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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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-0397; Directorate Identifier 2014-SW-048-AD; Amendment 39-18107; AD 2015-04-05]

RIN 2120-AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Sikorsky Model S-76A, B, C, and D helicopters. This AD requires inspecting the tail rotor drive shaft (TDS) flange-to-shaft attachment hardware for correct assembly and correct torque of the fasteners. If there is a discrepancy, this AD requires, before further flight, applying an index mark to the flange and TDS, inspecting the flange and shaft for a crack, fracture, wear, and certain measurements, and replacing any part that does not meet the approved criteria before further flight. This AD is prompted by a partial loss of tail rotor drive resulting in a forced landing. The actions specified by this AD are intended to prevent failure at the flange-to-shaft attachment, loss of a tail rotor drive, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective March 12, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain document as of March 12, 2015.

We must receive comments on this AD by April 27, 2015.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- *Fax:* 202-493-2251.

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

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated by reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1-800-Winged-S or 203-416-4299; email sikorskywcs@sikorsky.com. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-0397.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238-7761; email michael.schwetz@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

We are adopting a new AD for certain Sikorsky Model S-76A, B, C, and D helicopters. This AD requires inspecting the TDS flange-to-shaft attachment hardware at four locations for correct installation and correct torque of the fasteners. If there is movement, misalignment of the torque stripe, a misassembled part, or torque of less than 105 inch-pounds on any nut, this AD requires applying an index mark to the flange and shaft to make sure the flange is reinstalled in the same position to maintain shaft balance, and, before further flight, inspecting the flange and shaft for a crack, fracture, wear on the mounting hole, and diameter measurements, and replacing the TDS if the flange or stub does not meet the inspection criteria. This AD is prompted by a partial loss of tail rotor drive resulting in a forced landing, and instances where TDS flange-to-shaft attachment hardware was found to be loose or fractured. The actions specified by this AD are intended to detect loose or fractured hardware and prevent failure of the TDS at the flange-to-shaft attachment, loss of a tail rotor drive, and

subsequent loss of control of the helicopter.

FAA's Determination

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

Related Service Information Under 14 CFR Part 51

Sikorsky issued Alert Service Bulletin ASB 76-66-52, Basic Issue, on April 1, 2014, which specifies a one-time inspection of the TDS flange-to-shaft attachment hardware for proper installation and torque. If there is movement, torque stripe misalignment, or misassembled hardware, the ASB specifies removing and returning the hardware to Sikorsky with certain forms and replacing hardware with airworthy TDS hardware before returning the helicopter to service. The ASB also specifies either replacing the TDS or inspecting the flange and shaft for a crack, fracture, wear of the mounting hole, and diameter and replacing any part that does not meet the approved criteria. The ASB states there were instances where the TDS flange-to-shaft attachment hardware was found loose or fractured. This service information is reasonably available; see **ADDRESSES** for ways to access this service information.

AD Requirements

This AD requires, within 30 days:

- Inspecting each TDS flange attachment hardware at all four locations for looseness and torque stripe misalignment, inspecting each nut to determine whether it can be rotated by hand, determining whether the hardware is assembled correctly, and determining the torque of each nut.
- If there is no looseness, torque stripe misalignment, incorrect hardware assembly, and if no nut can be rotated by hand and the torque of any nut is not less than 105 inch-pounds, no further action is required by this AD.
- If there is looseness, torque stripe misalignment, incorrect hardware assembly, a nut rotated by hand, or the torque of any nut is less than 105 inch-pounds:
 - Applying an index mark to the flange and shaft, unbolting and removing the flange from the shaft, visually inspecting each radius washer for wear or fretting, and replacing any washer with wear or fretting.
 - Inspecting the flange and shaft for a crack, fracture, wear on the mounting hole, and diameter, and replacing the TDS with an airworthy TDS if the flange

and shaft fail any of the inspection criteria.

- Aligning index marks, installing the flange on the shaft, and coating the grip length of each bolt and the contact surfaces on each radius washer and washer with epoxy polyamide primer.
- Torquing each nut.

Differences Between This AD and the Service Information

The AD does not require returning the unairworthy parts with certain forms to the manufacturer as does the service information.

Costs of Compliance

We estimate that this AD affects 260 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. We estimate \$85 per work-hour for labor. We estimate 2.2 work-hours to inspect the hardware assembly and torque at a cost of \$187 per helicopter and \$48,620 for the fleet. We estimate 2.2 work-hours if the hardware is replaced and \$1,200 for the required parts, for a total cost of \$1,387 per helicopter.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments before adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment before adopting this rule because the required corrective actions must be done within 30 days, a very short time period based on the average flight-hour utilization rate of these helicopters used for commuter, air ambulance, and offshore operations.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015-04-05 Sikorsky Aircraft Corporation:
Amendment 39-18107; Docket No. FAA-2015-0397; Directorate Identifier 2014-SW-048-AD.

(a) Applicability

This AD applies to Model S-76A, S-76B, S-76C, and S-76D helicopters, serial numbers (S/N) up to and including 761050, certificated in any category, with a tail drive shaft (TDS) part number (P/N) and S/N as follows:

(a) P/N 76361-04004 (all dash numbers) with an S/N up to and including A127-01092; or

(b) P/N 76361-04604 (all dash numbers) with an S/N with a prefix A240 or B240, or with an S/N C240-00001 through C240-00880.

(b) Unsafe Condition

This AD defines the unsafe condition as loose or fractured TDS flange-to-shaft attachment hardware. This condition could result in loss of a tail rotor drive and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective March 12, 2015.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 30 hours time-in-service:

(1) Inspect each TDS flange attachment hardware at all four locations for looseness and torque stripe misalignment as depicted in Figure 1 and shown in Figure 2 of Sikorsky Aircraft Corporation Alert Service Bulletin ASB 76-66-52, Basic Issue, dated April 1, 2014 (ASB). Inspect each nut to determine whether it can be rotated by hand. Determine whether the hardware is assembled correctly by following the Accomplishment Instructions, paragraph B.(3)(a) through B.(3)(b) of the ASB. Determine the torque of each nut.

(2) If there is no looseness, torque stripe misalignment, incorrect hardware assembly, and if no nut can be rotated by hand and the torque of any nut is not less than 105 inch-pounds, no further action is required by this AD.

(3) If there is looseness, torque stripe misalignment, incorrect hardware assembly, a nut rotated by hand, or the torque of any nut is less than 105 inch-pounds, do the following:

(i) Apply an index mark to the flange and shaft to make sure the flange is reinstalled in the same position and to maintain shaft balance, unbolt and remove the flange from the shaft, and visually inspect each radius washer for wear or fretting. Replace any washer with wear or fretting.

(ii) Inspect the flange and shaft for a crack, fracture, wear on the mounting hole, and diameter by following the Accomplishment Instructions, paragraph 3.D.(5)(a) through 3.D.(5)(e), of the ASB. If the flange and shaft fail any of the inspection criteria, before further flight, replace the TDS with an airworthy TDS.

(iii) Align index marks, install the flange on the shaft, and coat the grip length of each bolt and the contact surfaces on each radius washer and washer with epoxy polyamide primer.

(iv) Torque each nut by following either paragraph D.(9) or D.(10) of the Accomplishment Instructions of the ASB.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Schwetz, Aviation Safety Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238-7761; email michael.schwetz@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6510 Tail Rotor Drive Shaft.

(h) Material Incorporated by Reference

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

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

(i) Sikorsky Aircraft Corporation Alert Service Bulletin ASB 76-66-52, Basic issue, dated April 1, 2014.

(ii) Reserved.

(3) For Sikorsky Aircraft Corporation service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1-800-Winged-S or 203-416-4299; email sikorskywcs@sikorsky.com.

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222-5110.

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

Issued in Fort Worth, Texas, on February 9, 2015.

Bruce E. Cain,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015-03703 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE**28 CFR Part 0**

[AG Order No. 3495-2015]

Authorization To Seize Property Involved in Drug Offenses for Administrative Forfeiture (2012R-9P)

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending its regulations to delegate to the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) authority to seize and administratively forfeit property involved in controlled substance offenses.

DATES: This rule is effective February 25, 2015.

FOR FURTHER INFORMATION CONTACT:

Denise Brown, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226, telephone: (202) 648-7070.

SUPPLEMENTARY INFORMATION:**Background**

After the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) became part of the Department of Justice (DOJ) in January 2003, pursuant to the Homeland Security Act of 2002 (Pub. L. 107-296), the Attorney General delegated to ATF the authority to investigate, seize, and forfeit property involved in a violation or attempted violation within its investigative jurisdiction. *See* 28 CFR 0.130(b)(1). ATF investigations focusing on violent crime frequently involve complex criminal organizations with multiple criminal enterprises and uncover drug-related offenses in addition to offenses within ATF's primary jurisdiction, such as violations of the Gun Control Act, 18 U.S.C. Chapter 44, the National Firearms Act, 26 U.S.C. Chapter 53, or the Contraband Cigarette Trafficking Act, 18 U.S.C. Chapter 114. In such investigations, ATF historically did not have authority under 21 U.S.C. Chapter 13 to seize for administrative forfeiture property involved in controlled substance offenses. Instead, ATF generally referred such property to the Drug Enforcement Administration (DEA), which is primarily responsible for investigating violations of drug laws contained in title 21 of the United States Code. DEA would then initiate, process, and conclude all necessary administrative forfeiture actions for the controlled substance-related property.

In other situations, ATF had to request that the local U.S. Attorney's office pursue a judicial forfeiture of such drug-related property.

The Department believes that forfeiting the assets of criminals is an essential tool in combating criminal activity that provides law enforcement with the ability to dismantle criminal organizations, deprive wrongdoers of the proceeds of their crimes, and deter crime. The Department further believes that administrative forfeiture permits the expedient and effective use of this valuable law enforcement tool.

An uncontested administrative forfeiture can be perfected in 60–90 days for minimal cost, including the personal notice to interested parties and the notice by publication required by statute. Conversely, the costs associated with judicial forfeiture can amount to hundreds or thousands of dollars and the judicial process generally can take anywhere from 6 months to years. In the meantime, the government incurs additional costs if the property requires storage or maintenance until a final order of forfeiture can be obtained.

One of the primary missions of ATF is to combat firearm-related violent crime. The nexus between drug trafficking and firearm violence is well established. Upon review of the current role and mission of ATF within DOJ, the Attorney General decided to authorize a temporary delegation of title 21 seizure and forfeiture authority to determine whether such authority can enhance the effectiveness of ATF in the investigation of violent crimes involving firearms. On August 21, 2012, the Attorney General signed a final rule delegating seizure and forfeiture authority under 21 U.S.C. 881 to the ATF for a trial period of one year, effective February 25, 2013. 77 FR 51698 (Aug. 27, 2012). By subsequent action, the Attorney General extended the same authority to ATF for an additional one-year period to give ATF more time to refine its process, fully hire and train all necessary staff, and further demonstrate the effectiveness of the delegation in the investigation of violent crimes involving firearms. 79 FR 12060 (Mar. 4, 2014).

ATF has refined its title 21 asset forfeiture process, and strengthened the overall asset forfeiture program, by changing organizational structure, adding experienced personnel and resources to review and more efficiently process all of ATF's administrative forfeitures, and providing additional asset forfeiture training to all agency personnel involved in the forfeiture process, together with a renewed focus on the proper execution of all phases of ATF's asset forfeiture mission to ensure

that all interested parties are afforded due process under the law, that all seized assets are accounted for and properly maintained, and that all forfeited property is disposed of according to law in a timely and cost-efficient manner.

This authority has given ATF the ability to process drug-related property seized in criminal investigations in which firearms and explosives also are seized. From February 25, 2013, to September 30, 2014, ATF used its authority under title 21 to seize more than 1,700 assets with a total value in excess of \$19,300,000.

The delegation of authority has afforded cost savings to the United States government by streamlining the forfeiture process to prevent unnecessary burden on the judicial system and the public and by permitting the government to process forfeitures within a single agency. The grant of title 21 seizure and forfeiture authority will permit ATF to continue its use of asset forfeiture as a valuable tool in support of its law enforcement mission and enable the Department to further increase the speed and efficiency of uncontested forfeiture actions.

Final Rule

This rule amends the regulations in 28 CFR part 0 to delegate to the Director of ATF the authority to seize, forfeit, and remit or mitigate the forfeiture of property in accordance with 21 U.S.C. 881.

Forfeiting the assets of criminals is an essential tool in combating criminal activity and provides law enforcement with the capacity to dismantle criminal organizations, deprive wrongdoers of the proceeds of their illegal activities, and deter crime. Therefore, the Attorney General has decided to delegate to the Director of ATF without a time limit administrative seizure and forfeiture authority under title 21 to permit expedient and effective use of this valuable law enforcement tool in the investigation of violent crime involving firearms.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

Administrative Procedure Act (APA)

Notice and comment rulemaking is not required for this final rule. Under the APA, “rules of agency organization, procedure or practice,” 5 U.S.C. 553(b)(A), that do not “affect[] individual rights and obligations,” *Morton v. Ruiz*, 415 U.S. 199, 232 (1974), are exempt from the general notice and comment requirements of

section 553 of title 5 of the United States Code. See *JEM Broad. Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (section 553(b)(A) applies to “agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency”) (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980) (internal quotation marks omitted)). The revisions to the regulations in 28 CFR part 0 are purely a matter of agency organization, procedure, and practice that will not affect individual rights and obligations. This rule does not expand the government's ability as a matter of law to effectuate forfeitures; it simply authorizes the Director of ATF to effectuate such forfeitures. Internal delegations of authority such as in this final rule are “rules of agency organization, procedure, or practice” under the APA. In addition, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date because, as an internal delegation of authority, it relates to a matter of agency management or personnel. See 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

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

Executive Order 12866 and Executive Order 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and with Executive Order 13563, “Improving Regulation and Regulatory Review.” This rule is limited to agency organization, management, or personnel matters as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a “regulation” or “rule” as defined by that Executive Order.

This rule will not have an annual effect on the economy of \$100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition,

jobs, the environment, public health or safety, or State, local, or tribal government or communities. Accordingly, this rule is not a “significant regulatory action” as defined in Executive Order 12866.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

Executive Order 13132

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a rule for purposes of the reporting requirement of 5 U.S.C. 801.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees,

Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Authority and Issuance

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, and for the reasons set forth in the preamble, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for 28 CFR part 0 continues to read as follows:

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

§ 0.130 [Amended]

■ 2. In § 0.130, amend paragraph (b)(2) by removing the second sentence.

Dated: February 20, 2015.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2015–03839 Filed 2–24–15; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1235–AA09

Definition of Spouse Under the Family and Medical Leave Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor’s (Department) Wage and Hour Division (WHD) revises the regulation defining “spouse” under the Family and Medical Leave Act of 1993 (FMLA or the Act) in light of the United States Supreme Court’s decision in *United States v. Windsor*, which found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional.

DATES: This Final Rule is effective March 27, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director of the Division of Regulations, Legislation, and Interpretation, U.S. Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S–3502, Frances Perkins Building, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this Final Rule may

be obtained in alternative formats (large print, braille, audio tape or disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency’s current regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD’s toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD’s Web site for a nationwide listing of WHD district and area offices at <http://www.dol.gov/whd/america2.htm>. Please visit <http://www.dol.gov/whd> for more information and resources about the laws administered and enforced by WHD. Information and compliance assistance materials specific to this Final Rule can be found at: <http://www.dol.gov/whd/fmla/spouse/>.

SUPPLEMENTARY INFORMATION:

I. Background

A. What the FMLA Provides

The Family and Medical Leave Act of 1993, 29 U.S.C. 2601 *et seq.*, entitles eligible employees of covered employers to take job-protected, unpaid leave, or to substitute appropriate accrued paid leave, for up to a total of 12 workweeks in a 12-month period for the birth of the employee’s son or daughter and to care for the newborn child; for the placement of a son or daughter with the employee for adoption or foster care; to care for the employee’s spouse, parent, son, or daughter with a serious health condition; when the employee is unable to work due to the employee’s own serious health condition; or for any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military member on covered active duty. 29 U.S.C. 2612. An eligible employee may also take up to 26 workweeks of FMLA leave during a “single 12-month period” to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. *Id.*

FMLA leave may be taken in a block, or under certain circumstances, intermittently or on a reduced leave schedule. *Id.* In addition to providing job-protected family and medical leave, employers must also maintain any preexisting group health plan coverage for an employee on FMLA-protected leave under the same conditions that would apply if the employee had not taken leave. 29 U.S.C. 2614. Once the leave period is concluded, the employer

is required to restore the employee to the same or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. *Id.* If an employee believes that his or her FMLA rights have been violated, the employee may file a complaint with the Department of Labor or file a private lawsuit in federal or state court. If the employer has violated the employee's FMLA rights, the employee is entitled to reimbursement for any monetary loss incurred, equitable relief as appropriate, interest, attorneys' fees, expert witness fees, and court costs. Liquidated damages also may be awarded. 29 U.S.C. 2617.

Title I of the FMLA is administered by the U.S. Department of Labor and applies to private sector employers of 50 or more employees, private and public elementary and secondary schools, public agencies, and certain federal employers and entities, such as the U.S. Postal Service and Postal Regulatory Commission. Title II is administered by the U.S. Office of Personnel Management and applies to civil service employees covered by the annual and sick leave system established under 5 U.S.C. Chapter 63 and certain employees covered by other federal leave systems.

B. Who the Law Protects

The FMLA generally covers employers with 50 or more employees. To be eligible to take FMLA leave, an employee must meet specified criteria, including employment with a covered employer for at least 12 months, performance of a specified number of hours of service in the 12 months prior to the start of leave, and work at a location where there are at least 50 employees within 75 miles.

C. Regulatory History

The FMLA required the Department to issue initial regulations to implement Title I and Title IV of the FMLA within 120 days of enactment (by June 5, 1993) with an effective date of August 5, 1993. The Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 10, 1993. 58 FR 13394. The Department received comments from a wide variety of stakeholders, and after considering these comments the Department issued an Interim Final Rule on June 4, 1993, effective August 5, 1993. 58 FR 31794.

After publication, the Department invited further public comment on the interim regulations. 58 FR 45433. During this comment period, the Department received a significant number of substantive and editorial comments on the interim regulations

from a wide variety of stakeholders. Based on this second round of public comments, the Department published final regulations to implement the FMLA on January 6, 1995. 60 FR 2180. The regulations were amended February 3, 1995 (60 FR 6658) and March 30, 1995 (60 FR 16382) to make minor technical corrections. The final regulations went into effect on April 6, 1995.

The Department published a Request for Information (RFI) in the **Federal Register** on December 1, 2006 requesting public comments on experiences with the FMLA (71 FR 69504) and issued a report on the RFI responses on June 28, 2007 (72 FR 35550). The Department published an NPRM in the **Federal Register** on February 11, 2008 proposing changes to the FMLA's regulations based on the Department's experience administering the law, two Department of Labor studies and reports on the FMLA issued in 1996 and 2001, several U.S. Supreme Court and lower court rulings on the FMLA, and a review of the comments received in response to the 2006 RFI. 73 FR 7876. The Department also sought comments on the military family leave statutory provisions enacted by the National Defense Authorization Act for Fiscal Year 2008. In response to the NPRM, the Department received thousands of comments from a wide variety of stakeholders. The Department issued a Final Rule on November 17, 2008, which became effective on January 16, 2009. 73 FR 67934.

The Department published an NPRM in the **Federal Register** on February 15, 2012 primarily focused on changes to the FMLA's regulations to implement amendments to the military leave provisions made by the National Defense Authorization Act for Fiscal Year 2010 and to the employee eligibility requirements for airline flight crew employees made by the Airline Flight Crew Technical Corrections Act. 77 FR 8960. The Department issued a Final Rule on February 6, 2013, which became effective on March 8, 2013. 78 FR 8834.

The Department commenced the current rulemaking by publishing an NPRM in the **Federal Register** on June 27, 2014 (79 FR 36445), inviting public comment for 45 days. The comment period closed on August 11, 2014. The Department received 77 comment submissions on the NPRM, representing over 18,000 individuals. Specific comments are discussed in detail below.

II. FMLA Spousal Leave

The FMLA provides eligible employees with leave to care for a

spouse in the following situations: (1) When needed to care for a spouse due to the spouse's serious health condition; (2) when needed to care for a spouse who is a covered servicemember with a serious illness or injury; and (3) for a qualifying exigency related to the covered military service of a spouse. The FMLA defines "spouse" as "a husband or wife, as the case may be." 29 U.S.C. 2611(13). In the 1993 Interim Final Rule, the Department defined spouse as "a husband or wife as defined or recognized under state law for purposes of marriage, including common law marriage in states where it is recognized." 58 FR 31817, 31835 (June 4, 1993). In commenting on the Interim Final Rule, both the Society for Human Resource Management and William M. Mercer, Inc., questioned which state law would apply when an employee resided in one State but worked in another State. 60 FR 2190. In response to these comments, the 1995 Final Rule clarified that the law of the State of the employee's residence would control for determining eligibility for FMLA spousal leave. *Id.* at 2191. Accordingly, since 1995 the FMLA regulations have defined spouse as a husband or wife as defined or recognized under state law and the regulation has looked to the law of the State where the employee resides. §§ 825.102, 825.122(a) (prior to the 2013 Final Rule the same definition appeared at §§ 825.113(a) and 825.800). The definition has also included common law marriage in States where it is recognized. *Id.*

The Defense of Marriage Act (DOMA) was enacted in 1996. Public Law 104–199, 110 Stat. 2419. Section 3 of DOMA restricted the definitions of "marriage" and "spouse" for purposes of federal law, regulations, and administrative interpretations: "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." 1 U.S.C. 7. For purposes of employee leave under the FMLA, the effect of DOMA was to limit the availability of FMLA leave based on a spousal relationship to opposite-sex marriages. While the Department did not revise the FMLA regulatory definition of "spouse" to incorporate DOMA's restrictions, in 1998 WHD issued an opinion letter that addressed, in part, the limitation section 3 of DOMA imposed on the availability of FMLA spousal leave.

Under the FMLA (29 U.S.C. 2611(13)), the term "spouse" is defined as a husband or wife, which the regulations (29 CFR

825.113(a) clarified to mean a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized. The legislative history confirms that this definition was adapted to ensure that employers were not required to grant FMLA leave to an employee to care for an unmarried domestic partner. (See Congressional Record, S 1347, February 4, 1993). Moreover, the subsequently enacted Defense of Marriage Act of 1996 (DOMA) (Pub. L. 104–199) establishes a Federal definition of “marriage” as only a legal union between one man and one woman as husband and wife, and a “spouse” as only a person of the opposite sex who is a husband or wife. Because FMLA is a Federal law, it is our interpretation that only the Federal definition of marriage and spouse as established under DOMA may be recognized for FMLA leave purposes.

Opinion Letter FMLA–98 (Nov. 18, 1998). WHD also referenced DOMA’s limitations on spousal FMLA leave in a number of sub-regulatory guidance documents posted on its Web site.

On June 26, 2013, the Supreme Court held in *United States v. Windsor*, 133 S. Ct. 2675 (2013), that section 3 of DOMA was unconstitutional under the Fifth Amendment. It concluded that this section “undermines both the public and private significance of state-sanctioned same-sex marriages” and found that “no legitimate purpose overcomes” section 3’s “purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect[.]” *Id.* at 2694–96.

Because of the Supreme Court’s holding in *Windsor* that section 3 of DOMA is unconstitutional, the Department is no longer prohibited from recognizing same-sex marriages as a basis for FMLA spousal leave. Accordingly, as of June 26, 2013, under the current FMLA regulatory definition of spouse, an eligible employee in a legal same-sex marriage who resides in a State that recognizes the employee’s marriage may take FMLA spousal leave. On August 9, 2013, the Department updated its FMLA sub-regulatory guidance to remove any references to the restrictions imposed by section 3 of DOMA and to expressly note that the regulatory definition of spouse covers same-sex spouses residing in States that recognize such marriages. Similarly, as a result of the *Windsor* decision, the interpretation expressed in Opinion Letter FMLA–98 of the definition of spouse as a person of the opposite sex as defined in DOMA is no longer valid.

III. Summary of Comments

The Department commenced this rulemaking by publishing an NPRM on June 27, 2014. 79 FR 36445. In the

NPRM the Department proposed to change the definition of spouse to look to the law of the jurisdiction in which the marriage was entered into (including for common law marriages), as opposed to the law of the State in which the employee resides, and to expressly reference the inclusion of same-sex marriages in addition to common law marriages. The Department proposed to change the definition of spouse to ensure that all legally married couples, whether opposite-sex or same-sex, will have consistent federal family leave rights regardless of where they live. The Department received 77 comment submissions on the NPRM, representing over 18,000 individuals, which are available for review at the Federal eRulemaking Portal, www.regulations.gov, Docket ID WHD–2014–0002. The vast majority of those individuals submitted identical letters, which expressed strong support for the proposed rule, that were part of a comment campaign by the Human Rights Campaign (HRC). In addition, hundreds of commenters submitted nearly identical but individualized letters, which also strongly supported the proposed rule, as part of the HRC comment campaign. Beyond these campaign comments, the majority of the comments were supportive of the proposed rule. Comments were received from advocacy organizations, labor organizations, employer associations, a state agency, United States Senators, and private individuals. The Department received one comment after the close of the comment period; the comment was not considered by the Department. A number of the comments received addressed issues that are statutory and therefore beyond the scope or authority of the proposed regulations, such as expanding the coverage of the Act to include domestic partners and parents in law. Because addressing these issues would require statutory changes, these comments are not addressed in this Final Rule. Moreover, the Department has previously issued guidance on some of these issues. See, e.g., Opinion Letter FMLA–98 (Nov. 18, 1998) (the FMLA does not cover absences to care for a domestic partner with a serious health condition)¹; Opinion Letter FMLA–96

¹ As noted above, the portion of Opinion Letter FMLA–98 that relied on DOMA’s definition of spouse and marriage is now invalid in light of *Windsor*. The remaining portion of Opinion Letter FMLA–98, however, continues to be valid. Specifically, the opinion letter noted that the FMLA’s legislative history indicated that the definition of spouse was meant to ensure that employers would not be required to provide leave to care for an employee’s domestic partner.

(June 4, 1998) (“parent” as referenced in the Act does not include a parent-in-law).

The Department has carefully considered all of the relevant and timely comments. The major comments received on the proposed regulatory changes are summarized below, together with a discussion of the Department’s responses. The Final Rule adopts the changes to the regulations as proposed in the NPRM.

IV. Analysis of the Proposed Changes to the FMLA Regulations

In the NPRM the Department proposed to change the regulatory definition of spouse in §§ 825.102 and 825.122(b) to mean the other person with whom an individual entered into marriage. The Department proposed to look to the law of the jurisdiction in which the marriage was entered into (including for common law marriages), as opposed to the law of the State in which the employee resides, and to expressly reference the inclusion of same-sex marriages in addition to common law marriages. The Department also proposed to include in the definition same-sex marriages entered into abroad by including marriages entered into outside of any State as long as the marriage was legally valid in the place where it was entered into and could have been entered into legally in at least one State.

The proposed definition included the statutory language defining spouse as a husband or wife but made clear that these terms included all individuals in lawfully recognized marriages. As noted in the NPRM, the Department is aware that the language surrounding marriage is evolving and that not all married individuals choose to use the traditional terms of husband or wife when referring to their spouse. 79 FR 36448. The Department intended the proposed definition to cover all spouses in legally valid marriages as defined in the regulation regardless of whether they use the terms husband or wife. The Department adopts the definition of spouse as proposed.

The Department is moving from a state of residence rule to a rule based on the jurisdiction where the marriage was entered into (place of celebration) to ensure that all legally married couples, whether opposite-sex or same-sex, will have consistent federal family leave rights regardless of where they live. 79 FR 36448. The Department noted in the proposed rule that while many States and foreign countries currently legally recognize same-sex marriage, not all do. As of February 13, 2015, thirty-two States and the District of Columbia

extend the right to marry to both same-sex and opposite-sex couples (Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming).² Additionally, as of February 13, 2015, eighteen countries extend the right to marry to both same-sex and opposite-sex couples (Argentina, Belgium, Brazil, Canada, Denmark, England/Wales/Scotland, Finland, France, Iceland, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, South Africa, Sweden, and Uruguay). The Department notes that this list of States and countries currently recognizing same-sex marriage does not limit the revised definition of spouse in any way. Legal recognition of same-sex marriage has expanded rapidly and the Department anticipates that the number of States and countries recognizing same-sex marriage will continue to grow.

The vast majority of commenters, including the HRC letter-writing campaign commenters, applauded the Department's proposed use of a place of celebration rule. As the Maine Women's Lobby, A Better Balance, the 9to5 National Association of Working Women, the American Federation of Teachers, the North Carolina Justice Center, the Women's Law Project, the Religious Action Center for Reform Judaism, and many other commenters noted, under a state of residence rule, employees in legally valid same-sex marriages who live in a State that does not recognize their marriage are often forced to risk their jobs and financial wellbeing when they need time off to care for their ill or injured spouse or to address qualifying exigencies relating to their spouse's military service. These commenters stated that a place of celebration rule will provide security to all legally married same-sex spouses in knowing that they will be able to exercise their FMLA rights when the need arises. An individual similarly commented that, as the mother of a daughter in a same-sex marriage, she supported the rule because it would provide comfort to her as a parent who

lives far from her daughter in knowing that, should her daughter need care, her daughter's same-sex spouse would be able to care for the daughter without having to worry that she would lose her job. Commenters such as the Family Equality Council (Family Equality), the National Partnership for Women & Families (National Partnership), the National Minority AIDS Council (NMAC), and twenty-three United States Senators who submitted a joint comment, also noted that nationally consistent and uniform access to leave as provided by the proposed rule will further the original purpose of the FMLA.

Many commenters, including the National Center for Transgender Equality, Family Values @Work, the National Employment Lawyers Association, the National Partnership, the Feminist Majority Foundation, the National Council of Jewish Women, and Equal Rights Advocates approved of the proposed place of celebration rule because it would provide certainty to same-sex couples regarding their FMLA leave rights, which would encourage worker mobility. The National Partnership commented that "[g]eographic mobility is a significant part of economic mobility for American workers By ensuring that [lesbian, gay, bisexual, and transgender (LGBT)] couples receive the same federal family leave protections if they move to a state that does not recognize their marriage, the rule makes it easier for workers to accept promotions or new jobs" This commenter also observed that the rule would provide important protections for LGBT military families who relocate due to military assignment.

Commenters also noted that a place of celebration rule will benefit employers as well as employees. The National Partnership observed that, by securing federal family leave rights to legally married same-sex spouses regardless of the State in which they reside, employers will be able to fill job positions with the most qualified workers. The National Business Group on Health expressed support for this rule because it will reduce the administrative burden on employers that operate in more than one State or have employees who move between States. The National Consumers League and the National Women's Law Center, among other commenters, echoed this observation that a place of celebration rule will simplify FMLA administration for employers that operate in multiple States.

The Department concurs with these comments. A place of celebration rule

provides consistent federal family leave rights for legally married couples regardless of the State in which they reside, thus reducing barriers to the mobility of employees in same-sex marriages in the labor market and ensuring employees in same-sex marriages will be able to exercise their FMLA leave rights. Moreover, such a rule also reduces the administrative burden on employers that operate in more than one State, or that have employees who move between States with different marriage recognition rules; such employers will not have to consider the employee's state of residence and the laws of that State in determining the employee's eligibility for FMLA leave.

Several commenters were appreciative that the proposed place of celebration rule would be consistent with the interpretations adopted by other federal government agencies, such as the Department of Defense and the Internal Revenue Service, as this would create greater uniformity for employees and employers. *See, e.g.*, the Legal Aid Employment Law Center, the American Federation of State, County, and Municipal Employees, AFL-CIO, the Fenway Institute at Fenway Health. The Society for Human Resource Management, the U.S. Chamber of Commerce, and the College and University Professional Association for Human Resources, which submitted a joint comment (collectively SHRM), appreciated the use by multiple federal agencies of a place of celebration rule because "consistent definitions are of tremendous importance and value for those seeking to comply with the FMLA." The Department agrees with these comments. In addition, as stated in the NPRM, the Department believes that, in relation to Department of Defense policy, it is appropriate whenever possible to align the availability of FMLA military leave with the availability of other marriage-based benefits provided by the Department of Defense. 79 FR 36448.

SHRM, the U.S. Conference of Catholic Bishops (USCCB), and the National Automobile Dealers Association (NADA) expressed concern regarding the potential burden on employers to know the marriage laws of jurisdictions beyond those in which they operate. NADA and SHRM requested that the Department provide guidance on how to determine if a same-sex marriage is legally valid, perhaps with a chart on the Department's Web site with current information on the status of same-sex marriage in the States and foreign jurisdictions.

² On January 16, 2015, the Supreme Court granted review of the Sixth Circuit's decision upholding state law bans on same-sex marriage in Kentucky, Michigan, Ohio, and Tennessee. *See DeBoer v. Snyder*, No. 14–571, 2015 WL 213650 (S. Ct. Jan. 16, 2015). The case is currently pending before the Supreme Court.

The Department does not believe that further guidance on state and foreign marriage laws is necessary at this time. Employers do not need to know the marriage laws of all 50 States and all foreign countries. Rather, employers will only need to know the same-sex marriage laws of a specific State or country in situations where an employee has requested leave to care for a spouse, child, or parent and the basis for the family relationship is a same-sex marriage. In such a situation, for purposes of confirming the qualifying basis of the leave, the employer would need to know the marriage laws of only the individual State or country where the marriage at issue was entered into. The Department believes that making this determination will not be burdensome. There are a number of organizations focused on providing up-to-date information on the status of same-sex marriages in the 50 States within the United States and foreign jurisdictions. Some examples of organizations that provide this information include <http://www.freedomtomarry.org/states/> and <http://gaymarriage.procon.org/>. Because such information is readily available, the Department does not believe that it is necessary at this time to provide such information on its own Web site.

A few commenters addressed common law marriages as referenced in the proposed definition of spouse. Family Equality questioned whether the wording of the proposed definition could be interpreted to exclude an individual in a same-sex common law marriage. This commenter requested that the definition be modified to make clear that same-sex common law spouses are included in the definition. SHRM and the Food Marketing Institute (FMI) expressed concern that knowing the common law marriage standards of numerous States will be particularly burdensome for employers.

The Department has retained the proposed language regarding common law marriage in the Final Rule. The Department believes that the language regarding common law marriage in the definition of "spouse" in the Final Rule will not result in a significant change in employers' administration of the FMLA. Common law marriages have been included in the definition of spouse under the FMLA since 1995. § 825.113(a) (1995).³ While the majority of States do not permit the formation of common law marriages within their borders, these States generally will recognize a common law marriage that

was validly entered into in another State. Therefore, under the current regulation, looking to the law of the State in which the employee resides to determine the existence of a common law marriage will often require looking, in turn, to the common law marriage standards of another State. For example, under the current regulation, an FMLA-eligible employee of a covered employer who validly entered into an opposite sex common law marriage in Alabama, a State that permits the formation of common law marriages, and later relocated to North Dakota, a State that does not permit the formation of common law marriages, would be considered to have a legal marriage and would be entitled to FMLA spousal leave.

The only change from the current definition of spouse to the definition in the Final Rule in regards to common law marriage is that in States that permit same-sex common law marriages, employees who have entered into a same-sex common law marriage in those States will now be eligible to take FMLA spousal leave regardless of the State in which they reside. In response to Family Equality's comment above, the Department believes that the language used in the proposed definition and adopted in the Final Rule already encompasses spouses in same-sex common law marriages.

Moreover, under both the current and revised definitions of spouse, an employer would only need to know the common law marriage standards for a particular State for confirmation purposes in the event that an eligible employee requests FMLA leave to care for a spouse, child, or parent and the basis for the family relationship is a common law marriage. The Department does not believe that this will be burdensome and notes that there are organizations that provide information to the public on the status of common law marriages in the 50 States within the United States. Some examples of organizations that provide this information include <http://www.nolo.com/legal-encyclopedia/common-law-marriage-faq-29086-2.html> and http://usmarriagelaws.com/search/united_states/common_law_marriage/. Finally, the Department notes that in its experience, the inclusion of common law marriages within the definition of spouse has not caused problems in the last 20 years and the Department does not anticipate that the Final Rule's recognition of common law marriages based on the place of celebration will result in any significant problems.

A few commenters addressed the documentation that employers may

require from employees to confirm a family relationship. SHRM recommended that the Department clarify the type of proof an employer may require to confirm that an employee has a valid marriage, and permit employers to ask for documentation of proof of marriage on a case-by-case basis. FMI commented that it will be burdensome for employers to determine whether a common law marriage is valid, and requested guidance on how to confirm the existence of a common law marriage. Due to these concerns, this commenter recommended that the definition of spouse be revised to apply only to those who have a valid, government-issued document recognizing the marriage, such as a marriage certificate, court order, or letter from a federal agency such as the Social Security Administration. The National Women's Law Center urged the Department to modify the regulation at § 825.122(k) to require that employers request documentation of a family relationship in a consistent and non-discriminatory manner so that employees in same-sex marriages are not singled out with special burdens when they attempt to exercise their FMLA rights.

The Department declines to modify the regulation at § 825.122(k). That regulation permits employers to require employees who take leave to care for a family member to provide reasonable documentation of the family relationship. Reasonable documentation may take the form of either a simple statement from the employee or documentation such as a birth certificate or court document.

In response to the comments, the Department believes that the current regulation adequately addresses the nature of the documentation that employers may require. An employee may satisfy an employer's requirement to confirm a family relationship by providing either a simple statement asserting that the requisite family relationship exists, or documentation such as a child's birth certificate, a court document, etc. It is the employee's choice whether to provide a simple statement or another type of documentation. Thus, in all cases, a simple statement of family relationship is sufficient under the regulation to satisfy the employer's request. In response to FMI's comment, the Department does not believe that it is necessary or that it would be appropriate to require government-issued documentation to confirm common law marriages when an employee can document all other

³ This definition was not changed in the 2008 and 2013 rulemakings. See 73 FR 67934; 78 FR 8834.

marriages with a simple statement. In response to SHRM's and the National Women's Law Center's comments, the Department notes that the change to a place of celebration rule in the definition of spouse does not alter the instances in which an employer can require an employee to confirm a family relationship, nor does it alter how an employee can do so. Employers have the option to request documentation of a family relationship but are not required to do so in all instances. Employers may not, however, use a request for confirmation of a family relationship in a manner that interferes with an employee's exercise or attempt to exercise the employee's FMLA rights. See 29 U.S.C. 2615(a). The Department also notes that if an employee has already submitted proof of marriage to the employer for some other purpose, such as obtaining health care benefits for the employee's spouse, such proof is sufficient to confirm the family relationship for purposes of FMLA leave. Lastly, the Department notes that where an employee chooses to satisfy a request for documentation of family relationship with a simple statement, the employer may require that such statement be written.

Two commenters raised concerns about a tension between the proposed definition and state laws prohibiting the recognition of same-sex marriages. USCCB commented that it believed the proposed definition of spouse is "at odds" with the Supreme Court's decision in *Windsor* because the definition does not defer to the laws of the States that define marriage as the union of one man and one woman. The South Dakota Department of Labor and Regulation commented that same-sex marriages are not recognized or valid under the South Dakota Constitution.

The Department believes that using a place of celebration rule in the definition of spouse under the FMLA is consistent with the Court's decision in *Windsor*. The FMLA is a federal law that entitles eligible employees to take unpaid, job-protected leave for qualifying reasons, and the Final Rule's definition of spouse simply defines a familial relationship that may be the basis of an employee's qualifying reason to take leave. The Final Rule does not require States to recognize or give effect to same-sex marriages or to provide any state benefit based on a same-sex marriage. The Final Rule impacts States only in their capacity as employers and merely requires them to provide unpaid FMLA leave to eligible employees based on a federal definition of spouse. The Department notes that, after *Windsor*, the current definition of spouse already

requires States in their capacity as employers to provide unpaid FMLA leave to employees in same-sex marriages if the employees reside in a different State that recognizes same-sex marriages. Moreover, the Department believes that defining the term spouse to include all legally married couples best serves the FMLA's goal of promoting "the stability and economic security of families," and the "national interests in preserving family integrity," 29 U.S.C. 2601, because the need to care for a spouse does not differ based on the gender of the spouses.

The Department noted in the NPRM that the proposed change to a place of celebration rule for the definition of spouse under the FMLA would also have some impact beyond spousal leave. 79 FR 36448. Specifically, the Department noted that under the Department's proposed rule, an employee in a legal same-sex marriage would be able to take leave to care for a stepchild (*i.e.*, the employee's same-sex spouse's child) to whom the employee does not stand in loco parentis. *Id.* Similarly, an employee whose parent is in a legal same-sex marriage would be able to take leave to care for the parent's same-sex spouse (*i.e.*, the employee's stepparent) who did not stand in loco parentis to the employee when the employee was a child. *Id.*

Several commenters addressed the interplay between the proposed rule and the Administrator's Interpretation FMLA 2010-3 (June 22, 2010) that addresses in loco parentis. See, *e.g.*, HRC, the HRC comment campaign, the National Gay and Lesbian Task Force (Task Force), the National Center for Lesbian Rights, the Statewide Parent Advocacy Network and Family Voices. These commenters stated that basing an employee's ability to take leave to care for a child on the employee's same-sex marriage could put the employee at risk of losing the ability to take leave to care for the child should the marriage dissolve. These commenters stated that recognizing an employee as standing in loco parentis, as the Administrator's Interpretation FMLA 2010-3 does, ensures that the employee who stands in loco parentis to a child will retain the ability to take leave to care for the child despite dissolution of the marriage. Therefore, the commenters requested that the Department clarify that this rule will not affect the in loco parentis Administrator's Interpretation both in how parents are determined to stand in loco parentis and in recognizing that more than two adults may stand in loco parentis to a child. The Department recognizes that the existence of an in

loco parentis relationship, using the standards set out in Administrator's Interpretation FMLA 2010-3, is an important basis for an employee to take leave to care for a child. The Department notes that it has consistently recognized the eligibility of employees to take leave to care for a child of the employee's same-sex partner (whether the employee and the partner are married or not) provided that the employee meets the in loco parentis requirement of providing day-to-day care or financial support for the child. *Id.*; see Administrator's Interpretation FMLA 2010-3 (June 22, 2010). For example, where an employee and the employee's same-sex spouse provide day-to-day care for the same-sex spouse's biological child, if the marriage dissolves but the employee continues to have an in loco parentis relationship with the child, the employee would be able to take leave to care for the child notwithstanding the dissolution of the marriage.

The Department did not intend for the proposed rule to have any impact on the standards for in loco parentis set out in the Administrator's Interpretation and this Final Rule has no impact on the standards for determining the existence of an in loco parentis relationship set out in Administrator's Interpretation FMLA 2010-3. Rather, the place of celebration rule means that employees in same-sex marriages, regardless of the State in which they reside, do not need to establish the requirements for in loco parentis for their spouse's child (the employee's stepchild) in order to take leave to care for the child. Only one type of relationship need apply for an employee to satisfy the requisite family relationship under the FMLA. See 825.102, which defines "son or daughter" to include a stepchild; see also 825.122(d), 825.122(h), and 825.122(i). Thus, the place of celebration rule expands the basis for an employee to take leave to care for a child.

A few commenters also expressed concern about the regulatory definition of "parent" in § 825.122(c), which provides that a parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in paragraph (d) of this section.⁴ These commenters suggested that, as currently worded, the definition could be read to imply either that a particular adult may be

⁴ While the commenters cited only to § 825.122(c), this same definition of parent is contained in § 825.102.

recognized as a biological, adoptive, step, or foster parent, or as a person who stood in loco parentis, but not both, or that a biological, adoptive, step, or foster parent must meet the criteria of in loco parentis. See, e.g., NMAC, HRC, Family Equality, Task Force. These commenters requested that the Department modify the definition of parent to avoid such misinterpretation.

The Department declines to modify the definition of parent as suggested. The Department believes that the definition of parent as currently worded is not causing confusion. Nonetheless, the Department understands that further clarification may be useful. As an initial matter, the Department notes that the definition of parent in § 825.122(c) is relevant only to instances of an employee needing FMLA leave to care for a parent or to attend to a qualifying exigency arising out of the parent's military service. It is not relevant to instances of an employee needing to take leave to care for the employee's child. The regulatory definition of parent lists various types of parents, separated by commas. §§ 825.102, 825.122(c). The term "any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in paragraph (d) of this section" is set off by a comma from the list of other types of parents (i.e., "biological, adoptive, step or foster father or mother"). By setting the phrase off by a comma, the Department believes it is clear that in loco parentis applies only to "any other individual"; it does not apply to a "biological, adoptive, step or foster father or mother." When an employee seeks leave to care for a biological, adoptive, step, or foster parent, there is no need to inquire whether the parent stood in loco parentis to the employee; that parent automatically satisfies the definition of "parent" for FMLA purposes and an analysis of whether the in loco parentis requirements are met is not necessary.

Two commenters addressed the publication and effective date of the Final Rule. FMI requested that the Department delay publication of the Final Rule until the Department provides guidance on how employers can confirm the existence of an employee's common law marriage. The National Business Group on Health requested that the Department delay the effective date of the Final Rule for at least 12 months to allow employers time to modify their policies and procedures. The Department does not believe that any delay is warranted given the limited scope of this Final Rule. Therefore, the Final Rule will become effective 30 days after publication.

Lastly, notwithstanding the Final Rule's definition of spouse as including all legally married couples according to the law of the place of celebration, an employer may, of course, offer an employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. See § 825.700(a). FMLA regulations state: "[N]othing in the Act is intended to discourage employers from adopting or retaining more generous leave policies." § 825.700(b).

V. Conforming Changes

Minor editorial changes were proposed to §§ 825.120, 825.121, 825.122, 825.127, 825.201 and 825.202 to make references to husbands and wives, and mothers and fathers gender neutral where appropriate so that they apply equally to opposite-sex and same-sex spouses. The Department proposed using the terms "spouses" and "parents," as appropriate, in these regulations. As stated in the NPRM, these editorial changes do not change the availability of FMLA leave but simply clarify its availability for all eligible employees who are legally married. 79 FR 36449. The Department received no comments on these changes and adopts them as proposed.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and its attendant regulations, 5 CFR part 1320, require that the Department consider an agency's need for its information collections, their practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. Under the PRA, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See 5 CFR 1320.8(b)(3)(vi).

OMB has assigned control number 1235-0003 to the FMLA information collections. As required by the PRA (44 U.S.C. 3507(d)), the Department has submitted these proposed information collection amendments to OMB for its review. The Department will publish a notice in the **Federal Register** to announce the result of the OMB review.

Summary: The Department seeks to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, federal contractors, state, local, and tribal governments, and other persons resulting from the collection of

information by or for the agency. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. See 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8.

The Department's Final Rule revises the regulation defining "spouse" under the FMLA, in light of the United States Supreme Court's holding that section 3 of the Defense of Marriage Act is unconstitutional. Amending the definition of spouse to include all legally married spouses as recognized under state law for purposes of marriage in the State where the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State, expands the availability of FMLA leave to legally married same-sex spouses regardless of the State in which they reside. Under the revised definition of spouse, eligible employees are able to take FMLA leave based on a same-sex marital relationship regardless of the state in which they reside.

In light of the June 26, 2013 *Windsor* decision and under the current regulation, employees in same-sex marriages have the right to take FMLA leave based on their same-sex marriage only if they reside in a State that recognizes same-sex marriage. In contrast, under the Final Rule's place of celebration rule, all eligible employees in same-sex marriages will be able to take FMLA leave based on their marital relationship, regardless of their state of residence. These information collection amendments update the burden estimates to include same-sex couples nationwide—both employees whom *Windsor* rendered eligible to take FMLA leave under the current regulation and employees who will be able to take such leave due to the changes in this Final Rule.

Covered, eligible employees in same-sex marriages are already eligible to take FMLA leave for certain FMLA qualifying reasons (e.g., the employee's own serious health condition, the employee's parent's or child's serious health condition, etc.). This Final Rule does not increase the number of employees eligible to take FMLA leave; rather, it allows employees in same-sex marriages to take FMLA leave on the basis of their marriage regardless of their state of residence, in addition to the other reasons for which they were already able to take leave. That is, FMLA coverage and eligibility provisions are unchanged by this Final Rule, and employees who were not

previously eligible and employed by a covered establishment do not become eligible as a result of this rule.

Accordingly, the Department developed an estimate that focuses on FMLA leave that employees can currently and will be able to take to care for a family member based on a same-sex marital relationship. The final regulations, which do not substantively alter the FMLA but instead allow FMLA leave to be taken on the basis of an employee's same-sex marriage regardless of their state of residence, will create additional burdens on some of the information collections.

Circumstances Necessitating Collection: The FMLA, 29 U.S.C. 2601, *et seq.*, requires private sector employers who employ 50 or more employees, all public and private elementary schools, and all public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons (*i.e.*, for birth of a son or daughter and to care for the newborn child; for placement with the employee of a son or daughter for adoption or foster care; to care for the employee's spouse, son, daughter, or parent with a serious health condition; because of a serious health condition that makes the employee unable to perform the functions of the employee's job; to address qualifying exigencies arising out of the deployment of the employee's spouse, son, daughter, or parent to covered active duty in the military), and up to 26 workweeks of unpaid, job-protected leave during a single 12-month period to an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness for the employee to provide care for the servicemember. FMLA section 404 requires the Secretary of Labor to prescribe such regulations as necessary to enforce this Act. 29 U.S.C. 2654.

The Department's authority for the collection of information and the required disclosure of information under the FMLA stems from the statute and/or the implementing regulations.

Purpose and Use: No WHD forms or other information collections are changed by this Final Rule, except in when they may apply. While the use of the Department's FMLA forms is optional, the regulations require employers and employees to make the third-party disclosures that the forms cover. The FMLA third-party disclosures ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under the FMLA.

Technology: The regulations prescribe no particular order or form of records. See § 825.500(b). Employers may maintain records in any format, including electronic, when adhering to the recordkeeping requirements covered by this information collection. The preservation of records in such forms as microfilm or automated word or data processing memory is acceptable, provided the employer maintains the information and provides adequate facilities to the Department for inspection, copying, and transcription of such records. Photocopies of records are also acceptable under the regulations. *Id.*

Aside from the general requirement that third-party notifications be in writing, with a possible exception for the employee's FMLA request that depends on the employer's leave policies, there are no restrictions on the method of transmission. Respondents may meet many of their notification obligations by using Department-prepared publications available on the WHD Web site, www.dol.gov/whd. These forms are in PDF, fillable format for downloading and printing.

Duplication: The FMLA information collections do not duplicate other existing information collections. In order to provide all relevant FMLA information in one set of requirements, the recordkeeping requirements restate a portion of the records employers must maintain under the Fair Labor Standards Act (FLSA). Employers do not need to duplicate the records when basic records maintained to meet FLSA requirements also document FMLA compliance. With the exception of records specifically tracking FMLA leave, the additional records required by the FMLA regulations are records that employers ordinarily maintain in the usual and ordinary course of business. The regulations do impose, however, a three-year minimum time limit that employers must maintain such records. The Department minimizes the FMLA information collection burden by accepting records maintained by employers as a matter of usual or customary business practices to the extent those records meet the FMLA requirements. The Department also accepts records kept due to other governmental requirements (*e.g.*, records maintained for tax and payroll purposes). The Department has reviewed the needs of both employers and employees to determine the frequency of the third-party notifications covered by this collection to establish frequencies that provide timely information with the least burden. The Department has further

minimized the burden by developing prototype notices for many of the third-party disclosures covered by this information collection.

Minimizing Small Entity Burden: The Department minimizes the FMLA information collection burden by accepting records maintained by employers as a matter of usual or customary business practices. The Department also accepts records kept due to requirements of other governmental requirements (*e.g.*, records maintained for tax and payroll purposes). The Department has reviewed the needs of both employers and employees to determine the frequency of the third-party notifications covered by this collection to establish frequencies that provide timely information with the least burden. The Department has further minimized burden by developing prototype notices for many of the third-party disclosures covered by this information collection and giving the text employers must use, in accordance with FMLA section 109 (29 U.S.C. 2619), in providing a general notice to employees of their FMLA rights and responsibilities, in addition to the prototype optional-use forms.

Agency Need: The Department is assigned a statutory responsibility to ensure employer compliance with the FMLA. The Department uses records covered by this information collection to determine compliance, as required of the agency by FMLA section 107(b)(1), 29 U.S.C. 2617(b)(1). Without the third-party notifications, the Department would have difficulty determining the extent to which employers and employees had met their FMLA obligations.

Special Circumstances: Because of the unforeseeable and often urgent nature of the need for FMLA leave, notice and response times must be of short duration to ensure that employers and employees are sufficiently informed and can exercise their FMLA rights and satisfy their FMLA obligations.

Privacy: Employers must maintain employee medical information they obtain for FMLA purposes as confidential medical records separately from other personnel files. Employers must also maintain such records in conformance with any applicable Americans with Disabilities Act and Genetic Information Nondiscrimination Act confidentiality requirements, except that: Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations; first aid and safety personnel may be informed (when

appropriate) if the employee's physical or medical condition might require emergency treatment; and government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

Agency: Wage and Hour Division.

Title of Collection: The Family and Medical Leave Act, as Amended.

OMB Control Number: 1235-0003.

Affected Public: Individuals or Households; Private Sector—Businesses or other for profits and not for profit institutions, farms, state, local, and tribal governments.

Total estimated number of respondents: 7,182,916 (no change).

Total estimated number of responses: 82,371,724 (38,106 responses added by this Final Rule).

Total estimated annual burden hours: 9,313,503 (4,918 hours added by this Final Rule).

Burden Cost: \$236,283,571 (\$124,770 from this final rule).

Other Respondent Cost Burden (capital/start-up): 0.\$

Other Respondent Cost Burden (operations/maintenance): \$184,932,912 (\$108,326 rounded) from this final rule).

The PRA requires agencies to consider public comments on information collections and to explain in final rules how public engagement resulted in changes from proposed rules. The Department discussed public comments regarding comments on documentation requirements related to establishing a family relationship earlier in this rulemaking.

VII. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Although this rule is not economically significant within the meaning of Executive Order 12866, it has been reviewed by OMB.

The Department revised the regulatory definition of "spouse" for the purpose of the FMLA to allow all legally married employees to take leave to care for their spouse regardless of whether

their state of residence recognizes their marriage. As a result of this Final Rule, covered and eligible employees will be entitled to take FMLA leave regardless of their state of residence to care for their same-sex spouse with a serious health condition; to care for a stepchild with a serious health condition to whom the employee does not stand in loco parentis; to care for their parent's same-sex spouse with a serious health condition who did not stand in loco parentis to the employee when the employee was a child; for qualifying exigency reasons related to the covered active duty of their same-sex spouse; and to care for their same-sex spouse who is a covered servicemember with a serious injury or illness. This Final Rule will not expand coverage under the FMLA; that is, the coverage and eligibility provisions of the FMLA are unchanged by this rule and employees who were not previously eligible and employed by a covered establishment will not become eligible as a result of this Final Rule.

Estimates of the number of individuals in same-sex marriages vary widely due to issues with state level data tracking, reliance on self-reporting, and changes in survey formatting. The Department bases its estimate of same-sex marriages on the 2013 American Community Survey (ACS), conducted by the U.S. Census Bureau. The 2013 ACS showed 251,695 self-reported same-sex marriages, which represents 503,390 individuals. The Department estimates, based on the 2013 ACS, that in 45.2 percent of same-sex marriages both partners are employed and, for the purposes of this analysis, the Department assumes that one spouse is employed in the remaining 54.8 percent of same-sex marriages.⁵

The Department recently surveyed employers and employees nationwide on FMLA leave taking, *Family and Medical Leave in 2012*.⁶ Based on these survey findings, 59.2 percent of employees meet the eligibility requirements for FMLA leave and are employed by covered establishments.⁷ Of those employees, 16.8 percent were

married and took FMLA leave⁸ and of those who took leave, 17.6 percent took leave to care for a parent, spouse, or child, and 1.4 percent took leave to address issues related to a military family member's covered active duty.⁹ Applying these findings to the number of individuals in same-sex marriages based on the 2013 ACS results in an estimated 8,202 new instances of FMLA leave annually as a result of the proposed change to the regulatory definition of spouse.^{10 11} This likely

⁸ Family and Medical Leave in 2012: Technical Report, exhibit 4.1.5, page 64.

⁹ Family and Medical Leave in 2012: Technical Report, exhibits 4.4.2, page 70, and 4.4.7, page 74.

¹⁰ $(251,695 \text{ marriages} \times 45.2 \text{ percent} \times 2) + (251,695 \times 54.8 \text{ percent}) = 227,532 + 137,929 = 365,461$ employed same-sex spouses.

$365,461 \text{ employees} \times 59.2 \text{ percent} = 216,353$ covered, eligible employees.

$216,353 \times 16.8 \text{ percent} = 36,347$ covered, eligible employees taking leave.

In past rulemakings the Department has estimated that covered, eligible employees taking leave take 1.5 instances of leave per year for traditional FMLA purposes, 13 instances of leave per year for qualifying exigency purposes, 44 instances of leave per year for military caregiver leave to care for an active-duty servicemember, and 51 instances of leave per year for military caregiver leave to care for a covered veteran. The Department uses those same estimates for this analysis. The Department estimates a weighted average for an employee who takes military caregiver leave at 45.4 instances of leave per year $((29,100 \text{ respondents} \times 44 \text{ responses}) + (6,966 \text{ respondents} \times 51 \text{ responses}) \rightarrow 1,280,400 + 355,266 = 1,635,666 \rightarrow 1,635,666 / (29,100 + 6,966) = 45.4)$.

To determine total new instances of leave, the Department first totaled the number of respondents per type of leave, then determined the percentage that respondents for each type of leave represent of all total respondents, and lastly, applied these percentages and the averages of instances of leave per type of leave to the Department's estimate of 36,347 same-sex, married employees who are FMLA-covered, FMLA-eligible and actually take FMLA leave per year. These calculations are as follows:

Traditional FMLA leave respondents: $7,000,000 + 5,950 = 7,005,950$

Qualifying Exigency leave respondents: $110,000 + 30,900 = 140,900$

Military Caregiver (all) leave respondents: $29,100 + 6,966 = 36,066$

Total respondents: 7,182,916.

Percentage that each type of leave represents of all total respondents:

Traditional FMLA leave respondents: $7,005,950 / 7,182,916 = 0.9754$ or 97.54 percent.

Qualifying Exigency leave respondents: $140,900 / 7,182,916 = 0.0196$ or 1.96 percent.

Military Caregiver (all) leave respondents: $36,066 / 7,182,916 = 0.0050$ or 0.50 percent.

$36,347 \text{ employees} \times 0.9754 \times 1.5 = 53,180$ instances of traditional leave

$36,347 \text{ employees} \times 0.0196 \times 13 = 9,256$ instances of qualifying exigency leave

$36,347 \text{ employees} \times 0.0050 \times 45.4 = 8,263$ instances of military caregiver leave

Total instances of leave or responses taken by individuals in same-sex marriages: 70,699.

$70,699 \times 17.6 \text{ percent} = 12,443$ instances of leave to care for a parent, spouse, or child.

$70,699 \times 1.4 \text{ percent} = 990$ instances of leave for qualifying exigency reasons.

⁵ U.S. Census Bureau, 2013. American Community Survey 1-year data file. Table 1: Household Characteristics of Opposite-Sex and Same-Sex Couple Households; and, Table 2: Household Characteristics of Same-Sex Couple Households by Assignment Status. Available at: <http://www.census.gov/hhes/samesex/>.

⁶ See Wage and Hour Division FMLA Surveys Web page at: <http://www.dol.gov/whd/fmla/survey/>.

⁷ Family and Medical Leave in 2012: Technical Report, exhibit 2.2.1, page 20, available at: <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

overestimates the number of instances of new leave that would be taken, as covered and eligible employees in same-sex marriages were already entitled in most instances to take FMLA leave to care for a parent or child with a serious health condition.

Because FMLA leave is unpaid leave, the costs to employers resulting from this Final Rule are: regulatory familiarization, maintenance of preexisting employee health benefits during FMLA leave, and administrative costs associated with providing required notices to employees, requesting certifications, reviewing employee requests and medical certifications, and making necessary changes to employer policies. The costs related to requesting and reviewing employee requests for leave and certifications and of providing required notices to employees are discussed in the Paperwork Reduction Act section of this Final Rule. The Department expects the remaining costs to be minimal to employers. The Department has determined that this rule will not result in an annual effect on the economy of \$100 million or more. No comments were received on the Department's regulatory impact analysis.

VIII. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. See 5 U.S.C. 603–604. If the rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA allows an agency to certify such, in lieu of preparing an analysis. See 5 U.S.C. 605.

⁷⁰ 699 × 1.4 percent = 990 instances of leave for military caregiver reasons.

The Department assumes that half (6,222) of the 12,443 instances of leave for the employee's parent, child, or spouse would be taken for the employee's same-sex spouse, stepchild, or stepparent, in recognition of the fact that an employee with a same-sex partner is already able to take leave to care for the employee's parent or child.

6,222 + 990 + 990 = 8,202 new instances of FMLA leave.

¹¹ PRA analysis estimates burdens imposed by the "paperwork" requirements, while E.O. 12866 analysis estimates the effect the proposed regulations will have on the economy. Because E.O. 12866 and the PRA impose differing requirements, and because the corresponding analyses are intended to meet different needs, the estimated number of instances of leave in the PRA analysis differs from the estimated number in the E.O. 12866 analysis.

The Department certifies that this Final Rule does not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Therefore, a final regulatory flexibility analysis is not required. The factual basis for this certification is set forth below.

This Final Rule amending the FMLA regulations' definition of spouse will not substantively alter current FMLA regulatory requirements, but instead will allow more employees to take leave based on a same-sex marital relationship. The Department estimates that this definitional revision will result in 6,222 new instances of FMLA leave taken to care for an employee's same-sex spouse, stepchild, or stepparent; 990 new instances for qualifying exigency purposes; and 990 new instances for military caregiver purposes. These numbers reflect the Department's estimate that a total of 8,202 new instances of FMLA leave might be taken as a result of this Final Rule, as detailed in the Executive Orders 12866 and 13563 section of this Final Rule preamble. This likely overestimates the number of new instances of leave-taking as covered and eligible employees in same-sex marriages are already entitled in most cases to take FMLA leave to care for a parent or child with a serious health condition.

Because the FMLA does not require the provision of paid leave, the costs of this rule are limited to the cost of hiring replacement workers, maintenance of employer-provided health insurance to the employee while on FMLA leave, compliance with the FMLA's notice requirements, and regulatory familiarization.

The need to hire replacement workers represents a possible cost to employers. In some businesses employers are able to redistribute work among other employees while an employee is absent on FMLA leave, but in other cases the employer may need to hire temporary replacement workers. This process involves costs resulting from recruitment of temporary workers with needed skills, training the temporary workers, and lost or reduced productivity of these workers. The cost to compensate the temporary workers is in most cases offset by the amount of wages not paid to the employee absent on FMLA leave, when the employee's FMLA leave is unpaid (*i.e.*, the employee is not using accrued sick or vacation leave).

In the first FMLA rulemaking, the Department drew upon available research to suggest that the cost per employer to adjust for workers who are on FMLA leave is fairly small. 58 FR

31810. Subsequent rulemakings have not produced evidence to the contrary; therefore, for the purpose of this discussion, the Department will continue to assume that these costs are fairly small. Furthermore, most employers subject to this Final Rule have been subject to the FMLA for some time and have already developed internal systems for work redistribution and recruitment of temporary workers.

Additionally, one cost to employers consists of the health insurance benefits maintained by employers during employees' FMLA leave. Based on the Department's recent survey on FMLA leave, *Family and Medical Leave in 2012*, the average length of leave taken in one year by a covered, eligible employee is 27.5 days.¹² Assuming that most employees worked an eight-hour day, the average length of FMLA leave for an employee totals 220 hours in a given year.

Further, based on methodology used in the 2008 Final Rule, which first implemented the FMLA's military leave provisions, the Department estimates that a covered, eligible employee will take 200 hours of FMLA leave for qualifying exigency leave under § 825.126 in a given year. Additionally, using the same methodology, the Department estimates that a covered, eligible employee will take 640 hours of FMLA leave for military caregiver leave in a given year under § 825.127. 73 FR 68051.

To calculate the costs of providing health insurance, the Department utilizes data from the BLS Employer Costs for Employee Compensation survey. According to BLS' March, 2014 report, employers spend an average of \$2.45 per hour on insurance.¹³ Cost estimates are derived by multiplying the average leave duration with both the number of new instances of FMLA leave taken in each category and the \$2.45 hourly cost to employers for health insurance, as follows:

- Estimated annual employer benefits cost for FMLA leave taken for employee's same-sex spouse, stepchild, or stepparent: \$3,353,658 (6,222 new instances × 220 hours¹⁴ × \$2.45)
- Estimated annual employer benefit cost for FMLA leave taken for qualifying

¹² 2012 FMLA survey data showed that employees' average length of leave in past twelve months was 27.5 days. Family and Medical Leave in 2012: Technical Report, page 68, available at: <http://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>.

¹³ <http://bls.gov/ro7/ro7ecec.htm>.

¹⁴ Note that 220 hours (27.5 days) is likely an overestimate, since some of these hours would be for FMLA leave that the employee was already eligible to take (*e.g.*, leave for employee's parent, spouse, or child).

exigency leave: \$485,100 (990 new instances × 200 hours × \$2.45)

■ Estimated annual employer benefit cost for FMLA leave taken for military caregiver leave: \$1,552,320 (990 new instances × 640 hours × \$2.45).

Assuming that all covered, eligible employees taking FMLA leave receive employer-provided health insurance benefits, the estimated total cost to employers for providing benefits is \$5,391,078 (\$3,353,658 + \$485,100 + \$1,552,320).

Further, employers will incur costs related to the increase in the number of required notices and responses to certain information collections due to this Final Rule. As explained in the Paperwork Reduction Act section of this Final Rule preamble, the Department has estimated the paperwork burden cost associated with this regulatory change to be \$233,096 per year.

Lastly, in response to this Final Rule, each employer will need to review the definitional change, determine what revisions are necessary to their policies, and update their handbooks or other leave-related materials to incorporate any needed changes. This is a one-time cost to each employer, calculated as 30 minutes at the hourly wage of a Human Resources Specialist. The median hourly wage of a Human Resources Specialist is \$27.23 plus 40 percent in fringe benefits, which results in a total hourly rate of \$38.12 ($(\$27.23 \times 0.40) + \27.23). See BLS Occupational Employment Statistics, Occupational Employment and Wages, May 2013 (<http://www.bls.gov/oes/current/oes131071.htm>). The Department estimates total annual respondent costs for the value of their time dedicated to regulatory familiarization costs to be \$7,261,860 ($\$38.12 \times 0.5 \text{ hour} \times 381,000$ covered firms and government agencies with 1.2 million establishments subject to the FMLA).

Therefore, the Department estimates the total cost of this Final Rule to be \$12,886,034 (\$5,391,078 in employer provided health benefits + \$233,096 in paperwork burden cost + \$7,261,860 in regulatory familiarization costs).

The Department believes this to be an overestimate. The FMLA applies to public agencies and to private sector employers that employ 50 or more employees for each working day during 20 or more calendar weeks in the current or preceding calendar year. 29 U.S.C. 2611(4). In addition, the FMLA excludes employees from eligibility for FMLA leave if the total number of employees employed by that employer within 75 miles of that employee's worksite is less than 50. 29 U.S.C. 2611(2)(B)(ii). Therefore, changes to the

FMLA regulations by definition will not impact small businesses with fewer than 50 employees. The Department acknowledges that some small employers that are within the SBA definition of small business (50–500 employees) will still have to comply with the regulation and incur costs.

In its 2012 proposed rule, the Department estimated there were 381,000 covered firms and government agencies with 1.2 million establishments subject to the FMLA. 77 FR 8989. Applying the SBA size definitions for small entities, the Department estimated that approximately 83 percent, or 314,751 employers, are small entities subject to the FMLA. 77 FR 9004. Dividing the total cost of this Final Rule by the Department's estimate for the number of affected small entities results in an annual cost per small entity of \$40.77 ($\$12,831,808/314,751$ small entities). This is not deemed a significant cost. In addition, if the Department assumed that all covered employers were small entities, the annual cost per small entity would only be \$33.82 ($\$12,886,034/381,000$ small entities). This also is not deemed a significant cost.

The Department received no comments on its determination that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The Department certifies to the Chief Counsel for Advocacy that this Final Rule will not have a significant economic impact on a substantial number of small entities.

IX. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments as well as on the private sector. Under section 202(a) of UMRA, the Department must generally prepare a written statement, including a cost-benefit analysis, for proposed and final regulations that “includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector” in excess of \$100 million in any one year (\$141 million in 2012 dollars, using the Gross Domestic Product deflator).

State, local, and tribal government entities are within the scope of the regulated community for this regulation. The Department has determined that this Final Rule contains a federal mandate that is unlikely to result in expenditures of \$141 million or more

for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

X. Executive Order 13132, Federalism

This Final Rule does not have federalism implications as outlined in E.O. 13132 regarding federalism. Although States are covered employers under the FMLA, this Final Rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

XI. Executive Order 13175, Indian Tribal Governments

This Final Rule was reviewed under the terms of E.O. 13175 and determined not to have “tribal implications.” This Final Rule also does not have “substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.” As a result, no tribal summary impact statement has been prepared.

XII. Effects on Families

The undersigned hereby certifies that this Final Rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

XIII. Executive Order 13045, Protection of Children

E.O. 13045 applies to any rule that (1) is determined to be “economically significant” as defined in E.O. 12866, and (2) concerns an environmental health or safety risk that the promulgating agency has reason to believe may have a disproportionate effect on children. This Final Rule is not subject to E.O. 13045 because it is not economically significant as defined in Executive Order 12866 and, although the rule addresses family and medical leave provisions of the FMLA, it does not concern environmental health or safety risks that may disproportionately affect children.

XIV. Environmental Impact Assessment

A review of this Final Rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.*; and the Departmental NEPA procedures, 29 CFR part 11, indicates that this Final Rule will not have a

significant impact on the quality of the human environment. Thus, no corresponding environmental assessment or environmental impact statement have been prepared.

XV. Executive Order 13211, Energy Supply

This Final Rule is not subject to E.O. 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

XVI. Executive Order 12630, Constitutionally Protected Property Rights

This Final Rule is not subject to E.O. 12630, because it does not involve implementation of a policy “that has takings implications” or that could impose limitations on private property use.

XVII. Executive Order 12988, Civil Justice Reform Analysis

This rule was drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. This Final Rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects in 29 CFR Part 825

Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Teachers.

Signed at Washington, DC, this 18th day of February, 2015.

David Weil,

Administrator, Wage and Hour Division.

For the reasons set forth in the preamble, the Department amends Title 29, Part 825 of the Code of Federal Regulations as follows:

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 1. The authority citation for part 825 continues to read as follows:

Authority: 29 U.S.C. 2654.

■ 2. In § 825.102 revise the definition of “spouse” to read as follows:

§ 825.102 Definitions.

* * * * *

Spouse, as defined in the statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or,

in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

- (1) Was entered into in a State that recognizes such marriages; or
- (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

* * * * *

- 3. Amend § 825.120 by:
 - a. Revising paragraph (a)(1);
 - b. Revising the first and fifth sentences of paragraph (a)(2);
 - c. Revising the first, second, fifth, and last sentences of paragraph (a)(3);
 - d. Revising the first and fourth sentences of paragraph (a)(4);
 - e. Revising the first sentence of paragraph (a)(5);
 - f. Revising paragraph (a)(6); and
 - g. Revising the sixth sentence of paragraph (b).

The revisions to read as follows:

§ 825.120 Leave for pregnancy or birth.

(a) * * *

(1) Both parents are entitled to FMLA leave for the birth of their child.

(2) Both parents are entitled to FMLA leave to be with the healthy newborn child (*i.e.*, bonding time) during the 12-month period beginning on the date of birth. * * * Under this section, both parents are entitled to FMLA leave even if the newborn does not have a serious health condition.

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee’s son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee’s parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. * * * Where spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. * * *

Note, too, that many state pregnancy disability laws specify a period of

disability either before or after the birth of a child; such periods would also be considered FMLA leave for a serious health condition of the birth mother, and would not be subject to the combined limit.

(4) The expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. * * * The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days. * * *

(5) A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for her following the birth of a child if she has a serious health condition. * * *

(6) Both parents are entitled to FMLA leave if needed to care for a child with a serious health condition if the requirements of §§ 825.113 through 825.115 and 825.122(d) are met. Thus, spouses may each take 12 weeks of FMLA leave if needed to care for their newborn child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

(b) * * * The employer’s agreement is not required for intermittent leave required by the serious health condition of the expectant mother or newborn child. * * *

- 4. Amend § 825.121 by:
 - a. Revising the first, second, and fifth sentences of paragraph (a)(3); and
 - b. Revising the second sentence of paragraph (a)(4).

The revisions to read as follows:

§ 825.121 Leave for adoption or foster care.

(a) * * *

(3) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the placement of the employee’s son or daughter or to care for the child after placement, for the birth of the employee’s son or daughter or to care for the child after birth, or to care for the employee’s parent with a serious health condition. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. * * * Where spouses

both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. * * *

(4) * * * Thus, spouses may each take 12 weeks of FMLA leave if needed to care for an adopted or foster child with a serious health condition, even if both are employed by the same employer, provided they have not exhausted their entitlements during the applicable 12-month FMLA leave period.

* * * * *

■ 5. Revise § 825.122(b) to read as follows:

§ 825.122 Definitions of covered servicemember, spouse, parent, son or daughter, next of kin of a covered servicemember, adoption, foster care, son or daughter on covered active duty or call to covered active duty status, son or daughter of a covered servicemember, and parent of a covered servicemember.

* * * * *

(b) *Spouse, as defined in the statute,* means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

- (1) Was entered into in a State that recognizes such marriages; or
- (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

* * * * *

■ 6. Amend § 825.127 by revising the first and second sentences of paragraph (f) to read as follows:

§ 825.127 Leave to care for a covered servicemember with a serious injury or illness (military caregiver leave).

* * * * *

(f) Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 26 workweeks of leave during the single 12-month period described in paragraph (e) of this section if the leave is taken for birth of the employee's son or daughter or to

care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. * * *

■ 7. Amend § 825.201 by revising the first, second, and fifth sentences of paragraph (b) to read as follows:

§ 825.201 Leave to care for a parent.

* * * * *

(b) *Same employer limitation.* Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as the spouses are employed by the same employer. * * * Where the spouses both use a portion of the total 12-week FMLA leave entitlement for either the birth of a child, for placement for adoption or foster care, or to care for a parent, the spouses would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. * * *

■ 8. Amend § 825.202 by revising the third sentence of paragraph (c) to read as follows:

§ 825.202 Intermittent leave or reduced leave schedule.

* * * * *

(c) * * * The employer's agreement is not required, however, for leave during which the expectant mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition. * * *

* * * * *

[FR Doc. 2015-03569 Filed 2-23-15; 11:15 am]

BILLING CODE 4510-27-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AP26

Automobile or Other Conveyance and Adaptive Equipment Certificate of Eligibility for Veterans or Members of the Armed Forces With Amyotrophic Lateral Sclerosis

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulation regarding certificates of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment. The amendment authorizes automatic issuance of a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment to all veterans with service-connected amyotrophic lateral sclerosis (ALS) and members of the Armed Forces serving on active duty with ALS.

DATES: *Effective Date:* This interim final rule is effective February 25, 2015.

Comment Date: Comments must be received by VA on or before April 27, 2015.

Applicability Date: The provisions of this regulatory amendment apply to all applications for a certificate of eligibility for an automobile or other conveyance and adaptive equipment allowance pending before VA on or received after February 25, 2015.

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AP26—Automobile or Other Conveyance and Adaptive Equipment Certificate of Eligibility for Veterans or Members of the Armed Forces With Amyotrophic Lateral Sclerosis Connected to Military Service." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll free number.) In addition, during the comment period,

comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Randy A. McKeivitt, Legal Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 20, 2011 (76 FR 78823), VA amended its regulations pertaining to the percent disability evaluation assignable for service-connected amyotrophic lateral sclerosis (ALS). As of January 19, 2012, the effective date of that amendment, 38 CFR 4.124a, diagnostic code 8017, provides a 100-percent disability evaluation for veterans with service-connected ALS. VA determined that assigning a 100-percent evaluation in all cases eliminates the need to unnecessarily reevaluate veterans with ALS repeatedly over a short period of time as the condition worsens and inevitably progresses to total disability. The change was necessary to adequately compensate veterans who suffer from this progressive, untreatable, and fatal disease. However, the change did not specifically address entitlement to certificates of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment.

Section 3901(1), title 38, United States Code (U.S.C.), provides specific criteria for determining eligibility for an automobile and adaptive equipment allowance. To be eligible for an automobile and adaptive equipment allowance, a veteran must be in receipt of compensation under chapter 11 of title 38 U.S.C. for (or a member of the Armed Forces serving on active duty must have) loss or permanent loss of use of one or both feet; loss or permanent loss of use of one or both hands; permanent impairment of vision of both eyes with central visual acuity of 20/200 or less in the better eye with the use of corrective glasses or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than twenty degrees in the better eye; or a severe burn injury. 38 U.S.C. 3901(1). These disabilities must be the result of an injury incurred or disease contracted in or aggravated by active military, naval, or air service. *Id.*

VA's automobile and adaptive equipment allowance eligibility regulation, 38 CFR 8.808 Automobiles or other conveyances and adaptive equipment; certification, which was promulgated to implement 38 U.S.C. 3901 and 3902, includes the same criteria for entitlement to a certificate of eligibility as 38 U.S.C. 3901. Because ALS is a rapidly progressive, totally debilitating, and irreversible disease, VA has determined that progression of ALS will routinely, and quickly, satisfy these existing certificate of eligibility criteria. This interim final rule permits VA to determine entitlement to a certificate of eligibility for an automobile or other conveyance and adaptive equipment as soon as a veteran establishes service connection for ALS, or a member of the Armed Forces serving on active duty is diagnosed with ALS, eliminating the need for additional development and reducing wait times. By streamlining the eligibility process, this regulatory amendment will allow veterans with service-connected ALS and members of the Armed Forces serving on active duty with ALS to receive and utilize to maximum advantage the automobile or other conveyance and adaptive equipment benefit, without unnecessary delay.

From the standpoint of entitlement to a certificate of eligibility for automobile or other conveyance and adaptive equipment qualification procedures, the effect of this regulatory amendment is to allocate resources more efficiently and ensure a better lifestyle for veterans with service-connected ALS and members of the Armed Forces serving on active duty with ALS who want to purchase and adapt an automobile or other conveyance and adaptive equipment so they can remain mobile as long as possible. In this regard, as the ALS progresses, the need for assistive devices adapting an automobile or other conveyance and adaptive equipment so that the veteran or member of the Armed Forces serving on active duty can continue to be mobile, including attending examinations and treatment by medical personnel, while remaining in their home for as long as possible, will be greatly assisted. Without these benefits, a veteran or member of the Armed Forces serving on active duty may be required to be institutionalized sooner than otherwise necessary to receive medical treatment.

Thus, there exists an immediate need for VA to focus this regulatory change upon the entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment process. Because the prognosis of the progression of ALS is typically

established after a brief period of observation, in most cases less than 3 months, VA has determined that it is fair and reasonable to provide a certificate of eligibility for automobile or other conveyance and adaptive equipment upon determination of service connection for ALS in a veteran or on diagnosis and receipt of an application from a member of the Armed Forces serving on active duty.

VA, therefore, intends to establish entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment eligibility for eligible veterans with service-connected ALS and members of the Armed Forces serving on active duty with ALS. VA is doing so by adding a new provision to 38 CFR 3.808, which governs eligibility for entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment under 38 U.S.C. 3901 and 3902. This new provision adds ALS as a qualifying disability for eligibility to this benefit and will allow eligible individuals to access this benefit without further development and delay. VA incorporates this new category of criteria in § 3.808 as new paragraph (b)(5). Current paragraph (b)(5) will be redesignated as paragraph (b)(6).

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), we find that there is good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. This interim final rule is necessary to implement immediately the Secretary's decision to establish entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment for all veterans with service-connected ALS and members of the Armed Forces serving on active duty with ALS. Delay in the implementation of this rule would be impracticable and contrary to the public interest, particularly to veterans and members of the Armed Forces serving on active duty.

Because the survival period for persons suffering from ALS is generally 18-48 months or less from the onset of symptoms, any delay in establishing entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment eligibility is extremely detrimental to veterans and members of the Armed Forces serving on active duty who are currently afflicted with ALS. Any delay in implementation until after a public-comment period could delay modifying the regulated certificate of eligibility

process, depriving ALS veterans and members of the Armed Forces serving on active duty with ALS of quick and efficient access to automobile or other conveyance and adaptive equipment benefits.

For the foregoing reasons, the Secretary is issuing this rule as an interim final rule with immediate effect.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will not affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from the final regulatory flexibility analysis requirements of section 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of

recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/>, by following the link for VA Regulations Published From FY 2004 Through FYTD.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on February 12, 2015, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Dated: February 20, 2015.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.808 by redesignating paragraph (b)(5) as paragraph (b)(6) and adding a new paragraph (b)(5) to read as follows:

§ 3.808 Automobiles or other conveyances and adaptive equipment; certification.

* * * * *

(b) * * *

(5) Amyotrophic lateral sclerosis.

* * * * *

[FR Doc. 2015–03889 Filed 2–24–15; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0253; FRL–9919–59]

Clothianidin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of clothianidin, (*E*)-*N*-[(2-chloro-5-thiazolyl)methyl]-*N*'-methyl-*N*'-nitroguanidine, in or on fruit, citrus, group 10–10. This action is in response to EPA’s granting of an emergency exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on citrus. This regulation establishes a maximum permissible level for residues of clothianidin in or on citrus. The time-limited tolerance expires on December 31, 2017.

DATES: This regulation is effective February 25, 2015. Objections and requests for hearings must be received on or before April 27, 2015, and must be filed in accordance with the instructions provided in 40 CFR part

178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2014-0253, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2014-0253 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 27, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2014-0253, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of clothianidin, (*E*)-*N*-[(2-chloro-5-thiazolyl)methyl]-*N'*-methyl-*N'*-nitroguanidine, in or on fruit, citrus, group 10-10 at 0.07 parts per million (ppm). This time-limited tolerance expires on December 31, 2017.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement of a tolerance for pesticide chemical residues in food that will

result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.*, without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue"

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Clothianidin in or on Immature Citrus Trees and FFDCA Tolerances

The Florida Department of Agriculture and Consumer Services requested the EPA Administrator to issue a specific exemption for the use of clothianidin as a soil drench application on immature citrus trees to control the transmission of Huanglongbing (HLB) disease vectored by the Asian Citrus Psyllid (ACP). The applicant asserts that clothianidin is needed to control HLB disease due to the lack of effective available alternatives for season long control practices, and that significant economic losses will occur if this

urgent, non-routine disease is not controlled.

Further, the Applicant asserts that an emergency condition exists in accordance with the criteria for approval of an emergency exemption, and issued a crisis exemption under FIFRA section 18 to allow the use of clothianidin on immature citrus trees for control of the transmission of HLB disease vectored by the ACP in Florida. After having reviewed the submission, EPA concurred that an emergency condition exists for Florida citrus growers and authorized a specific emergency exemption under FIFRA section 18 for control of clothianidin on immature citrus trees to control the transmission of HLB disease vectored by the ACP.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of clothianidin in or on citrus. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). Although this time-limited tolerance expires on December 31, 2017, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on fruit, citrus, group 10–10 after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by the time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions about whether clothianidin meets FIFRA's registration requirements for use on fruit, citrus, group 10–10 or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of clothianidin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance by itself serve as the

authority for persons in any State other than Florida to use this pesticide on the applicable crop under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for clothianidin contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of clothianidin in or on citrus. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2) and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18.

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this emergency action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption and the time-limited tolerance for residues of clothianidin in or on fruit, citrus, group 10–10 at 0.07 ppm.

EPA recently evaluated the currently approved uses of clothianidin when establishing tolerances for residues of clothianidin in three non-citrus commodity groups in the March 29, 2013 **Federal Register** (78 FR 19130) (FRL–9378–6). A summary of the human risk assessment toxicological

endpoints is discussed in Units 111.A. and B. of the March 29, 2013 Final Rule.

EPA has also recently evaluated the dietary exposure that would result from a similar use of clothianidin on citrus that would result in clothianidin residues of 0.60 ppm. This is significantly higher than the 0.07 ppm time-limited tolerance level established in today's final rule. In order to expedite this time-limited tolerance rule, EPA has relied on its previous dietary risk assessment assuming clothianidin residues of 0.60 ppm on citrus. The higher application rates and concentrations assure that exposure and risk resulting from the emergency use are not underestimated. In addition, the estimated drinking water concentrations based on the clothianidin use on citrus resulted in higher acute drinking water estimates than those previously assessed. The chronic analysis drinking water estimate remains the same as it was in the previous dietary assessment. Even with these conservative assumptions, the revised acute dietary risk estimates from exposure to clothianidin through food and water are below the Agency's level of concern for all population subgroups.

In its aggregate assessment of exposures and risk associated with clothianidin, including use on citrus which was assessed at a significantly higher use rate, EPA concluded that the acute dietary exposure from food and water to clothianidin would occupy 28% of the acute population adjusted dose (aPAD) for children 1–2 years old, the population subgroup receiving the greatest exposure; and that chronic exposure to clothianidin from food and water would utilize 28% of the chronic population adjusted dose (cPAD) for children 1–2 years old, the population subgroup receiving the greatest exposure. These population adjusted doses represent the levels below which exposure is not of health concern. Because these levels of dietary exposures for the most exposed subpopulations would be well below the aPAD and cPAD, the expected lower levels of dietary exposures are not of concern.

There are no new residential uses of clothianidin at this time. However, existing uses of clothianidin on turf, ornamental plants, and/or indoor surfaces for bed bug control may result in human exposure in a residential setting. Such exposures may occur during application of products containing clothianidin (handler exposure) as well as following application (post-application exposure) and are expected to be of short-term (1–30 days) duration.

For clothianidin, residential handler and post-application risk estimates are considered to be of potential concern when the dermal margin of exposure (MOE) is less than 100, the inhalation MOE is less than 1,000, and/or the aggregate risk index (ARI), reflecting combined dermal and inhalation exposure, is less than one. The residential handler and post-application risk estimates are not of concern (ARIs range from 1.9 to 990). The aggregate ARIs, which combine residential and dietary exposure, ranged from 1.2 to 6.5, which are not of concern (*i.e.* when the ARI is greater 1).

Therefore, EPA concluded there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to clothianidin residues as a result of existing uses and the proposed section 18 use pattern.

Refer to the March 29, 2013 final rule, available at <http://regulations.gov>, for a summary of the aggregate risk assessment and determination of safety. Detailed discussion of the aggregate risk assessments and the determinations of safety relied upon in this action may be found in the Agency reviews and human health risk assessments provided as supporting documents in the docket for this action under docket ID number EPA-HQ-OPP-2014-0253.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology, based on solvent extraction and liquid chromatography-mass spectrometry/mass spectrometry (LC-MS/MS) separation, identification, and quantification, is available for plant (Morse Method#Meth-164-modified, RM-39C-1, or Bayer Method 00552) matrices to enforce the tolerance expression. The limit of quantitation (LOQ) for clothianidin in plant commodities is 0.01 ppm. Clothianidin and its major metabolites are not adequately recovered using any of the United States Food and Drug Administration (FDA) multi-residue methods.

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food

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

The Codex has established MRLs for clothianidin in or on citrus fruits at 0.07 ppm, the same level the U.S. is establishing for the time-limited-tolerance.

VI. Conclusion

Therefore, a time-limited tolerance is established for residues of clothianidin, in or on fruit, citrus, group 10-10 at 0.07 ppm. This tolerance expires on December 31, 2017.

VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a

proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 13, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

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

■ 2. In § 180.586, revise paragraph (b) to read as follows:

§ 180.586 Clothianidin; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance specified in the following table is established for residues of clothianidin, (*E*)-*N*-[(2-chloro-5-thiazolyl)methyl]-*N'*-methyl-*N''*-nitroguanidine, in or on the specified agricultural commodity, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. This tolerance expires on the date specified in the table.

Commodity	Parts per million	Expiration date
Fruit, citrus, group 10–10	0.07	12/31/17

* * * * *

[FR Doc. 2015–03928 Filed 2–24–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131211999–5045–02]

RIN 0648–BD86

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 20B; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule to implement Amendment 20B to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the exclusive economic zone of the Gulf of Mexico and Atlantic Region (Amendment 20B) that was published in the **Federal Register** January 27, 2015.

DATES: This correction is effective March 1, 2015.

FOR FURTHER INFORMATION CONTACT: Anik Clemens, 727–551–5611; email: *Anik.Clemens@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Need for Correction

On January 27, 2015, (80 FR 4216), NMFS published an incorrect annual

catch limit (ACL) value for Atlantic migratory group Spanish mackerel in § 622.388(d)(1)(iii). The commercial ACL for Atlantic migratory group Spanish mackerel is equal to the commercial quota. The commercial quota value was published correctly in § 622.384(c)(2), however, the commercial ACL value was published incorrectly in § 622.388(d)(1)(iii). This document corrects the commercial ACL value for Atlantic migratory group Spanish mackerel.

Correction

1. On page 4223, in the first column, § 622.388(d)(1)(iii) is correctly revised to read as follows:

§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(d) * * *

(1) * * *

(iii) The commercial ACL for the Atlantic migratory group Spanish mackerel is 3.33 million lb (1.51 million kg).

* * * * *

Dated: February 19, 2015.

Samuel D. Rauch III,

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

[FR Doc. 2015–03905 Filed 2–24–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 80, No. 37

Wednesday, February 25, 2015

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. FCIC-13-0006]

RIN 0563-AC46

Part 400—General Administrative Regulation—Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to replace the General Administrative Regulation—Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium. The intended effect of this action is to incorporate legislative changes to the Federal Crop Insurance Act (Act) stemming from the Agricultural Act of 2014, clarify existing regulations, lessen the burden of submitters of crop insurance policies, provisions of policies, or rates of premium under section 508(h) of the Act, provide guidance on the submission and payment for concept proposals under section 522 of the Act, and to incorporate changes that are consistent with those made in the Common Crop Insurance Policy Basic Provisions (Basic Provisions).

DATES: Written comments and opinions on this proposed rule will be accepted until close of business April 27, 2015 and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-13-0006 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division,

Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205. All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public.

All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov#!/privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management

and Budget (OMB) under control number 0563-0064.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. No matter the size of the submitter, all submitters are required to

perform the same tasks and those tasks are necessary to ensure that the concept proposal can be made into a viable and marketable submission and any submission can be made into viable and marketable, actuarially sound insurance product. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC makes available standard policies for producers to insure certain agricultural commodities against various agricultural production risks and perils. Under the provisions of section 508(h) of the Act, any person may submit or propose other crop insurance policies, plans of insurance, provisions of policies, or rates of premium to the FCIC Board of Directors (Board) for approval for reinsurance and subsidy. These policies may be submitted without regard to certain

limitations contained in the Act. Section 508(h) of the Act also requires that FCIC issue regulations to establish guidelines for the submission and Board review of policies or other material submitted to the Board under the Act. These regulations were published at 7 CFR part 400, subpart V (Subpart V) and provided the process for making submissions, its contents, the approval process, and the procedures for requests for reimbursement of research and development costs and maintenance. Section 522 of the Act authorizes the advance payment of research and development costs for concept proposals and this proposed rule includes the procedures for requesting such advanced payment.

The Agricultural Act of 2014 amended parts of section 508(h) as well as other sections of the Act. One such change requires FCIC to develop procedures for submitting index-based weather plans of insurance. Another change mandated by the Agricultural Act of 2014 requires submitters of products for specialty crops to follow certain consultation requirements with grower groups in the major producing areas. The Agricultural Act of 2014 also contains amendments that require changes to review criteria and establish approval priorities and considerations of submissions under section 508(h) of the Federal Crop Insurance Act.

In addition to the changes required by the Agricultural Act of 2014, other changes are being proposed to provide clarity or lessen the burden on submitters or FCIC. This rule contains proposed revisions to definitions to clarify the meaning of terms used in Subpart V as well as new definitions for terms that were either not defined or not previously used. This rule also contains proposed changes to clarify FCIC and submitter responsibilities with respect to timing, content, approval, reimbursement for research and development costs and maintenance costs, and potential user fees for such submissions. To lessen the burden on submitters, this rule proposes to reduce the number of printed copies of the submission that must be provided to FCIC. This rule proposes to provide additional guidance for submitting concept proposals, including confidentiality standards and advance payment provisions. This rule also proposes changes to guidelines for non-reinsured supplemental policies to be submitted to FCIC including a proposed provision to decrease the burden on FCIC by increasing the time FCIC has to review such policies from 120 to 150 days.

List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance.

Proposed Rule

Accordingly, as set forth in the preamble, FCIC proposes to amend 7 CFR part 400 by replacing subpart V in its entirety as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Revise subpart V to read as follows:

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies

Sec.	
400.700	Basis, purpose, and applicability.
400.701	Definitions.
400.702	Confidentiality and duration of confidentiality.
400.703	Timing and format.
400.704	Covered by this subpart.
400.705	Contents for new and changed submissions, concept proposals, and index-based weather plans of insurance.
400.706	Review.
400.707	Presentation to the Board for approval or disapproval.
400.708	Post approval.
400.709	Roles and responsibilities.
400.710	Preemption and premium taxation.
400.711	Right of review, modification, and the withdrawal of approval.
400.712	Research and development reimbursement, maintenance reimbursement, advance payments for concept proposals, and user fees.
400.713	Non-reinsured supplemental (NRS) policy.

Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies.

Authority: 7 U.S.C. 1506(l), 1506(o), 1508(h), 1522(b), 1523(i).

§ 400.700 Basis, purpose, and applicability.

This subpart establishes guidelines, the approval process, and responsibilities of FCIC and the applicant for policies, provisions of policies, and rates of premium submitted to the Board as authorized under section 508(h) of the Act. It also provides procedures for reimbursement of research and development costs and maintenance costs for concept proposals and approved submissions. Guidelines for submitting concept proposals and the standards for approval and advance payments are provided in this subpart. This subpart also provides guidelines and reference to procedures for submitting index-based weather plans of insurance as authorized under section 523(i) of the Act. The procedures for

submitting non-reinsured supplemental policies in accordance with the Standard Reinsurance Agreement (SRA) are also contained within.

§ 400.701 Definitions.

Act. Subtitle A of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501–1524).

Actuarial documents. The information for the crop or insurance year that is available for public inspection in your agent's office and published on RMA's Web site, and that shows available insurance policies, coverage levels, information needed to determine amounts of insurance and guarantees, prices, premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop or agricultural commodity, insurable acreage, and other related information regarding insurance in the county or state.

Actuarially appropriate. Premium rates expected to cover anticipated losses and establish a reasonable reserve based on valid reasoning, an examination of available risk data, or knowledge or experience of the expected value of future costs associated with the risk to be covered. This will be expressed by a combination of data including, but not limited to liability, premium, indemnity, and loss ratios based on actual data or simulations reflecting the risks covered by the policy.

Administrative and operating (A&O) subsidy. The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the approved insurance provider. Loss adjustment expense reimbursement paid by FCIC for catastrophic risk protection (CAT) eligible crop insurance contracts is not considered as A&O subsidy.

Advance payment. A portion, up to 50 percent, of the estimated research and development costs, that may be approved by the Board under section 522(b) of the Act for an approved concept proposal, and after the applicant has begun research and development activities, the Board may at its sole discretion provide up to an additional 25 percent advance payment of the estimated research and development costs.

Agent. An individual licensed by the State in which an eligible crop insurance contract is sold and serviced for the reinsurance year, and who is employed by, or under contract with, the approved insurance provider, or its designee, to sell and service such eligible crop insurance contracts.

Applicant. Any person or entity that submits to the Board for approval a submission under section 508(h) of the Act, a concept proposal under section 522 of the Act, or an index-based weather plan of insurance under section 523(i) of the Act.

Approved insurance provider. A legal entity that has entered into a reinsurance agreement with FCIC for the applicable reinsurance year.

Approved procedures. The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board.

Board. The Board of Directors of FCIC.

Commodity. Has the same meaning as section 518 of the Act.

Complete. A submission, concept proposal, or index-based weather plan of insurance determined by RMA and the Board to contain all required documentation in accordance with § 400.705 and is of sufficient quality, as determined by the Board and RMA, to conduct a meaningful review.

Complexity. Consideration of factors such as originality of policy materials, underwriting methods, actuarial rating methodology, and the pricing methodology used in design, construction and processes for the full development of a policy or plan of insurance.

Concept proposal. A written proposal for a prospective submission, submitted under section 522 of the Act for advance payment of research and development, and containing enough information that the Board is able to determine that, if approved, will be developed into a viable and marketable policy consistent with Board approved procedures, these regulations, and section 508(h) of the Act.

Delivery system. The components or parties that make the policy or plan of insurance available to the public for sale. The delivery system includes, but is not limited to RMA, approved insurance providers, and agents.

Development. The process of composing documentation and procedures, pricing and rating methodologies, administrative and operating procedures, systems and software, supporting materials, and documentation necessary to create and implement a submission.

Disinterested third party. A person who:

(1) Does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to

have a familial relationship) with the submitter;

(2) Who will not benefit financially from the submission, concept proposal, or index-based weather plan of insurance if approved, or from the administration of any approved policy or plan of insurance; or

(3) Must not be employed by or work under contract or be associated in any similar manner to the applicant on a regular basis.

Endorsement. A document that amends or revises an insurance policy reinsured under the Act in a manner that changes existing, or provides additional, coverage provided by such policy.

Expert reviewer. Independent persons contracted by the Board who meets the criteria for underwriters or actuaries that are selected by the Board to review a concept proposal, submission, or index-based weather plan of insurance and provide advice to the Board regarding the results of their review,

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA, whose programs are administered by RMA.

Index-based weather plan of insurance. A risk management product in which indemnities are based on a defined weather parameter exceeding or failing to meet a given threshold during a specified time period. The weather index is a proxy to measure expected loss of production when the defined weather parameter does not meet the threshold.

Limited resource producer. Has the same meaning as the term defined by USDA at: www.lfctool.sc.egov.usda.gov/LRP_Definition.aspx or a successor Web site.

Livestock commodity. Has the same meaning as the term in section 523(i) of the Act.

Maintenance. For the purposes of this subpart only, the process of continual support, revision or improvement, as needed, for an approved submission, including the periodic review of premium rates and prices, updating or modifying the rating or pricing methodologies, updating or modifying policy terms and conditions, adding a new commodity under similar policy terms and conditions with similar rating and pricing methodology, or expanding a plan or policy to additional states and counties, and any other actions necessary to provide adequate, reasonable and meaningful protection for producers, ensure actuarial soundness, or to respond to statutory or regulatory changes. A concept proposal that is similar to a previously approved

submission will be considered maintenance for the similar approved submission if submitted by the same person.

Maintenance costs. Specific expenses associated with the maintenance of an approved submission as authorized by § 400.712.

Maintenance period. A period of time that begins on the date the Board approves the submission and ends on the date that is not more than four reinsurance years after such approval.

Manager. The Manager of FCIC.

Marketing plan. A plan that identifies, at a minimum, the expected number of potential buyers, premium, liability, and the data upon which such information is based. Such data must include, but is not limited to, focus group results, market research studies, qualitative market estimates, effects upon the delivery system or participants, an assessment of factors that could negatively or adversely affect the market, responses from a reasonable representative cross-section of producers or significant market segment to be affected by the policy or plan of insurance, and if applicable, results from the consultation with the major producer groups of specialty crops demonstrating their interest in purchasing the product.

Multiple peril crop insurance (MPCI). Policies reinsured by FCIC that provide protection against multiple causes of loss that adversely affect production or revenue, such as to natural disasters, such as hail, drought, and floods.

National Agricultural Statistics Service (NASS). An agency within USDA, or its successor agency that collects and analyzes data collected from producers and other sources.

Non-reinsured supplemental policy (NRS). A policy, endorsement, or other risk management tool not reinsured by FCIC under the Act, that offers additional coverage, other than for loss related to hail.

Non-significant changes. Minor changes to the policy or plan of insurance, such as technical corrections, that do not affect the rating or pricing methodologies, the amount of subsidy owed, the amount or type of coverage, FCIC's reinsurance risk, or any other condition that does not affect liability or the amount of loss to be paid under the policy. Revisions to approved plans required by statutory or regulatory changes are included in this category. Changes to the policy that involve concepts that have been previously sent for expert review are also included in this category.

Plan of insurance. A class of policies, such as yield, revenue, or area based

that offers a specific type of coverage to one or more agricultural commodities.

Policy. Has the same meaning as the term in section 1 of the Basic Provisions (7 CFR 457.8).

Rate of premium. The dollar amount per insured unit, or percentage rate per dollar of liability, that is needed to pay anticipated losses and provide a reasonable reserve.

Reinsurance year. The term beginning July 1 and ending on June 30 of the following year and, for reference purposes, identified by reference to the year containing June.

Related material. The actuarial documents for the insured commodity and any underwriting or loss adjustment manuals, handbooks, forms, instructions or other information needed to administer the policy.

Research. For the purposes of development, the gathering of information related to: producer needs and interests for risk management; the marketability of the policy or plan of insurance; appropriate policy terms, premium rates, price elections, administrative and operating procedures, supporting materials, documentation, and the systems and software necessary to implement a policy or plan of insurance. The gathering of information to determine whether it is feasible to expand a policy or plan of insurance to a new area or to cover a new commodity under the same policy terms and conditions, price, and premium rates is not considered research.

Research and development costs. Specific expenses incurred and directly related to the research and development activities of a submission as authorized in § 400.712.

Risk Management Agency (RMA). An agency within USDA that is authorized to administer the crop insurance program on behalf of FCIC.

Risk subsidy. The portion of the premium paid by FCIC on behalf of the insured.

Sales closing date. A date contained in the Special Provisions by which an application must be filed and the last date by which the insured may change the crop insurance coverage for a crop year.

Secretary. The Secretary of the United States Department of Agriculture.

Significant change. Any change to the policy or plan of insurance that may affect the rating and pricing methodologies, the amount of subsidy owed, the amount of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that may affect liability or the amount of loss to be paid under the policy.

Special Provisions. Has the same meaning as the term in section 1 of the Basic Provisions (7 CFR 457.8).

Specialty crops. Fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture).

Socially disadvantaged producer. Has the same meaning as section 2501(E) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)).

Standard Reinsurance Agreement (SRA). The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance provider is authorized to sell and service the eligible crop insurance contracts for which the premium discount is proposed. For the purposes of this subpart, all references to the SRA will also include any other reinsurance agreements entered into with FCIC, including the Livestock Price Reinsurance Agreement.

Submission. A policy, plan of insurance, provision of a policy or plan of insurance, or rates of premium provided by an applicant to FCIC in accordance with the requirements of § 400.705. Submissions as referenced in this subpart do not include concept proposals, index-based weather plans of insurance, or non-reinsured supplemental policies.

Submitter. Same meaning as applicant.

Sufficient quality. The material presented is complete, understandable and unambiguous, so that a disinterested third party can understand, comprehend and make calculations, draw substantiated conclusions or results to determine whether the submission, concept proposal, or index-based weather plan of insurance is, or can result in, a viable and marketable insurance product with actuarially appropriate rates, reasonable expected market prices, provides meaningful coverage, and that protects the interests of producers and program integrity. The material must be presented in Microsoft Office format and must also contain adequate information that is presented clearly enough for the determination to be made whether RMA has the resources to implement, administer, and deliver the submission effectively and efficiently. Liability (guarantee), premium, and indemnity are clearly defined and consistent in calculation throughout the policy materials and appropriate for the commodity and the risks covered. As applicable, the policy, loss adjustment methods, underwriting procedures, and actuarial rating and pricing

methodologies must be clearly identified and correspond to the risks covered.

Targeted producer. Producers who are considered small, socially disadvantaged, beginning and limited resource or other specific aspects designated by FCIC for review.

USDA. The United States Department of Agriculture.

User fees. Fees, approved by the Board, that can be charged to approved insurance provider for use of a policy or plan of insurance once the period for maintenance has expired that covers the expected maintenance costs to be incurred by the submitter.

Viable and marketable. A determination by the Board based on a detailed, written marketing plan demonstrating that a sufficient number of producers will purchase the product to justify the resources and expenses required to offer the product for sale and maintain the product for subsequent years.

§ 400.702 Confidentiality and duration of confidentiality.

(a) Pursuant to section 508(h)(4)(A) of the Act, prior to approval by the Board, any submission submitted to the Board under section 508(h) of the Act, concept proposal submitted under section 522 of the Act, or index-based weather plan of insurance submitted under section 523(i) of the Act, including any information generated from the submission, concept proposal, or index-based weather plan of insurance, will be considered confidential commercial or financial information for purposes of 5 U.S.C. 552(b)(4) and will not be released by FCIC to the public, unless the applicant authorizes such release in writing.

(b) Once the Board approves a submission or an index-based weather plan of insurance, information provided with the submission (including information from the concept proposal) or the index-based weather plan of insurance, or generated in the approval process, may be released to the public, as applicable, including any mathematical modeling and data, unless it remains confidential business information under 5 U.S.C. 552(b)(4). While the expert reviews are releasable once the submission or an index-based weather plan of insurance has been approved, the names of the expert reviewers may be redacted to prevent any harassment or undue pressure on the expert reviewers.

(c) Any submission, concept proposal, or index-based weather plan of insurance disapproved by the Board will remain confidential commercial or

financial information in accordance with 5 U.S.C. 552(b)(4) and no information related to such submission, concept proposal, or index-based weather plan of insurance will be released by FCIC unless authorized in writing by the applicant.

(d) All submissions, concept proposals, and index-based weather plans of insurance, will be kept confidential until approved by the Board and will be given an identification number for tracking purposes, unless the applicant advises otherwise.

§ 400.703 Timing and format.

(a) A submission, concept proposal, or index-based weather plan of insurance may only be provided to FCIC during the first five business days in January, April, July, and October.

(b) A submission, concept proposal, or index-based weather plan of insurance must be provided to FCIC in the following format:

(1) Electronic format, sent to the address in paragraph (d)(1) of this section by the due date in paragraph (a) of this section. The electronic copy must be provided as a single document so that when printed the order and content exactly match the hard copy; and

(2) Two hard copies, mailed to the addresses in paragraph (d)(2) of this section and postmarked by the due date in paragraph (a) of this section. The hard copies must exactly match the electronic copy.

(c) Any submission, concept proposal, or index-based weather plan of insurance not provided within the first 5 business days of a month stated in paragraph (a) of this section will be considered to have been provided in the next month stated in paragraph (a). For example, if an applicant provides a submission on January 10, it will be considered to have been received on April 1.

(d) Any submission, concept proposal, or index-based weather plan of insurance must be provided:

(1) In electronic format to the Deputy Administrator for Product Management (or successor) at DeputyAdministrator@rma.usda.gov and the Administrator at Administrator@rma.usda.gov; and

(2) In hard copy format, with one hard copy provided to the Deputy Administrator for Product Management (or any successor position), USDA/Risk Management Agency, Beacon Facility Mail Stop 0812, 9240 Troost Ave., Kansas City, MO 64131-3055, and one identical hard copy must be provided to the Administrator, Risk Management Agency, 1400 Independence Ave., Stop

0801, Room 3053 South Building, Washington, DC 20250-0801.

(e) In addition to the requirements in paragraph (a) of this section, a submission must be received not later than 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.

(f) To be offered for sale in a crop year, there must be at least sixty days between the date the policy has been approved by the Board and ready to be made available for sale and the earliest sales closing date, unless this requirement is waived by the Board.

(g) Notwithstanding, paragraph (f) of this section, the Board, or RMA if authorized by the Board, shall determine when sales can begin for a submission approved by the Board.

§ 400.704 Covered by this subpart.

(a) An applicant may submit to the Board, in accordance with § 400.705, a submission that is:

(1) A policy or plan of insurance not currently reinsured by FCIC;

(2) One or more proposed revisions to a policy or plan of insurance authorized under the Act; or

(3) Rates of premium for any policy or plan of insurance authorized under the Act.

(b) An applicant must submit to the Board, any significant change to a previously approved submission, including requests for expansion, prior to making the change in accordance with § 400.705.

(c) An applicant may submit a concept proposal to the Board prior to developing a full submission, in accordance with this subpart and the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Expenses, which can be found on the RMA Web site at www.rma.usda.gov.

(d) An applicant who is an approved insurance provider may submit an index-based weather plan of insurance for consideration as a pilot program in accordance with this subpart and the Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance, which can be found on the RMA Web site at www.rma.usda.gov.

(e) An applicant must submit a non-reinsured supplemental policy or endorsement to RMA in accordance with § 400.713.

§ 400.705 Contents for new and changed submissions, concept proposals, and indexed-based weather plans of insurance.

(a) A complete submission must contain the following material, as

applicable, in the order given, in a 3-ring binder for hard copies and in a single Microsoft Word document file for electronic copies, with a table of contents, page numbers, and section dividers clearly labeling each section, as applicable. All relevant materials should be provided in the designated section and not appended to the end of the submission.

(b) The first section will contain general information numbered as follows (1, 2, 3, etc.), including, as applicable:

(1) The applicant's name(s), address or primary business location, phone number, and email address;

(2) The type of submission (see § 400.704) and a notation of whether or not the submission was approved by the Board as a concept proposal;

(3) A statement of whether the applicant is requesting:

(i) Reinsurance;

(ii) Risk subsidy;

(iii) A&O subsidy;

(iv) Reimbursement for research and development costs, as applicable and, if the submission was previously submitted as a concept proposal, the amount of the advance payment for expected research and development costs; or

(v) Reimbursement for expected maintenance costs, if applicable;

(4) The proposed agricultural commodities to be covered, including types, varieties, and practices covered by the submission;

(5) The crop or insurance year and reinsurance year in which the submission is proposed to be available for purchase by producers;

(6) The proposed sales closing date, if applicable, or if not applicable, the earliest date the applicant expects to release the product to the public;

(7) The proposed area for the plan of insurance and if applicable, the reasons why the submission is not being proposed for other areas producing the commodity;

(8) Any known or anticipated future expansion plans;

(9) Identification, including names, addresses, telephone numbers, and email addresses, of the person(s) responsible for:

(i) Addressing questions regarding the policy, underwriting rules, loss adjustment procedures, rate and price methodologies, data processing and record-keeping requirements, and any other questions that may arise in implementing or administering the program if it is approved; and

(ii) Annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements

executed between the applicant and FCIC; and

(10) A statement of whether the submission will be filed with the applicable office responsible for regulating insurance in each state proposed for insurance coverage, and if not, reasons why the submission will not be filed for review.

(c) The second section must contain the benefits of the plan, including, as applicable, a summary that includes:

(1) How the submission offers coverage or other benefits not currently available from existing public or private programs;

(2) The projected demand for the submission, including support for and against development from market research, producers or producer groups, agents, lending institutions, and other interested parties that provide verifiable evidence of demand;

(3) Potential impacts the submission may have on producers both where the new plan will and will not be available (include both positive and negative impacts);

(4) How the submission meets public policy goals and objectives consistent with the Act and other laws, as well as policy goals supported by USDA and the Federal Government; and

(5) A detailed description of the coverage provided by the submission and its applicability to all producers, including targeted producers.

(d) Except as provided in this section, the third section must contain the policy, that is clearly written in plain language in accordance with the Plain Writing Act of 2010 (5 U.S.C. 301) such that producers will be able to understand the coverage being offered. The policy language permits actuaries to form a clear understanding of the payment contingencies for which they will set rates. The policy language does not encourage an excessive number of disputes or legal actions because of misinterpretations.

(1) If the submission involves a new insurance policy or plan of insurance:

(i) All applicable policy provisions; and

(ii) A list of any additional coverage that may be elected by the insured in conjunction with the submission such as applicable endorsements (include a description of the coverage and how such coverage may be obtained).

(2) If the submission involves a change to a previously approved policy, plan of insurance, or rates of premium, the proposed revisions, rationale for each change, data and analysis supporting each change, the impact of each change, and the impact of all changes in aggregate.

(e) The fourth section must contain a marketing plan, including, as applicable:

(1) A list of counties and states where the submission is proposed to be offered;

(2) The amount of commodity (acres, head, board feet, etc.), the amount of production, and the value of each agricultural commodity proposed to be covered in each proposed county and state;

(3) A reasonable estimate of expected liability and premium, for each proposed county and state and total expected liability and premium by crop year based on the marketing plan and an estimate of the market penetration of other similar products;

(4) If available, any insurance experience for each year and in each proposed county and state in which the policy has been previously offered for sale including an evaluation of the policy's performance and, if data are available, a comparison with other similar insurance policies reinsured under the Act;

(5) Focus group results, both positive and negative reactions;

(6) Market research studies that include:

(i) Evidence the proposed submission will be positively received by producers; and

(ii) Market estimates that show demand and level of coverage for which producers are willing to pay;

(7) For submissions proposing products for specialty crops a consultation report must be provided that includes a summary and analysis of discussions with groups representing producers of those agricultural commodities in all major producing areas for commodities to be served or potentially impacted, either directly or indirectly, and the expected impact of the proposed submission on the general marketing and production of the crop from both a regional and national perspective including evidence that the submission will not create adverse market distortions;

(8) Effects upon the delivery system or participants including:

(i) Estimated computer system impacts and costs;

(ii) Estimated administrative and training costs; and

(iii) What, if any, efficiency will be gained;

(9) Correspondence from producers expressing the need for such policy or plan of insurance; and

(10) A commitment in writing from at least one approved insurance provider to sell and support the policy or plan of insurance.

(f) The fifth section must contain the information related to the underwriting and loss adjustment of the submission, including as applicable:

- (1) Detailed rules for determining insurance eligibility, including all producer reporting requirements;
- (2) Relevant dates;
- (3) Step by step examples of the data and calculations needed to establish the insurance guarantee (liability) and premium per acre or other unit of measure, including worksheets that provide the calculations in sufficient detail and in the same order as presented in the policy to allow verification that the premiums charged for the coverage are consistent with policy provisions;
- (4) Step-by-step examples of calculations used to determine indemnity payments for all probable situations where a partial or total loss may occur;
- (5) A detailed description of the causes of loss covered by the policy or plan of insurance and any causes of loss excluded;
- (6) Any statements to be included in the actuarial documents including any intended Special Provisions statements that may change any underlying policy terms or conditions; and
- (7) The loss adjustment standards handbook for the policy or plan of insurance that includes:
 - (i) A table of contents and introduction;
 - (ii) A section containing abbreviations, acronyms, and definitions;
 - (iii) A section containing insurance contract information (insurability requirements; Crop Provisions not applicable to catastrophic risk protection; specific unit division guidelines, if applicable; notice of damage or loss provisions; quality adjustment provisions; etc.);
 - (iv) A section that thoroughly explains appraisal methods, if applicable;
 - (v) Illustrative samples of all the applicable forms needed for insuring and adjusting losses in regards to the submission, plus detailed instructions for their use and completion;
 - (vi) Instructions, examples of calculations, and loss adjustment procedures that are necessary to establish the amounts of coverage and loss;
 - (vii) A section containing any special coverage information (*i.e.*, replanting, tree replacement or rehabilitation, prevented planting, etc.), as applicable; and
 - (viii) A section containing all applicable reference material (*i.e.*,

minimum sample requirements, row width factors, etc.).

(g) The sixth section must contain information related to prices and rates of premium, including, as applicable:

- (1) A detailed description of the specific premium rating methodology proposed to be used and the basis for selection of the rating methodology;
- (2) A list of all assumptions made in the premium rating and commodity pricing methodologies, and the basis for these assumptions;
- (3) A detailed description of the pricing and rating methodologies, including:
 - (i) Supporting documentation;
 - (ii) All mathematical formulas and equations;
 - (iii) Data and data sources used in determining rates and prices and a detailed assessment of the data and how it supports the proposed rates and prices;
 - (iv) A detailed explanation of how the rates account for each of the risks covered by the policy; and
 - (v) A detailed explanation of how the prices are applicable to the policy;
- (4) An example of both a rate calculation and a price calculation;
- (5) A discussion of the applicant's objective evaluation of the accuracy of the data, the short and long term availability of the data, and how the data will be obtained (if the data source is confidential or proprietary explain the cost of obtaining the data); and
- (6) An analysis of the results of simulations or modeling showing the performance of proposed rates and commodity prices, as applicable, based on one or more of the following (Such simulations must use all years of experience available to the applicant and must reflect both partial losses and total losses):
 - (i) A recalculation of total premium and losses compared to a similar or comparable insurance plan offered under the authority of the Act with modifications, as needed, to represent the components of the submission;
 - (ii) A simulation that shows liability, premium, indemnity, and loss ratios for the proposed insurance product based on the probability distributions used to develop the rates and commodity prices, as applicable, including sensitivity tests that demonstrate price or yield extremes, and the impact of inappropriate assumptions; or
 - (iii) Any other comparable simulation that provides results indicating both aggregate and individual performance of the submission including expected liability, premium, indemnity, and loss ratios for the proposed insurance product, under various scenarios

depicting good and poor actuarial experience.

(h) The seventh section must contain forms, instructions for completing forms, and statements for all forms applicable to the submission in a format compatible with the Document and Supplemental Standards Handbook (FCIC 24040) found at <http://www.rma.usda.gov/handbooks/24000/index.html>.

(i) The eighth section must contain the following:

- (1) A statement certifying that the submitter and any approved insurance provider or its affiliates will not solicit or market the submission until at least 60 days after all policy materials are released to the public by RMA, unless otherwise specified by the Board;
 - (2) An explanation of any provision of the policy not authorized under the Act and identification of the portion of the rate of premium due to these provisions; and
 - (3) If applicable, agent and loss adjuster training plans.
- (j) The ninth section must contain a statement from the submitter that, if the submission is approved, the submitter will work with RMA and its computer programmers as needed to assure an effective and efficient implementation process. The applicant must consult with RMA to determine whether or not the submission can be effectively and efficiently implemented and administered through the current information technology standards and systems.

(1) If FCIC approves the submission and determines that its information technology systems have the capacity to implement and administer the submission, the applicant must provide a document detailing acceptable computer processing requirements consistent with those used by RMA as shown on the RMA Web site in the Appendix III/M-13 Handbook. This information details the acceptable computer processing requirements in a manner consistent with that used by RMA to facilitate the acceptance of producer applications and related data.

(2) Any computer systems, requirements, code and software must be consistent with that used by RMA and comply with the standards established in Appendix III/M-13 Handbook, or any successor document, of the SRA or other reinsurance agreement as specified by FCIC.

(3) These requirements are available from the USDA/Risk Management Agency, Beacon Facility Mail Stop 0812, 9240 Troost Ave., Kansas City, MO 64131-3055, or on RMA's Web site at

<http://www.rma.usda.gov/data/#m13>, or a successor Web site.

(k) The tenth section submitted on separate pages and in accordance with §§ 400.712 must specify:

(1) On one page, the amount received for an advance payment, an estimate of the total amount of reimbursement for research and development costs (new products only) or an estimate for maintenance costs for the year that the submission will be effective (for products that are within the maintenance period); and

(2) On another page, a detailed estimate of maintenance costs for future years of the maintenance period and the basis that such maintenance costs will be incurred, including, but not limited to:

- (i) Any anticipated expansion;
- (ii) Anticipated changes or updates to policy materials;
- (iii) The generation of premium rates;
- (iv) The determination of prices; and
- (v) Any other costs that the applicant anticipates will be requested for reimbursement of maintenance costs or expenses;

(l) The eleventh section must contain executed (signed) certification statements in accordance with the following:

(1) “{Applicant’s Name} hereby claim that the basis and amounts set forth in this section and § 400.712 are correct and due and owing to {Applicant’s Name} by FCIC under the Federal Crop Insurance Act”; and

(2) “{Applicant Name} understands that, in addition to criminal fines and imprisonment, the submission of false or fraudulent statements or claims may result in civil and administrative sanctions.”

(m) The contents required for concept proposals are found in the Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Expenses. In addition, the proposal must provide a detailed description of why the concept provides insurance:

- (1) In a significantly improved form;
- (2) To a crop or region not traditionally served by the Federal crop insurance program; or
- (3) In a form that addresses a recognized flaw or problem in the program;

(n) The contents required for index-based weather plans of insurance are found in the Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance. In accordance with the Board approved procedures, the approved insurance provider that

submits the index-based weather plan of insurance must provide evidence they have:

(1) Adequate experience underwriting and administering policies or plans of insurance that are comparable to the proposed policy of plan of insurance;

(2) Sufficient assets or reinsurance to satisfy the underwriting obligations of the approved insurance provider, and possess a sufficient insurance credit rating from an appropriate credit rating bureau; and

(3) Applicable authority and approval from each State in which the approved insurance provider intends to sell the insurance product.

§ 400.706 Review.

(a) Prior to providing a submission, concept proposal, or index-based weather plan of insurance to the Board, RMA will:

(1) Review the submission, concept proposal, or index-based weather plan of insurance to determine if all required documentation is included in accordance with § 400.705;

(2) Review the submission, concept proposal, or index-based weather plan of insurance to determine whether it is of sufficient quality to conduct a meaningful review such that the Board will be able to make an informed decision regarding approval or disapproval;

(3) In accordance with section 508(h)(1)(B) of the Act, at its sole discretion, determine if the policy or plan of insurance:

- (i) Will likely result in a viable and marketable policy;
- (ii) Will provide crop insurance coverage in a significantly improved form; and
- (iii) Adequately protect the interests of producers.

(4) Except for submissions developed from a concept proposal funded for advanced payment by the Board, reject and return any submission, concept proposal, or indexed based weather plan of insurance that:

- (i) Does not contain all the required information or is not of sufficient quality to conduct a meaningful review;
- (ii) Is unlikely result in a viable and marketable policy;
- (iii) Will not provide crop insurance coverage in a significantly improved form; and
- (iv) Will not adequately protect the interests of producers.

(5) Except as provided in paragraph (a)(4) of this section or if the submission was developed from an approved concept proposal, forward the submission, concept proposal, or index-based weather plan of insurance, and

the results of RMA’s initial review, to the Board for its determination of completeness.

(b) Upon the Board’s receipt of a submission, the Board will:

(1) Determine if the submission is complete (The date the Board votes to contract with the expert reviewers is the date the submission is deemed to be complete for the start of the 120 day time-period for approval);

(2) Unless the submission makes non-significant changes to a policy or plan of insurance, or involves policy provisions that have already undergone expert review, forward the complete submission to at least five expert reviewers to review the submission:

(i) Of the five expert reviewers, no more than one will be employed by the Federal Government, and none may be employed by any approved insurance provider or their representative; and

(ii) The expert reviewers will each provide their individual assessment of whether the submission:

- (A) Protects the interests of agricultural producers and taxpayers;
- (B) Is actuarially appropriate;
- (C) Follows appropriate insurance principles;
- (D) Meets the requirements of the Act;
- (E) Does not contain excessive risks;
- (F) Follows sound, reasonable, and appropriate underwriting principles;
- (G) Will provide a new kind of coverage that is likely to be viable and marketable;

(H) Will provide crop insurance coverage in a manner that addresses a clear and identifiable flaw or problem in an existing policy;

(I) Will provide a new kind of coverage for a commodity that previously had no available crop insurance, or has demonstrated a low level of participation or coverage level under existing coverage;

(J) May have a significant adverse impact on the crop insurance delivery system;

(K) Contains a marketing plan that reasonably demonstrates the product would be viable and marketable;

(L) If applicable, contains a consultation report that provides evidence the submission will not create adverse market distortions; and

(M) Meets any other criteria the Board may deem necessary;

(3) Return to the applicant any submission the Board determines is not complete, along with an explanation of the reason for the determination and:

- (i) With respect to submissions developed from approved concept proposals, the provisions in § 400.712(c)(1) shall apply; and
- (ii) Except for submissions developed from concept proposals, if the

submission is resubmitted at a later date, it will be considered a new submission solely for the purpose of determining the amount of time that the Board must take action;

(4) For complete submissions:

(i) Request review by RMA to provide its assessment of whether the submission:

(A) Meets the criteria listed in subsections (b)(2)(ii)(A) through (M);

(B) Is consistent with USDA's public policy goals;

(C) Does not increase or shift risk to any other FCIC reinsured policy;

(D) Can be implemented, administered, and delivered effectively and efficiently using RMA's information technology and delivery systems; and

(E) Contains requested amounts of government reinsurance, risk subsidy, and administrative and operating subsidies that are reasonable and appropriate for the type of coverage provided by the policy submission; and

(ii) Seek review from the Office of the General Counsel (OGC) to determine if the submission conforms to the requirements of the Act and all applicable Federal statutes and regulations.

(5) Unless all the requirements for approval for submissions in this subsection are met or reasons for notice of disapproval exist as specified in subsection (k), provide a notice of intent to disapprove, including the reasons for the intent to disapprove.

(c) Upon the Board's receipt of a concept proposal, the Board will:

(1) Determine whether the concept proposal is complete (The date the Board votes to contract with expert reviewers is the date the concept proposal is deemed to be a complete concept proposal for the start of the 120 day time-period for approval);

(2) If complete, forward the complete concept proposal to at least two expert reviewers with underwriting or actuarial experience to review the concept in accordance with section 522(b)(2) of the Act, this subpart, and Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Expenses;

(3) Return to the applicant any concept proposal the Board determines is not complete, along with an explanation of the reason for the determination (If the concept proposal is resubmitted at a later date, it will be considered a new concept proposal solely for the purposes of determining the amount of time that the Board must take action);

(4) Determine whether the concept proposal, if developed into a policy or

plan of insurance would, in good faith, would meet the requirement of being likely to result in a viable and marketable policy consistent with section 508(h);

(5) At its sole discretion, determine whether the concept proposal, if developed into a policy or plan of insurance would meet the requirement of providing coverage:

(i) In a significantly improved form;

(ii) To a crop or region not traditionally served by the Federal crop insurance program; or

(iii) In a form that addresses a recognized flaw or problem in the program;

(6) Determine whether the proposed budget and timetable are reasonable;

(7) Determine whether the concept proposal meets all other requirements imposed by the Board or as otherwise specified in Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Expenses;

(8) Provide a date by which the submission must be provided in consultation with the applicant; and

(9) Unless all the requirements for approval of concept proposals in this subsection are met or reasons for disapproval exist as specified in subsection (l), provide a notice of disapproval, including the reasons for disapproval.

(d) Upon the Board's receipt of an index-based weather plan of insurance, the Board will:

(1) Determine whether the index-based weather plan of insurance is complete (The date the Board votes to contract with expert reviewers is the date the index-based weather plan of insurance is deemed to be a complete for the start of the 120 day time-period for approval);

(2) If determined to be complete, contract with five expert reviewers and review the index-based weather plan of insurance in accordance with section 523(i) of the Act, this subpart, and Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance;

(3) Return to the applicant any index-based weather plan of insurance the Board determines is not complete, along with an explanation of the reason for the determination (If the index-based weather plan of insurance is resubmitted at a later date, it will be considered a new index-based weather plan of insurance solely for the purposes of determining the amount of time that the Board must take action);

(4) Give the highest priority for approval of index-based weather plans

of insurance that provide a new kind of coverage for specialty crops and livestock commodities that previously had no available crop insurance, or has demonstrated a low level of participation under existing coverage; and

(5) Unless all the requirements for approval of index-based weather plans of insurance in this subsection are met or reasons for notice of disapproval exist as specified in paragraph (m) of this section, provide a notice of intent to disapprove including the reasons for the intent to disapprove.

(e) All comments and evaluations will be provided to the Board by a date determined by the Board to allow the Board adequate time for review.

(f) The Board will consider all comments, evaluations, and recommendations in its review process. Prior to making a decision, the Board may request additional information from RMA, OGC, the expert reviewers, or the applicant.

(g) In considering whether to approve a submission and when such submission will be offered for sale, the Board will:

(1) First, consider policies or plans of insurance that address underserved commodities, including commodities for which there is no insurance;

(2) Second, consider existing policies or plans of insurance for which there is inadequate coverage or there exists low levels of participation; and

(3) Last, consider all policies or plans of insurance submitted to the Board that do not meet the criteria described in paragraph (g)(1) or (2) of this section.

(h) At any time an applicant may request a time delay after the submission, concept proposal, or index-based weather plan of insurance has been placed on the Board meeting agenda. The Board is not required to agree to such an extension.

(1) With respect to submissions from concept proposals approved by the Board for advanced payment, the applicant must provide good cause why consideration should be delayed.

(2) Any requested time delay is not limited in the length of time unless a date is set by the Board by which all revisions to the submission, concept proposal or indexed-based weather plan of insurance must be made. However, delays may make implementation of the submission for the targeted crop year impractical or impossible as determined by the Board.

(3) The time period during which the Board will make a decision to approve or disapprove the submission, concept proposal or indexed-based weather plan of insurance shall be extended

commensurately with any time delay requested by the applicant.

(i) The applicant may withdraw a submission, concept proposal, index-based weather plan of insurance, or a portion of a submission or concept proposal, at any time by presenting a request to the Board. A withdrawn submission, concept proposal or index-based weather plan of insurance that is resubmitted will be deemed a new submission, concept proposal, or index-based weather plan of insurance solely for the purposes of determining the amount of time that the Board must take action.

(j) The Board will render a decision on a submission, concept proposal, or indexed-based weather plan of insurance, with or without revision within 90 days after the date the submission, concept proposal, or indexed-based weather plan of insurance is considered complete by the Board, unless the Board agrees to a time delay in accordance with paragraph (h) of this section. Failure to approve a submission, concept proposal, or indexed-based weather plan of insurance constitutes intent to give of intent to disapprove a submission or index-based weather plan of insurance or disapproval of a concept proposal.

(k) The Board may provide a notice of intent to disapprove a submission if it determines:

(1) The interests of producers and taxpayers are not protected, including but not limited to:

(i) The submission does not provide adequate coverage or treats producers disparately;

(ii) The applicant has not presented sufficient documentation that the submission will provide a new kind of coverage that is likely to be viable and marketable;

(iii) Coverage would be similar to another policy or plan of insurance that has not demonstrated a low level of participation or does not contain a clear and identifiable flaw, and the producer would not significantly benefit from the submission;

(iv) The submission may create adverse market distortions or adversely impact other crops or agricultural commodities if marketed;

(v) The submission will have a significant adverse impact on the private delivery system; or

(vi) The submission cannot be implemented, administered, and delivered effectively and efficiently using RMA's information technology and delivery systems;

(2) The premium rates are not actuarially appropriate;

(3) The submission does not conform to sound insurance and underwriting principles;

(4) The risks associated with the submission are excessive or it increases or shifts risk to another reinsured policy;

(5) The submission does not meet the requirements of the Act; or

(6) The 90 day deadline under subsection (i) will expire before the Board has time to make an informed decision to approve or disapprove the submission.

(l) The Board may disapprove a concept proposal if it determines:

(1) The concept, in good faith, will not likely result in a viable and marketable policy consistent with section 508(h);

(2) At the sole discretion of the Board, the concept, if developed into a policy and approved by the Board, would not provide crop insurance coverage:

(i) In a significantly improved form;

(ii) To a crop or region not traditionally served by the Federal crop insurance program; or

(iii) In a form that addresses a recognized flaw or problem in the program;

(3) The proposed budget and timetable are not reasonable, as determined by the Board; or

(4) The concept proposal fails to meet one or more requirements established by the Board.

(m) The Board may provide a notice of intent to disapprove an index-based weather plan of insurance if it determines there is not:

(1) Adequate experience underwriting and administering policies or plans of insurance that are comparable to the proposed policy or plan of insurance;

(2) Sufficient assets or reinsurance to satisfy the underwriting obligations of the approved insurance provider, and possess a sufficient insurance credit rating from an appropriate credit rating bureau, in accordance with Board procedures; and

(3) Applicable authority and approval from each State in which the approved insurance provider intends to sell the insurance product.

(n) Unless otherwise provided for in this section:

(1) If the Board intends to disapprove a submission or index-based weather plan of insurance or disapproves a concept proposal, the Board will provide the applicant with a written explanation outlining the basis for the intent to disapprove or disapproval; and

(2) Any approval or disapproval of a submission, concept proposal, or index-based weather plan of insurance must be made by the Board in writing not

later than 120 days after the Board has determined it to be complete.

(o) If a notice of intent to disapprove all or part of a submission or index-based weather plan of insurance has been provided by the Board, the applicant must provide written notice to the Board not later than 30 days after the Board provides such notice if the submission or index-based weather plan of insurance will be modified. If the applicant does not respond within the 30-day period, the Board will send the applicant a letter stating the submission or index-based weather plan of insurance is disapproved.

(p) If the applicant elects to modify the submission or index-based weather plan of insurance:

(1) The applicant must advise the Board of a date by which the modified submission or index-based weather plan of insurance will be presented to the Board; and

(2) The remainder of the time left between the Board's notice of intent to disapprove and the expiration of the 120 day deadline is tolled until the modified submission or index-based weather plan of insurance is received by the Board.

(3) The Board will disapprove a modified submission or index-based weather plan of insurance if the:

(i) Causes for disapproval stated by the Board in its notification of intent to disapprove the submission or index-based weather plan of insurance are not satisfactorily addressed;

(ii) Board determines there is insufficient time for the Board to finish its review before the expiration of the 120-day deadline for disapproval of a submission or index-based weather plan of insurance, unless the applicant grants the Board an extension of time to adequately consider the modified submission or index-based weather plan of insurance (If an extension of time is agreed upon, the time period during which the Board must act on the modified submission or index-based weather plan of insurance will tolled during the extension); or

(iii) Applicant does not present a modification of the submission or index-based weather plan of insurance to the Board on the date the applicant specified and the applicant does not request an additional time delay.

(q) If the Board fails to render a decision on a new submission or index-based weather plan of insurance within the time periods specified in paragraph (j) or (n) of this section, such submission or index-based weather plan of insurance will be deemed approved by the Board for the initial reinsurance year designated for the submission or index-based weather plan of insurance. The

Board must approve the submission or index-based weather plan of insurance for it to be available for any subsequent reinsurance year.

§ 400.707 Presentation to the Board for approval or disapproval.

(a) The Board will inform the applicant of the date, time, and place of the Board meeting.

(b) The applicant will be given the opportunity and is encouraged to present the submission, concept proposal, or index-based weather plan of insurance to the Board in person. The applicant must confirm in writing, email or fax whether the applicant will present in person to the Board.

(c) If the applicant elects not to present the submission, concept proposal, or index-based weather plan of insurance to the Board, the Board will make its decision based on the information provided in accordance with § 400.705 and § 400.706.

§ 400.708 Post approval.

(a) After a submission is approved by the Board, and prior to it being made available for sale to producers:

(1) The following must be executed, as applicable:

(i) If required by FCIC, an agreement between the applicant and FCIC that specifies:

(A) In addition to the requirements in § 400.709, responsibilities of each with respect to the implementation, delivery and maintenance of the submission; and

(B) The required timeframes for submission of any information and documentation needed to administer the approved submission;

(ii) A reinsurance agreement if terms and conditions differ from the available existing reinsurance agreements; and

(iii) A training package to facilitate implementation of the approved submission;

(2) The Board may limit the availability of coverage, for any policy or plan of insurance developed under the authority of the Act and this regulation, on any farm or in any county or area;

(3) A submission approved by the Board under this subpart will be made available to all approved insurance providers under the same reinsurance, subsidy, and terms and conditions as received by the applicant;

(4) Any solicitation, sales, marketing, or advertising of the approved submission by the applicant before FCIC has made the policy materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for those policies affected; and

(5) The property rights to the submission will automatically transfer to FCIC if the applicant elects not to maintain the submission under § 400.712(a)(3) or fails to notify FCIC of its decision to elect or not elect maintenance of the program under § 400.712(l).

(b) Requirements and procedures for approved index-based weather plans of insurance are contained in Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance. In accordance with the Board approved procedures, index-based weather plans of insurance are not eligible for federal reinsurance, but may be approved for risk subsidy and A&O subsidy.

§ 400.709 Roles and responsibilities.

(a) With respect to the applicant:

(1) The applicant is responsible for:

(i) Preparing and ensuring that all policy documents, rates of premium, prices, and supporting materials, including actuarial documents, are submitted by the deadline specified by FCIC, in the form approved by the Board, and are in compliance with Section 508 of the Rehabilitation Act;

(ii) Annually updating and providing maintenance changes no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy or plan of insurance is sold;

(iii) Timely addressing responses to procedural issues, questions, problems or clarifications in regard to a policy or plan of insurance (all such resolutions for approved submissions will be communicated to all approved insurance providers through FCIC's official issuance system); and

(iv) If requested by the Board, providing an annual review of the policy's performance, in writing to the Board, 180 days prior to the contract change date for the plan of insurance (The first annual report will be submitted one full year after implementation of an approved policy or plan of insurance, as agreed to by the submitter and RMA);

(2) Only the applicant may make changes to the policy, plan of insurance, or rates of premium approved by the Board:

(i) Any changes to approved submissions, both non-significant and significant, must be submitted to FCIC in the form of a submission for review in accordance with this subpart no later than 180 days prior to the earliest contract change date for the commodity in all counties or states in which the policy or plan of insurance is sold; and

(ii) Significant changes will be considered a new submission;

(3) Except as provided in paragraph (a)(4) of this section, the applicant is solely liable for any mistakes, errors, or flaws in the submitted policy, plan of insurance, their related materials, or the rates of premium that have been approved by the Board unless the policy or plan of insurance is transferred to FCIC in accordance with § 400.712(l) (The applicant remains liable for any mistakes, errors, or flaws that occurred prior to transfer of the policy or plan of insurance to FCIC);

(4) If the mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium is discovered more than 45 days prior to the cancellation or termination date for the policy or plan of insurance, the applicant may request in writing that FCIC withdraw the approved policy, plan of insurance, or rates of premium:

(i) Such request must state the discovered mistake, error, or flaw in the policy, plan of insurance, or rates of premium, and the expected impact on the program; and

(ii) For all timely received requests for withdrawal, no liability will attach to such policies, plans of insurance, or rates of premium that have been withdrawn and no producer, approved insurance provider, or any other person will have a right of action against the applicant;

(5) Notwithstanding the policy provisions regarding cancellation, any policy, plan of insurance, or rates of premium that have been withdrawn by the applicant, in accordance with paragraph (a)(4) of this section is deemed canceled and applications are deemed not accepted as of the date that FCIC publishes the notice of withdrawal on its Web site at www.rma.usda.gov.

(i) Approved insurance providers will be notified in writing by FCIC that the policy, plan of insurance, or premium rates have been withdrawn; and

(ii) Producers will have the option of selecting any other policy or plan of insurance authorized under the Act that is available in the area by the sales closing date for such policy or plan of insurance; and

(6) Failure of the applicant to perform all of the applicant's responsibilities may result in the withdrawal of approval for the policy or plan of insurance.

(b) With respect to FCIC:

(1) FCIC is responsible for:

(i) Conducting a review of the submission in accordance with § 400.706 and providing its recommendations to the Board;

(ii) With respect to submissions:

(A) Ensuring that all approved insurance providers receive the approved policy or plan of insurance, and related material, for sale to producers in a timely manner (All such information shall be communicated to all approved insurance providers through FCIC's official issuance system);

(B) As applicable, ensuring that approved insurance providers receive reinsurance under the same terms and conditions as the applicant (Approved insurance providers should contact FCIC to obtain and execute a copy of the reinsurance agreement) if required; and

(C) Reviewing the activities of approved insurance providers, agents, loss adjusters, and producers to ensure that they are in accordance with the terms of the policy or plan of insurance, the reinsurance agreement, and all applicable procedures;

(2) FCIC will not be liable for any mistakes, errors, or flaws in the policy, plan of insurance, their related materials, or the rates of premium and no cause of action may be taken against FCIC as a result of such mistake, error, or flaw in a submission or index-based weather plan of insurance submitted under this subpart;

(3) If at any time prior to the cancellation date, FCIC discovers there is a mistake, error, or flaw in the policy, plan of insurance, their related materials, or the rates of premium, or any other reason for withdrawal of approval contained in § 400.706(k) exists, FCIC will deny reinsurance for such policy or plan of insurance (If reinsurance is denied, a written notice will be provided to on RMA's Web site at www.rma.usda.gov);

(4) If maintenance of the policy or plan of insurance is transferred to FCIC in accordance with § 400.712(l), FCIC will assume liability for the policy or plan of insurance for any mistake, error, or flaw that occur after the date the policy is transferred.

(c) If approval by the Board is withdrawn or reinsurance is denied for any submission, the approved insurance provider must cancel the policy or plan of insurance in accordance with its terms.

§ 400.710 Preemption and premium taxation.

A policy or plan of insurance that is approved by the Board for FCIC reinsurance is preempted from state and local taxation. This preemption does not apply to index-based weather plans of insurance approved for premium subsidy or A&O subsidy under this part.

§ 400.711 Right of review, modification, and the withdrawal of approval.

(a) At any time after approval, the Board may review any policy, plan of insurance, related material, or rates of premium approved under this subpart, including index-based weather plans of insurance and request additional information to determine whether the policy, plan of insurance, related material, or rates of premium comply with the requirements of this subpart.

(b) The Board will notify the applicant of any problem or issue that may arise and allow the applicant an opportunity to make any needed change. If the contract change date has passed, the applicant will be liable for such problems or issues for the crop year in accordance with § 400.709 until the policy may be changed.

(c) The Board may withdraw approval for the applicable policy, plan of insurance or rate of premium, including index-based weather plans of insurance, as applicable, if:

(1) The applicant fails to perform the responsibilities stated under § 400.709(a);

(2) The applicant does not timely and satisfactorily provide materials or resolve any issue to the Board's satisfaction so that necessary changes can be made prior to the earliest contract change date;

(3) The Board determines the applicable policy, plan of insurance or rate of premium, including index-based weather plans of insurance is not in conformance with the Act, these regulations or the applicable procedures;

(4) The policy, plan of insurance, or rates of premium are not sufficiently marketable according to the applicant's estimate in the submission or fails to perform sufficiently as determined by the Board; or

(5) The interest of producers or tax payers is not protected or the continuation of the program raises questions or issues of program integrity.

§ 400.712 Research and development reimbursement, maintenance reimbursement, advance payments for concept proposals, and user fees.

(a) For submissions approved by the Board for reinsurance under section 508(h) of the Act:

(1) The submission may be eligible for a one-time payment of research and development costs and reimbursement of maintenance costs for up to four reinsurance years, as determined by the Board;

(2) Reimbursement of research and development costs or maintenance costs will be considered as payment in full by

FCIC for the submission, and no additional amounts will be owed to the applicant if the submission is transferred to FCIC in accordance with paragraph (l) of this section; and

(3) If the applicant elects at any time not to continue to maintain the submission, it will automatically become the property of FCIC and the applicant will no longer have any property rights to the submission and will not receive any user fees for the plan of insurance;

(b) The Board approved procedures and time-frames must be followed, or research and development costs and maintenance costs may not be reimbursed, unless otherwise determined by the Board.

(1) After a submission has been approved by the Board for reinsurance, to be considered for reimbursement of:

(i) Research and development costs, the applicant must submit the total amount requested and all supporting documentation to FCIC by electronic method or by hard copy and such information must be received by FCIC on or before August 1 immediately following the date the submission was released to approved insurance providers through FCIC's issuance system; or

(ii) Maintenance costs, the applicant must submit the total amount requested and all supporting documentation to FCIC by electronic method or by hard copy and such information must be received by FCIC on or before August 1 of each year of the maintenance period.

(2) Given the limitation on funds, regardless of when the request is received, no payment will be made prior to September 15 of the applicable fiscal year.

(c) Applicants submitting a concept proposal may request an advance payment of up to 50 percent of the projected total research and development costs, and after the applicant has begun research and development activities, the Board may at its sole discretion provide up to an additional 25 percent advance payment of the estimated research and development costs, if requested in accordance with Procedures Handbook 17030—Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Expenses.

(1) If a concept proposal is approved by the Board for advance payment, the applicant is responsible for independently developing a submission that is complete and of sufficient quality as specified in this subpart by the deadline set by the Board.

(i) If an applicant fails to fulfill the obligation to provide a submission that is complete and of sufficient quality by the deadline set by the Board, the Board shall provide a notice of non-compliance to the applicant and allow not less than 30 days for the applicant to respond;

(ii) If the applicant fails to respond, to the satisfaction of the Board, with just cause as to why a submission that is complete and of sufficient quality was not provided by the deadline set by the Board, the applicant shall return the amount of the advance payment plus interest at the rate of 1.25 percent simple interest per calendar month;

(iii) If the applicant responds, to the satisfaction of the Board, with just cause as to why a submission that is complete and of sufficient quality was not provided by the deadline set by the Board, the applicant will be given a new deadline by which to provide a submission that is complete and of sufficient quality; and

(iv) If the applicant fails to provide a submission that is complete and of sufficient quality by the deadline, no additional extensions will be approved by the Board and the applicant shall return the amount of the advance payment plus interest at the rate of 1.25 percent simple interest per calendar month.

(2) If an applicant receives an advance payment for a portion of the expected research and development costs for a concept proposal that is developed into a submission and determined by the Board to be complete and of sufficient quality, but the submission is not approved by the Board following expert review, the Board will not:

(i) Seek a refund of any advance payments for research and development costs; and

(ii) Make any further research and development cost reimbursements associated with the submission.

(d) Under section 522 of the Act, there are limited funds available on an annual fiscal year basis to pay for reimbursements of research and development costs (including advance payments for concept proposals) and maintenance costs. Consistent with paragraphs (e) through (j) of this section if all applicants' requests for reimbursement of research and development costs (including advance payments for concept proposals) and maintenance costs in any fiscal year:

(1) Do not exceed the maximum amount authorized by law, the applicants may receive the full amount of reimbursement determined reasonable by the Board; or

(2) Exceed the amount authorized by law, each applicant's reimbursement determined reasonable by the Board will be determined by dividing the total amount of each individual applicant's reimbursable costs authorized in paragraphs (e) through (j) of this section by the total amount of the aggregate of all applicants' reimbursable costs authorized in paragraphs (e) through (j) for the year and multiplying the result by the amount of reimbursement authorized under the Act.

(e) The amount of reimbursement for research and development costs requested by the applicant may be reduced based on:

(1) The complexity of the policy, plan of insurance, or rates of premium, so requests for reimbursements for submissions:

(i) Adding commodities to existing plans of insurance (*i.e.*, Yield Protection and Revenue Protection under the Common Crop insurance Policy Basic Provisions, Area Risk Protection, Actual Revenue History, Whole Farm, Rainfall Index, Vegetative Index, etc.) may be reduced by as much as 20 percent;

(ii) Using existing rating methodologies or commodity prices or a price methodology may be reduced by as much as 10 percent;

(iii) Using existing policy provisions, procedures, etc., may be reduced by as much as 10 percent; and

(2) The scope as measured by the agricultural commodities proposed to be covered or geographic area the proposed submission will cover, as determined by FCIC so requests for reimbursements for submissions:

(i) That cover a single commodity may be reduced by 10 percent; and

(ii) That cover a small geographic area compared to the total growing area for the commodity may be reduced by 10 percent.

(f) Research and development and maintenance costs must be supported by itemized statements and supporting documentation (copies of contracts, billing statements, time sheets, travel vouchers, accounting ledgers, etc.).

(1) Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(2) Allowable research and development costs and maintenance costs (directly related to research and development or maintenance of the submission only) may include the following:

(i) Wages and benefits, exclusive of bonuses, overtime pay, or shift differentials;

(A) One line per employee or contractor, include job title, total hours, and total dollars;

(B) The rates charged must be commensurate with the tasks performed (For example, a person performing the task of data entry should not be paid at the rate for performing data analysis);

(C) The wage rate and benefits shall not exceed two times the hourly wage rate plus benefits provided by the Bureau of Labor Statistics; and

(D) The applicant must report any familial or business relationship that exists between the applicant and the contractor or employee (Reimbursement may be limited or denied if the contractor or employee is associated to the applicant and they may be considered as one and the same. This includes a separate entity being created by the applicant to conduct research and development. Reimbursement may be limited or denied if the contractor is paid a salary or other compensation);

(ii) Travel and transportation (One line per event, include the job title, destination, purpose of travel, lodging cost, mileage, air or other identified transportation costs, food and miscellaneous expenses, other costs, and the total cost);

(iii) Software and computer programming developed specifically to determine appropriate rates, prices, or coverage amounts (Identify the item, include the purpose, and provide receipts or contract or straight-time hourly wage, hours, and total cost. Software developed to send or receive data between the producer, agent, approved insurance provider or RMA or such other similar software may not be included as an allowable cost);

(iv) Miscellaneous expenses such as postage, telephone, express mail, and printing (Identify the item, cost per unit, number of items, and total dollars); and

(v) Training costs expended to facilitate implementation of a new approved submission (Include instructor(s) hourly rate, hours, and cost of materials and travel) conducted at a national level, directed to all approved insurance providers interested in selling the submission, and approved prior to the training by RMA).

(3) The following expenses are specifically not eligible for research and development and maintenance cost reimbursement:

(i) Copyright fees, patent fees, or any other charges, costs or expenses related to the use of intellectual property;

(ii) Training costs, excluding training costs to facilitate implementation of the approved submission in accordance with subsection (f)(2)(v);

(iii) State filing fees and expenses;

(iv) Normal ongoing administrative expenses or indirect overhead costs (for example, costs associated with the management or general functions of an organization, such as costs for internet service, telephone, utilities, and office supplies);

(v) Paid or incurred losses;

(vi) Loss adjustment expenses;

(vii) Sales commission;

(viii) Marketing costs;

(ix) Lobbying costs;

(x) Product or applicant liability

resulting from the research,

development, preparation or marketing of the policy;

(xi) Copyright infringement claims

resulting from the research,

development, preparation or marketing of the policy;

(xii) Costs of making program changes as a result of any mistakes, errors or flaws in the policy or plan of insurance;

(xiii) Costs associated with building rents or space allocation;

(xiv) Costs in paragraphs (i) and (j) of this section determined by the Board to be ineligible for reimbursement; and

(xv) Local, State, or Federal taxes.

(g) Requests for reimbursement of maintenance costs must be supported by itemized statements and supporting documentary evidence for each reinsurance year in the maintenance period.

(1) Actual costs submitted will be examined for reasonableness and may be adjusted at the sole discretion of the Board.

(2) Maintenance costs for the following activities may be reimbursed:

(i) Expansion of the original submission into additional crops, counties or states;

(ii) Non-significant changes to the policy and any related material;

(iii) Non-significant or significant changes to the policy as necessary to protect program integrity or as required by Congress; and

(iv) Any other activity that qualifies as maintenance.

(h) Projected costs for research and development for concept proposals shall be based on a reasonable estimate of the costs allowed in paragraph (f) of this section.

(i) If a submission is determined to be of insufficient quality to refer to expert review, or is considered incomplete and is subsequently resubmitted and approved, the costs to perfect the submission may not be considered reimbursable costs depending on the level of insufficiency or incompleteness of the submission, as determined at the sole discretion of the Board.

(j) Reimbursement of costs associated with addressing issues raised by the

Board, expert reviewers and RMA will be evaluated based on the substance of the issue and the amount of time reasonably necessary to address the specific issue raised. Delays and additional costs caused by the inability or refusal to adequately address issues may not be considered reimbursable, as determined at the sole discretion of the Board.

(k) If the Board withdraws its approval for reinsurance at any time during the period that reimbursement for maintenance is being made or user fees are being collected, no maintenance reimbursement shall be made nor any user fee be owed after the date of such withdrawal.

(l) Not later than 180 days prior to the end of the last reinsurance year in which a maintenance reimbursement will be paid for the approved submission, the applicant must notify FCIC in writing regarding its decision on future ownership and maintenance of the policy or plan of insurance.

(1) The applicant must notify FCIC in writing whether it intends to:

(i) Continue to maintain the policy or plan of insurance and charge approved insurance providers a user fee to cover maintenance expenses for all policies earning premium; or

(ii) Transfer responsibility for maintenance to FCIC.

(2) If the applicant fails to notify FCIC in writing by the deadline, the policy or plan of insurance will automatically transfer to FCIC beginning with the next reinsurance year.

(3) If the applicant elects to:

(i) Continue to maintain the policy or plan of insurance, the applicant must submit a request for approval of the user fee by the Board at the time of the election; or

(ii) Transfer the policy or plan of insurance to FCIC, FCIC may at its sole discretion, continue to maintain the policy or plan of insurance or elect to withdraw the availability of the policy or plan of insurance.

(4) Requests for approval of the user fee must be accompanied by written documentation to support the amount requested will only cover direct costs to maintain the plan of insurance. Costs that are not eligible for research and development and maintenance reimbursements under this section are not eligible to be considered for determining the user fee.

(5) The Board will approve the amount of user fee, including the maximum amount of total maintenance that may be collected per year, that is payable to the applicant by approved insurance providers unless the Board determines that the user fee charged:

(i) Is unreasonable in relation to the maintenance costs associated with the policy or plan of insurance; or

(ii) Unnecessarily inhibits the use of the policy or plan of insurance by approved insurance providers.

(6) If the total user fee exceeds the maximum amount determined by the Board, the maximum amount determined by the Board will be divided by the number of policies earning premium to determine the amount to be paid by each approved insurance provider.

(7) Reasonableness of the initial request to charge a user fee will be determined by the Board based on a comparison of the amount of reimbursement for maintenance previously received, the number of policies, the number of approved insurance providers, and the expected total amount of user fees to be received in any reinsurance year.

(8) A user fee unnecessarily inhibits the use of a policy or plan of insurance if it is so high that approved insurance providers will not sell the policy.

(9) The user fee charged to each approved insurance provider will be considered payment in full for the use of such policy, plan of insurance or rate of premium for the reinsurance year in which payment is made.

(10) It is the sole responsibility of the applicant to collect such fees from an approved insurance provider and any indebtedness for such fees must be resolved by the applicant and approved insurance provider.

(i) Applicants may request that FCIC provide the number of policies sold by each approved insurance provider.

(ii) Such information will be provided not later than 90 days after such request is made or not later than 90 days after the requisite information has been provided to FCIC by the approved insurance provider, whichever is later.

(11) Every two years after approval of a user fee, or if the applicant has made a significant change to the approved submission, applicants must submit documentation to the Board for review in determining if the user fee should be revised.

(12) The Board may review the amount of the user fee at any time at its sole discretion.

(m) The Board may consider information from the Equal Access to Justice Act, 5 U.S.C. 504, the Bureau of Labor Statistic's Occupational Employment Statistics Survey, the Bureau of Labor Statistic's Employment Cost Index, and any other information determined applicable by the Board, in making a determination whether to approve a submission for

reimbursement of research and development costs, maintenance costs, or user fees.

(n) For purposes of this section, rights to, or obligations of, research and development cost reimbursement, maintenance cost reimbursement, or user fees cannot be transferred from any individual or entity unless specifically approved in writing by the Board.

(o) Applicants requesting reimbursement for research and development costs, maintenance costs, or user fees, may present their request in person to the Board prior to consideration for approval.

(p) Index-based weather plans of insurance are not eligible for reimbursement from FCIC for maintenance costs or research and development costs. Submitters of approved index-based weather plans of insurance may collect user fees from other approved insurance providers in accordance with Procedures Handbook 17050—Approved Procedures for Submission of Index-based Weather Plans of Insurance.

§ 400.713 Non-reinsured supplemental (NRS) policy.

(a) Unless otherwise specified by FCIC, any NRS policy that covers the same agricultural commodity as any policy reinsured by FCIC under the Act must be provided to RMA to ensure it does not shift any loss under the FCIC reinsured policy. Failure to provide such NRS policy or endorsement to RMA prior to its issuance shall result in the denial of reinsurance, A&O subsidy and risk subsidy on the underlying FCIC reinsured policy for which such NRS policy was sold.

(b) Three hard copies, and an electronic copy in a format approved by RMA, of the new or revised NRS policy and related materials must be submitted at least 150 days prior to the first sales closing date applicable to the NRS policy. At a minimum, examples that demonstrate how liability and indemnities are determined under differing scenarios must be included.

(1) Hard copies of the NRS must be sent to the Deputy Administrator for Product Management (or successor), USDA/Risk Management Agency, Beacon Facility Mail Stop 0812, 9240 Troost Ave., Kansas City, MO 64131-3055.

(2) Electronic copies of the NRS must be sent to the Deputy Administrator for Product Management (or successor) at DeputyAdministrator@rma.usda.gov.

(c) RMA will review the NRS policy. If any of the conditions found in paragraphs (c)(1) through (5) of this section are found to occur, FCIC will

deny reinsurance, A&O subsidy and risk subsidy on the underlying FCIC reinsured policy for which such NRS policy was sold.

(1) If the NRS policy materially increases or shifts risk to the underlying policy or plan of insurance reinsured by FCIC.

(i) An NRS policy will be considered to materially increase or shift risk to the underlying policy or plan of insurance reinsured by FCIC if it creates an incentive for moral hazard such as a financial incentive to increase the number or size of losses or, allows for aggregate indemnities in excess of the expected value of the insured commodity.

(ii) The NRS must include language that clearly states no indemnity will be paid in excess of the initial value of the insured commodity.

(2) The NRS reduces or limits the rights of the insured with respect to the underlying policy or plan of insurance reinsured by FCIC. An NRS policy will be considered to reduce or limit the rights of the insured with respect to the underlying policy or plan of insurance if it alters the terms or conditions of the underlying policy or otherwise preempts procedures issued by FCIC.

(3) The NRS disrupts the marketplace. An NRS policy will be considered to disrupt the marketplace if it encourages planting more acres of the insured commodity in excess of normal market demand, adversely affects the sales or administration of reinsured policies, undermines producers' confidence in the Federal crop insurance program, or harms public perception of the Federal crop insurance program.

(4) The NRS is an impermissible rebate. An NRS may be considered to be an impermissible rebate if FCIC determines that the premium rates charged are insufficient to cover the expected losses and a reasonable reserve or it offers other benefits that are generally provided at a cost.

(5) The NRS policy is conditioned upon or provides incentive for the purchase of the underlying policy or plan of insurance reinsured by FCIC with a specific agent or approved insurance provider.

(d) RMA will respond not less than 60 days before the first sales closing date or provide notice why RMA is unable to respond within the time frame allotted.

(e) NRS policies reviewed by RMA will not need to be submitted for a five year period unless a change is made to the NRS or the underlying policy or the loss ratio for the NRS policy exceeds 2.0. Once any changes are made to either policy or the five year period has

concluded, the NRS must be resubmitted for review.

Signed in Washington, DC, on February 13, 2015.

Brandon Willis,
Manager, Federal Crop Insurance Corporation.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 15, 17, 19, 32, 37, 38, 140, and 150

RIN 3038-AD99; 3038-AD82

Position Limits for Derivatives and Aggregation of Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking; provision of Table 11a; and reopening of comment periods.

SUMMARY: On December 12, 2013, the Commodity Futures Trading Commission (“Commission”) published in the **Federal Register** a notice of proposed rulemaking (the “Position Limits Proposal”) to establish speculative position limits for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. On November 15, 2013, the Commission published in the **Federal Register** a notice of proposed rulemaking (the “Aggregation Proposal”) to amend existing regulations setting out the Commission’s policy for aggregation under its position limits regime. The Commission’s Energy and Environmental Markets Advisory Committee has scheduled a public meeting to be held on February 26, 2015, which will consider, among other matters, exemptions for bona fide hedging positions. In conjunction with the meeting of the Commission’s Energy and Environmental Markets Advisory Committee, the Commission will post an agenda and associated materials, if any, on the Commission’s Web site; additionally, access to a video webcast of the meeting will be added to the Web site. In addition, and in connection with the meeting, the Commission is providing counts of the unique persons over percentages of the 28 proposed position limit levels (currently provided in Table 11 of the Position Limits Proposal based on counts from the period of January 1, 2011, to December 31, 2012 period) in a new table, Table

11a, based on counts from the period of January 1, 2013, to December 31, 2014. To provide commenters with a sufficient period of time to respond to questions raised and points made at the Energy and Environmental Markets Committee meeting, as well as to provide an opportunity to comment on Table 11a, the Commission will reopen the comment periods for an additional 30 days. The Commission is providing notice that comments may be made on the issues addressed at the meeting or in the associated materials posted to the Commission's Web site, as they pertain to energy commodities. Furthermore, comments may be made on Table 11a, showing counts of the unique persons over percentages of the 28 proposed position limit levels based on counts from the period of January 1, 2013, to December 31, 2014.

DATES: The comment periods for the Aggregation Proposal published November 15, 2013, at 78 FR 68946, and for the Position Limits Proposal published December 12, 2013, at 78 FR 75680, will reopen on February 26, 2015, and will close on March 28, 2015.

ADDRESSES: You may submit comments, identified by RIN 3038-AD99 for the Position Limits Proposal or RIN 3038-AD82 for the Aggregation Proposal, by any of the following methods:

- *Agency Web site:* <http://comments.cftc.gov>;
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581;
- *Hand Delivery/Courier:* Same as Mail, above; or
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow instructions for submitting comments.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted under § 145.9 of the Commission's regulations (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may

deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Stephen Sherrod, Senior Economist, Division of Market Oversight, (202) 418-5452, ssherrod@cftc.gov; or Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418-5494, radriance@cftc.gov; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission has long established and enforced speculative position limits for futures and options contracts on various agricultural commodities as authorized by the Commodity Exchange Act ("CEA").¹ The part 150 position limits regime² generally includes three components: (1) the level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot-month, individual month, and all months combined,³ (2) exemptions for positions that constitute bona fide hedging transactions and certain other types of transactions,⁴ and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.⁵ The Position Limits Proposal generally sets out proposed changes to the first and second components of the position limits regime and would establish speculative position limits for 28 exempt and agricultural commodity futures and option contracts, and physical commodity swaps that are "economically equivalent" to such contracts (as such term is used in CEA section 4a(a)(5)).⁶ The Aggregation Proposal generally sets out proposed changes to the third component of the position limits regime.⁷

¹ 7 U.S.C. 1 *et seq.*

² See 17 CFR part 150. Part 150 of the Commission's regulations establishes federal position limits on futures and option contracts in nine enumerated agricultural commodities.

³ See 17 CFR 150.2.

⁴ See 17 CFR 150.3.

⁵ See 17 CFR 150.4.

⁶ See Position Limits for Derivatives, 78 FR 75680 (Dec. 12, 2013).

⁷ See Aggregation of Positions, 78 FR 68946 (Nov. 15, 2013).

The Commission published the Position Limits Proposal and the Aggregation Proposal separately because it believes that the proposed amendments regarding aggregation of positions could be appropriate regardless of whether the Position Limits Proposal is finalized.⁸ If the Aggregation Proposal is finalized first, the modifications would apply to the current position limits regime for futures and option contracts on nine enumerated agricultural commodities. If the Position Limits Proposal is subsequently finalized, the modifications in the Aggregation Proposal would apply to the position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts.

In order to provide interested parties with an opportunity to comment on the Aggregation Proposal during the comment period on the Position Limits Proposal, the Commission extended the comment period for the Aggregation Proposal to February 10, 2014, the same end date as the comment period for the Position Limits Proposal.⁹

Subsequent to publication of the Position Limits Proposal and the Aggregation Proposal, the Commission directed staff to schedule a June 19, 2014, public roundtable to consider certain issues regarding position limits for physical commodity derivatives. The roundtable focused on hedges of a physical commodity by a commercial enterprise, including gross hedging, cross-commodity hedging, anticipatory hedging, and the process for obtaining a non-enumerated exemption. Discussion included the setting of spot month limits in physical-delivery and cash-settled contracts and a conditional spot-month limit exemption. Further, the roundtable included discussion of: The aggregation exemption for certain ownership interests of greater than 50 percent in an owned entity; and aggregation based on substantially identical trading strategies. As well, the Commission invited comment on whether to provide parity for wheat contracts in non-spot month limits. In conjunction with the roundtable, staff questions regarding these topics were posted on the Commission's Web site.

To provide commenters with a sufficient period of time to respond to questions raised and points made at the roundtable, the Commission published a document in the **Federal Register** on May 29, 2014 (79 FR 30762), reopening

⁸ See *id.* at 68947.

⁹ See 79 FR 2394 (Jan. 14, 2014).

the comment periods for the Position Limit Proposal and the Aggregation Proposal for three weeks, from June 12, 2014 to July 3, 2014. The Commission published a document in the **Federal Register** on July 3, 2014 (79 FR 37973), further extending the comment periods to August 4, 2014.

The Commission’s Agricultural Advisory Committee met on December 9, 2014. The agenda adopted for the meeting included consideration, among other matters, of two issues associated with the Position Limits rulemaking: Deliverable supply and exemptions for bona fide hedging positions. In conjunction with the meeting of the Commission’s Agricultural Advisory Committee, the Commission posted questions and presentation materials on the Commission’s Web site; additionally, access to a video webcast of the meeting was added to the Web site.¹⁰ To provide interested persons with a sufficient period of time to respond to questions raised and points made at the Agricultural Advisory Committee meeting, the Commission reopened both the Position Limit Proposal and the Aggregation Proposal for an additional 45-day comment period.¹¹

Comment letters received on the Position Limits Proposal are available at <http://comments.cftc.gov/PublicComments/>

[CommentList.aspx?id=1436](http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1436). Comment letters received on the Aggregation Proposal are available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1427>.

II. Reopening of Comment Period

The Commission’s Energy and Environmental Markets Advisory Committee has scheduled a meeting on February 26, 2015. The agenda adopted for the meeting includes consideration of exemptions for bona fide hedging positions. In conjunction with the meeting of the Commission’s Energy and Environmental Markets Advisory Committee, the Commission will post associated materials on the Commission’s Web site; additionally, access to a video webcast of the meeting will be added to the Web site. To provide interested persons with a sufficient period of time to respond to questions raised and points made at the Energy and Environmental Markets Advisory Committee meeting, the Commission is reopening both the Position Limit Proposal and the Aggregation Proposal for an additional 30-day comment period. The Commission is providing notice that, in addition to commenting on the agenda issues, comments may be made on the issues addressed at the meeting or in associated materials posted to the Commission’s Web site, as they pertain

to energy commodities, including hedges of a physical commodity by a commercial enterprise, as pertains to energy commodities.

In addition, and in connection with the Energy and Environmental Markets Advisory Committee meeting, the Commission is providing counts of the unique persons exceeding the 28 proposed position limit levels (currently provided in Table 11 of the Positions Limits Proposal based on counts from the period of January 1, 2011, to December 31, 2012 period¹²) by certain specified percentages in a new table, Table 11a, based on counts from the period of January 1, 2013, to December 31, 2014. As was the case with Table 11, to provide the public with additional information regarding the number of large position holders in the past two calendar years, Table 11a provides counts of unique persons over 60, 80, 100, and 500 percent of the levels of the position limits proposed for 28 core referenced futures products.¹³ Note that the 500 percent line is omitted from Table 11a for contracts where no person held a position over that level. The Commission notes that in addition to commenting on the agenda issues and on the issues addressed at the meeting or in associated materials posted to the Commission’s Web site, as they pertain to energy commodities, comments may be made on Table 11a.

TABLE 11a—UNIQUE PERSONS OVER PERCENTAGES OF PROPOSED POSITION LIMIT LEVELS, JANUARY 1, 2013, TO DECEMBER 31, 2014

Commodity type/core referenced futures contract	Percent of level	Unique persons over level			
		Spot month (physical-delivery)	Spot month (cash-settled)	Single month	All months
Legacy Agricultural					
CBOT Corn (C)	60	206	—	12	25
	80	147	—	4	7
	100	49	—	(*)	5
	500	4	—	—	—
CBOT Oats (O)	60	(*)	—	11	12
	80	(*)	—	6	8
	100	—	—	(*)	5
CBOT Soybeans (S)	60	127	—	14	18
	80	90	—	9	11
	100	31	—	6	9
	500	9	—	—	—
CBOT Soybean Meal (SM)	60	53	—	42	54
	80	31	—	12	19

¹⁰ Questions, presentation materials, and a video webcast have been made available at http://www.cftc.gov/PressRoom/Events/opaevent_aac120914.

¹¹ See 79 FR 71973 (Dec. 4, 2014). The Commission also provided notice and clarification that, in addition to commenting on the agenda issues noted in the December 4, 2014, **Federal Register** release providing notice of the reopened comment period, comments could be made on the issues addressed at the meeting or in associated

materials posted to the Commission’s Web site, as they pertained to agricultural commodities, including hedges of a physical commodity by a commercial enterprise; and the process for estimating deliverable supplies used in the setting of spot month limits, as each pertained to agricultural commodities. See also 80 FR 200 (Jan. 5, 2015).

¹² See 78 FR 75680 at 75731 (Dec. 12, 2013).

¹³ As is the case for Table 11, the Commission notes that Table 11a is presented using the

proposed initial limit levels, without regard to alternatives presented in the proposed rule. See 78 FR at 75839 for the proposed initial limit levels for the spot month. The Commission also proposed alternatives methods for setting initial levels for the spot month. See FR at 75727–8. The proposed initial limit levels for the non-spot months are found at 78 FR 76787 (Dec. 19, 2013). The Commission also proposed an alternative method to establish higher initial limit levels in the non-spot months. See FR 78 at 75734.

TABLE 11a—UNIQUE PERSONS OVER PERCENTAGES OF PROPOSED POSITION LIMIT LEVELS, JANUARY 1, 2013, TO DECEMBER 31, 2014—Continued

Commodity type/core referenced futures contract	Percent of level	Unique persons over level			
		Spot month (physical-delivery)	Spot month (cash-settled)	Single month	All months
CBOT Soybean Oil (SO)	100	16	—	6	11
	500	(*)	—	—	—
	60	82	—	31	38
	80	51	—	10	18
	100	18	—	5	11
CBOT Wheat (W)	500	(*)	—	—	—
	60	39	—	35	33
	80	30	—	12	17
	100	10	—	8	11
	500	(*)	—	—	—
ICE Cotton No. 2 (CT)	60	16	—	15	22
	80	10	—	10	14
	100	7	—	8	10
	500	4	—	—	—
KCBT Hard Winter Wheat (KW)	60	17	—	32	39
	80	7	—	16	27
	100	(*)	—	12	12
	60	7	—	33	36
MGEX Hard Red Spring Wheat (MWE)	80	4	—	20	29
	100	(*)	—	15	21
	100	(*)	—	—	—
Other Agricultural					
CBOT Rough Rice (RR)	60	9	—	6	5
	80	7	—	4	4
	100	(*)	—	(*)	(*)
CME Milk Class III (DA)	60	NA	5	(*)	26
	80	NA	4	—	15
	100	NA	(*)	—	10
CME Feeder Cattle (FC)	60	NA	113	8	14
	80	NA	70	(*)	8
	100	NA	28	—	5
CME Lean Hog (LH)	60	NA	98	19	34
	80	NA	74	8	24
	100	NA	45	(*)	14
CME Live Cattle (LC)	60	51	—	14	29
	80	7	—	7	16
	100	5	—	(*)	8
ICUS Cocoa (CC)	60	4	—	47	42
	80	4	—	38	30
	100	(*)	—	21	21
ICE Coffee C (KC)	60	14	—	30	32
	80	10	—	13	16
	100	6	—	8	11
ICE FCOJ-A (OJ)	500	(*)	—	—	—
	60	5	—	7	7
	80	5	—	4	4
	100	5	—	4	4
ICE Sugar No. 11 (SB)	60	55	—	41	39
	80	42	—	31	29
	100	16	—	21	22
	500	(*)	—	—	—
ICE Sugar No. 16 (SF)	60	5	—	6	13
	80	5	—	6	11
	100	4	—	5	11
Energy					
NYMEX Henry Hub Natural Gas (NG)	60	187	236	(*)	7
	80	142	205	(*)	(*)
	100	83	187	—	(*)
	500	(*)	46	—	—
NYMEX Light Sweet Crude Oil (CL)	60	135	100	(*)	12
	80	95	87	(*)	7
	100	44	65	—	(*)
	500	—	—	—	—
NYMEX NY Harbor ULSD (HO)	60	76	68	13	16

TABLE 11a—UNIQUE PERSONS OVER PERCENTAGES OF PROPOSED POSITION LIMIT LEVELS, JANUARY 1, 2013, TO DECEMBER 31, 2014—Continued

Commodity type/core referenced futures contract	Percent of level	Unique persons over level			
		Spot month (physical-delivery)	Spot month (cash-settled)	Single month	All months
NYMEX RBOB Gasoline (RB)	80	49	63	7	9
	100	31	44	(*)	6
	500	—	5	—	—
	60	97	57	26	30
	80	67	52	15	17
	100	36	37	11	12
	500	—	(*)	—	—
Metals					
COMEX Copper (HG)	60	12	—	61	62
	80	9	—	37	40
	100	4	—	29	30
COMEX Gold (GC)	60	13	—	22	24
	80	9	—	14	14
	100	5	—	10	11
COMEX Silver (SI)	60	9	—	34	32
	80	4	—	20	21
	100	(*)	—	16	16
NYMEX Palladium (PA)	60	9	—	12	13
	80	5	—	9	5
	100	(*)	—	4	4
NYMEX Platinum (PL)	60	11	—	29	29
	80	7	—	18	18
	100	(*)	—	9	9

Legend:
 * means fewer than 4 unique owners exceeded the level.
 — means no unique owner exceeded the level.
 NA means not applicable.¹⁴

Both comment periods will reopen on February 26, 2015, and will close on March 28, 2015.

Issued in Washington, DC, on February 19, 2015, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Position Limits for Derivatives and Aggregation of Positions Reopening of Comment Periods—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2015-03834 Filed 2-24-15; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket Nos. FDA-2003-N-0196 (Formerly 2003N-0233), FDA-1978-N-0018 (Formerly 1978N-0038 and 78N-0038), and FDA-1996-N-0006 (Formerly 96N-0277)]

Over-the-Counter Sunscreen Drug Products—Regulatory Status of Enzacamene

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing a proposed sunscreen order (proposed order) under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Sunscreen Innovation Act (SIA). The proposed order announces FDA's tentative determination that enzacamene is not generally recognized as safe and effective (GRASE) and is misbranded when used in over-the-counter (OTC) sunscreen products

because the currently available data are insufficient to classify it as GRASE and not misbranded, and additional information is needed to allow us to determine otherwise.

DATES: Submit either electronic or written comments on this proposed order by April 13, 2015. Sponsors may submit written requests for a meeting with FDA to discuss this proposed order by March 27, 2015. See section VI for the proposed effective date of a final order based on this proposed order.

ADDRESSES: You may submit comments by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

¹⁴ Table notes: (1) Aggregation exemptions were not used in computing the counts of unique persons; (2) the position data was for futures, futures options and swaps that are significant price discovery contracts (SPDCs).

Instructions: All submissions received must clearly identify the specific active ingredient (enzacamene) and the Docket Nos. FDA-2003-N-0196, FDA-1978-N-0018, and FDA-1996-N-0006 for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the “Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket numbers, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit requests for a meeting with FDA to discuss this proposed order to Kristen Hardin (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT:

Kristen Hardin, Division of Nonprescription Drug Products, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5491, Silver Spring, MD 20993-0002, 240-402-4246.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

A. Regulatory and Statutory Framework

The data and information addressed in this proposed order were originally submitted for review under FDA’s Time and Extent Application (TEA) regulation, § 330.14 (21 CFR 330.14), a process that has since been supplemented with new statutory procedures established in the SIA (Pub. L. 113-195), enacted November 26, 2014. The discussion that follows briefly describes and compares the pre- and post-SIA processes as they apply to the regulatory status of enzacamene.

The TEA regulation established a process through which a sponsor could request that an active ingredient or other OTC condition,¹ particularly one not previously marketed in the United States, be added to an OTC drug monograph to enable compliant OTC drug products containing the condition

to be marketed in the United States without an approved new drug application (NDA) or abbreviated new drug application (ANDA). Because this proposed order specifically addresses an OTC sunscreen active ingredient (enzacamene), the remainder of this discussion will refer only to “active ingredients.”

Critical steps in a proceeding under the TEA regulation include the following: (1) FDA’s determination that an active ingredient had been marketed for the proposed OTC use for a material time and to a material extent (eligibility determination), and public call for submission of safety and efficacy data, followed by; (2) review of safety and efficacy data submitted by the sponsor or other interested parties; and (3) FDA’s initial determination that the data show the active ingredient to be either GRASE or not GRASE for OTC use under the applicable monograph conditions (including any new conditions arising from FDA’s review) (GRASE determination). Under the TEA regulation, FDA’s GRASE determinations are effectuated through notice and comment rulemaking to amend or establish the appropriate monograph.

The TEA process in FDA regulations was supplemented by Congress’s enactment of the SIA. Among other amendments it makes to the FD&C Act, the SIA creates new procedures specifically for reviewing the safety and effectiveness of nonprescription sunscreen active ingredients, including those, such as enzacamene, that were the subject of pending TEA proceedings at the time the SIA was enacted. Like the TEA regulation, the SIA calls for an initial eligibility determination phase for nonprescription sunscreen active ingredients, followed by submissions of safety and efficacy data and a GRASE determination phase. However, the SIA requires FDA to make proposed and final GRASE determinations for nonprescription sunscreen active ingredients in the form of administrative orders rather than the multistep public rulemaking required by the TEA regulation, and establishes strict timelines for the necessary administrative actions.

Among other requirements, no later than 90 days after the SIA was enacted (*i.e.*, no later than February 24, 2015), FDA must publish a proposed sunscreen order in the **Federal Register** for any nonprescription sunscreen active ingredient, including enzacamene, for which, on the date of enactment, an eligibility determination had been issued under the TEA regulation and submissions of safety and efficacy data

received, and for which a TEA feedback letter had not yet been issued (section 586C(b)(4) of the FD&C Act (21 U.S.C. 360fff-3(b)(4)), as amended by the SIA). Other provisions of the SIA that are not discussed in this proposed order address procedures applicable to other pending and future sunscreen active ingredient GRASE determinations, pending and future GRASE determinations for OTC products other than sunscreens, issuance of specified guidances and reports, and completion of pending sunscreen rulemakings, among others.

A proposed sunscreen order under the SIA is an order containing FDA’s tentative determination proposing that a nonprescription sunscreen active ingredient or combination of ingredients: (1) Is GRASE and is not misbranded when marketed in accordance with the proposed order; (2) is not GRASE and is misbranded; or (3) is not GRASE and is misbranded because the data are insufficient to classify the active ingredient or combination of ingredients as GRASE and not misbranded, and additional information is necessary to allow FDA to determine otherwise (section 586(7) of the FD&C Act, as amended by the SIA). Publication of a proposed sunscreen order triggers several timelines under the SIA, including a 45-day public comment period, and a 30-day period in which a sponsor may request a meeting with FDA to discuss the proposed order.

B. FDA’s Review of Enzacamene

Buchanan Ingersoll submitted a TEA in 2002 on behalf of Merck KGaA under § 330.14(c) seeking OTC monograph status for the sunscreen active ingredient enzacamene (also known as 4-Methylbenzylidene Camphor (4-MBC) or Eusolex 6300) at concentrations up to 4 percent for use in OTC sunscreen products (enzacamene TEA) (Note 1). FDA issued a TEA notice of eligibility for enzacamene on July 11, 2003 (68 FR 41386), stating that enzacamene at concentrations of up to 4 percent is eligible to be considered for inclusion in the OTC sunscreen monograph (21 CFR part 352, currently stayed) and calling for submission of safety and effectiveness data for enzacamene. In response, a submission of data dated October 9, 2003, was made to the docket on behalf of Merck KGaA (enzacamene data submission) (Note 2), which referred to materials previously submitted to other dockets.² At the time

¹ For purposes of OTC drug regulation, a “condition” is defined as an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration marketed for a specific OTC use, with specific exclusions (see § 330.14(a)(2)). This document will refer simply to new “active ingredients,” since that is the condition under consideration.

² These include FDA-1978-N-0018-0744-0756 (Sup 24, 25, 26, 27 and 28), Request to Reopen

the SIA was enacted, FDA had not issued a TEA feedback letter or otherwise responded to that submission.

In accordance with new section 586C(b)(4) of the FD&C Act as amended by the SIA, we are issuing this notice as a proposed order for enzacamene. Based on our review of the available safety and efficacy data, we have made a tentative determination that enzacamene is not GRASE and is misbranded because the data are insufficient to classify it as GRASE and not misbranded for use in OTC sunscreens, and additional information is necessary to allow us to determine otherwise. The remainder of this proposed sunscreen order describes our review of the available safety and efficacy data, identifies additional data needed to demonstrate that enzacamene is GRASE for the requested use, and explains our rationale for specific conclusions and data requirements.

This proposed order will be open for public comment (see **DATES**). The sponsor may request a meeting with FDA to discuss this proposed order (see **DATES**). We also invite the sponsor to submit additional safety and/or efficacy data to inform our further consideration, as publication of a final sunscreen order under the SIA for enzacamene will be contingent on receipt of such information. (See section 586C(b)(9)(ii) of the FD&C Act.) We specifically encourage the sponsor to discuss any proposed study protocols with us before performing the studies.

II. Safety Data Considerations for OTC Sunscreen Products Containing Enzacamene

In evaluating the safety of a proposed monograph active ingredient, FDA applies the following regulatory standard: Safety means a low incidence of adverse reactions or significant side effects under adequate directions for use and warnings against unsafe use as well as low potential for harm which may result from abuse under conditions of widespread availability. Proof of safety shall consist of adequate tests by methods reasonably applicable to show the drug is safe under the prescribed, recommended, or suggested conditions of use. This proof shall include results of significant human experience during marketing. General recognition of safety shall ordinarily be based upon published studies which may be

corroborated by unpublished studies and other data (§ 330.10(a)(4)(i) (21 CFR 330.10(a)(4)(i))).

FDA's OTC drug regulations generally identify the types of information that may be submitted as evidence that an active ingredient or other OTC drug condition is safe, as part of the consideration of whether an active ingredient or other condition is GRASE (§ 330.10(a)(2)). For convenience, this order uses the term "generally recognized as safe (GRAS)" to refer to that aspect of the GRASE determination. To apply the general OTC safety standard to each potential new condition, FDA uses its scientific expertise to determine what constitutes "adequate tests by methods reasonably applicable to show the drug is safe under the prescribed, recommended, or suggested conditions of use." In assessing what specific testing or other data are needed to adequately demonstrate the safety of enzacamene for use in sunscreen, FDA considers the circumstances under which OTC sunscreen products that could contain enzacamene would be used by consumers.

When used as directed with other sun protection measures, broad spectrum OTC sunscreen products with a sun protection factor (SPF) value of 15 or higher strongly benefit the public health by decreasing the risk of skin cancer and premature skin aging associated with solar ultraviolet (UV) radiation, as well as by helping to prevent sunburn. (Sunscreens with lower SPF values, or without broad spectrum protection, also help prevent sunburn.) When used as directed by the required labeling, all OTC sunscreen products are applied liberally to the skin and reapplied frequently throughout the day (§ 201.327(e) (21 CFR 201.327(e))). Because the effects of UV exposure are cumulative, to obtain the maximum benefit, users of broad spectrum sunscreens with an SPF value of 15 or higher are directed to use such products regularly—on a routine basis (*id.*). Given these conditions of use, our safety evaluation of an OTC sunscreen active ingredient such as enzacamene must consider both short-term safety concerns (such as skin sensitization/irritation and photosafety) and potential concerns related to long-term sunscreen use, including potential systemic exposure via dermal absorption.

The purpose of the safety testing described in this section II is to establish whether an OTC sunscreen product containing enzacamene and otherwise marketed under the conditions described in a final sunscreen order and in accordance with

all requirements applicable to nonprescription drugs would be GRAS for use as labeled. To demonstrate that these requirements are met for enzacamene, initial safety testing should be performed using enzacamene as the sole active ingredient up to the highest concentration for which marketing status is sought and eligibility has been established: 4 percent. If initial testing suggests a particular safety concern associated with enzacamene (*e.g.*, a hormonal activity), FDA may request additional studies to address that concern.

A. Human Safety Data

1. Human Irritation, Sensitization, and Photosafety Studies

Studies of skin irritation, sensitization, and photosafety are standard elements in the safety evaluation of topical drug products that, like enzacamene-containing sunscreens, are applied to the skin repeatedly over long periods of time. FDA recommends separate studies for skin irritation and sensitization. Skin irritation studies should generally include at least 30 evaluable subjects and should evaluate the test formulation (*i.e.*, enzacamene in an appropriate test vehicle), the vehicle alone, and both negative and positive controls. Skin sensitization studies generally should include at least 200 subjects and should evaluate the test formulation containing enzacamene, the vehicle, and a negative control. For both irritation and sensitization studies, test site applications should be randomized and the test observer blinded to the identities of the test formulations.

FDA recommends that photosafety evaluation generally involve studies of skin photoirritation (phototoxicity) and skin photosensitization (photoallergenicity). General principles for designing and conducting photosafety studies are described in FDA guidance (Ref. 1). Photosafety studies, like sensitization and irritation studies, should be conducted using enzacamene 4 percent in an appropriate test vehicle, the vehicle alone, and a negative control. In addition, phototoxicity studies should include at least 30 evaluable subjects and photoallergenicity studies should include at least 45 evaluable subjects.

Data Available for Enzacamene: Human Irritation, Sensitization, and Photosafety Studies

We reviewed the submitted study reports for human safety studies, including a skin irritation and sensitization study of enzacamene 5 percent in 30 subjects (Note 3); skin

Rulemaking Record Respect Sunscreen Drug Products for OTC, submitted on April 12, 1999 (1999 enzacamene submission); FDA-1978-N-0018-0766, Citizen Petition (CP1), submitted on December 17, 1980; and Tracking number: 805596eb Legacy Doc. ID, SUP 5, "Supplement from Rona Pearle" SUP5, submitted on August 15, 1985.

irritation and sensitization study of enzacamene 5 percent in 10 subjects (Note 4); a photoirritation study of 4 percent enzacamene in 5 subjects (Note 5); and two photosensitization studies, one using 4 percent enzacamene in 5 subjects and the other using an unknown concentration in 25 subjects (Notes 6 and 7). Although these studies suggest that enzacamene may not be a primary irritant, sensitizer, photosensitizer, or photoirritant, each of the submitted studies has limitations, such as inadequate sample size, lack of blinding, and lack of positive and negative controls, that prevent us from making definitive conclusions. In addition, protocol information, such as the inclusion and exclusion criteria used in subject selection, was not consistently provided.

FDA concludes that the data submitted are not sufficient to assess the dermal safety of enzacamene and specifically its potential to cause irritation, sensitization, photoirritation, or photoallergenicity. We recommend submission of additional data from human irritation, sensitization, and photosafety studies to demonstrate that an OTC sunscreen containing up to 4 percent enzacamene is not an irritant, sensitizer, photosensitizer, or photoirritant.

2. Human Dermal Pharmacokinetic (Bioavailability) Studies

Because sunscreens are topically applied, another important safety consideration for enzacamene for use in sunscreens is whether dermal application may result in skin penetration and systemic exposure to enzacamene, and if so, to what extent. A well-designed and -conducted human dermal pharmacokinetic study can be expected to detect and quantify the presence of enzacamene and/or any metabolites in blood or other bodily fluids that may have a bearing on safety, using recognized parameters such as bioavailability percentage, maximum plasma concentration (C_{max}), time to maximum plasma concentration (T_{max}), total area under the plasma concentration versus time curve (AUC), half-life, clearance, and volume of distribution. This information can help identify potential safety concerns and help determine whether an adequate safety margin for sunscreens containing enzacamene exists. FDA recommends that the pharmacokinetic studies performed on enzacamene also collect additional safety-related data from regularly scheduled physical examinations, collection of vital signs, and other measures, which may help capture adverse skin events or other

potential safety signals. To ensure that maximum penetration of enzacamene has taken place and chances of it being detected are optimal, studies should continue until steady state is reached.

General information and recommendations on the design and conduct of human pharmacokinetic studies can be found in FDA guidance (Ref. 2). To support a GRAS determination for enzacamene (up to 4 percent), such a study should be conducted under maximal use conditions using enzacamene 4 percent in various vehicles, including vehicles that would be expected to enhance absorption. We encourage study sponsors to consult with us before conducting pharmacokinetic studies, because the properties of enzacamene bear on the optimal design.

Data Available for Enzacamene: Human Dermal Pharmacokinetic (Bioavailability) and Clinical Pharmacology Studies

We reviewed three submitted reports of dermal absorption studies in humans in which percutaneous absorption was estimated using radiolabeled (¹⁴C) formulations of enzacamene. In one study (Note 8) a ¹⁴C-labeled 5 percent formulation of enzacamene was applied to the lower arms of six volunteers for 6 hours, followed by a 3-day collection of urine and feces. Investigators reported that approximately 54.6 percent of the ¹⁴C-activity applied to the skin was recovered. An average of 0.76 percent enzacamene was recovered in urine and 0.14 percent in the feces. In a second study (Note 9), investigators reported a total recovery of 98.2 percent and 90.7 percent overall recovery of the ¹⁴C-activity applied to the skin from two volunteers, respectively. The third study report (Note 10) was similar to the previous two studies in terms of the general design. Following the analysis of the data from the planned six volunteers, two more volunteers were enrolled to evaluate the low observed recovery (54 to 69 percent) of the radiolabeled enzacamene. A different recovery schema was applied to these last two patients with satisfactory results in line with the previous studies. As to the utility of the aggregate data, we cannot draw definitive conclusions regarding the dermal absorption of enzacamene based on these studies. The overall number of subjects was low, the studies were single-dose studies, a limited surface area was exposed to the formulation, the recovery of radioactivity was variable, and finally no blood or other body fluids were sampled to provide direct information about systemic exposure. We also note

that these studies were conducted in the 1980s and the limit of analytical detection for enzacamene was much higher than it is today.

A review of the published literature identified more recent studies related to the extent of absorption of enzacamene in humans after dermal application. A 2004 article from Janjua et al. (Ref. 3) reports on the absorption from a formulation containing 10 percent enzacamene and 2 other active sunscreen ingredients after whole body application for 4 days in 15 healthy males and 17 postmenopausal females. The article provides only summary bioavailability information but claims that the maximum plasma concentrations were 20 milligrams (mg)/milliliter (mL) in both men and women and that increasing plasma levels of enzacamene and metabolites were seen, suggesting the presence of accumulation. It is noted that thyroid function was also assessed during this study, but results are confounded by the simultaneous application of three active sunscreen ingredients. A 2006 article from Shauer et al. (Ref. 4) includes in vivo pharmacokinetic data from six healthy volunteers exposed to 4 percent enzacamene applied over 90 percent body surface area for a 12-hour period. The data are limited by the small number of subjects included; however, there was gender-related difference observed in those males who had blood levels that were approximately twice that of females. A 2008 article by Janjua et al. contains a more complete analysis of in vivo absorption for enzacamene in a 10 percent enzacamene formulation (Ref. 5). The levels of absorption were generally low but accumulation was observed. However, the age of the females enrolled in the study was 2 to 3 times that of the males, confounding the interpretation of age or gender effects.

Overall, the data available are incomplete for the assessment of human bioavailability (dermal absorption) of enzacamene. Accordingly, we request data from human pharmacokinetic studies to assess potential for and extent of systemic absorption. These studies should be performed under expected maximal-use conditions with the proposed maximum concentration as discussed previously.

In addition to the bioavailability data described previously, three reports of clinical pharmacology studies were submitted that evaluate the potential effect of enzacamene on thyroid function. The first was a pilot study in which a 5 percent enzacamene formulation was applied twice, at 3-hour intervals, to the abdomen and back

of four adult subjects (two males and two females) (Note 11). Subsequent increases in the thyroid analytes thyroid-stimulating hormone (TSH), T3, and T4 were observed in some subjects. Blood and urine levels of enzacamene were reported to have been measured but no data were reported. We consider the number of subjects in this study too small to draw conclusions about the safety of enzacamene. In addition, there were missing data and the report lacked information about whether subjects' thyroid analyte levels exceeded normal levels.

A second study evaluated the effect on thyroid function of topical application of 5 percent enzacamene (6 grams (g) applied twice, at 3-hour intervals) in nine healthy volunteers (Note 12). This was a double-blind, placebo-controlled, crossover design study, and investigators reported that there was a statistically significant lowering of mean T3 and T4 values in the active treatment group at 24 hours after application. Although larger than the pilot study, this is a small single-dose study and the changes reported were small relative to placebo and were of questionable clinical significance. Interpretation of the results is also hampered by the fact that some analytes (TSH and free T4) were below normal levels at baseline.

A third study was a parallel-group, placebo-controlled design in which 48 subjects received treatment with either enzacamene (5 g of a 6 percent enzacamene formulation per dose) or placebo twice daily for 14 days (Note 13). According to the investigators, the results of the study did not reveal any significant differences in thyroid function tests between enzacamene and placebo, although there was a small between-group difference in thyroid volume gland decrease (a 1.7 percent reduction in the enzacamene arm and an increase of 3.1 percent in the placebo group). The quality of the study report submitted is inadequate to be used to verify the analyses, but no adverse events of hypothyroidism or hyperthyroidism or abnormal thyroid function tests were reported.

The three clinical pharmacology studies submitted are insufficient either to substantiate or dismiss clinical concerns related to potential thyroid effects from enzacamene. We request submission of any additional clinical thyroid function data or analyses that have not yet been submitted to us, including any provided to the European Scientific Committee on Cosmetic Products and Nonfood Products (SCCNFP) to support its 2008 conclusion that enzacamene at a

concentration up to 4 percent is safe for use in finished cosmetic products for whole body application (Ref. 6). If, after full review of nonclinical toxicology data (discussed in section I.B of this proposed order) and any additional clinical data, concerns exist regarding enzacamene's thyroid safety, we will recommend that additional clinical study be carried out. It is recommended that we be consulted regarding the study protocols prior to commencement of such investigations.

3. Human Safety Data To Establish Adverse Event Profile

An evaluation of safety information from adverse event reports and other safety-related information derived from commercial marketing experience of sunscreen products containing enzacamene, as well as from other sources, is a critical aspect of FDA's safety review for enzacamene. The TEA regulation under which the original request for enzacamene was submitted specifically calls for submission of information on all serious adverse drug experiences, as defined in 21 CFR 310.305(a) and 314.80(a), from each country where the active ingredient or other condition has been or is currently marketed as either a prescription or OTC drug; in addition, it calls for submission of all data generally specified in § 330.10(a)(2), which includes documented case reports and identification of expected or frequently reported side effects (§ 330.14(f)(1) and (f)(2)). To evaluate enzacamene, FDA continues to seek individual adverse drug experience reports, a summary of all serious adverse drug experiences, and expected or frequently reported side effects of the condition (*id.*). To assist in the Agency's safety evaluation of enzacamene, FDA emphasizes our need for the following data:

- A summary of all available reported adverse events potentially associated with enzacamene;
- All available documented case reports of serious side effects
- Any available safety information from studies of the safety and effectiveness of enzacamene in humans; and
- Relevant medical literature describing adverse events associated with enzacamene. Submissions of adverse event data should also include a description of how each country's system identifies and collects adverse events, unless this information has been previously submitted as part of enzacamene's TEA package.

Although we recognize that adverse event data from foreign marketing experience may reflect patterns of use

and regulatory reporting requirements that differ from those in the United States, we nonetheless consider such information to be strongly relevant both to our overall GRASE assessment of enzacamene for use in sunscreens and to our consideration of potential product labeling. FDA recognizes that such information may not be available from all countries; where that is the case, please provide a written explanation for the lack of data. Overall, we seek sufficient data to characterize enzacamene's adverse event profile.³

Data Available for Enzacamene: Human Safety Data To Establish Adverse Event Profile

The 1999 enzacamene submission states that no complaints from customers concerning tolerance or adverse reactions had been reported for enzacamene by the cosmetic industry during the prior 10 years (Note 14). This information was referred to in the 2002 TEA submission and the 2003 enzacamene data submission. The 1999 enzacamene submission also included a literature search for adverse reactions to enzacamene from the following databases: Medline (1966–1998), Derwent Drug File (1983–1998), and CSearch (week 3 1998–week 48 1998) (Note 15). There were 17 articles reviewed which had been published or translated into English. Of these, 10 articles describe contact dermatitis and resultant positive photopatch testing in one or two patients. The 7 other articles are literature or case series reviews of up to 400 patients, describing dermatologic adverse reactions to sunscreen use and subsequent photopatch testing. On the whole, these reports suggest that enzacamene has the potential to cause contact allergy and photocontact allergy. However, data from this literature have limitations. In some cases, the testing methodology used to determine that enzacamene is an allergen is not described. Also, some of the test formulations used are not described. It is conceivable that the observed reactions may have been specific to particular test formulations, including formulations containing other active ingredients.

The submitted information and literature do not fulfill the criteria described previously. To support the evaluation of safety of enzacamene for

³ See 67 FR 3060 at 3069 (January 23, 2002) (agreeing that the absence of an adverse experience reporting system in a foreign country for drugs or cosmetics does not necessarily mean that a condition cannot be GRAS/E. The GRAS/E determination will be based on the overall quality of the data and information presented to substantiate safety and effectiveness).

use in OTC sunscreens, we request that the sponsor either supplement the data already submitted, including more recent adverse drug experience data, or explain why such data cannot be provided.

B. Nonclinical (Animal) Studies

Another important element of FDA's GRAS review of enzacamene for use in sunscreens is an assessment of data from nonclinical (animal) studies that characterize the potential long-term dermal and systemic effects of exposure to enzacamene. Even if the bioavailability data discussed in section II.A.2 suggest that dermal application is unlikely to result in skin penetration and systemic exposure to enzacamene, FDA still considers data on the effects of systemic exposure to be an important aspect of our safety evaluation of enzacamene. A determination that enzacamene up to 4 percent is GRASE for use in sunscreens would permit its use in as-yet-unknown product formulations, which might in turn alter the skin penetration of the active ingredient. Therefore, an understanding of the effects of enzacamene, were systemic exposure to occur, is critical to determine whether and how regulatory parameters can be defined to assure that all conforming enzacamene-containing sunscreens would be GRASE as labeled.

FDA recommends animal testing of the potential long-term dermal and systemic effects of exposure to enzacamene because these effects cannot be easily assessed from previous human use. Taken together, the carcinogenicity studies, developmental and reproductive toxicity studies, and toxicokinetic studies described in sections II.B.1 through II.B.3 should provide the information needed to characterize both the potential dermal and systemic toxic effects and the levels of exposure at which they occur. These data, when viewed in the context of human exposure data, can be used to determine a margin of safety for use of enzacamene in OTC sunscreens.

Data Available for Enzacamene: Nonclinical (Animal) Studies Generally

The enzacamene submissions included data from the following types of nonclinical safety studies:

- Acute-dose toxicity studies
 - Oral toxicity (rats, dogs) (Note 16)
 - Dermal toxicity (rats) (Note 17)
 - Intraperitoneal toxicity (rats) (Note 18)
 - Mucosal irritation (rabbits) (Note 19)
 - Skin irritation and sensitization (guinea pigs) (Note 20)
 - Phototoxicity potential (mice) (Note

- 21)
 - Photosensitization (guinea pig) (Note 22)
- Repeat-dose toxicity studies
 - 17 days oral (rat) (Note 23)
 - 4 weeks oral (rat) (Note 24)
 - 13 weeks oral (rat) (Note 25)
 - Liver enzyme induction study (rat) (Note 26)
- Genotoxicity and mutagenicity assays
 - Chromosome aberration assay (Chinese hamster V79 cells) (Note 27)
 - Mutagenicity (*Salmonella typhimurium*) (Note 28)
 - Photomutagenicity (*S. typhimurium*, *Escherichia coli*) (Note 29)
- Reproductive and developmental toxicity studies
 - Orienting tests for embryotoxicity (rabbit) (Note 30)
 - Toxicological investigation (incubated hen's egg) (Note 31)
 - Teratogenicity (rat) (Note 32)

Based on the submitted studies, acute toxicity was low. However, the standard battery of tests detected findings that we will consider further as additional data become available to inform our GRAS assessment. Studies submitted by the sponsor showed an increase in thyroid weight and changes in thyroid function that included an increase in T3 and TSH, along with a decrease in T4. Other thyroid findings included follicular epithelium hypertrophy and hyperplasia. A decrease in adrenal and prostate weights, and alterations in ovarian weights (an increase was seen in some studies while decreased weight was noted in others), was documented with a no observed adverse effect level (NOAEL) of 25–30 mg/kilograms (kg)/day (Note 33).

To followup on these findings, we identified published literature that describes related enzacamene activity. A number of these articles indicate that exposure to enzacamene at high doses has been associated with hormonal changes. Among the in vitro findings (Refs. 7 through 16), a number of articles described the in vitro binding activity of enzacamene to estrogen (ER) and androgen (AR) receptors where it was able to bind to ER β but showed inconsistent binding activity at ER α receptors. No androgenic activity and mixed results for antiandrogenic activity were also documented.

Other effects of enzacamene included in vivo alterations of reproductive tissues and behavior in rats (Refs. 17 through 25). Findings include decreased testis weight; increased prostate volume and altered duct development; delayed preputial separation; decreased prostate

weight in males; and increased uterine weight, decreased ovarian weight, and altered sexual behavior in females. Overall, we cannot arrive at a final determination about the findings described in the literature until we receive a complete nonclinical assessment as described in sections II.B.1 through II.B.3.

We did not receive data from toxicokinetic or dermal or systemic carcinogenicity studies. Upon assessment of all available information for enzacamene and based on the nonclinical studies currently recommended to support sunscreen development, the following nonclinical studies are recommended to support the safety of enzacamene:

- Dermal and systemic carcinogenicity
- Fertility
- Prenatal/postnatal toxicity
- Toxicokinetics

Additional discussion of study findings and data gaps are provided in the following subsections.

1. Carcinogenicity Studies: Dermal and Systemic

FDA guidance recommends that carcinogenicity studies be performed for any pharmaceutical that is expected to be clinically used continuously for at least 6 months or "repeatedly in an intermittent manner" (Refs. 26, 27, and 28). Because the proposed use of enzacamene in OTC sunscreens falls within this category, these studies should be conducted to help establish that enzacamene is GRAS for its proposed use. Carcinogenicity studies assist in characterizing potential dermal and systemic risks by identifying the type of toxicity observed, the level of exposure at which toxicity occurs, and the highest level of exposure at which no adverse effects occur (*i.e.*, NOAEL). The NOAEL would then be used in determining the safety margin for human exposure to sunscreens containing enzacamene.

Systemic carcinogenicity studies can also help to identify other systemic or organ toxicities that may be associated with enzacamene, such as hormonal effects. For example, the effect of persistent disruption of particular endocrine gland systems (*e.g.*, hypothalamic-pituitary-adrenal axis), if any, can be captured by these assays.

Data Available for Enzacamene: Genotoxicity Studies

Enzacamene showed no evidence of DNA mutations in one standard Ames test. A chromosomal aberration assay using a Chinese hamster V79 cell line

and a photomutagenicity assay were negative. Although these studies somewhat ease concerns about potential genotoxicity and mutagenicity, they were not definitive evaluations of potential toxic effects from long-term systemic or dermal exposure.

Data Available for Enzacamene: Carcinogenicity Studies

We did not receive dermal or systemic carcinogenicity studies. Assessments of both dermal and systemic carcinogenicity are recommended because sunscreen products containing enzacamene are expected to be applied over large portions of the body with multiple daily applications. In addition, as discussed previously, marketing of this product according to a final sunscreen order might permit its formulation in a variety of as-yet-unknown vehicles that might have an impact on systemic absorption. Consequently, FDA seeks information on dermal and system carcinogenicity, in case of the possibility that systemic absorption could occur.

2. Developmental and Reproductive Toxicity (DART) Studies (Ref. 29)

FDA recommends conducting DART studies to evaluate the potential effects that exposure to enzacamene may have on developing offspring throughout gestation and postnatally until sexual maturation, as well as on the reproductive competence of sexually mature male and female animals. Gestational and neonatal stages of development may also be particularly sensitive to active ingredients with hormonal activity. For this reason, we recommend that these studies include assessments of endpoints such as vaginal patency, preputial separation, anogenital distance, and nipple retention, which can be incorporated into traditional DART study designs to assess potential hormonal effects of enzacamene on the developing offspring. We also recommend conducting behavioral assessments (*e.g.*, mating behavior) of offspring, which may also detect neuroendocrine effects.

Data Available for Enzacamene: DART Studies

Potential reproductive and developmental effects from enzacamene were evaluated in two embryotoxicity studies and one teratogenicity study. Enzacamene did not show evidence of embryotoxicity in a pilot rabbit test and hen's egg assay. In a teratogenicity study in rats with oral administration of single daily doses of 10, 30, and 100 mg/kg of enzacamene administered on days 6 to 15 after conception, enzacamene was

not found to be teratogenic in any of the treated groups. Additional DART testing is recommended to assess fertility and prenatal and postnatal development in a rodent model.

3. Toxicokinetics (Ref. 30)

We recommend conducting animal toxicokinetic studies because they provide an important bridge between toxic levels seen in animal studies and potential human exposure. Data from these studies can be correlated to potential human exposure via clinical dermal pharmacokinetic study findings. Toxicokinetic data could be collected as part of animal studies being conducted to assess one or more of the safety parameters described previously.

Data Available for Enzacamene: Toxicokinetics

No toxicokinetic data were submitted as part of any of the nonclinical studies, thus it is difficult to bridge from animal findings to potential human exposure. Toxicokinetic data should be collected as part of the animal studies to allow exposure comparisons between animals and humans.

Toxicokinetic data are particularly important to the evaluation of enzacamene's safety for use in sunscreens because enzacamene appears to have the potential to affect some endocrine-responsive endpoints. We need toxicokinetic data to develop more information about exposure parameters, in order to understand whether a margin of safety exists between the exposures that cause the effects in animals and estimated human exposures. Should we find, after review of a more complete nonclinical program, that additional clinical studies are warranted, we will provide additional recommendations regarding the design of the studies.

III. Effectiveness Data Considerations for OTC Sunscreen Products Containing Enzacamene

FDA's evaluation of the effectiveness of active ingredients under consideration for inclusion in an OTC drug monograph is governed by the following regulatory standard: Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when used under adequate directions for use and warnings against unsafe use, will provide clinically significant relief of the type claimed. Proof of efficacy shall consist of controlled clinical investigations as defined in 21 CFR 314.126(b). Investigations may be corroborated by partially controlled or uncontrolled studies, documented

clinical studies by qualified experts, and reports of significant human experience during marketing. Isolated case reports, random experience, and reports lacking the details that permit scientific evaluation will not be considered. General recognition of effectiveness shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data (§ 330.10(a)(4)(ii)). For convenience, this order uses the term "generally recognized as effective" (GRAE) when referring to this aspect of the GRAE determination.

To evaluate the efficacy of enzacamene for use in OTC sunscreen products, FDA requests evidence from at least two adequate and well-controlled SPF studies showing that enzacamene effectively prevents sunburn. To determine that enzacamene is GRAE for use in OTC sunscreens at concentrations in a range with the proposed maximum strength of 4 percent as requested, two adequate and well-controlled SPF studies of enzacamene at a lower concentration should be conducted according to established standards.⁴ These SPF studies should demonstrate that the selected concentration (below 4 percent) provides an SPF of 2 or more.

The current standard procedure for SPF testing is described in FDA's regulations in § 201.327(i).⁵ Further SPF tests for enzacamene should be performed as described in these regulations, using a test formulation containing enzacamene as the only active ingredient to identify its contribution to the overall SPF test results. (See the following subsection *Data Available for Enzacamene: Effectiveness* for further discussion of submitted SPF tests.) The study should also include a vehicle control arm in order to rule out any contribution the vehicle may have on the SPF test results. Finally, as described in § 201.327(i), an SPF standard formulation comparator arm should be another component of the study design.

Although current sunscreen testing and labeling regulations also specify a "broad spectrum" testing procedure to support related labeling claims for certain OTC sunscreen products marketed without approved new drug

⁴ The upper bound of any concentration of enzacamene ultimately established in the OTC sunscreen monograph will be governed by the safety data, as well as by efficacy.

⁵ Although the SPF testing procedure is used primarily for final formulation testing of finished products marketed without approved NDAs, under the sunscreen monograph, it is equally applicable for determining whether or not a sunscreen active ingredient is GRAE.

applications that contain specified active ingredients included in the stayed sunscreen monograph, those additional claims are permitted, but not required (§ 201.327(c)(2) and (j)). Under current regulations, sunscreen active ingredients need only be effective for the labeled indication of sunburn prevention, for which the SPF test can provide sufficient evidence. Consistent with this approach, we here do not request broad spectrum testing data for enzacamene. Broad spectrum protection is often, although not always, the result of the combined contribution of multiple active ingredients in a final sunscreen formulation. Thus, under the current regulations applicable to other sunscreens, the determination of whether an individual sunscreen product may be labeled as broad spectrum and bear the related additional claims is made on a product-specific basis, applying standard testing methods set forth in those regulations. If enzacamene is established to be GRASE for use in nonprescription sunscreens (based in part on the efficacy data requested here), the final order can likewise address broad-spectrum testing and related labeling conditions for final sunscreen formulations containing enzacamene.

Data Available for Enzacamene: Effectiveness

A total of 11 efficacy studies were submitted. Two studies, an in vitro assessment and a field study, both dated from the 1970s, did not use study designs that we consider valid for SPF assessment for a GRASE determination (Docket No. 78N-0038, OTC Volume 060083, submitted December 18, 1973; Docket No. 78N-0038, OTC Volume 060130, submitted November 1974). The other nine studies all tested enzacamene as the only active ingredient. These included two studies of 1.25 percent enzacamene and three studies of 2.5 percent enzacamene, concentrations within the range found eligible for consideration of GRASE status in the Agency's 2003 eligibility determination, and three studies of 5 percent enzacamene and one study of 10 percent enzacamene, concentrations above the maximum established to be eligible for consideration, which studies we do not further address in this proposed order. (FDA-1978-N-0018-0766, Citizen Petition (CP1), submitted December 17, 1980.) In each of the five studies addressing enzacamene at concentrations of 1.25 percent and 2.5 percent, enzacamene achieved a mean SPF of 2, but there is substantial variability in the data and it cannot be confirmed that that efficacy was

established at any of the concentrations tested. In addition, none of these study reports specified the use of appropriate standard controls to validate the test results. Currently, there are insufficient data to support a finding that enzacamene is GRAE at concentrations up to 4 percent.

To support a finding that enzacamene is GRAE at concentrations up to 4 percent, we request data from two adequate and well-controlled SPF studies conducted according to established standards to demonstrate that the lowest selected concentration provides an SPF of 2 or more. Because no study has been identified that establishes that enzacamene is effective at a concentration of 4 percent, we also recommend that such a study be conducted and submitted.

IV. Summary of Current Data Gaps for Enzacamene

Based on our review of the available safety and efficacy data as discussed previously, we request the types of data listed in this section of the proposed order, at minimum, for us to reverse our tentative determination that enzacamene is not GRASE and is misbranded because the data are insufficient to classify enzacamene as GRASE and not misbranded, and additional data are necessary to allow us to determine otherwise. For additional information about the purpose and design of studies recommended to address these data gaps, please refer to the earlier sections of this proposed order referenced in parentheses. We welcome discussions on design of any of the studies prior to their commencement. We request the following types of data:

- *Safety Data (see section II)*

A. Human Clinical Studies

1. Skin irritation/sensitization and photosafety (see section II.A.1)
2. Human dermal pharmacokinetic (bioavailability) studies (see section II.A.2)

The need for additional human safety studies (*e.g.*, for evaluation of hormonal disruption) will be based on review of the completed nonclinical studies, as recommended in section IV.C.

B. Human Safety Data To Establish Adverse Event Profile (II.A.3)

1. A summary of all available reported adverse events potentially associated with enzacamene
2. All available documented case reports of serious side effects
3. Any available safety information from studies of the safety and

effectiveness of sunscreen products containing enzacamene in humans

4. Relevant medical literature describing adverse events associated with enzacamene

Alternatively, the results of a literature search that found no reports of adverse events may be provided. In that case, detailed information on how the search was conducted should be provided.

C. Nonclinical (Animal) Studies

1. Dermal and systemic carcinogenicity (see section II.B.1)
 2. Fertility (see section II.B.2)
 3. Prenatal/postnatal development (see section II.B.2)
 4. Toxicokinetics (see section II.B.3)
- *Effectiveness Data (see section III)*

In order for concentrations of enzacamene up to 4 percent to be found to be GRASE for use in nonprescription sunscreen products as requested, at least two SPF studies showing effectiveness of a selected concentration lower than 4 percent should be conducted. An efficacy study of enzacamene at 4 percent is also recommended.

V. Administrative Procedures

A copy of this proposed order will be filed in the Division of Dockets Management in Docket Numbers FDA-2003-N-0196, FDA-1978-N-0018, and FDA-1996-N-0006. To inform FDA's evaluation of whether this ingredient is GRASE and not misbranded for use in sunscreen products, we encourage the sponsor and other interested parties to submit additional data regarding the safety and effectiveness of this ingredient for use as an OTC sunscreen product. We also encourage the sponsor and other interested parties to notify us in writing of their intent to submit additional data. However, as noted previously, because the data submitted to date are not sufficient to support a determination that enzacamene is GRASE for use as an active ingredient in OTC sunscreen drug products, at present, OTC sunscreen products containing enzacamene may not be marketed without approval of an NDA (see section 586C(e)(1)(A) of the FD&C Act, as amended by the SIA). Data submissions relating to this proposed order should be submitted to Docket Numbers FDA-2003-N-0196, FDA-1978-N-0018, and FDA-1996-N-0006 at the Division of Dockets Management (see **ADDRESSES**). In addition, you can submit the data through the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Section 586C(b)(7) of the FD&C Act, as amended by the SIA, provides that

the sponsor may, within 30 days of publication of a proposed order (see **DATES**), submit a request to FDA for a meeting to discuss the proposed order. Submit meeting requests electronically to <http://www.regulations.gov> or in writing to the Division of Dockets Management (see **ADDRESSES**), identified with the active ingredient name enzacamene, the docket numbers found in brackets in the heading of this proposed order, and the heading "Sponsor Meeting Request." To facilitate your request, please also send a copy to Kristen Hardin (see **FOR FURTHER INFORMATION CONTACT**).

VI. Proposed Effective Date

FDA proposes that any final administrative order based on this proposal become effective on the date of publication of the final order in the **Federal Register**.

VII. Comments

Similarly, section 586C(b)(6) of the FD&C Act, as amended by the SIA, establishes that a proposed sunscreen order shall provide 45 days for public comment. Interested persons wishing to comment on this proposed order may submit either electronic comments to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the active ingredient name (enzacamene) and the docket numbers found in brackets in the heading of this proposed order. Received comments on this proposed order may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

VIII. Notes

1. FDA-2003-N-0196-0056, Time and Extent Application (TEA) Request to Reopen the Rulemaking Record; submitted August 21, 2002.
2. FDA-2003-N-0196-0028, C1, dated October 9, 2003.
3. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 10, dated November 27, 1972.
4. FDA-1978-N-0018-0760 (Sup 26), Volume 3, Report 20, dated September 8, 1982.
5. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 11, dated February 20, 1980.
6. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 12, dated February 20, 1980.
7. FDA-1978-N-0018-0760 (Sup 26), Volume 3, Report 21, dated June 5, 1985.

8. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 14, dated November 29, 1982.

9. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 15, dated July 17, 1984.

10. FDA-1978-N-0018-0760 (Sup 26), Volume 3, Report 16, dated July 8, 1984.

11. FDA-1978-N-0018-0760 (Sup 26), Volume 3, Report 19, dated August 1, 1981.

12. FDA-1978-N-0018-0760 (Sup 26), Volume 3, Report 18, dated July 2, 1982.

13. FDA-1978-N-0018-0762 (Sup 28), Volume 5, Report 29, Study no. 43/20792, dated October 18, 1995.

14. FDA-1978-N-0018-0754 (Sup 24), dated April 12, 1999.

15. FDA-1978-N-0018-0755 (Sup 24), Attachment 1, dated April 12, 1999.

16. FDA-1978-N-0018-0758 (Sup 24), Volume 1, Reports 1, 2, 3 and 4, Study no. 4/83/71, 4/130/73, 4/131/73, 4/52/80.

17. FDA-1978-N-0018-0758 (Sup 24), Volume 1, Reports 2 and 3, Study no. 4/130/73 and 4/131/73.

18. *Id.*

19. *Id.*

20. *Id.*

21. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 8, dated October 16, 1978.

22. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 9, dated October 16, 1978.

23. FDA-1978-N-0018-0758 (Sup 24), Volume 1, Report 5, dated May 5, 1983.

24. *Id.*

25. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 7, dated April 26, 1984.

26. FDA-1978-N-0018-0760 (Sup 26), Volume 3, Report 17, dated May 1, 1984.

27. FDA-1978-N-0018-0760 (Sup 26), Volume 3, Report 22, Study no. LMP166, dated April 25, 1986.

28. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 13, Study no. 4/56/80, dated June 2, 1980.

29. FDA-1978-N-0018-0761 (Sup 27), Volume 4, Report 28, Study no. 40/13/93, dated April 14, 1993.

30. FDA-1978-N-0018-0760 (Sup 26), Volume 3, Report 23, Study no. 4/20/84, Experiment No. T9207.

31. FDA-1978-N-0018-0761 (Sup 27), Volume 4, Report 24 and 25, dated October 23, 1987, and October 26, 1987.

32. FDA-1978-N-0018-0761 (Sup 27), Volume 4, Report 26, Study no. 4/43/88, Experiment No. T9305, dated September 14, 1983.

33. FDA-1978-N-0018-0759 (Sup 25), Volume 2, Report 7, dated April 26, 1984.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at <http://www.regulations.gov>. (FDA has verified the Web site addresses in this reference section, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA, Guidance for industry, "Photosafety Testing," May 2003 (available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm079252.pdf>).
2. FDA, Guidance for Industry, "Guideline for the Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application," February 1987 (available at <http://www.fda.gov/downloads/drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm072112.pdf>).
3. Janjua, N.R., et al., "Systemic Absorption of the Sunscreens Benzophenone-3, Octyl-Methoxycinnamate, and 3-(4-Methyl-Benzylidene) Camphor After Whole Body Topical Application and Reproductive Hormone Levels in Humans." *Journal of Investigative Dermatology*, vol. 123, pp. 57-61, 2004.
4. Schauer, U.M., et al., "Kinetics of 3-(methylbenzylidene) Camphor in Rats and Humans After Dermal Application." *Toxicology and Applied Pharmacology*, vol. 216(2), pp. 339-346, 2006.
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Dated: February 20, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–03884 Filed 2–24–15; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. FDA–2008–N–0474]

Over-the-Counter Sunscreen Drug Products—Regulatory Status of Ecamsule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing a proposed sunscreen order (proposed order) under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Sunscreen Innovation Act (SIA). The proposed order announces FDA's tentative determination that ecamsule (also known as terephthalylidene dicamphor sulfonic acid) at concentrations up to 10 percent is not generally recognized as safe and effective (GRASE) and is misbranded when used in over-the-counter (OTC) sunscreen products because the currently available data are insufficient to classify it as GRASE and not misbranded, and additional information is needed to allow us to determine otherwise.

DATES: Submit either electronic or written comments on this proposed order by April 13, 2015. Sponsors may submit written requests for a meeting with FDA to discuss this proposed order by March 27, 2015. See section VI for the proposed effective date of a final order based on this proposed order.

ADDRESSES: You may submit comments by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must clearly identify the specific active ingredient (ecamsule) and the Docket No. FDA–2008–N–1474 for this

rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket numbers, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit requests for a meeting with FDA to discuss this proposed order to Kristen Hardin (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kristen Hardin, Division of Nonprescription Drug Products, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5491, Silver Spring, MD 20993-0002, 240-402-4246.

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

A. Regulatory and Statutory Framework

The data and information addressed in this proposed order were originally submitted for review under FDA's Time and Extent Application (TEA) regulation, § 330.14 (21 CFR 330.14), a process that has since been supplemented with new statutory procedures established in the SIA (Pub. L. 113-195), enacted November 26, 2014. The discussion that follows briefly describes and compares the TEA and SIA processes as they apply to the regulatory status of ecamsule.

The TEA regulation established a process through which a sponsor could request that an active ingredient or other OTC condition,¹ particularly one not previously marketed in the United States, be added to an OTC drug monograph to enable compliant OTC drug products containing the condition to be marketed in the United States without an approved new drug application (NDA) or abbreviated new drug application (ANDA). Because this proposed order specifically addresses an

OTC sunscreen active ingredient (ecamsule), the remainder of this discussion will refer only to "active ingredients."

Critical steps in a proceeding under the TEA regulation include the following: (1) FDA's determination that an active ingredient had been marketed for the proposed OTC use for a material time and to a material extent (eligibility determination), and public call for submission of safety and efficacy data, followed by; (2) review of safety and efficacy data submitted by the sponsor or other interested parties; and (3) FDA's initial determination that the data show the active ingredient to be either GRASE or not GRASE for OTC use under the applicable monograph conditions (including any new conditions rising from FDA's review) (GRASE determination). Under the TEA regulation, FDA's GRASE determinations are effectuated through notice and comment rulemaking to amend or establish the appropriate monograph.

The TEA process in FDA regulations was supplemented by Congress's enactment of the SIA. Among other amendments it makes to the FD&C Act, the SIA creates new procedures specifically for reviewing the safety and effectiveness of nonprescription sunscreen active ingredients, including those, such as ecamsule, that were the subject of pending TEA proceedings at the time the SIA was enacted. Like the TEA regulation, the SIA calls for an initial eligibility determination phase for nonprescription sunscreen active ingredients, followed by submissions of safety and efficacy data and a GRASE determination phase. However, the SIA requires FDA to make proposed and final GRASE determinations for nonprescription sunscreen active ingredients in the form of administrative orders rather than the multistep public rulemaking required by the TEA regulation, and establishes strict timelines for the necessary administrative actions.

Among other requirements, no later than 90 days after the SIA was enacted (*i.e.*, no later than February 24, 2015), FDA must publish a proposed sunscreen order in the **Federal Register** for any nonprescription sunscreen active ingredient, including ecamsule, for which, on the date of enactment, an eligibility determination had been issued under the TEA regulation and submissions of safety and efficacy data received, and for which a TEA feedback letter had not yet been issued (section 586C(b)(4) of the FD&C Act (21 U.S.C. 360fff-3(b)(4)), as amended by the SIA). Other provisions of the SIA that are not

discussed in this proposed order address procedures applicable to other pending and future sunscreen active ingredient GRASE determinations, pending and future GRASE determinations for OTC products other than sunscreens, issuance of specified guidances and reports, and completion of pending sunscreen rulemakings, among others.

A proposed sunscreen order under the SIA is an order containing FDA's tentative determination proposing that a nonprescription sunscreen active ingredient or combination of ingredients: (1) Is GRASE and is not misbranded when marketed in accordance with the proposed order; (2) is not GRASE and is misbranded; or (3) is not GRASE and is misbranded because the data are insufficient to classify the active ingredient or combination of ingredients as GRASE and not misbranded, and additional information is necessary to allow FDA to determine otherwise (section 586(7) of the FD&C Act, as amended by the SIA). Publication of a proposed sunscreen order triggers several timelines under the SIA, including a 45-day public comment period, and a 30-day period in which a sponsor may request a meeting with FDA to discuss the proposed order.

B. FDA's Review of Ecamsule

L'Oreal asked FDA to include ecamsule in concentrations up to 10 percent as an active ingredient in the OTC sunscreen monograph in a TEA submitted September 19, 2007. FDA announced on September 12, 2008, that ecamsule had been found eligible in concentrations up to 10 percent to be considered for inclusion in the OTC sunscreen monograph (21 CFR part 352, currently stayed), and requested submissions of safety and effectiveness data to support a GRASE determination for the requested OTC use (73 FR 53029). L'Oreal submitted safety and efficacy data on ecamsule to the designated docket (FDA-2008-N-0474) on November 14, 2008 (ecamsule data submission). At the time the SIA was enacted, FDA had not issued a TEA feedback letter or otherwise responded to that submission.

In accordance with new section 586C(b)(4) of the FD&C Act as amended by the SIA, we are issuing this notice as a proposed order for ecamsule. Based on our review of the ecamsule data submission, we have made a tentative determination that ecamsule is not GRASE for OTC sunscreen use and is misbranded because the data are insufficient to classify it as GRASE and not misbranded, and additional

¹ For purposes of OTC drug regulation, a "condition" is defined as an active ingredient or botanical drug substance (or a combination of active ingredients or botanical drug substances), dosage form, dosage strength, or route of administration marketed for a specific OTC use, with specific exclusions (see § 330.14(a)(2)). This document will refer simply to new "active ingredients," since that is the condition under consideration.

information is necessary to allow us to determine otherwise. The remainder of this proposed sunscreen order describes our review of safety and efficacy data, identifies additional data needed to demonstrate that ecamsule is GRASE for the requested use, and explains our rationale for specific conclusions and data requirements.

This proposed order will be open for public comment (see **DATES**). The sponsor may request a meeting with FDA to discuss this proposed order (see **DATES**). We also invite the sponsor to submit additional safety and/or efficacy data to inform our further consideration, as publication of a final sunscreen order for ecamsule under the SIA will be contingent on receipt of such information. (See section 586C(b)(9)(ii) of the FD&C Act.) We specifically encourage the sponsor to discuss any proposed study protocols with us before performing the studies.

II. Safety Data Considerations for OTC Sunscreen Products Containing Ecamsule

In evaluating the safety of a proposed monograph active ingredient, FDA applies the following regulatory standard: Safety means a low incidence of adverse reactions or significant side effects under adequate directions for use and warnings against unsafe use as well as low potential for harm which may result from abuse under conditions of widespread availability. Proof of safety shall consist of adequate tests by methods reasonably applicable to show the drug is safe under the prescribed, recommended, or suggested conditions of use. This proof shall include results of significant human experience during marketing. General recognition of safety shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data (§ 330.10(a)(4)(i) (21 CFR 330.10(a)(4)(i))).

FDA's OTC drug regulations generally identify the types of information that may be submitted as evidence that an active ingredient or other OTC drug condition is safe, as part of the consideration of whether an active ingredient or other condition is GRASE (§ 330.10(a)(2)). For convenience, this order uses the term "generally recognized as safe (GRAS)" to refer to that aspect of the GRASE determination. To apply the general OTC safety standard to each potential new condition, FDA uses its scientific expertise to determine what constitutes "adequate tests by methods reasonably applicable to show the drug is safe under the prescribed, recommended, or suggested conditions of use." In

assessing what specific testing or other data are needed to adequately demonstrate the safety of ecamsule for use in sunscreen, FDA considers the circumstances under which OTC sunscreen products that could contain ecamsule would be used by consumers.

When used as directed with other sun protection measures, broad spectrum OTC sunscreen products with a sun protection factor (SPF) value of 15 or higher strongly benefit the public health by decreasing the risk of skin cancer and premature skin aging associated with solar ultraviolet (UV) radiation, as well as by helping to prevent sunburn. (Sunscreens with lower SPF values, or without broad spectrum protection, also help prevent sunburn.) When used as directed by the required labeling, all OTC sunscreen products are applied liberally to the skin and reapplied frequently throughout the day (§ 201.327(e) (21 CFR 201.327(e))).

Because the effects of UV exposure are cumulative, to obtain the maximum benefit, users of broad spectrum sunscreens with an SPF value of 15 or higher are directed to use such products regularly—on a routine basis (*id.*). Given these conditions of use, our safety evaluation of an OTC sunscreen active ingredient such as ecamsule must consider both short-term safety concerns (such as skin sensitization/irritation and photosafety) and potential concerns related to long-term sunscreen use, including potential systemic exposure via dermal absorption.

The purpose of the safety testing described in this section II is to establish whether an OTC sunscreen product containing ecamsule and otherwise marketed under the conditions described in a final sunscreen order and in accordance with all requirements applicable to nonprescription drugs would be GRAS for use as labeled. To demonstrate that these requirements are met for ecamsule, initial safety testing should be performed using ecamsule as the sole active ingredient up to the highest concentration for which marketing status is sought and eligibility has been established: 10 percent. If initial testing suggests a particular safety concern associated with ecamsule (*e.g.*, a hormonal activity), FDA may request additional studies to address that concern.

A. Human Safety Data

1. Human Irritation, Sensitization, and Photosafety Studies

Studies of skin irritation, sensitization, and photosafety are standard elements in the safety

evaluation of topical drug products that, like ecamsule-containing sunscreens, are applied to the skin repeatedly over long periods of time. FDA recommends separate studies for skin irritation and sensitization. Skin irritation studies should generally include at least 30 evaluable subjects and should evaluate the test formulation (*i.e.*, ecamsule in an appropriate test vehicle), the vehicle alone, and both negative and positive controls. Skin sensitization studies generally should include at least 200 subjects and should evaluate the test formulation containing ecamsule, the vehicle, and a negative control. For both irritation and sensitization studies, test site applications should be randomized and the test observer blinded to the identities of the test formulations.

FDA recommends that photosafety evaluation generally involve studies of skin photoirritation (phototoxicity) and skin photosensitization (photoallergenicity). General principles for designing and conducting photosafety studies are described in FDA guidance (Ref. 1). Photosafety studies, like sensitization and irritation studies, should be conducted using ecamsule 10 percent in an appropriate test vehicle, the vehicle alone, and a negative control. In addition, phototoxicity studies should include at least 30 evaluable subjects and photoallergenicity studies should include at least 45 evaluable subjects.

Data Available for Ecamsule: Human Irritation, Sensitization, and Photosafety Studies

We received information regarding 26 non-U.S. human dermal safety studies evaluating formulations containing up to approximately 4 percent ecamsule with one or more other additional active ingredients (Note 1). These studies exposed a total of approximately 1,500 adults to formulations containing ecamsule. Reports of 21 of these studies were complete: 2 of these studies assessed primary cutaneous irritation, 7 assessed cumulative irritation and sensitization potential, 9 assessed phototoxicity potential, and 3 assessed photosensitizing potential. However, the information provided in the 21 complete study reports does not meet FDA's current standards to support the human dermal safety of ecamsule at any concentration. All of these studies assessed formulations containing more than one active ingredient and therefore provide only limited insight into the safety of ecamsule. Furthermore, the formulations used in these studies included ecamsule only in concentrations of between 0.33 percent and 3.96 percent, and therefore would

not support a determination that ecamsule is GRAS at concentrations between 3.96 percent and 10.0 percent as found eligible for review and requested for GRASE evaluation by L'Oreal. Other deficiencies noted included:

- Failure to provide individual skin reaction scores to negative controls in all studies.
- Failure to enroll a sufficient number of subjects in the sensitization, phototoxicity, and photoallergenicity studies.
- Although the cumulative irritation studies enrolled an adequate number of evaluable subjects, there was a failure to indicate whether positive controls were used, and only three study reports indicated a negative control was used.
- Failure to indicate whether or not investigators in the primary cutaneous irritation, phototoxicity, and photoallergenicity studies were blinded to patch applications.
- Failure to indicate whether the phototoxicity and photoallergenicity studies included vehicle controls.

The ecamsule data submission also included reports for 14 studies exposing a total of over 500 children primarily between 3 and 12 years of age to sunscreen formulations containing ecamsule in concentrations of 1.5 percent to 9 percent, with 1 or more other additional active ingredients (Note 2). Numerous dermatologic reactions were reported; however, none were considered serious.

Three human safety-related literature citations listed in the submission were limited to studies describing photoallergic reactions to combination sunscreen products formulated both with and without ecamsule (Note 3). One publication described a single case of photoallergy to an ecamsule-containing sunscreen product (Ref. 2). A second publication was a review that summarized published and unpublished data from a single center's experience with patch and photopatch testing in a consecutive series of 402 patients who presented to a photobiology unit from 1981 to 1996 with suspected clinical photosensitivity (Ref. 3). The authors did not observe allergy or photoallergy to 1 percent ecamsule, but experience with ecamsule was limited in this study because it was included in the sunscreen series beginning in 1995, towards the end of the 15-year study period. The third publication was a case report describing no photoallergy to an ecamsule-containing combination sunscreen drug product in a 71-year-old male patient with persistent photocontact allergy to other UV filters (Ref. 4). A literature search conducted

by FDA did not identify additional publications regarding the human dermal safety of ecamsule in concentrations up to 10 percent for use as an OTC sunscreen.

FDA concludes that the data submitted are not sufficient to assess the dermal safety of ecamsule in concentrations up to 10 percent and specifically its potential to cause irritation, sensitization, photoirritation, or photoallergenicity. Submission of data from human irritation, sensitization, and photosafety studies that meet FDA standards (see section II.A.1) is recommended to demonstrate that an OTC sunscreen product containing up to 10 percent ecamsule is not an irritant, sensitizer, photosensitizer, or photoirritant.

2. Human Dermal Pharmacokinetic (Bioavailability) Studies

Because sunscreens are typically applied, another important safety consideration for ecamsule for use in sunscreens is whether dermal application may result in skin penetration and systemic exposure to ecamsule, and if so, to what extent. A well-designed and -conducted human dermal pharmacokinetic study can be expected to detect and quantify the presence of ecamsule and/or any metabolites in blood or other bodily fluids that may have a bearing on safety, using recognized parameters such as bioavailability percentage, maximum plasma concentration (C_{max}), time to maximum plasma concentration (T_{max}), total area under the plasma concentration versus time curve (AUC), half-life, clearance, and volume of distribution. This information can help identify potential safety concerns and help determine whether an adequate safety margin for sunscreens containing ecamsule exists. FDA recommends that the pharmacokinetic studies performed on ecamsule also collect additional safety-related data from regularly scheduled physical examinations, collection of vital signs, and other measures, which may help capture adverse skin events or other potential safety signals. To ensure that maximum penetration of ecamsule has taken place and chances of it being detected are optimal, studies should continue until steady state is reached.

General information and recommendations on the design and conduct of human pharmacokinetic studies can be found in FDA guidance (Ref. 5). To support a GRAS determination for ecamsule (up to 10 percent), such a study should be conducted under maximal use conditions using ecamsule up to 10

percent in various vehicles, including vehicles that would be expected to enhance absorption. We encourage study sponsors to consult with us before conducting pharmacokinetic studies, because the properties of ecamsule bear on the optimal design.

Data Available for Ecamsule: Human Dermal Pharmacokinetic (Bioavailability) Studies

Human dermal pharmacokinetic studies for ecamsule were submitted in response to our call for data. We reviewed one in vitro study that evaluated the potential for dermal penetration of topically applied ecamsule from human skin samples (Note 4). Because this study was not designed to detect or quantify ecamsule in the blood or other body fluids, it provides no useful information about systemic exposure. One urinary excretion study conducted with a 4.95 percent ecamsule test formulation suggested minimal systemic absorption in seven male volunteers dosed over an extensive body surface area for a total of 5 days (Note 5). A study in which radiolabeled 2 percent ecamsule was topically applied to the forearms of five male volunteers and retained for 4 hours detected a minimal level of radiation above background in urine after dosing but radiation levels above background were not detected in blood (Note 6). Although this study suggests that ecamsule is minimally absorbed following dermal application, the study formulation contained ecamsule at a concentration much lower than the requested 10 percent maximum and only a small number of subjects were dosed over a limited surface area. The last human dermal pharmacokinetic study assessed the absorption of 3 percent ecamsule from a formulation containing a total of four active ingredients (Note 7). The formulation was applied to an extensive body surface area of six male subjects twice daily for 8 days. Results showed that there were quantifiable plasma concentrations of ecamsule at several time points, suggesting that ecamsule is absorbed via dermal application. None of the submitted human dermal pharmacokinetic studies assessed an adequate number of subjects, or tested ecamsule at the maximum requested concentration of 10 percent.

Our literature search found no additional publications regarding human pharmacokinetics of ecamsule. Accordingly, we request data from human pharmacokinetic studies to assess the potential for and the extent of systemic absorption. These studies should be performed under expected

maximal use conditions with the proposed maximum concentration, as discussed previously in this section, in a sufficiently large study population to control for both gender and age.

3. Human Safety Data To Establish Adverse Event Profile

An evaluation of safety information from adverse event reports and other safety-related information derived from commercial marketing experience of sunscreen products containing ecamsule, as well as from other sources, is a critical aspect of FDA's safety review for ecamsule. The TEA regulation under which the original request for ecamsule was submitted specifically calls for submission of information on all serious adverse drug experiences, as defined in 21 CFR 310.305(a) and 314.80(a), from each country where the active ingredient or other condition has been or is currently marketed as either a prescription or an OTC drug; in addition, it calls for submission of all data generally specified in § 330.10(a)(2), which includes documented case reports and identification of expected or frequently reported side effects (§ 330.14(f)(1) and (f)(2)). To evaluate ecamsule, FDA continues to seek individual adverse drug experience reports, a summary of all serious adverse drug experiences, and expected or frequently reported side effects of the condition (*id.*). To assist in the Agency's safety evaluation of ecamsule, FDA emphasizes its need for the following data:

- A summary of all available reported adverse events potentially associated with ecamsule;
- All available documented case reports of serious side effects;
- Any available safety information from studies of the safety and effectiveness of ecamsule in humans; and
- Relevant medical literature describing adverse events associated with ecamsule. Submissions of adverse event data should also include a description of how each country's system identifies and collects adverse events, unless this information has been previously submitted as part of ecamsule's TEA package.

Although we recognize that adverse event data from foreign marketing experience may reflect patterns of use and regulatory reporting requirements that differ from those in the United States, we nonetheless consider such information to be strongly relevant both to our overall GRASE assessment of ecamsule for use in sunscreens and to our consideration of potential product labeling. FDA recognizes that such

information may not be available from all countries; where that is the case, please provide a written explanation for the lack of data. Overall, we seek sufficient data to characterize ecamsule's adverse event profile.²

Ecamsule: Human Safety Data To Establish Adverse Event Profile

The submission describes the marketing history of ecamsule and provides eight case report forms (Form FDA 3500A) that have been submitted to FDA's MedWatch program in association with marketed sunscreen products containing ecamsule in combination with other active ingredients (Note 8). Our review of the FDA Adverse Event Reporting System (FAERS) identified one additional case report associated with such a sunscreen product. These case reports describe serious allergic reactions such as redness, swelling and urticaria, breathing difficulties, and anaphylaxis. The role, if any, of ecamsule in these cases cannot be fully assessed due in part to the presence of multiple active ingredients in the associated sunscreen products. To support the evaluation of the safety of ecamsule for use in OTC sunscreens, we request that the sponsor either supplement the information already submitted with adverse event or other safety-related data derived from commercial marketing experience, or explain why such information cannot be provided.

B. Nonclinical (Animal) Studies

Another important element of FDA's GRAS review of ecamsule for use in sunscreens is an assessment of data from nonclinical (animal) studies that characterize the potential long-term dermal and systemic effects of exposure to ecamsule. Even if the bioavailability data discussed in section II.A.2 suggest that dermal application is unlikely to result in skin penetration and systemic exposure to ecamsule, FDA still considers data on the effects of systemic exposure to be an important aspect of our safety evaluation of ecamsule. A determination that ecamsule up to 10 percent is GRASE for use in sunscreens would permit its use in as-yet-unknown product formulations, which might in turn alter the skin penetration of the active ingredient. Therefore, an understanding of the effects of

² See 67 FR 3060 at 3069 (January 23, 2002) (agreeing that the absence of an adverse experience reporting system in a foreign country for drugs or cosmetics does not necessarily mean that a condition cannot be GRAS/E. The GRAS/E determination will be based on the overall quality of the data and information presented to substantiate safety and effectiveness).

ecamsule, were systemic exposure to occur, is critical to determine whether and how regulatory parameters can be defined to assure that all conforming ecamsule-containing sunscreens would be GRASE as labeled.

FDA recommends animal testing of the potential long-term dermal and systemic effects of exposure to ecamsule because these effects cannot be easily assessed from previous human use. Taken together, the carcinogenicity studies, developmental and reproductive toxicity studies, and toxicokinetic studies described in sections II.B.1 through II.B.3 should provide the information needed to characterize both the potential dermal and systemic toxic effects and the levels of exposure at which they occur. These data, when viewed in the context of human exposure data, can be used to determine a margin of safety for use of ecamsule in OTC sunscreens.

Data Available for Ecamsule: Nonclinical (Animal) Studies Generally

The ecamsule submission included reports of the following types of nonclinical safety studies:

- Single-dose toxicity studies
 - Oral toxicity (rat, mouse) (Note 9)
 - Dermal toxicity (rat, mouse) (Note 10)
 - Intravenous toxicity (rat, mouse) (Note 11)
 - Mucosal and skin irritation (rabbit) (Note 12)
 - Skin irritation and sensitization (guinea pig) (Note 13)
 - Photoirritation and photosensitization (guinea pig) (Note 14)
- Repeat-dose toxicity studies
 - 4-week bridging dermal (mouse) (Note 15)
 - 13-week dermal (mouse) (Note 16)
 - 9-month dermal (minipig) (Note 17)
- Genotoxicity and mutagenicity assays
 - Ames test (*Salmonella typhimurium*, *Escherichia coli*) (Note 18)
 - Chromosomal aberration assay (Chinese hamster ovary (CHO cells)) (Note 19)
 - Micronucleus test (rat) (Note 20)
 - Photomutagenicity (*E. coli*) (Note 21)
 - HPRT test (CHO cells) (Note 22)
 - Photochromosomal aberration assay (CHO cells) (Note 23)
- Reproductive and developmental toxicity studies
 - Fertility and early embryonic development, oral (rat) (Note 24)
 - Pre/postnatal development, oral (rat) (Note 25)
 - Embryotoxicity/teratogenicity, dermal (rabbit) (Note 26)

- Embryofetal development/teratogenicity, oral (rat) (Note 27)
- Embryofetal development/teratogenicity, oral (rabbit) (Note 28)
- Carcinogenicity and photocarcinogenicity
 - 104 weeks dermal carcinogenicity (mouse) (Note 29)
 - 12 months photocarcinogenicity (mouse) (Note 30)
- Pharmacokinetics
 - Pharmacokinetic study, oral (rat) (Note 31)
 - Pharmacokinetic study, dermal (mouse, rat) (Note 32)
 - Microsome metabolism (interspecies, in vitro) (Note 33)
 - Excretion, oral and dermal (rat) (Note 34)

The submission includes summary reports of nonclinical studies that are of the types FDA requests as a basis for evaluating whether ecamsule is GRAS for use in sunscreen (chronic toxicity, carcinogenicity, reproductive and developmental toxicity, and toxicokinetics). However, the submission did not provide the full reports and full comprehensive data sets that would be needed for an adequate review of the data for these studies. Because the summary data provided can support only tentative conclusions about these studies, full final study reports and data sets need to be made available to support a final GRASE determination.

Additional discussion of study findings and data gaps are provided in the following subsections.

1. Carcinogenicity Studies: Dermal and Systemic

FDA guidance recommends that carcinogenicity studies be performed for any pharmaceutical that is expected to be clinically used continuously or "repeatedly in an intermittent manner" for a total of 6 months of exposure (Refs. 6, 7, and 8). Because the proposed use of ecamsule in OTC sunscreens falls within this category, these studies should be conducted to help establish that ecamsule is GRAS for its proposed use. Carcinogenicity studies assist in characterizing potential dermal and systemic risks by identifying the type of toxicity observed, the level of exposure at which toxicity occurs, and the highest level of exposure at which no adverse effects occur (*i.e.*, NOAEL). The NOAEL would then be used in determining the safety margin for human exposure to sunscreens containing ecamsule.

Systemic carcinogenicity studies can also help to identify other systemic or organ toxicities that may be associated with ecamsule, such as hormonal

effects. For example, the effect of persistent disruption of particular endocrine gland systems (*e.g.*, hypothalamic-pituitary-adrenal axis), if any, can be captured by these assays.

Data Available for Ecamsule: Genotoxicity Studies

The ecamsule submission included some information regarding genotoxicity studies. Based on the reviewable genotoxicity data included in the ecamsule data submission, ecamsule appears to be negative for causing genotoxic activity under the conditions studied (Notes 35 through 43). As we believe that data from the recommended systemic carcinogenicity and developmental and reproductive toxicology (DART) studies will provide an adequate and appropriate measure of potential long-term effects of systemic or dermal exposure to ecamsule, we do not request further genotoxicity studies.

Data Available for Ecamsule: Carcinogenicity Studies

We have reviewed study summaries for four dermal carcinogenicity and photocarcinogenicity studies, which appear to be negative (Notes 44 through 47). However, full final study reports need to be made available to support a final GRASE determination. In addition, we did not receive any systemic carcinogenicity data, which are recommended to support the safety of long-term use of ecamsule. We request that the sponsor provide a systemic carcinogenicity study, as well as make available full final study reports for the previously conducted carcinogenicity studies that were submitted in a summarized form.

2. DART Studies (Ref. 9)

FDA recommends conducting DART studies to evaluate the potential effects that exposure to ecamsule may have on developing offspring throughout gestation and postnatally until sexual maturation, as well as on the reproductive competence of sexually mature male and female animals. Gestational and neonatal stages of development may also be particularly sensitive to active ingredients with hormonal activity. For this reason, we recommend that these studies include assessments of endpoints such as vaginal patency, preputial separation, anogenital distance, and nipple retention, which can be incorporated into traditional DART study designs to assess potential hormonal effects of ecamsule on the developing offspring. We also recommend conducting behavioral assessments (*e.g.*, mating

behavior) of offspring, which may also detect neuroendocrine effects.

Data Available for Ecamsule: DART Studies

We received study summaries for five developmental and reproductive toxicity assays (Notes 48 through 52), which appear to be negative for the potential to cause adverse developmental or reproductive effects. However, comprehensive data sets were not provided.

We request that the sponsor make available full final study reports, including full comprehensive datasets, to support a final GRASE determination.

3. Toxicokinetics (Ref. 10)

We recommend conducting animal toxicokinetic studies because they provide an important bridge between toxic levels seen in animal studies and potential human exposure. Data from these studies can be correlated to potential human exposure via clinical dermal pharmacokinetic study findings. Toxicokinetic data could be collected as part of animal studies being conducted to assess one or more of the safety parameters described previously.

Data Available for Ecamsule: Toxicokinetics

We reviewed single-dose pharmacokinetic studies conducted in animal models which showed that systemic exposure was achieved under the conditions of the conducted studies (Notes 53 and 54). However, we did not receive any pharmacokinetic data reflecting drug levels following long-term exposure, which are usually collected from repeat toxicity studies such as chronic (systemic or dermal) studies. We recommend that a time course toxicokinetic study be conducted following repeat-dose exposure (via the oral and dermal routes) to evaluate the steady-state exposure level of ecamsule. Data obtained from this study could be used to compare drug levels in animals to those in humans under maximal exposure conditions to establish a margin of safety for human exposure.

III. Effectiveness Data Considerations for OTC Sunscreen Products Containing Ecamsule

FDA's evaluation of the effectiveness of active ingredients under consideration for inclusion in an OTC drug monograph is governed by the following regulatory standard: Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when used under adequate directions

for use and warnings against unsafe use, will provide clinically significant relief of the type claimed. Proof of efficacy shall consist of controlled clinical investigations as defined in 21 CFR 314.126(b). Investigations may be corroborated by partially controlled or uncontrolled studies, documented clinical studies by qualified experts, and reports of significant human experience during marketing. Isolated case reports, random experience, and reports lacking the details that permit scientific evaluation will not be considered. General recognition of effectiveness shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data (§ 330.10(a)(4)(ii)). For convenience, this order uses the term “generally recognized as effective” (GRAE) when referring to this aspect of the GRAE determination.

To evaluate the efficacy of ecamsule for use in OTC sunscreen products, FDA requests evidence from at least two adequate and well-controlled SPF studies showing that ecamsule effectively prevents sunburn. To determine that ecamsule is GRAE for use in OTC sunscreens at concentrations in a range with the proposed maximum strength of 10 percent as requested, two adequate and well-controlled SPF studies of ecamsule at a lower concentration should be conducted according to established standards.³ These SPF studies should demonstrate that the selected concentration (below 10 percent) provides an SPF of 2 or more.

The current standard procedure for SPF testing is described in FDA’s regulations in § 201.327(i).⁴ Further SPF tests for ecamsule should be performed as described in these regulations, using a test formulation containing ecamsule as the only active ingredient to identify its contribution to the overall SPF test results. (See the following subsection *Data Available for Ecamsule: Effectiveness* for further discussion of submitted SPF tests.) The study should also include a vehicle control arm to rule out any contribution the vehicle may have on the SPF test results. Finally, as described in § 201.327(i), an SPF standard formulation comparator

arm should be another component of the study design.

Although current sunscreen testing and labeling regulations also specify a “broad spectrum” testing procedure to support related labeling claims for certain OTC sunscreen products marketed without approved new drug applications that contain specific ingredients included in the OTC sunscreen monograph, those additional claims are permitted, but not required, for these products (§ 201.327(c)(2) and (j)). Under current regulations, sunscreen active ingredients need only be effective for the labeled indication of sunburn prevention, for which the SPF test can provide sufficient evidence. Consistent with this approach, we here do not request broad spectrum testing for ecamsule. Broad spectrum protection is often, although not always, the result of the combined contribution of multiple active ingredients in a final sunscreen formulation. Thus, under the current regulations applicable to other sunscreens, the determination of whether an individual sunscreen product may be labeled as broad spectrum and bear the related additional claims is made on a product-specific basis, applying standard testing methods set forth in those regulations. If ecamsule is established to be GRAE for use in nonprescription sunscreens (based in part on the efficacy data requested here), the final sunscreen order can likewise address broad-spectrum testing and related labeling conditions for final sunscreen formulations containing ecamsule.

Data Available for Ecamsule: Effectiveness

Study reports were submitted for two studies that assessed SPF of formulations containing ecamsule, at a concentration of either 2 percent or 3 percent (Notes 55 and 56, respectively), in combination with other active ingredients. Neither of these studies provides a direct evaluation of the efficacy of ecamsule alone. These studies were not adequately designed to provide evidence of efficacy on which to base a GRAE determination for ecamsule. No adequately designed studies of ecamsule efficacy were identified in our search of the published literature. To support the finding that ecamsule is GRAE when used at concentrations up to 10 percent, we request submission of data from two adequate and well-controlled SPF studies conducted according to established standards to demonstrate that the lowest selected concentration provides an SPF of 2 or more. Because no study has been identified that

assesses the effectiveness of ecamsule at a concentration of 10 percent, it is recommended that such a study be conducted and submitted.

IV. Summary of Current Data Gaps for Ecamsule

Based on our review of the available safety and efficacy data as discussed previously, we request the types of data listed in this section of the proposed order, at minimum, for us to reverse our tentative determination that ecamsule is not GRAE and is misbranded because the data are insufficient to classify ecamsule as GRAE and not misbranded, and additional data are necessary to allow us to determine otherwise. Note that, in some cases, as discussed in section II of this proposed order, the ecamsule data submission provided some information from nonclinical studies of the type FDA requests as part of the basis for a GRAS determination, but only in summary form. Were complete study data generally available from these previously conducted studies, they might address several aspects of our GRAE consideration. If data from these previously conducted studies are not made available, further studies of those types would be needed to support a finding that ecamsule is GRAE for use in sunscreens. Further, as summarized in the following subsections, some additional studies of other types are needed. For additional information about the purpose and design of studies recommended to address present data gaps, please refer to the earlier sections of this proposed order referenced in parentheses. We welcome discussions on the design of any of the studies prior to their commencement. We request the following types of data:

- *Safety Data (see section II)*

A. Human Clinical Studies

1. Skin irritation/sensitization, and photosafety (see section II.A.1)
2. Human dermal pharmacokinetic (bioavailability) studies (see section II.A.2)

B. Human Safety Data To Establish Adverse Event Profile (see Section II.A.3)

1. A summary and analysis of all available reported adverse events potentially associated with ecamsule
2. A summary and analysis of all available documented case reports of serious side effects
3. A summary and analysis of any available safety information from studies of the safety and effectiveness of sunscreen products containing ecamsule in humans

³ The upper bound of any concentration of ecamsule ultimately established in the OTC sunscreen monograph will be governed by the safety data, as well as by efficacy.

⁴ Although the SPF testing procedure is used primarily for final formulation testing of finished products marketed without approved NDAs, under the sunscreen monograph, it is equally applicable for determining whether or not a sunscreen active ingredient is GRAE.

4. A summary and analysis of relevant medical literature describing adverse events associated with ecamsule

Alternatively, the results of a literature search that found no reports of adverse events may be provided. In that case, detailed information on how the search was conducted should be provided.

C. Nonclinical (Animal) Studies

Full study reports will be needed for the following studies:

1. Systemic and dermal carcinogenicity (see section II.B.1)
 2. Reproductive and developmental toxicity studies (see section II.B.2)
 3. Toxicokinetics (see section II.B.3)
- *Effectiveness Data (see section III)*
- For concentrations of ecamsule up to 10 percent to be found to be GRASE for use in nonprescription sunscreen products as requested, at least two SPF studies showing effectiveness of a selected concentration lower than 10 percent should be conducted. An efficacy study of ecamsule at 10 percent is also recommended.

V. Administrative Procedures

A copy of this proposed order will be filed in the Division of Dockets Management in Docket No. FDA-2008-N-0474. To inform FDA's evaluation of whether this ingredient is GRASE and not misbranded for use in sunscreen products, we encourage the sponsor and other interested parties to submit additional data regarding the safety and effectiveness of this ingredient for use as an OTC sunscreen product. We also encourage the sponsor and other interested parties to notify us in writing of their intent to submit additional data. However, as noted previously, because the data submitted to date are not sufficient to support a determination that ecamsule is GRASE for use as an active ingredient in OTC sunscreen drug products, at present, OTC sunscreen products containing ecamsule may not be marketed without approval of an NDA or ANDA (see section 586C(e)(1)(A) of the FD&C Act, as amended by the SIA). Data submissions relating to this proposed order should be submitted to Docket No. FDA-2008-N-0474 at the Division of Dockets Management (see **ADDRESSES**). In addition, you can submit the data through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments.

Section 586C(b)(7) of the FD&C Act, as amended by the SIA, provides that the sponsor may, within 30 days of publication of a proposed order (see **DATES**), submit a request to FDA for a

meeting to discuss the proposed order. Submit meeting requests electronically to <http://www.regulations.gov> or in writing to the Division of Dockets Management (see **ADDRESSES**), identified with the active ingredient name ecamsule, Docket No. FDA-2008-N-0474, and the heading "Sponsor Meeting Request." To facilitate your request, please also send a copy to Kristen Hardin (see **FOR FURTHER INFORMATION CONTACT**).

VI. Proposed Effective Date

FDA proposes that any final administrative order based on this proposal become effective on the date of publication of the final order in the **Federal Register**.

VII. Comments

Similarly, section 586C(b)(6) of the FD&C Act, as amended by the SIA, establishes that a proposed sunscreen order shall provide 45 days for public comment. Interested persons wishing to comment on this proposed order may submit either electronic comments to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the active ingredient name (ecamsule) and the docket number found in brackets in the heading of this proposed order. Received comments on this proposed order may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

VIII. Notes

1. FDA-2008-N-0474-0012 and FDA-2008-N-0474-0013, Volumes 6 and 7, dated November 14, 2008.
2. FDA-2008-N-0474-0015 and FDA-2008-N-0474-0016, Volumes 9 and 10, dated November 14, 2008.
3. FDA-2008-N-0474-0007, Volume 1, dated November 14, 2008, FDA-2008-N-0474-0006, TEA submission.
4. FDA-2008-N-0474-0008, Volume 2, Study no. 16039/G2347.
5. FDA-2008-N-0474-0014, Volume 8, Study no. V3156.
6. FDA-2008-N-0474-0014, Volume 8, Study no. V99.1203.
7. FDA-2008-N-0474-0014, Volume 8, Study no. CG.03.SRE.2607.
8. FDA-2008-N-0474-0007, Volume 1, dated November 14, 2008.
9. FDA-2008-N-0474-0009, Volume 3, Study no. 3667-109/309, Study no. 1.CG.03.SRE.12160.
10. FDA-2008-N-0474-0009, Volume 3, Study no. 4222-109/310, Study no. 1.CG.03.SRE.12156.

11. FDA-2008-N-0474-0009, Volume 3, Study no. 1.CG.03.SRE.12158, Study no. 1.CG.03.SRE.12157.

12. FDA-2008-N-0474-0009, Volume 3, Study no. 712332, Volume 4, Study no. 712320.

13. FDA-2008-N-0474-0010, Volume 4, Study no. 802410, Study no. 3697-109/313.

14. FDA-2008-N-0474-0010, Volume 4, Study no. 1.CG.03.SRE.12163, Study no. 1.CG.03.SRE.12164.

15. FDA-2008-N-0474-0010, Volume 4, Study no. RDA.03.SRE.12268.

16. FDA-2008-N-0474-0009, Volume 3, Study no. 93/LOL/007/0971.

17. FDA-2008-N-0474-0009, Volume 3, Study no. 1.CG.03.SRE.12183.

18. FDA-2008-N-0474-0011, Volume 5, Study no. G185-109/314.

19. FDA-2008-N-0474-0011, Volume 5, Study no. G220-109/381, Study no. G220-109/381A, Study no. 12174MIC, Study no. 413/52-D6172.

20. FDA-2008-N-0474-0011, Volume 5, Study no. 12639MAR.

21. FDA-2008-N-0474-0011, Volume 5, Study no. EU1REBRP.031.

22. FDA-2008-N-0474-0011, Volume 5, Study no. LRL 170/921503.

23. FDA-2008-N-0474-0011, Volume 5, Study no. ICHUREBRP.031.

24. FDA-2008-N-0474-0010, Volume 4, Study no. 1.CG.03.SRE.12181.

25. FDA-2008-N-0474-0011, Volume 5, Study no. 1.CG.03.SRE.12182.

26. FDA-2008-N-0474-0011, Volume 5, Study no. 10297 RSL.

27. FDA-2008-N-0474-0010, Volume 4, Study no. 1412 RMR/064.89.

28. FDA-2008-N-0474-0011, Volume 5, RCC Project 682874.

29. FDA-2008-N-0474-0010, Volume 4, Study no. 95/LOL/008/1217, Study no. LOL/011/980150.

30. FDA-2008-N-0474-0010, Volume 4, Study no. C-1012-001, Study no. RDS.03.SRE.12215.

31. FDA-2008-N-0474-0009, Volume 3, Study no. 10225PAR, Study no. 1.CG.03.SRE.12269/RDS.03.SRE.12269.

32. FDA-2008-N-0474-0009, Volume 3, Study no. 10507 PAS, Study no. RDS.03.SRE.12268, Study no. RDS.03.SRE.12269/1.CG.03.SRE.12269.

33. FDA-2008-N-0474-0009, Volume 3, Study no. 2.CG.03.SRE.11029.

34. FDA-2008-N-0474-0009, Volume 3, Study no. 1.CG.03.SRE.12270.

35. FDA-2008-N-0474-0011, Volume 5, Study no. G185-109/314.

36. FDA-2008-N-0474-0011, Volume 5, Study no. G220-109/381.

37. FDA-2008-N-0474-0011, Volume 5, Study no. G220-109/381A.

38. FDA-2008-N-0474-0011, Volume 5, Study no. 12174MIC.

39. FDA-2008-N-0474-0011, Volume 5, Study no. 413/52-D6172.

40. FDA-2008-N-0474-0011, Volume 5, Study no. 12639MAR.

41. FDA-2008-N-0474-0011, Volume 5, Study no. EU1REBRP.031.

42. FDA-2008-N-0474-0011, Volume 5, Study no. LRL 170/921503.

43. FDA-2008-N-0474-0011, Volume 5, Study no. ICHUREBRP.031.

44. FDA-2008-N-0474-0010, Volume 4, Study no. 95/LOL/008/1217.
45. FDA-2008-N-0474-0010, Volume 4, Study no. LOL/011/980150.
46. FDA-2008-N-0474-0010, Volume 4, Study no. C-1012-001.
47. FDA-2008-N-0474-0010, Volume 4, Study no. RDS.03.SRE.12215.
48. FDA-2008-N-0474-1000, Volume 4, Study no. 1.CG.03.SRE.12181.
49. FDA-2008-N-0474-0011, Volume 5, Study no. 1.CG.03.SRE.12182, Study no. 1412 RMR/064.89.
50. FDA-2008-N-0474-0011, Volume 5, RCC Project 682874.
51. FDA-2008-N-0474-0011, Volume 5, RCC Project 682874.
52. FDA-2008-N-0474-0011, Volume 5, Study no. 1.CG.03.SRE.12182.
53. FDA-2008-N-0474-0009, Volume 3, Study no. 10225PAR.
54. FDA-2008-N-0474-0009, Volume 3, Study no. 1.CG.03.SRE.12269/RDS.03.SRE.12269.
55. FDA-2008-N-0474-0017, Volume 11, Study no. PEN.810.02.
56. FDA-2008-N-0474-0017, Volume 11, Study no. PEN.810.06.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at <http://>

www.regulations.gov. (FDA has verified the Web site addresses in this reference section, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA, Guidance for Industry, "Photosafety Testing," May 2003 (available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm079252.pdf>).
2. Leonard, F., B. Kalis, H. Adamski, et al., "The New Standard Battery of Photopatch Test in France." *Nouvelles Dermatologiques*, vol. 15, pp. 343-348, 1996.
3. Schauder, S., and H. Ippen, "Contact and Photocontact Sensitivity to Sunscreens. Review of a 15-Year Experience and of the Literature." *Contact Dermatitis*, vol. 37(5), pp. 221-232, 1997.
4. Schmidt, T., J. Ring, and D. Abeck, "Photoallergic Contact Dermatitis Due to Combined UVB (4-Methylbenzylidene Camphor/Octyl Methoxycinnamate) and UVA (Benzophenone-3/Butyl Methoxydibenzoylmethane) Absorber Sensitization." *Dermatology*, vol. 196(3), pp. 354-357, 1998.
5. FDA, Guidance for Industry, "Guideline for the Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application," February 1987 (available at <http://www.fda.gov/downloads/drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm072112.pdf>).
6. International Conference on Harmonization (ICH), Guidance for Industry, "The Need for Long-Term Rodent

Carcinogenicity Studies of Pharmaceuticals S1A," March 1996 (available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidance/UCM074911.pdf>).

7. ICH, Guidance for Industry, "S1B Testing for Carcinogenicity of Pharmaceuticals," July 1997 (available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM074916.pdf>).

8. ICH, "S1C(R2) Dose Selection for Carcinogenicity Studies" (Revision 1), September 2008 (available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM074919.pdf>).

9. ICH Harmonized Tripartite Guideline for Industry, "Detection of Toxicity to Reproduction for Medicinal Products & Toxicity to Male Fertility S5(R2)," 2005 (available at http://www.ich.org/fileadmin/Public_Web_Site/ICH_Products/Guidelines/Safety/S5_R2/Step4/S5_R2_Guideline.pdf).

10. ICH, Guideline for Industry, "Toxicokinetics: The Assessment of Systemic Exposure in Toxicity Studies S3A," March 1995 (available at <http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM074937.pdf>).

Dated: February 20, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-03883 Filed 2-24-15; 8:45 am]

BILLING CODE 4164-01-P

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Renewal of Charter of the Global Development Council

AGENCY: United States Agency for International Development.

ACTION: Notice of Charter Renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of the renewal of the Charter of the President's Global Development Council.

Purpose of the Committee

The President's Global Development Council brings together representatives of a variety of sectors, including, among others, institutions of higher education, non-profit and philanthropic organizations, civil society, and private industry to inform U.S. global development policy and programs and to support new and existing public-private partnerships to advance the global development policy agenda.

The Charter is being renewed for two years effective from the date of filing on February 20, 2015.

FOR FURTHER INFORMATION CONTACT: Jayne Thomisee, 202-712-5506

Dated: February 19, 2015.

Christa White,

Committee Management Officer.

Charter of the President's Global Development Council

1. Committee's Official Designation

President's Global Development Council (Council).

2. Authority

Executive Order 13600 of February 9, 2012 provided the authority to establish the President's Global Development Council. The Council is established in accordance with the provisions of the Federal Advisory Committee Act (FACA) as amended, 5.U.S.C. App.

Executive Order 13652, Continuation of Certain Federal Advisory Committees, dated September 30, 2013, authorized the continuation of the Global Development Council until September 30, 2015.

3. Objectives and Scope of Activities

To advise and support the President, through the National Security Staff/National Economic Council staff, in furtherance of the policy set forth in the Executive Order establishing the Global Development Council and the President's Policy Directive on Global Development.

4. Description of Duties

To inform the policy and practice of U.S. global development policy and programs by providing advice to the President and other senior officials on issues including:

- (i) Innovative, scalable approaches to development with proven demonstrable impact, particularly on sustainable economic growth and good governance;
- (ii) Areas for enhanced collaboration between the Federal Government and public and private sectors to advance development policy;
- (iii) Best practices for and effectiveness of research and development in low and middle income economies; and
- (iv) Long-term solutions to issues central to strategic planning for U.S. development efforts.

To support new and existing public-private partnerships by:

- (i) Identifying key areas for enhanced collaboration and any barriers to collaboration; and
- (ii) Recommending concrete efforts that the private and public sectors together can take to promote economic development priorities and initiatives; and
- (iii) Increase awareness and action in support of development by soliciting public input on current and emerging issues in the field of global development as well as bringing to the President's attention concerns and ideas that would inform policy options.

5. Agency or Official to Whom the Committee Reports

The Council reports to the President through the National Security Staff and the National Economic Council.

6. Support

Support to the Council is provided by staff of the Office of the Administrator at USAID.

7. Estimated Annual Operating Costs and Staff Years

The annual operating costs in dollars and person-years for the Council and subcommittees thereof are estimated to be approximately \$250,000 and one staff year respectively.

8. Designated Federal Officer

The Designated Federal Officer (DFO) for the Council is the Executive Director of the President's Global Development Council. The Chair, in coordination with the National Security Staff/National Economic Staff, shall convene and preside at meetings, determine the agendas, and direct the Council's work. The DFO will assist the Chair and the National Security Staff/National Economic Staff in calling all of the advisory committee meetings, preparing all meeting agendas, attending Council meetings, and adjourning meetings.

9. Estimated Number and Frequency of Meetings

It is expected that the Council will hold approximately two public meetings annually. Its subcommittees and/or working groups, as and if requested by the Council, will meet as determined necessary.

10. Duration

The need for this advisory committee is continuing; however, this charter is subject to renewal every two years.

11. Termination

The Council shall terminate on September 30, 2015, two years after the date of Executive Order 13652 unless renewed by the President.

12. Membership and Designation

The membership of the Council shall be as follows:

- (a) The Council shall be composed of the officials described in paragraph (b) of this section and not more than 12 individuals from outside the Federal Government appointed by the President. Appointed members of the Council may serve as representatives of a variety of sectors, including, among others, institutions of higher education, non-profit and philanthropic organizations, civil society, and private industry.

(b) The Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the USAID Administrator, the Chief Executive Officer of the Millennium Challenge Corporation, the United States Trade Representative, and the Chief Executive Officer of the Overseas Private Investment Corporation shall serve as non-voting members of the Council and may designate, to perform the Council functions of the member, a senior-level official who is part of the member's department, agency, or office, and who is a full-time officer or employee of the Federal Government.

13. Subcommittees

The Council, in coordination with USAID, may create subcommittees and/or working groups as necessary. These subcommittees/working groups shall report back to the Council and not directly to a federal officer or agency.

14. Recordkeeping

The records of this Committee, all formally and informally established subcommittees/working groups shall be handled in accordance with General Records Schedule 26, Item 2, or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552 and will be posted on the Council's Web site.

15. Filing Date

February 20, 2015.

[FR Doc. 2015-03807 Filed 2-20-15; 11:15 am]

BILLING CODE 6116-02-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 19, 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.

Comments regarding this information collection received by March 27, 2015 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725-17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Use of the Grounds and Facilities as well as Commercial Photography and Cinematography at the U.S. Arboretum.

OMB Control Number: 0518-0024.

Summary of Collection: The mission of the U.S. National Arboretum (USNA) is to conduct research, provide education, and conserve and display trees, shrubs, flowers, and other plants to enhance the environment. The USNA is a 446-acre public facility. The grounds of the USNA are available to the general public for purposes of education and passive recreation. The USNA has many spectacular feature and garden displays which are very popular to visitors and photographers. Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-107 ("FAIR ACT") provided statutory authorities regarding the USNA. These authorities include the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds for any purpose consistent with the mission of USNA. Also, the authority was provided to charge fees for the use of the USNA for commercial photography and cinematography.

Need and Use of the Information: USNA officials will collect the information using applications in the form of questionnaires. The collected

information is used by USNA management to determine if a requestor's needs can be met and the request is consistent with the mission and goals of the USNA uses of the information. If the basic information is not collected, USNA officials will not be able to determine if a requestor's needs are met.

Description of Respondents: Business or other for profit; Not-for-profit institutions; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 284.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 142.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015-03911 Filed 2-24-15; 8:45 am]

BILLING CODE 3410-03-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 19, 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.

Comments regarding this information collection received by March 27, 2015 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725-17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-

7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

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Animal & Plant Health Inspection Service

Title: Importation of Poultry Meat and Other Poultry Products from Sinaloa and Sonora, Mexico

OMB Control Number: 0579-0144.

Summary of Collection: The Animal Health Protection Act of 2002 (Title X, Subtitle E, Sec. 10401-18 of Pub. L. 107-171) is the primary Federal law governing the protection of animal health. Disease prevention is the most effective method for maintaining a healthy animal population and for enhancing the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), Veterinary Services' ability to allow United States animal producers to compete in the world market of animal and animal product trade APHIS currently has regulations in place that restrict the importation of poultry meat and other poultry products from Mexico due to the presence of Newcastle Disease (ND) in that country. However, APHIS allows the importation of poultry meat and poultry products from the Mexican States of Sinaloa and Sonora because APHIS has determined that poultry meat and products from these two Mexican States pose a negligible risk of introducing ND into the United States. To ensure that these items are safe for importation, APHIS requires that certain data appear on the foreign meat inspection certificate that accompanies the poultry meat and other poultry products from Sinaloa and Sonora to the United States. APHIS also requires that serial numbered seals be applied to containers carrying the poultry meat and other poultry products.

Need and Use of the Information: APHIS will collect information to certify that the poultry meat or other poultry products were (1) derived from poultry born and raised in commercial breeding establishments in Sinaloa and Sonora; (2) derived from poultry that were slaughtered in Sinaloa or Sonora in a Federally-inspected slaughter plant approved to export these commodities to the United States in accordance with Food Safety & Inspection regulations; (3)

processed at a Federally inspected processing plant in Sinaloa or Sonora; and (4) kept out of contact with poultry from any other State within Mexico. APHIS will also collect information to ensure that the poultry meat or poultry products from Sinaloa and Sonora pose the most negligible risk possible for introducing ND into the United States.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 386.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 386.

Animal and Plant Health Inspection Service

Title: Importation of Fresh Pitaya Fruit from Central America into the Continental United States.

OMB Control Number: 0579-0378.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701-7772), the Secretary of Agriculture is authorized to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests new to the United States or not known to be widely distributed throughout the United States. The regulations "Subpart-Fruit and Vegetables" (7 CFR 319.56-1 through 319.56-71), prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are not widely distributed within the United States. The Animal and Plant Health Inspection Service (APHIS) allows the importation of fresh pitaya fruit from Central America into the continental United States.

Need and Use of the Information: The Animal and Plant Health Inspection Service uses the following activities to collect information: Production Site Certification, Review and Maintain Documents, Registration of Packinghouses, Bilateral Workplan, Records of Fruit Fly Detections and Update Records, Shipping Documents Identifying the Places of Production, Phytosanitary Certificate with Additional Declaration, Production Site Registration, and Box Markings. If the information is not collected, APHIS' ability to protect the United States from exotic insect pest would be severely compromised.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 97.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 287.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015-03912 Filed 2-24-15; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 19, 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.

Comments regarding this information collection received by March 27, 2015 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725-17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal & Plant Health Inspection Service

Title: National Poultry Improvement Plan (NPIP).

OMB Control Number: 0579-0007.

Summary of Collection: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized to among other things, administer the National Poultry Improvement Plan (NPIP or the Plan), the primary purpose of which is to protect the health of the U.S. poultry population. NPIP is a voluntary Federal-State-industry cooperative program for the improvement of poultry flocks and products through disease control techniques. The NPIP regulations are contained in 9 CFR parts 56, 145, 146 and 147.

Need and Use of the Information: APHIS will collect information using several forms to continually improve the health of the U.S. poultry population and the quality of U.S. poultry products. If the information were collected less frequently or not collected, APHIS could not affectively monitor the health of the nation's poultry population.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 18,097.

Frequency of Responses:

Recordkeeping; Reporting: On occasion.

Total Burden Hours: 104,311.

Animal and Plant Health Inspection Service

Title: Control of Chronic Wasting Disease.

OMB Control Number: 0579-0189.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, and eradicate pests or diseases of livestock or poultry, and to pay claims arising from destruction of animals. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to complete in exporting animals and animal products. Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy (TSE) of elk, deer and moose typified by chronic weight loss leading to death. The presence of CWD disease in cervids causes significant economic and market losses to U.S. producers. In an effort to accelerate the control and limit the spread of this disease in the United States, APHIS

created a cooperative, voluntary Federal-State-private sector CWD Herd Certification Program designed to identify farmed or captive herds infected with CWD and provided for the management of these herds in a way that reduces the risk of spreading CWD. APHIS is combining 0579-0237 into this information collection (0579-0189) and will retire 0579-0237 upon the approval of this renewal of 0579-0189.

Need and Use of the Information: APHIS will collect information from owners of elk, deer, and moose herds who choose to participate in the CWD Herd Certification program. They would need to follow program requirements for animal identification, testing, herd management, and movement of animals into and from herds. APHIS also established requirements for the interstate movement of cervids to prevent movement of elk, deer, and moose that pose a risk of spreading CWD. Carrying out this program will entail the use of several information collection activities: Memoranda of understandings; participation requests/applications; sample collections and lab submissions; herd records; cervid identification; reports of cervid disappearances, escapes, and deaths; herd plans; annual reports; consistent State reviews; epidemiological investigations; appraisal, destruction, and payment of indemnity; letter to appeal suspension; Interstate Certificates of Veterinary Inspection (ICVI); and wild cervid ICVI, and surveillance data. Failure to collect this information would cripple APHIS' ability to effectively sustain its CWD control program.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 5,735.

Frequency of Responses: Reporting and Recordkeeping: On occasion.

Total Burden Hours: 383,383.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015-03907 Filed 2-24-15; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: Software Vendors of State and Local Management Information Systems (MIS) and Other Technology Solutions for the National School Lunch and School Breakfast Programs

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice; request for information.

SUMMARY: This is a request for information from Management Information Systems (MIS) software and hardware vendors and developers ("vendors") to learn about the functionality of State and School Food Authority National School Lunch and School Breakfast Program (NSLP/SBP) data management information systems. It is not a request for proposal and does not commit the Government to issue a solicitation, make an award, or pay any costs associated with responding to this announcement. All submitted information shall remain with the Government and will not be returned. All responses will become part of the public record and will not be held confidential.

The United States Department of Agriculture (USDA) is seeking information that will inform future data reporting requirements for the Department's oversight and management of NSLP/SBP. The Department is aware that all States and many school districts have installed and implemented MIS or other technology solutions to improve State and local program management. To better understand the availability and implementation of these solutions, USDA is requesting information from vendors about NSLP/SBP data systems they offer and have deployed at the State and local levels.

The objectives of this request for information (RFI) are to:

1. Obtain background data to inform later research on State and School Food Authority (SFA) NSLP/SBP data management information systems.
2. Describe the functionality and capabilities of systems currently in use by State agencies and SFAs, or available to States and SFA for purchase.
3. Describe the typical costs of system development, installation, maintenance, and upgrades.
4. Identify which States and SFAs are using particular systems.

DATES: To be assured of consideration, written comments must be submitted or postmarked on or before April 27, 2015.

ADDRESSES: The Food and Nutrition Service, USDA, invites the submission of the requested information through one of the following methods:

- *Preferred Method:* Submit information through the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submissions.

- *Mail:* Submissions should be addressed to Dennis Ranalli, Social Science Policy Analyst, Office of Policy Support, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

- Comments may also be emailed to dennis.ranalli@fns.usda.gov.

All information properly and timely submitted, using one of the three methods described above, in response to this request for information will be included in the record and will be made available to the public on the Internet at <http://www.regulations.gov>. Please be advised that the substance of the information provided and the identity of the individuals or entities submitting it will be subject to public disclosure.

All written comments will be open for public inspection at the FNS office located at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 1014, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday). All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this request for information should be directed to Dennis Ranalli at dennis.ranalli@fns.usda.gov.

SUPPLEMENTARY INFORMATION: The current Food and Nutrition Service (FNS) routine data collection requirements for the National School Lunch Program and School Breakfast Program (NSLP/SBP) have their roots in the paper and early computer eras and reflect concerns with paperwork and reporting burden. Thus, data collected to administer and monitor these programs is typically reported at the State level, with detailed data collected at the service delivery point (e.g., individual meal transactions, school) often aggregated at one or more levels (e.g., school to SFA to State-level) before being submitted to FNS. Data aggregation results in a significant loss of potentially valuable information that could support administration, monitoring, and policy development.

FNS recognizes that, in fact, managing a school food service program is a complex and data intensive operation,

and that SFAs collect, generate, and maintain far more data than they report to their State child nutrition agencies. This includes data on costs, revenues, inventories, vendor management, and other business, administrative and regulatory activity. The same is true of State agencies that are responsible for monitoring the work of many SFAs. Some States and SFAs have developed more sophisticated data management systems to manage program data, however there is no comprehensive inventory of NSLP/SBP management information systems (MIS) in use, the number of States and SFAs that use MIS, or the data elements collected to support FNS reporting and general program management.

The *Review of Child Nutrition Data and Analysis for Program Management* project will fill this knowledge gap by fully documenting SFA and State NSLP/SBP management information systems. This baseline “as is” review will document overall NSLP/SBP information system design, capabilities, functions, development/replacement and maintenance costs, and typical lifespan. The “as is” review is focusing particular attention on NSLP/SBP program management data that are collected or generated at the SFA or State agency levels, but are not required to be reported to FNS on any FNS program report forms. Findings from the RFI and additional review activities will provide a baseline for potential improvements to data collection practices and help support future MIS modernization and paperwork reduction efforts. They will also help identify promising and emerging practices and define models for MIS at both the state and local SFA levels.

FNS requests that vendors respond in detail to the items below. Vendors are encouraged to provide any material that addresses the information requested or any other information that may be pertinent. Additional references or links to materials are welcome.

I. Vendor Information

- Name of Company
- Address and Telephone Number
- Vendor Representative, contact number and email address

II. Vendor Overview & Experience

Briefly describe your company, your products and services, history, and ownership; for example:

- Web site address
- Main product/services
- Main market/customers
- Company location(s)
- Product deployment sites/school systems

- Number of School District/schools currently deployed
- Average/typical size of the school system
- Year of first deployment
- Years serving schools

III. Product Information

a. List and describe the core modules provided by your product. For example:

- Point of Sale/Service (POS)
- Prepayment system(s) for parents
- Nutrient Analysis and Menu Planning

b. Applications

- Inventory Management
- Purchasing/Vendor Management
- Production Records
- Financial Management
- Free and Reduced-Price Meals

c. Other direct certification—

- Scanning paper applications
- Processing On-line applications
- Making eligibility determinations
- Creating benefit issuance documents

d. For SFAs, are POS terminals

- Conducting verification
- Direct Certification
- SNAP recipients
- Extended SNAP household members

e. Homeless, migrant, foster

- Meal counting and claiming
- Administrative Review
- Reporting

f. Any other not listed above

b. Describe the capabilities and reporting functionalities of your product.

c. Describe your platform—site-based, central office w/satellite, cloud-based, etc.

d. For SFAs, are POS terminals proprietary or third-party?

e. Is your system a commercial off the shelf (COTS) product with application in multiple industry segments or school nutrition specific?

f. Does your firm rely on any ‘third party software products/systems’ for implementation and/or operation?

g. Are any additional licenses required from ‘third party sources’ to utilize your product?

h. What is your product’s ability to interface with other vendor systems? What level of customization is available?

i. List the minimum and recommended hardware requirements to implement and utilize your product at each level of installation.

j. Describe the interface capabilities between your product and various within-district student data base systems.

k. Describe the interface capabilities between your product and State agency systems.

l. Does your system adhere to Schools Interoperability Framework (SIF) standards?

m. Please provide a list of data elements captured/stored by your product. For example:

1. Name of the data element
2. Description of the data element
3. Possible values

n. Describe the processes/procedures/steps associated with planning, installation, setup, data import and conversion, data migration, quality assurance, deployment, and roll-out for your product.

IV. Customer Support, Maintenance and Security

a. Describe your model for providing customer support, including charge/cost structure (e.g., hours of support, levels of support).

b. Describe your incident reporting and tracking systems, and the ability for customer staff to access those systems directly.

c. List the types of support access that are available (web, email, chat, telephone etc.).

d. Describe the communication and escalation processes/protocols in the event of failure, network outages, degraded service, and/or exceeded planned utilization.

e. Describe your replication, archival and retrieval processes, including your disaster recovery model.

f. Describe the warranty and maintenance plan(s) for your product. Have there been recent upgrades or updates to your product? How often do you typically develop and release upgrades?

g. Is your support agreement integrated into the license agreement?

h. Describe your understanding and system approach to privacy rules, specifically those related to children and students (Children's Online Privacy Protection Act, Family Educational Rights and Privacy Act, etc.).

i. Describe your process for upgrading your product to meet federal and state regulations.

j. Does your product support access through smartphones, tablets, laptops etc.?

V. Pricing

a. Describe your pricing models relevant to each component of your product.

b. Is your pricing model based on purchasing the entire product or individual module(s), or is it based on usage/users?

c. Describe the upgrade process and cost to upgrade.

d. List any additional pricing/cost information that would be useful to evaluate the affordability of the product.

VI. Training

a. What type of technical training do you provide?

b. Describe your product's documentation and in-program help?

Dated: February 11, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2015-03848 Filed 2-24-15; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2015-0007]

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) is sponsoring a public meeting on February 25, 2015. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 29th Session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission (Codex), which will take place in Paris, France, March 9-13, 2015. The Deputy Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 29th Session of CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, February 25, 2014 from 1-4 p.m.

ADDRESSES: The public meeting will take place at the South Building, United States Department of Agriculture (USDA), 1400 Independence Ave SW., Room 1160, Washington, DC 20250. Documents related to the 29th Session of CCGP will be accessible on-line at the following address: <http://www.codexalimentarius.org/meetings-reports/en/>.

Mary Frances Lowe, U.S. Delegate to the 29th Session of CCGP, invites interested U.S. parties to submit their comments electronically to the following email address: USCODEX@fsis.usda.gov.

Call-In Number

If you wish to participate in the public meeting for the 29th Session of CCGP by conference call on February 25, 2015, please use the call-in number and participant code listed below:

Call-in Number: 1 (888) 844-9904
Participant code: 5126092

Registration

Attendees may register by emailing uscodex@fsis.usda.gov by February 24, 2015. Early registration is encouraged because it will expedite entry into the building. The meeting will be held in a Federal building. Attendees should also bring photo identification and plan for adequate time to pass through security screening systems. Those who are not able to attend the meeting in-person, but wish to participate may do so by phone.

FOR FURTHER INFORMATION CONTACT:

For Further Information About the 29th Session of CCGP Contact: Mary Frances Lowe, U.S. Codex Office, 1400 Independence Avenue, Room 4861, Washington, DC 20250, Phone: (202) 205-7760, Fax: (202) 720-3157, Email: USCODEX@fsis.usda.gov.

For Further Information About the Public Meeting Contact: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue, Room 4861, Washington, DC 20250. Phone: (202) 205-7760, Fax: (202) 720-3157, Email: USCODEX@fsis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCGP is responsible for dealing with procedural and general matters referred to it by Codex, for proposing amendments to the Codex Procedural Manual, and for reviewing and endorsing procedural provisions and texts forwarded by Codex Committees for inclusion in the Procedural Manual.

The Committee is hosted by France.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 29th Session of CCGP will be discussed during the public meeting:

- Matters Referred to the Committee
- Proposed amendments to the Terms of Reference of CCGP

- Proposed amendments to the Procedures for the Elaboration of Codex Standards and Related Texts
- Consistency of the Risk Analysis Texts across the Relevant Committees
- Codex Work Management and Functioning of the Executive Committee
- Other Business

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Committee meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the February 25, 2015, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Mary Frances Lowe, U.S. Delegate for the 29th Session of CCGP (see **ADDRESSES**). Written comments should state that they relate to activities of the 29th Session of CCGP.

Additional Public Notification

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

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

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/

parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which is available accessed on-line at http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail

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

Fax

(202) 690-7442.

Email

program.intake@usda.gov.

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

Dated: February 19, 2015.

Marie Maratos,

Acting U.S. Manager for Codex Alimentarius.

[FR Doc. 2015-03800 Filed 2-24-15; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed fee increase on Christmas tree permits.

SUMMARY: The Sawtooth National Forest is proposing to increase the fee for Christmas tree permits from \$5.00 to \$10.00 per tag. The fee is proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation, visitor services, maps, and law enforcement while issuing and enforcing Christmas tree permits.

DATES: Comments will be accepted through May 30, 2015. Increased fees

would begin November 2015 for Christmas tree permits.

ADDRESSES: Kit Mullen, Forest Supervisor, Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, Idaho 83301.

FOR FURTHER INFORMATION CONTACT:

Jennifer Blake, Recreation Fee Coordinator, by phone at 208-737-3216 or via email at jenniferblake@fs.fed.us. Information about proposed fee changes can also be found on the Sawtooth National Forest Web site: <http://www.fsis.usda.gov/sawtooth>.

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 Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Once public involvement is complete, the fee increases will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: February 18, 2015.

Jennifer Blake,

Acting Forest Supervisor.

[FR Doc. 2015-03725 Filed 2-24-15; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology, Commerce.

Title: Summer High School Intern Program (SHIP).

OMB Control Number: 0693-XXXX.

Form Number(s): None.

Type of Request: Regular Submission (new collection).

Number of Respondents: 350.

Average Hours per Response: 8.

Burden Hours: 2,800.

Needs and Uses: The Summer High School Intern Program (SHIP) is a NIST-wide 8-week summer intern program for students who will have finished their junior or senior year of high school by

the start of the program, are U.S. citizens, and are interested in scientific research. Students selected for this competitive volunteer program will participate in cutting-edge research at NIST, and will work closely with NIST staff scientists and engineers on a specific research problem.

The first round of the application process is completed via an on-line application through the Student Information System which collects basic biographical information about the student. This information is reviewed and finalists are invited to submit secondary materials via email to ship@nist.gov. These secondary materials include a resume, transcript, letters of recommendation, personal statement, and parental consent and commitment form.

Affected Public: Individuals or households; local government (public schools).

Frequency: Once a year.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

Dated: February 20, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015-03870 Filed 2-24-15; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Three-Year Generic Request for Customer Service—Related Data Collections.

OMB Control Number: 0693-0031.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 90,000.

Average Hours Per Response: Less than 2 minutes for a response card; 2 hours for focus group participation. The

estimated response time is expected to be less than 30 minutes.

Burden Hours: 15,000.

Needs and Uses: NIST conducts surveys, focus groups, and other customer satisfaction/service data collections. The collected information is needed and will be used to determine the kind and the quality of products, services, and information our key customers want and expect, as well as their satisfaction with and awareness or existing products, services, and information.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary, providing the requested information is necessary to obtain accurate information regarding customer satisfaction with NIST products, services and information.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or fax to (202) 395-5806.

Dated: February 19, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015-03824 Filed 2-24-15; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-76-2014]

Foreign-Trade Zone 45—Portland, Oregon; Revision to Production Authority; Epson Portland, Inc., Subzone 45F; (Inkjet Cartridges and Bulk Ink); Hillsboro, Oregon

On October 20, 2014, Epson Portland, Inc. (EPI) submitted a notification of proposed revision to existing production authority to the Foreign-Trade Zones (FTZ) Board for EPI's facility in Hillsboro, Oregon, within Subzone 45F.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 64168-64169, 10-28-2014). The FTZ Board has determined that no further review of the

proposed revision to the scope of production authority is warranted at this time. The proposed revision described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: February 19, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015-03895 Filed 2-24-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2012-2013

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On August 21, 2014, the Department of Commerce ("the Department") published its preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Taiwan.¹ Based upon our analysis of the comments received, we have made no changes to the margin calculations for these final results and continue to determine that Nan Ya Plastics Corporation ("Nan Ya") made sales of subject merchandise to the United States at below normal value. The final dumping margin is listed below in the "Final Results of Review" section of this notice.

DATED: *Effective Date:* February 25, 2015.²

FOR FURTHER INFORMATION CONTACT: Milton Koch or Toni Page at (202) 482-2584, or (202) 482-1398, respectively; AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

¹ See *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 49496 (August 21, 2014) ("Preliminary Results").

² Due to the closure of the Federal Government in Washington, DC on February 17, 2015, the Department reached this determination on the next business day (i.e., February 18, 2015). See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

SUPPLEMENTARY INFORMATION:**Background**

On August 21, 2014, the Department published the *Preliminary Results* of this administrative review. The administrative review covers one producer and exporter of the subject merchandise to the United States, Nan Ya. On January 8, 2014, the Department published a notice rescinding the review with respect to Shinkong Materials Technology Corporation.³ The period of review (POR) is July 1, 2012, through June 30, 2013. We invited parties to comment on the *Preliminary Results*. Nan Ya timely filed a case brief on September 29, 2014; however, the Department rejected the case brief for containing new factual information. Nan Ya resubmitted its case brief on October 14, 2014. Petitioners timely filed a rebuttal brief on October 21, 2014.

Scope of the Order

The products covered by the antidumping duty order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the antidumping duty order is dispositive.

Analysis of Comments Received

The sole issue raised in the case and rebuttal briefs by parties regarding differential pricing methodology is addressed in the Issues and Decision Memorandum, which is dated concurrently with these final results and incorporated herein by reference.⁴ The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building, as well as

³ See *Polyethylene Terephthalate Film From Taiwan: Partial Rescission of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 1362 (January 8, 2014).

⁴ See Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Final Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan; 2012–2013," dated February 18, 2015 (Issues and Decision Memorandum).

electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at <http://access.trade.gov> and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/enforcement>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made no adjustments to the margin calculations for Nan Ya.

Final Results of Review

We determine that Nan Ya's weighted-average dumping margin is 1.56 percent for entries of subject merchandise that were produced and/or exported by Nan Ya and that entered, or were withdrawn from warehouse, for consumption during the period July 1, 2012, through June 30, 2013.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (i.e., 0.5 percent) in the final results, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where either the respondent's weighted average dumping margin is zero or below *de minimis* or an importer-specific assessment rate is zero or below *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The Department clarified its "automatic assessment" regulation on May 6, 2003.⁵

⁵ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) ("Assessment Policy Notice").

This clarification will apply to entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁶

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET film from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended ("the Act"): (1) The cash deposit rate for Nan Ya will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all others rate for this proceeding, 2.40 percent, as established in the less-than-fair-value investigation.⁷ These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification Regarding Administrative Protective Orders

This notice is the only reminder to parties subject to the administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information

⁶ For a full discussion of this clarification, see *Assessment Policy Notice*.

⁷ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan*, 67 FR 44174 (July 1, 2002), as corrected in *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan*, 67 FR 46566 (July 15, 2002).

disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These final results of administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: February 18, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015-03897 Filed 2-24-15; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99-8A005]

Export Trade Certificate of Review

ACTION: Notice of Application to Amend the Export Trade Certificate of Review Issued to California Almond Export Association, LLC ("CAEA"), Application No. (99-8A005).

SUMMARY: The Office of Trade and Economic Analysis ("OTEA") of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) ("the Act") authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2014). Section 302(b)(1) of the Export Trade Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its application. Under 15 CFR 325.6(a), interested parties may, within twenty days after the date of this notice, submit written comments to the Secretary on the application.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 99-8A005."

Summary of the Application

Applicant: California Almond Export Association, LLC ("CAEA"), 4800 Sisk Road Modesto, CA 95356.

Contact: Bill Morecraft, Chairman, Telephone: (916) 446-8537.

Application No.: 99-8A005.

Date Deemed Submitted: February 6, 2014.

Proposed Amendment: CAEA seeks to amend its Certificate to delete the following company as a Member of CAEA's Certificate: Minturn Nut Company, Inc., Le Grand, CA.

CAEA's proposed amendment of its Export Trade Certificate of Review would result in the following companies as Members under the Certificate:

Almonds California Pride, Inc., Caruthers, CA, Baldwin-Minkler Farms, Orland, CA, Blue Diamond Growers, Sacramento, CA, Campos Brothers, Caruthers, CA, Chico Nut Company, Chico, CA, Del Rio Nut Company, Inc., Livingston, CA, Fair Trade Corner, Inc., Chico, CA, Fisher Nut Company, Modesto, CA, Hilltop Ranch, Inc., Ballico, CA, Hughson Nut, Inc., Hughson, CA, Mariani Nut Company, Winters, CA, Nutco, LLC d.b.a. Spycher Brothers, Turlock, CA, Paramount Farms, Inc., Los Angeles, CA, P-R Farms, Inc., Clovis, CA, Roche Brothers International Family Nut Co., Escalon, CA, South Valley Almond Company, LLC, Wasco, CA, Sunny Gem, LLC, Wasco, CA, Western Nut Company, Chico, CA.

Dated: February 19, 2015.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2015-03784 Filed 2-24-15; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Mission to South Africa, Kenya and Mozambique

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Replacement of Trade Mission Statement.

SUMMARY: The United States Department of Commerce, International Trade Administration is replacing a notice published June 14, 2014, at 79 FR 36290, for the Trade Mission to South Africa and Mozambique, With an Optional Stop in Kenya; February 23-27, 2015.

SUPPLEMENTARY INFORMATION: Replacement of Trade Mission Statement.

Background

The United States Department of Commerce, International Trade Administration is replacing its Trade Mission to South Africa and

Mozambique, With an Optional Stop in Kenya; February 23–27, 2015 with a new trade mission as notified herein. Replacement.

Trade Mission to Mozambique, Kenya and South Africa

June 18–26, 2015

Mission Description

The U. S. Department of Commerce, International Trade Administration, is organizing a Trade Mission to Mozambique, Kenya and South Africa, June 18–26, 2015, which will be led by a senior executive of the U.S. Department of Transportation. The mission is designed to help U.S. firms find business partners and sell equipment and services. Target sectors holding high potential for U.S. exporters include:

Transportation Infrastructure and Equipment, such as: road, bridge and dam construction and reconstruction; automatic fare collection systems, new and refurbished railroad locomotives, new bulk car and other dedicated rolling freight fleets, smart signaling and rail operation automation, rolling stock depot design, strategic route design and network planning, port mobile, weighbridges and quayside systems and upgrading of existing port equipment and oil and gas development infrastructure.

Energy Equipment and Services, such as: power generation (including renewable energy); transmission and distribution (including smart grid), energy efficiency, oil and gas exploration and production and project development.

Agricultural Equipment, such as: crop production equipment and machinery, irrigation equipment and technology, crop storage and handling, precision farming technologies and fertilizers.

Although focused on the sectors above, the mission also will consider participation from companies in other appropriate sectors as space permits.

This trade mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with national and regional government officials, chambers of commerce, and business groups; and networking receptions. The mission will help participating firms and trade associations gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports to Mozambique, Kenya and South Africa.

Commercial Setting

Mozambique, with a population of 23 million, grew its economy from 1994 to 2009 at an average rate of eight percent per year—one of the fastest rates of growth of any sub-Saharan African economy over this period. In 2013, GDP reached \$15 billion. While the country was devastated after the civil war ended in 1992, it has since benefited from macroeconomic reforms and large foreign investment projects.

Though infrastructure remains weak and the population is still largely rural, the government is committed to building a strong commercial environment. The United States has traditionally been a relatively minor trading partner, but U.S. investment in the energy sector, particularly off-shore natural gas, is expected to grow tremendously in the next several years. External competition, local labor quotas, periodic flooding, and an often-contentious political situation present some challenges to doing business in Mozambique.

Kenya, with a population of 43 million, is the dominant economy in the East African Community. Given its position as the economic, commercial, and logistical hub of East Africa, more U.S. companies are investing in Kenya and setting up local and regional operations there. Kenya's first election under a new constitution with a devolved government structure was held in April 2013, and should position it for further growth. Investor confidence is high, as demonstrated by Kenya's record-breaking \$2 billion debut sovereign bond offering in 2014.

Kenya also boasts a large number of well-educated English-speaking and multi-lingual professionals, and a strong entrepreneurial tradition. Doing business in Kenya includes a number of challenges, such as crime, unemployment, limited infrastructure, and corruption.

South Africa, a country of 52 million people, has the most advanced, broad-based industrial economy in Africa, enjoys relative macroeconomic stability and boasts sound financial, legal and accounting institutions; not to mention an English-speaking workforce. It remains the primary choice for U.S. companies wishing to develop the promising markets of sub-Saharan Africa, although it suffers from large disparities in income distribution and over 25 percent unemployment. In 2014 South Africa's GDP grew by less than two percent to \$357 billion. Doing business in South Africa includes a number of challenges including corruption and power shortages, as well

as a series of protectionist policies that has precipitated a series of downgrades by the major credit agencies.

Best Prospects in Targeted Sectors

Transportation Infrastructure and Equipment

Mozambique

Transport networks and infrastructure will be instrumental to developing Mozambique's growth potential in the near and long term. The recently concluded \$500 million Millennium Challenge Corporation compact funded extensive rehabilitation of key roads, a dam, and a water supply project in two northern provinces. The Government of Mozambique is investing heavily in expanding rail and port capacity to manage the rising production of mineral resources. A rail line to the deepest natural port on the East Coast of Africa should significantly lower coal transport costs, and two foreign companies have recently been contracted to begin work on a new rail line ending at Macuze port. As total coal exports are projected to reach 40 million tons per year by 2015 and long term estimates are in the range of 100 million tons per year, infrastructure around this sector remains a priority. In addition, rapid investment in infrastructure to support planned liquefied natural gas (LNG) projects in northern Mozambique, one of its least developed regions, could bring vast opportunities to U.S. firms.

Kenya

Kenya enjoys an extensive, but uneven, infrastructure that is still superior in many cases to that of its neighbors. Nairobi is the undisputed transportation hub of Eastern and Central Africa and the largest city between Cairo and Johannesburg. The Port of Mombasa is the most important deep-water port in the region, supplying the shipping needs of more than a dozen countries despite persistent deficiencies in equipment, inefficiency and corruption. As a result of these deficiencies, the Port of Mombasa has been earmarked for major expansion and re-habilitation.

Kenya's "Vision 2030" infrastructure development plans call for significant improvements to the provision of water, renewable energy, ICT, housing, roads, bridges, railways, seaports and airports over the next 20 years. The construction industry in Kenya is driven primarily by two key infrastructure sectors: Transportation and housing, given the large housing deficit that exists in Kenya. Construction and infrastructure development will also present new opportunities, especially with the

passage of the new public-private partnership (PPP) law which will make government procurements more transparent and less risky.

South Africa

South Africa's Transnet, the largest State Owned Enterprise (SOE) within the Department of Public Enterprises (DPE) has announced and allocated funding for significant transportation infrastructure capital investments. In 2012, the government announced the allocation of funding for investments estimated at over \$90 billion over 15 years. Though there have been complaints of slow implementation, leading some contractors to re-focus business elsewhere in the continent, in late 2013 and early 2014 commitments were made to procure passenger rolling stock, locomotives, signaling and track upgrades. Also, the development of the significant Durban phase 2 port extension (in the old Durban International Airport precinct) has been initiated.

The Passenger Rail Agency of South Africa (Prasa) of the SA Department of Transport (SADOT) in March 2012 announced a 20-year rail improvement program estimated at more than \$13.6 billion. Of this, \$1.3 billion will be invested in signaling, new depots, modern stations and integrated ticketing, while \$1.1 billion is being spent on new locomotives.

SOE Transnet Freight Rail (TFR) and others are expanding logistics projects such as upgrading the Sishen-Saldanha Bay ore line, the Richard Bay coal line and other new coal line networks in the northwest. Transnet's rail and port projects are reportedly set to cost around \$30 billion over seven years and include augmenting the tractive and bulk car fleet, signaling, maintenance, advanced train management systems and network expansion/concession models. For the second large diesel locomotive program of 465 units, one U.S. and one Chinese manufacturer were selected as preferred bidders in February 2014.

Transnet Port Terminals (TPT), the port operating SOE is set to invest \$3.3 billion over the next seven years for the expansion and improvement of its bulk and container terminals. Significant capacity-creating projects included the expansion of the Durban Container Terminal's (DCT's) Pier 1 that would increase its capacity from 700,000 twenty-foot equivalent units (TEUs) to 820,000 TEUs by 2013 and 1.2 million TEUs by 2016/17. Other expansion projects include the Ngqura Container Terminal, Durban Ro-Ro and Maydon Wharf terminal, the iron-ore bulk

terminal at the Port of Saldanha and the ageing Richards Bay Terminal where \$370 million is set aside for mobile and quayside equipment, as well as weighbridges.

Energy

Mozambique

Mozambique is set to become one of the world's largest new suppliers of natural gas. The country's massive offshore discoveries have launched a scramble among exploration and production companies to develop these new-found resources. In early 2014, the Oil and Gas Journal raised Mozambique's proven reserves to 100 trillion cubic feet (Tcf), making it the third-largest proved natural gas holder in Africa. Although much of the Mozambique's offshore acreage still remains underexplored, one U.S. company already has announced recoverable finds totaling some 45–65 Tcf. The country's rich resources could support up to ten LNG trains in one province alone, and a floating LNG facility is under consideration. Developers focusing on Mozambique's LNG infrastructure expect to begin exporting as early as 2018. Additionally, although the United States exported only \$25 million of oil and gas field equipment to Mozambique in 2013, this is up from \$1 million only five years prior and comprises about 19 percent of the country's relatively small total of \$132 million for that year. More than 80 percent of U.S. exports to Mozambique are in pipe products, indicating the early stages of the industry.

Mozambique is a net exporter of energy. But in order to support its growing economy the country requires significant investment to upgrade old infrastructure and conclude new generation projects. The majority of power produced in the country comes from the Cahora Bassa hydro-power scheme in central Mozambique, where the government plans a multi-million dollar "North Bank" expansion. It will add an additional 1,250 MW with transmission lines to South Africa, the South African Power Pool, Maputo, and Northern Mozambique. Planning for a second multi-billion dollar, 1,500-plus MW hydropower dam 35 miles downstream at Mphanda Nkuwa is well underway, and the operators are expected to finalize financing this year, with commercial operations due to start as early as 2017. The government of Mozambique recently approved new renewable feed-in tariffs as part of an ongoing strategy to promote private investment in renewable energy sources.

Kenya

In response to strong economic growth and increasing demand for electricity, Kenya is focused on developing its power generation and transmission and distribution infrastructure. Today, Kenya is faced with brownouts, blackouts, and power surges that damage equipment and necessitate emergency power, driving up the cost of electricity. The supply deficit and costly short-term solutions impede economic growth, and reduce the competitiveness of Kenya's private sector in the region. With only 25 percent of the population connected to the grid, the Kenyan government is currently implementing a plan to connect an additional 5,000MW to the grid to meet growing demand and help reduce electricity tariffs by 40 percent by 2017, with a goal of achieving universal access by 2030.

In ITA's Renewable Energy Top Markets for U.S.-Exports 2014–2015, Kenya was ranked 13th most promising export market for U.S. renewable energy companies, and first in the geothermal sector, which makes up about 22 percent of Kenya's energy mix (about 583 MW). More than 40 wells per year currently are being drilled, with a target of developing over 5,000 MW, approximately half of its capacity, in the next two decades. Kenya has extensive plans to increase other renewables as well. The country is gradually diversifying its energy mix and is keen to wean off expensive thermal diesel power, whose supply is impacted by recurring droughts; and thermal power, which is sensitive to global fuel prices.

Kenya is also an increasingly promising player in the booming East Africa oil and gas market. The multiple onshore discoveries announced since 2012, largely in Turkana County, have led exploration and production companies to sound optimistic notes about the country's potential. The greatest enthusiasm surrounds offshore resources, where drillers hope to replicate Mozambique and Tanzania's vast natural gas discoveries. To date, Kenya's oil resources are estimated to be 600 million barrels, with at least one firm projecting that Kenya's resource base could amount to as much as 10 billion barrels, though exploration is still in the early stages. While movement on key planned infrastructure projects, such as the \$25 billion Lamu Port, South Sudan Ethiopia, Transport (LAPSSET) Corridor, has been slow, if all goes smoothly, a Uganda-Kenya pipeline could be completed by as early as 2019.

South Africa

Electricity supply constraints are significant and are expected to remain a feature of South Africa's social and economic landscape for several years to come. ESKOM, the government owned power utility, with a virtual monopoly on generation, transmission and distribution (responsible for around 95 percent of local generation) is experiencing budgetary and infrastructure challenges. As a result of these challenges, the government has put a renewed focus on the increased generation of power, increased energy efficiency and decreased consumption. ESKOM's reserve of power has recently become so low that it has been forced to utilize its contractual rights with large industrial users to require them to reduce consumption at critical times, and it has implemented scheduled brownouts or "load-shedding" outages for all users. It has also been forced to use expensive diesel to power generators at peak load periods. Though there is current and planned infrastructure investment to ensure future supply, there have been significant delays in bringing these planned power generation facilities on line.

ESKOM is currently investigating smart grid as an option to manage peak load demand. Renewable energy programs have also been introduced in order to facilitate clean renewable independent energy production. The government's Renewable Energy Independent Power Producer Procurement program (REIPPP) has been relatively successful and marks the first time independent power producers have been allowed to sell power back to the grid. In ITA's Renewable Energy Top Markets for U.S.-Exports 2014-2015, South Africa was ranked 12th; however, local content requirements, which have increased in recent months, may limit potential U.S. exports.

Further capital expenditure is ongoing with the two large scale coal-fired plants under construction—Medupi Power Station (4,800 MW) and Kusile Power Station (4800 MW)—as well as a pumped storage project (1,332 MW) and a wind energy facility (1,00MW). With on-going power outages, the government of South Africa has also recently opened bids to independent power producers for the provision of 2,500 MW of base-load (coal) power.

South Africa boasts the world's eighth largest supply of technically recoverable shale gas resources, according to the U.S. Department of Energy's Energy Information Administration. In 2012, the government lifted a moratorium on

exploring the country's estimated 390 trillion cubic feet (tcf) of unconventional deposits. While licenses have yet to be issued, President Zuma announced in June 2014 that the government would proceed with shale gas development plans, indicating the government's willingness to move forward with development in the sector.

South Africa has announced plans to add 9,600 MW of nuclear power over the next twenty years and the government is in talks with multiple countries about resources to develop South Africa's civil nuclear energy program. The country currently has two nuclear reactors that generate 5 percent of its electricity.

Agricultural Equipment

Mozambique

Mozambique has vast needs and vast opportunities in the agriculture sector. Boasting a landmass about the size of Texas and Louisiana combined, a coastline longer than the eastern seaboard of the United States, and a geographic location well-positioned to export to burgeoning Asian markets, agriculture is still small-scale and subsistence. Growth in agriculture has lagged in relation to GDP growth, largely due to the lack of mechanization and irrigation. Opportunities for U.S. companies vary from cold storage, irrigation and food processing equipment.

Mozambique recognizes agriculture as the key to poverty reduction and employment and is focused on policy reforms to attract more private sector investment. The Government of Mozambique is committed to promoting the use of technology, irrigation, and improved methods to raise yields. This commitment has resulted in plans by U.S. and other foreign agribusiness companies to establish commercial farms.

Kenya

Agriculture remains the backbone of Kenya's economy. It accounts for about 24 percent of GDP directly and 75 percent of the labor force indirectly. Cash crop (tea, coffee, and horticulture), food crops (maize, wheat and rice), and livestock dominate the agricultural sector. Kenyan agriculture faces many challenges. It is predominately rainfall dependent and thus subject to wide production variances. It is undercapitalized, implying low technological absorption resulting in low productivity. Small-scale farmers contribute about 75 percent to the country's total value of agricultural output and account for nearly 85

percent of total employment in the agricultural sector. These attributes, coupled with challenges arising from limited institutional capacity, poor infrastructure, and risks associated with liberalized markets, explain the relative stagnation of agricultural productivity and incomes.

Kenya's horticulture industry is a major export success in Africa. It is almost entirely dominated by the private sector and provides many opportunities for increased importation of fertilizers, pesticides and equipment. Similar opportunities lie in the floriculture industry in Kenya, which is the leading exporter of fresh cut flowers to the flower auction in Holland. Other important commodities include maize, tea, coffee, sugarcane and wheat, which will require additional use of fertilizers as production grows. The government has embarked on a mechanization program to increase use of more modern means of farming to increase output. In addition, the government has set aside 1.2 million acres of land for irrigation that for growing maize and wheat, and livestock farming. Agricultural equipment is tax exempt under the VAT Act 2013 to provide support to the sector.

Kenya imports virtually all of its agricultural chemicals because local production is insignificant. Kenya's fertilizer use has almost doubled since the liberalization of the market in the 1990s and the removal of government price controls and import licensing quotas. The growth in use has been noted especially among the smallholder farmers in growth of both food crops (maize, domestic horticulture) and export crops (tea, coffee). Growth in the industry is largely due to huge private investment in both importation and retailing of fertilizers. Fertilizer is also tax exempted under the new VAT Act.

South Africa

South Africa has by far the most modern, productive and diverse agricultural economy in Sub Saharan Africa. Agriculture in South Africa remains an important sector despite its relatively small contribution to the GDP. The sector plays an important role in terms of job creation, especially in rural areas, but is also a foremost earner of foreign exchange.

South Africa has a market-oriented agricultural economy that is highly diversified, including production of all the major grains (except rice), oilseeds, deciduous and subtropical fruits, sugar, citrus, wine and most vegetables. Livestock production includes cattle, dairy, pigs, sheep, and a well-developed broiler and egg industry. Value-added

sector activities include slaughtering, processing and preserving of meat; processing and preserving of fruit and vegetables; dairy products; grain mill products; crushing of oilseeds; prepared animal feeds; and sugar refining amongst other food products. South Africa also exports wine, corn, mohair, groundnuts, karakul pelts, sugar, and wool.

South Africa offers U.S. exporters in the agricultural equipment and technology sector a wide range of

opportunities. Five percent of all new agriculture equipment is being produced locally; 95 percent of all agriculture equipment and parts are being sourced from international markets, and at least 20 percent of new equipment and technologies are currently being sourced from the U.S.

Mission Goals

The goal of this trade mission is to provide U.S. participants with first-hand market information, and one-on-

one meetings with business contacts, including potential agents, distributors and partners so they can position themselves to enter or expand their presence in these markets.

Mission Scenario

This mission will visit Maputo, Mozambique, Nairobi, Kenya and Johannesburg, South Africa allowing participants to access the largest markets and business centers in these countries.

PROPOSED MISSION TIMETABLE

Day of Week	Location	Activity
Wednesday, June 17	Maputo	Companies arrive Maputo. Welcome Breakfast.
Thursday, June 18	Maputo	Briefing by U.S. Embassy. One-on-one business appointments. Evening business reception.
Friday, June 19	Maputo	One-on-one business appointments continue.
Saturday, June 20	Maputo/Nairobi	Site visit or travel to Nairobi.
Sunday, June 21	Maputo/Nairobi	Remain in or travel to Nairobi. Welcome Breakfast.
Monday, June 22	Nairobi	Briefing by U.S. Embassy. One-on-one business appointments. Evening business reception.
Tuesday, June 23	Nairobi	One-on-one business appointments continue.
Wednesday, June 24	Nairobi/Johannesburg ...	Travel to Johannesburg. Welcome Breakfast.
Thursday, June 25	Johannesburg	Briefing by U.S. Embassy. One-on-one business appointments. Evening business reception.
Friday, June 26	Johannesburg	One-on-one business appointments continue. Mission Ends.

***Note:** The final schedule and potential site visits will depend on the availability of local government and business officials, specific goals of mission participants, and air travel schedules.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and maximum of 20 firms and/or trade associations or organizations will be selected from the applicant pool to participate in the mission.

Fees and Expenses

After a company or trade association/organization has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee for the mission is \$4,600 for small or medium-sized enterprises (SME),¹ and \$6,200 for large

firms and trade associations/organizations. The fee for each additional representative (large firm, SME or trade association/organization) is \$750.

Exclusions

The mission fee does not include any personal travel expenses such as lodging, most meals, local ground transportation and air transportation. Delegate members will however, be able to take advantage of U.S. Government rates for hotel rooms. Government fees and processing expenses to obtain such visas are also not included in the mission costs. However, the U.S. Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas.

affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

Conditions for Participation

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's or association/organization's products and/or services, primary market objectives, and goals for participation by April 17, 2015. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the U.S., or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. In the case of a trade association or organization, the applicant must certify that for each company to be represented by the association/organization, the products and/or services the represented

¹ An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see <http://www.sba.gov/services/contractingopportunities/sizestandardstopping/index.html>). Parent companies,

company seeks to export are either produced in the U.S. or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

In addition, each applicant must:

Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;

Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department that may present the appearance of a conflict of interest;

Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Selection Criteria for Participation

Targeted mission participants are U.S. companies and trade associations/organizations providing or promoting products and services that have interest in entering or expanding their business in markets of Mozambique, Kenya and South Africa. The following criteria will be used in selecting participants:

Suitability of a company's (or in the case of a trade association/organization, represented companies') products or services to these markets.

Company's (or in the case of a trade association/organization, represented companies') potential for business in the markets, including likelihood of exports resulting from the mission.

Consistency of the applicant company's (or in the case of a trade association/organization, represented companies') goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Application

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<http://www.export.gov/trademissions/>) and other Internet Web sites, press releases to general and trade

media, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for this mission will begin immediately and conclude April 17, 2015. We will inform applicants of selection decisions as soon as possible after April 17, 2015. Applications received after April 17, 2015 will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT:

U.S. Commercial Service, Johannesburg, South Africa, Brent Omdahl, Deputy Senior Commercial Officer, Phone: 27-11-290-3227, Email: Brent.Omdahl@trade.gov.
Trade Missions Office, Washington, DC, Anne Novak, Phone: (202) 482-8178, Email: Anne.Novak@trade.gov.

Frank Spector,

International Trade Specialist.

[FR Doc. 2015-03898 Filed 2-24-15; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD770

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting and webinar/conference call.

SUMMARY: NMFS will hold a 3-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in March 2015. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held from 10:30 a.m. to 5 p.m. on Tuesday, March 10, 2015; from 8:30 a.m. to 5 p.m. on Wednesday, March 11, 2015; and from 8:30 a.m. to 12 p.m. on Thursday, March 12, 2015. There will be an introduction for new AP members at 9 a.m. on Tuesday, March 10, 2015.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814. The meeting presentations will also be available via WebEx webinar/conference call.

On Tuesday, March 10, 2015, the conference call information is phone number 1-800-857-6552; Participant Code: 8099565; and the webinar event address is: <https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=393951018&t=a>; event password: NOAA.

On Wednesday, March 11, 2015, the conference call information is phone number 1-800-857-6552; Participant Code: 8099565; and the webinar event address is: <https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=395887510&t=a>; event password: NOAA.

On Thursday, March 12, 2015, the conference call information is phone number 1-800-857-6552; Participant Code: 8099565; and the webinar event address is: <https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=394954698&t=a>; event password: NOAA.

Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT:

Peter Cooper or Margo Schulze-Haugen at (301) 427-8503.

SUPPLEMENTARY INFORMATION:

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104-297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for Atlantic HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks.

The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999); the HMS FMP (April 1999); Amendment 1 to the HMS FMP (December 2003); the Consolidated HMS FMP (October 2006); and Amendments 1, 2, 3, 4, 5a, 5b, 6, 7, 8, and 9 to the 2006 Consolidated HMS FMP (April and October 2008, February and September 2009, May and September 2010, April and September 2011, March and September 2012, January and September 2013, April and September 2014), among other things.

The intent of this meeting is to consider alternatives for the conservation and management of all Atlantic tunas, swordfish, billfish, and shark fisheries. We anticipate discussing

the following Amendments to the 2006 Consolidated HMS FMP: Draft Amendment 6 on the future of shark fishery, providing updates on Amendment 5b on dusky shark management and Amendment 9 on smoothhound shark management and ongoing stock assessment, reviewing Final Amendment 7 on bluefin tuna management measures, as well as discussing the HMS Essential Fish Habitat 5-Year Review. The meeting will also include discussion of the Electronic Technologies Implementation Plan for Atlantic HMS, implementation of 2014 ICCAT recommendations, and updates on the Atlantic HMS Management-Based Research Priorities document and other research activities, among other updates.

Additional information on the meeting and a copy of the draft agenda will be posted prior to the meeting at: http://www.nmfs.noaa.gov/sfa/hms/advisory_panels/hms_ap/meetings/ap_meetings.html.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Cooper at (301) 427-8503 at least 7 days prior to the meeting.

Dated: February 20, 2015.

Alan D. Risenhoover,

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

[FR Doc. 2015-03894 Filed 2-24-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD791

Caribbean Fishery Management Council: Scoping Meetings

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

ACTION: Notice of scoping meetings on Caribbean Federal permits.

SUMMARY: The harvest activities of all fishing sectors must be understood to the greatest degree possible to assure that societal goals encompassed in the Magnuson-Stevens Fishery Conservation and Management Act are met. Thus, the need for timely, effective, and efficient means to monitor harvest from all sectors is fundamental. The goal of this Scoping Hearing is to allow the public to comment on the scoping

document and to provide alternative options and ideas not yet considered by the Council and NMFS.

Dates and Addresses:

Written comments can be sent to the Council not later than April 10th, 2015, by regular mail to the address below, or via email to graciela_cfmc@yahoo.com or Miguel.lugo@noaa.gov.

In Puerto Rico

March 11, 2015—7 p.m.—10 p.m.—

Verdanza Hotel, Tartak St. Isla Verde Puerto Rico

March 25, 2015—7 p.m.—10 p.m.—

Mayaguez Holiday Inn, 2701 Hostos Avenue, Mayagüez, Puerto Rico

In the U.S. Virgin Islands

March 16, 2015—7 p.m.—10 p.m.—The

Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands

March 18, 2015—7 p.m.—10 p.m.—

Windward Passage Hotel, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT:

Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918-1903, telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council is considering establishing federal permits for fishing in the U.S. Caribbean exclusive economic zone (EEZ), and is conducting scoping meetings to obtain public comments regarding this matter.

Background

A permitting system provides a comprehensive method to achieve this goal. Permitting supports professionalization of individual fisheries, identifying and acknowledging those fishers dedicated to and reliant upon a specific component of the commercial fishery. Permits also allow for direct communication with fishing entities, enabling focused outreach and education opportunities.

A permitting system allows fishery scientists and managers to gather more accurate data, decreasing both scientific and management uncertainty. Scientific uncertainty can be mitigated to some degree by increasing knowledge of the fishery and the health of the fish populations that support that fishery. A permit system that identifies the universe of fishers operating within a fishing sector and allows tracking of the disposition and characteristics of harvested resources would substantially enhance knowledge of the fishery. Data derived from a comprehensive permit

system would also contribute to reducing management uncertainty by providing better estimates of harvesting effort and the timing of harvest, thereby improving management design and responsiveness. More accurate and reliable catch data allows for more informed management.

The absence of a federal permit system, or mandatory federal reporting requirements, has been identified as a major contributor to the lack of fishing effort information in the U.S. Caribbean EEZ. A permitting system would allow better estimates for measuring fishing effort for the Council-managed fisheries while shedding light on the effectiveness of regulations implemented to manage that effort.

Some of the needs and Issues that a permitting system could address in the EEZ:

1. Provide accurate and timely data on landings.
2. Allow estimation of catch per unit of fishing effort.
3. Identify spatial and temporal trends in effort, including the relative importance of fishing to individual communities.
4. Manage competing interests for the resource.
5. Identify trends in the health of targeted fish stocks.
6. Quantify the socioeconomic importance of permitted fishing sectors and mitigate negative impacts of management to fishing communities.
7. Provide permitted fishers with a better understanding of their fishery and the opportunities and implications of management to that fishery.

There are many aspects to implementing fishing permits in the U.S. Caribbean exclusive economic zone (EEZ) and many options regarding the design of a permit system. Options for developing and designing a permit system include, but are not limited to:

1. Require commercial fishers to obtain a federal permit to fish in the U.S. Caribbean EEZ;
2. Require commercial fishers to obtain a commercial fishing license from either Puerto Rico or the U.S. Virgin Islands (USVI) to fish in the U.S. Caribbean EEZ;
3. Require commercial fishers to obtain a federal permit or a commercial fishing license from either Puerto Rico or the USVI to fish in the U.S. Caribbean EEZ;
4. Require a species/species group/fishery-specific permit in the U.S. Caribbean EEZ;
5. Require a gear-specific permit in the U.S. Caribbean EEZ;
6. Require a dealer permit to purchase fish harvested from the U.S. Caribbean EEZ;

7. Conduct a pilot study with some or all fishers from some or all island groups to evaluate the practicality of permits in the U.S. Caribbean EEZ.

The goal of these scoping meetings is to allow the public to comment on the options listed above and to provide alternative options not yet considered by the Council and NMFS.

Copy of the Scoping Document to address the Development of Federal Permits in the U.S. Caribbean Exclusive Economic Zone can be found at http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/index.html under Current Rule Making or and the Caribbean Council Web site at caribbeanfmc.com.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918-1903, telephone (787) 766-5926, at least 5 days prior to the meeting date.

Dated: February 20, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015-03892 Filed 2-24-15; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD444

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to San Francisco Bay Area Water Emergency Transportation Authority Central Bay Operations and Maintenance Facility Project in Alameda, California

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the San Francisco Bay Area Water Emergency Transportation Authority (WETA) to take, by harassment, small numbers of two

species of marine mammals incidental to pile driving and removal associated with the Central Bay Operations and Maintenance Facility Project in the City of Alameda, California, between December 1, 2015, through November 30, 2016.

DATES: Effective December 1, 2015, through November 30, 2016.

ADDRESSES: A copy of the application containing a list of the references used in this document, NMFS's Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has

the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On April 9, 2014, NMFS received an application from WETA for the taking of marine mammals incidental to the construction of a Central Bay Operations and Maintenance Facility (Project). The purpose of the Project is to serve as the central San Francisco Bay (Bay) base for WETA's ferry fleet. After NMFS provided comments on the draft IHA application, WETA submitted a revised IHA application on May 15, 2014. NMFS determined that the application was adequate and complete on July 31, 2014. No changes were made for the proposed WETA's construction Project as described in the proposed IHA except the Project duration was changed to December 1, 2015, through November 30, 2016, from the original June 15 through October 15, 2014, due to funding and other constraints. Please refer to **Federal Register** notice for the proposed IHA for a detailed description of the project activities.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to WETA was published in the **Federal Register** on September 17, 2014 (79 FR 55479). That notice described, in detail, WETA's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), the Sierra Club, the San Francisco Bay Conservation and Development Commission (BCDC), and 40 private citizens.

All comments specific to WETA's application that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

Comment 1: The Commission recommends NMFS issue the IHA to WETA, subject to inclusion of the proposed mitigation and monitoring measures described in the proposed IHA. In addition, the Commission recommends that NMFS only authorize in-season adjustments in the sizes of the exclusion and/or disturbance zones (zones of influence) if the size(s) of the estimated zones are determined to be too small.

Response: NMFS agrees with the Commission's recommendation and has issued the IHA with mitigation and monitoring measures described below in this document, with the requirement that the exclusion and/or zones of influence be adjusted only of the size(s) of the estimated zones are determined to be too small.

Comment 2: Citing WETA's permit application to BCDC to construct the Central Bay Operations and Maintenance Facility Project, BCDC points out that an abandoned small craft floating dock located at the proposed project site that harbor seals use as a haul-out site, would be removed for the construction. BCDC states that there are relatively few haul-out locations in the Bay for harbor seals, and BCDC is concerned that removal of a haul-out location may result in harmful impacts to wildlife. The Sierra Club and 40 private citizens also have concerns about the loss of a harbor seal haul-out due to the removal of the floating dock.

BCDC recommends that NMFS review the potential habitat impacts associated with removal of these harbor seal haul-out locations, including suggestions for mitigation and monitoring, where appropriate, as part of the IHA application for the project.

Response: NMFS was not aware this issue during its initial analysis of potential impacts to the loss of one harbor seal haul-out site as a result of the proposed WETA construction project in the Bay. Therefore, the potential impact of marine mammal habitat did not address this in the **Federal Register** (79 FR 55479; September 17, 2014) for the proposed IHA. Subsequently, NMFS conducted further investigation and worked with NMFS West Coast Regional Office to assess the potential impacts to harbor seal haul-out and habitat in general in the Bay.

The harbor seal haul-out site that would be affected is a small craft dock located at the project site and was abandoned by the Navy when it vacated the Naval Air Station-Alameda in 1997. The unmaintained dock has been deteriorating slowly over the last 17 years and the deterioration has appeared to be accelerating in the last five years. In 2010, the portion connecting the floating dock to land broke off and sank, leaving remnant parts of the floating

dock isolated from land. Since 2010, additional remnant parts of the marina have also been lost. During this period of time harbor seals have been opportunistically using the dock for haul-out purposes. At present, seals have been observed by local residents hauling out on the portion of the dock that is furthest from shore.

It is observed that on an average, about 10 to 20 harbor seals use the floating dock as haul-out periodically. Although during the spring of 2014, one pup was observed reared at the floating dock, the site is not a known breeding area for harbor seal. Because the dock has been in a gradual state of decay since the closure of the naval base and will likely continue to fall apart, the haul-out area on the dock provided for harbor seals is expected to decrease and eventually disappear.

Finally, several nearby haul-out sites are available in the Bay that are available to resident harbor seals in the area. These areas include the tip of Breakwater Island (1 mile from the WETA project site) and the haul-out at Yerba Buena Island (4 to 5 miles from the WETA project site) which is identified as one of the five major haul-out sites for harbor seals in the San Francisco Bay (Gibble 2011).

Therefore, the removal of the remnant abandoned dock would have negligible impact to harbor seal habitat in the proposed WETA construction site.

NMFS has thoroughly reviewed WETA's IHA application, including the proposed mitigation and monitoring measures to reduce potential impacts from the construction activities. These mitigation and monitoring measures include using noise attenuation devices for impact pile driving, power down/shutdown of pile driving hammer if a marine mammal is observed approaching the exclusion zone, and monitoring the exclusion zones and zones of influence. Detailed description of these monitoring and mitigation measures and NMFS analysis is provided in the **Federal Register** (79 FR 55479; September 17, 2014) for the proposed IHA, therefore, it is not repeated here.

Comment 3: The Sierra Club and several private citizens recommend that NMFS requires WETA to construct a new haul-out dock nearby to compensate and mitigate the loss of

harbor seal haul-out, if the current old floating dock is to be removed.

Response: NMFS does not consider building an artificial harbor seal haul-out is a good conservation measure to compensate for the loss of the old floating dock that is being used as a haul-out by 10–20 harbor seals. As the Sierra Club also stated in its comment, “[i]n the case of the WETA ferry facility project, it is not a traditional natural shoreline that will be disturbed or destroyed.” The floating dock proposed to be removed is a manmade structure that is bound to disappear as it deteriorates and falls apart. To build another new structure without maintenance will likely have the same issue in the near future. Therefore, NMFS considers it better conservation practice not to construct a new structure just to replace the current deteriorating artificial one.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina richardsi*) and California sea lion (*Zalophus californianus*). Although harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), and gray whale (*Eschrichtius robustus*) have been sighted near the vicinity of the proposed construction area, their presence at the activity area is considered unlikely, because the proposed construction area is not typical habitat for these species. The southern sea otter (*Enhydra lutris*) also may occur in the proposed construction area, but that species is managed by the U.S. Fish and Wildlife Service and is not considered further in this proposed IHA notice. A list of the marine mammal species under NMFS jurisdiction and their abundance and Endangered Species Act (ESA) status is provided in Table 1.

Additional information on the marine mammal species found in California waters can be found in Caretta *et al.* (2013), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf>, and in the **Federal Register** notice (79 FR 55479) for the proposed IHA.

TABLE 1—LIST OF MARINE MAMMAL SPECIES UNDER NMFS JURISDICTION THAT OCCUR IN THE VICINITY OF THE WETA CENTRAL BAY OPERATIONS AND MAINTENANCE FACILITY PROJECT AREA

Common name	Scientific name	Stock	ESA Status	Abundance
California sea lion	<i>Zalophus californianus</i>	U.S.	Not listed	296,750
Harbor seal	<i>Phoca vitulina richardsi</i>	California	Not listed	30,196

Potential Effects of the Specified Activity on Marine Mammals and Marine Mammal Habitat

The primary potential impacts to marine mammals and marine mammal habitat are associated with elevated sound levels, but the project may also result in additional effects to marine mammal prey species and short-term, local water turbidity caused by in-water construction due to pile removal and pile driving. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA and are not repeated here. The potential affected habitat on harbor seal haul-out was not discussed in the proposed IHA because NMFS was not aware of that issue at the time. An analysis of the potential effect on the removal of a harbor seal haul-out is provided below.

The harbor seal haul-out site that would be affected is a small craft dock located at the project site and was abandoned by the Navy when it vacated the Naval Air Station-Alameda in 1997. The unmaintained dock has been deteriorating slowly over the last 17 years and the deterioration has appeared to be accelerating in the last five years. Later in 2010, the portion connecting the floating dock to land broke off and sank, leaving remnant parts of the floating dock isolated from land. Since 2010, additional remnant parts of the marina have also been lost. During this period of time harbor seals have been opportunistically using the dock for haul-out purposes. At present, seals have been observed by local residents hauling out on the portion of the dock that is furthest from shore.

It is observed that on an average, about 10 to 20 harbor seals use the floating dock as haul-out periodically. Although during the spring of 2014, one pup was observed reared at the floating dock, the site is not a known breeding area for harbor seal. Because the dock has been in a gradual state of decay since the closure of the naval base and will likely continue to fall apart, the haul-out area on the dock provided for

harbor seals is expected to decrease and eventually disappear.

Finally, several nearby haul-out sites are available in the Bay that are available to resident harbor seals in the area. These areas include the tip of Breakwater Island (1 mile from the WETA project site) and the haul-out at Yerba Buena Island (4 to 5 miles from the WETA project site) which is identified as one of the five major haul-out sites for harbor seals in the San Francisco Bay (Gibble 2011).

Therefore, the removal of the remnant abandoned dock would have negligible impact to harbor seal habitat in the proposed WETA construction site.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

For WETA’s proposed Central Bay Operations and Maintenance Facility Project, NMFS required the following mitigation measures to minimize the potential impacts to marine mammals in the Project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, to monitor marine mammals within designated zones of influence corresponding to NMFS’ current Level B harassment thresholds and, if marine mammals with the ZOI appear disturbed by the work activity, to initiate immediate shutdown or power down of the piling hammer, making it very unlikely potential injury or hearing impairment to marine mammals would occur and ensuring that Level B behavioral harassment of marine

mammals would be reduced to the lowest level practicable.

Use of Noise Attenuation Devices

Noise attenuation systems (*i.e.*, bubble curtains) will be used during all impact pile driving of steel piles to dampen the acoustic pressure and reduce the impact on marine mammals. By reducing underwater sound pressure levels at the source, bubble curtains would reduce the area over which Level B harassment would occur, thereby potentially reducing the numbers of marine mammals affected. In addition, the bubble curtain system would reduce sound levels below the threshold for injury (Level A harassment), and thus eliminate the need for an exclusion zone for Level A harassment.

Time Restrictions

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

In addition, all in-water construction will be limited to the period between August 1 and November 30, 2016.

Establishment of Harassment Zones of Influence

Before the commencement of in-water pile driving activities, WETA shall establish Level B behavioral harassment zones of influence (ZOIs) where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 µPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and mechanic dismantling), respectively. The ZOIs delineate where Level B harassment would occur. Because of the relatively low source levels from vibratory pile driving and from impact pile driving with air bubble curtains, there will be no area where the noise level would exceed the threshold for Level A harassment for pinnipeds, which is 190 dB (rms) re 1 µPa. The modeled maximum isopleths for ZOIs are listed in Table 2.

TABLE 2—MODELED LEVEL B HARASSMENT ZONES OF INFLUENCE FOR VARIOUS PILE DRIVING ACTIVITIES

Pile driving methods	Pile material and size	Distance to 120 dB re 1 μPa (rms) (m)	Distance to 160 dB re 1 μPa (rms) (m)
Impact pile driving with air bubble curtain	30" epoxy coated steel piles	NA	250
	24" epoxy coated steel piles	NA	185
	18" epoxy coated steel piles	NA	93
Vibratory pile driving	18" plastic fender piles	2,154	NA

In addition, although Level A harassment and injury by noise are not expected to occur due to implementation of noise attenuation devices and vibratory pile driving, a minimum shutdown zone of 10 m will be established during all pile driving and removal activities, regardless of the estimated zone. These precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to establish a precautionary minimum zone with regard to acoustic effects.

Once the underwater acoustic measurements are conducted during initial test pile driving, WETA shall adjust the sizes of the exclusion zones and ZOIs only if the measured exclusion zones and ZOIs are larger than modeled zones. These zones will be monitored as described under the Proposed Monitoring section below.

Soft Start

A “soft-start” technique is intended to allow marine mammals to vacate the area before the pile driver reaches full power. Whenever there has been downtime of 30 minutes or more without pile driving, the contractor will initiate the driving with ramp-up procedures described below.

For vibratory hammers, the contractor will initiate the driving for 15 seconds at reduced energy, followed by a 1-minute waiting period. This procedure shall be repeated two additional times before continuous driving is started. This procedure would also apply to vibratory pile extraction.

For impact driving, an initial set of three strikes would be made by the hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets at 40 percent energy, with 1-minute waiting periods, before initiating continuous driving.

Shutdown Measures

WETA shall implement shutdown measures for pile driving or pile removal activities if a marine mammal is sighted within or is about to enter the 10 m exclusion zone.

In addition, WETA shall discontinue pile driving or pile removal activities if a marine mammal within a ZOI appears disturbed by the work activity. Work may not resume until the animal is seen to leave the ZOI or 30 minutes have passed since the disturbed animal was last sighted.

Furthermore, for in-water heavy machinery work with the potential to affect marine mammals (other than pile driving), if a marine mammal comes within 10 m, operations shall cease until the animal has left the shutdown zone or 15 minutes has passed. Heavy machinery work could include setting the pile and removal of the pile from the water column/substrate via a crane (*i.e.*, dead pull).

Finally, if any marine mammal species not authorized for take are encountered during pile driving or removal and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms) for impact pile driving or greater than or equal to 120 dB re 1 μPa (rms) for vibratory driving or removal, then the Holder of this IHA must cease those activities prior to the animal entering the applicable Level B zone to avoid take. Activities cannot commence until the animal has left the Level B zone.

Mitigation Conclusions

NMFS has carefully evaluated the mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals.
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned.
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish,

have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving and pile removal or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving and pile removal, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/ disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant’s proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least

practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. WETA submitted a marine mammal monitoring plan as part of the IHA application. It can be found at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

- Physiological measurements in the presence of stimuli compared to

observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);

- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

WETA shall employ NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Central Bay Operations and Maintenance Facility Project. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. If a PSO observes a marine mammal within a ZOI that appears to be disturbed by the work activity, the PSO will notify the work crew to initiate shutdown measures.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (e.g., Zeiss, 10 × 42 power). Marine mammal visual monitoring shall be conducted from the best vantage point available, including the pier, breakwater, and adjacent docks within the harbor, to maintain an excellent view of the ZOIs and adjacent areas during the survey period. Monitors would be equipped with radios or cell phones for maintaining contact with work crews.

Data collection during marine mammal monitoring will consist of a count of all marine mammals by species, a description of behavior (if possible), location, direction of movement, type of construction that is occurring, time that pile replacement work begins and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as weather, visibility, temperature, tide level, current, and sea state would also be recorded.

Reporting Measures

WETA would be required to submit weekly monitoring reports to NMFS that summarize the monitoring results, construction activities, and environmental conditions.

A final monitoring report would be submitted to NMFS within 90 days after

completion of the construction work. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WETA would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require WETA to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of the construction site. WETA shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WETA finds an injured or dead marine mammal that is not in the vicinity of the construction area, WETA would report the same information as listed above to NMFS as soon as operationally feasible.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

As discussed above, in-water pile removal and pile driving (vibratory and impact) generate loud noises that could potentially harass marine mammals in the vicinity of WETA's proposed Central Bay Operations and Maintenance Facility Project.

Currently, NMFS uses 120 dB re 1 μ Pa and 160 dB re 1 μ Pa at the received levels for the onset of Level B harassment from non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. Table 3 summarizes the current NMFS marine mammal take criteria.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 μPa (cetaceans) 190 dB re 1 μPa (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 μPa (rms).
Level B Harassment	Behavioral Disruption (for non-impulse noise)	120 dB re 1 μPa (rms).

As explained above, ZOIs will be established that encompass the areas where received underwater SPLs exceed the applicable thresholds for Level B harassment. There will not be a zone for Level A harassment in this case, because the bubble curtain system will keep all underwater noise below the threshold for Level A harassment.

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal or driving. Expected marine mammal presence is determined by past observations and general abundance near the project area during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, this type of calculation is not applicable in this case, because the ZOI will be relatively small and there is no specific local

animal density for harbor seals or California sea lions. Based on observational data, the maximum number of harbor seals observed along the closest breakwater near the project vicinity ranges from 10 to 20 individuals. Observational data on California sea lions are not available, but they are generally less abundant than harbor seals; therefore, the number of harbor seals will be used to estimate impacts for both species.

While it is unlikely that 10 to 20 individuals would be present inside the ZOI at any one time, given the distance from the nearest haul-out site, as a worst-case, this analysis assumes that up to 20 individuals might be present.

For the Project, the total number of pile removal hours is estimated to not exceed 18 hours over 3 days, and the total number of pile driving hours is estimated to not exceed 60 hours over 10 days. Therefore, the estimated total number of days of activities that might impact marine mammals is 13 days. For the exposure estimate, it is assumed that

the highest count of harbor seals observed, and the same number of California sea lions, will be foraging within the ZOI and be exposed multiple times during the Project.

The calculation for marine mammal exposures for this Project is estimated by:

Exposure estimate = N * (10 days of pile driving activity + 3 days of pile removal activity), where:

N = # of animals potentially present = 20.

This formula results in the following exposure estimate:

Exposure estimate = 20 animals * 13 days = 260 animals.

Therefore, WETA is requesting authorization for Level B acoustical harassment of up to 260 harbor seals and up to 260 California sea lions due to pile removal and driving. A summary of the take estimates and the proportions of the stocks potentially affected is provided in Table 4.

TABLE 4—SUMMARY OF POTENTIAL MARINE MAMMAL TAKES AND PERCENTAGES OF STOCKS AFFECTED

	Estimated density	Estimated take by level B harassment	Abundance of stock	Percentage of stock potentially affected	Population trend
California sea lion	NA	260	396,750	0.06%	Stable.
Harbor seal	NA	260	30,196	0.86%	Stable.

Analysis and Determinations

Negligible Impact

Negligible impact is “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival” (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, NMFS must consider other

factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

WETA’s proposed Central Bay Operations and Maintenance Facility Project would involve pile removal and pile driving activities. Elevated underwater noises are expected to be generated as a result of these activities; however, these noises are expected to result in no mortality or Level A harassment and limited, if any, Level B harassment of marine mammals. WETA would use noise attenuation devices (*i.e.*, bubble curtains) during the impact

pile driving, thus eliminating the potential for injury (including PTS) and TTS from impact driving. For vibratory pile removal and pile driving, noise levels are not expected to reach the level that may cause TTS, injury (including PTS), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A harassment (including injury or PTS) or Level B harassment in the form of TTS from being exposed to in-water pile removal and pile driving associated with WETA’s construction project.

In addition, WETA’s proposed activities are localized and of short duration. The entire project area is limited to WETA’s Central Bay Operations and Maintenance Facility near Pier 3 in the City of Alameda. The entire Project would involve the

removal of 35 existing concrete piles and installation of a total of 61 steel piles ranging from 18 inches to 30 inches in diameter and 24 plastic piles of 18-inch diameter. The duration for pile removal is expected to be fewer than three days and the duration for pile driving is expected to be fewer than 10 days, for a total of 13 days of activity. The duration for removing each pile would be about 30 minutes, and the duration for driving each pile would be about 10 to 30 minutes for impact steel pile driving and about 10 to 20 minutes for plastic vibratory pile driving. These low-intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, the proposed mitigation and monitoring measures are expected to reduce potential exposures and behavioral modifications even further. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area. Therefore, the take resulting from the proposed Central Bay Operations and Maintenance Project is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival.

The Project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the "Anticipated Effects on Marine Mammal Habitat" section in the **Federal Register** notice (79 FR 55479; September 17, 2014). The project activities would not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range, but because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from WETA's Central Bay Operations and Maintenance Facility Project will have a negligible impact on the affected marine mammal species or stocks.

Small Number

Based on analyses provided above, it is estimated that approximately 260 California sea lions and 260 Pacific harbor seals could be exposed to received noise levels that could cause Level B behavioral harassment from the proposed construction work at the WETA Central Bay Operations and Maintenance Facility in Alameda, CA. These numbers represent approximately 0.06% and 0.86% of the stocks and populations of these species that could be affected by Level B behavioral harassment, respectively (see Table 4 above), which are small percentages relative to the total populations of the affected species or stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, which are expected to reduce the number of marine mammals potentially affected by the proposed action, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area, and thus no subsistence uses impacted by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from WETA's Central Bay Operations and Maintenance Facility project in Alameda, California. Therefore, A Finding of No Significant Impact (FONSI) was issued for this action. A copy of the EA and FONSI is available upon request.

Authorization

NMFS has issued an IHA to USCG for the potential harassment of small numbers of marine mammal species

incidental to its waterfront repair project at Station Monterey in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 19, 2015.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2015-03850 Filed 2-24-15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD660

Takes of Marine Mammals Incidental to Specified Activities; Seabird Research Activities in Central California, 2015–2016

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, we hereby give notification that the National Marine Fisheries Service has issued an Incidental Harassment Authorization (IHA) to Point Blue Conservation Science (Point Blue), to take marine mammals, by Level B harassment, incidental to conducting seabird and pinniped research activities in central California, January 2015 through January 2016.

DATES: Effective January 31, 2015, through January 30, 2016.

ADDRESSES: The public may obtain an electronic copy of the Point Blue's application, supporting documentation, the authorization, and a list of the references cited in this document by visiting: <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm>. In the case of problems accessing these documents, please call the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

The Environmental Assessment and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act of 1969, are also available at the same site.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS (301) 427-8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361

et seq.) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) We make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

We shall grant an authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Also, the authorization must set forth the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings. We have defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

We received an application on July 30, 2014, from Point Blue requesting the taking by harassment of small numbers of marine mammals incidental to conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River in central California. We determined the application complete and adequate on December 7, 2014.

Point Blue, along with partners Oikonos Ecosystem Knowledge, Point Reyes National Seashore with the National Park Service, and the Gulf of the Farallones National Marine Sanctuary would conduct this research under cooperative agreements with the U.S. Fish and Wildlife Service in

consultation with the Gulf of the Farallones National Marine Sanctuary.

The proposed research activities would occur for one year, January 31, 2015, through January 30, 2016, and would involve annual monitoring and censusing of seabird colonies; seabird nesting habitat observations; nesting burrows restoration; breeding elephant seals observations; and the periodic resupply of a field station.

These proposed activities would occur in the vicinity of pinniped haul out sites and could likely result in the incidental take of marine mammals. We anticipate take, by Level B Harassment only, of individuals of either California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), or Steller sea lions (*Eumetopias jubatus*) to result from the specified activity.

This is the organization's sixth request for an Authorization. To date, we have issued an Incidental Harassment Authorization (Authorization) to Point Blue (formerly known as PRBO Conservation Science) for the conduct of similar activities from 2007 to 2013 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012, 78 FR 66686, November 6, 2013).

Description of the Specified Activity

Overview

Point Blue proposes to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; observe breeding elephant and harbor seals; and resupply a field station annually in central California (*i.e.*, Southeast Farallon Island, West End Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River in Sonoma County).

The purpose of the seabird research is to continue a 30-year monitoring program of the region's seabird populations. Point Blue's long-term pinniped research program monitors pinniped colonies to understand elephant and harbor seal population dynamics and to contribute to the conservation of both species.

Dates and Duration

The Authorization would be effective from January 31, 2015 through January 30, 2016. Following is a brief summary of the dates and duration of the activities.

Seabird Research on Southeast Farallon Island: Daily observations of seabird colonies would occur at a

maximum frequency of three 15-minute visits. Daily observations of breeding common murre (*Uria aalge*) colonies would occur at a maximum frequency of a single five-hour visit. These activities usually involve one or two observers conducting daily censuses of seabirds or conducting mark/recapture studies of breeding seabirds on the island.

Field Station Resupply on Southeast Farallon Island: Resupply of the field station would occur once every two weeks at a maximum frequency of 26 visits annually. Resupply activities involve personnel approaching either the North Landing or East Landing by motorboat to offload supplies.

Pinniped Research in Central California: Surveys of breeding northern elephant seals on Southeast Farallon and Año Nuevo Islands, the coastline of Point Reyes Peninsula, San Francisco Bay, and the Russian River, would occur in early December and late February, annually. At least three researchers would visit the sites at a maximum frequency of five times per year.

Seabird Research and Field Supply on Año Nuevo Island: Researchers would monitor seabird burrow nesting habitat quality, conduct habitat restoration, and resupply the field station from April through August at a maximum frequency of 20 visits annually. Occasionally, researchers would also conduct intermittent visits to the island throughout the year. These activities involve two to three researchers accessing the island by motorboat.

Seabird Research on Point Reyes National Seashore: The National Park Service in collaboration with Point Blue monitors seabird breeding and roosting colonies; conducts habitat restoration; removes non-native plants; monitors intertidal areas; and maintains coastal dune habitat. Seabird monitoring usually involves one or two observers conducting the survey by small boats along the shoreline. Researchers would visit the site at a maximum frequency of 20 times per year.

Specified Geographic Region

Point Blue will conduct their research activities within the vicinity of pinniped haul out sites in the following locations:

South Farallones Islands: The South Farallon Islands consist of Southeast Farallon Island located at 37°41'54.32" N; 123° 0'8.33" W and West End Island. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie

within the waters of the Gulf of the Farallones National Marine Sanctuary.

Año Nuevo Island: Año Nuevo Island located at 37° 6'29.25" N; 122°20'12.20" W is one-quarter mile (402 meters (m)) offshore of Año Nuevo Point in San Mateo County, CA. The island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area.

Point Reyes National Seashore: Point Reyes National Seashore is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary.

San Francisco Bay: The main part of San Francisco Bay measures approximately 3 to 12 miles (5 to 20 km) wide east-to-west and between 48 miles (77 km) and 60 miles (97 km) north-to-south.

Russian River: The Russian River coastline stretches for approximately 55 miles just south of San Francisco. Starting at Lake Mendocino, the Russian River flows south through valleys in Mendocino and Sonoma County, and empties into the Pacific Ocean at Jenner, California.

Detailed Description of Activities

We outlined the purpose of Point Blue's activities in a previous notice for the proposed authorization (79 FR 76975, December 23, 2014). The proposed activities have not changed between the proposed authorization notice and this final notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, we refer the reader to the notice for the proposed authorization (79 FR 76975, December 23, 2014).

Comments and Responses

We published a notice of receipt of Point Blue's application and proposed Authorization in the **Federal Register** on December 23, 2014 (79 FR 76975). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that Point Blue carries out the required monitoring and mitigation measures as described in the notice of the proposed authorization (79 FR 76975, December 23, 2014) and the application. We have included all measures proposed in the notice of the proposed authorization (79 FR 76975, December 23, 2014) in the Authorization.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

The marine mammals most likely to be harassed incidental to conducting seabird and pinniped research at the proposed research areas are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent the eastern distinct population segment (DPS) of the Steller sea lion, which NMFS has removed from the list of threatened species under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), effective November 2013. The ESA does not categorize California sea lions, northern elephant seals, Pacific harbor seals as threatened or endangered and the MMPA categorizes these species as not depleted. On the other hand, despite the delisting of Steller sea lions as endangered under the ESA, NMFS still categorizes the species as a strategic stock and depleted species under the MMPA. The agency will consider designating the eastern stock of Steller sea lions as non-strategic and not depleted under the MMPA following review by the Alaska Scientific Review Group in 2014.

We refer the public to Carretta *et al.*, (2014) for general information on these species which we presented in the notice of the proposed authorization (79 FR 76975, December 23, 2014). The publication is available at: <http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf>.

Other Marine Mammals in the Proposed Action Area

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 1.24 miles (2 km) of the shoreline. Point Blue has not encountered California sea otters during the course of their seabird or pinniped research activities over the past five years. This species is managed by the U.S. Fish and Wildlife Service and we do not consider it further in this notice of issuance of an Authorization.

Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: (1) Noise generated by motorboat approaches and departures; (2) noise generated during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities, have the potential to cause California sea lions, Pacific harbor seals, northern elephant

seals, and Steller sea lions hauled out in areas within Southeast Farallon Island, West End Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals.

We expect that acoustic and visual stimuli resulting from the proposed motorboat operations and human presence has the potential to harass marine mammals. We also expect that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

We included a summary and discussion of the ways that the types of stressors associated with Point Blue's specified activities (*i.e.*, visual and acoustic disturbance) have the potential to impact marine mammals in a previous notice for the proposed authorization (79 FR 76975, December 23, 2014).

Vessel Strike: The potential for striking marine mammals is a concern with vessel traffic. However, it is highly unlikely that the use of small, slow-moving boats to access the research areas would result in injury, serious injury, or mortality to any marine mammal. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Point Blue's researchers will access areas at slow transit speeds in easily maneuverable boats negating any chance of an accidental strike.

Rookeries: No research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we do not expect mother and pup separation or crushing of pups during flushing.

The potential effects to marine mammals described in the notice for the proposed authorization (79 FR 76975, December 23, 2014) did not take into consideration the proposed monitoring and mitigation measures described later in this document (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections).

Anticipated Effects on Habitat

We considered these impacts in detail in the notice for the proposed authorization (79 FR 76975, December 23, 2014). Briefly, we do not anticipate that the proposed research activities would result in any significant or long-term effects on the habitats used by the marine mammals in the proposed area,

including the food sources they use (*i.e.*, fish and invertebrates). While we anticipate that the specified activity could potentially result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible. We do not consider behavioral modification to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

Point Blue has based the mitigation measures which they will implement during the proposed research, on the following: (1) Protocols used during previous Point Blue seabird research activities as required by our previous authorizations for these activities; and (2) recommended best practices in Richardson *et al.* (1995).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Point Blue and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Postpone beach landings on Año Nuevo Island until pinnipeds that may be present on the beach have slowly entered the water.

(2) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.

(3) Avoid visits to sites used by pinnipeds for pupping.

(4) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.

(5) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(6) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(7) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(8) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

(9) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(10) Have the lead biologist serve as an observer to evaluate incidental take.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS' evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to activities expected to

result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of Point Blue's proposed measures, we have determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth "requirements pertaining to the monitoring and reporting of such taking." The Act's implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an incidental take authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned later;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of potential stressor(s) associated with the action (*e.g.*, sound or visual stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on

individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

As part of its 2015–2016 application, Point Blue proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the incidental harassment authorization. The Point Blue researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

Point Blue has complied with the monitoring requirements under the previous authorizations for the 2007 through 2014 seasons. The results from previous Point Blue's monitoring reports support our findings that the proposed mitigation measures, which we also required under the 2007–2014 Authorizations provide the means of effecting the least practicable adverse impact on the species or stock.

Point Blue will submit a monitoring report on the January 31, 2014 through January 30, 2015 research period by April 2015. Upon receipt and review, we will post this annual report on our Web site at <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm>.

Proposed Reporting

Point Blue must submit a draft final report to NMFS' Office of Protected

Resources within 60 days after the conclusion of the 2016 field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization.

Point Blue will submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, within 30 days after receiving comments from NMFS on the draft final report. If Point Blue does not receive any comments from NMFS on the draft report, NMFS and Point Blue will consider the draft final report to be the final report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

NMFS proposes to authorize take by Level B harassment only for the proposed seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Acoustic (*i.e.*, increased sound) and visual stimuli generated during these proposed activities may have the potential to cause marine mammals in the harbor area to experience temporary, short-term changes in behavior.

Based on Point Blue's previous research experiences, with the same activities conducted in the proposed research area, and on marine mammal research activities in these areas, we estimate that approximately 9,871 California sea lions, 343 harbor seals, 196 northern elephant seals, and 106 Steller sea lions could be affected by Level B behavioral harassment over the course of the effective period of the proposed Authorization.

The authorized take differs from Point Blue's original request for California sea lions (10,092), northern elephant seals (261), harbor seals (526) and Steller sea lions (185). NMFS bases these new estimates on historical data from previous monitoring reports and anecdotal data for the same activities conducted in the proposed research area. In brief, for each species, we created a statistical model to derive an estimate of the average annual increase

of reported take based on a best fit regression analysis (*i.e.*, linear or polynomial regression) of reported take from 2007 to 2013. Next, we added the predicted annual increase in take to a baseline of take reported for 2013–2014 season to project the estimated take for each species for the 2015–2016 Authorization. We carried through the same predicted annual increase in take for future Authorizations (2014–2017) to obtain a mean projected take for each species. Last, we analyzed the reported take for each activity by calculating the upper bound of the 99 percent confidence interval of the mean reported take (2007–2013) and mean projected take (2014–2017) for each species. Our use of the upper confidence interval represents the best available information that supports our precautionary deliberation of how much take could occur annually.

There is no evidence that Point Blue's planned activities could result in injury, serious injury or mortality within the action area. Moreover, the required mitigation and monitoring measures will minimize further any potential risk for injury, serious injury, or mortality. Thus, we do not authorize any injury, serious injury or mortality. We expect all potential takes to fall under the category of Level B harassment only.

Encouraging and Coordinating Research

Point Blue will continue to coordinate monitoring of pinnipeds during the research activities occurring on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Point Blue conducts bone fide research on marine mammals, the results of which may contribute to the basic knowledge of marine mammal biology or ecology, or are likely to identify, evaluate, or resolve conservation problems.

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population level effects) forms the basis of a negligible impact finding.

In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A

harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, we consider:

- (1) The number of anticipated injuries, serious injuries, or mortalities;
- (2) The number, nature, and intensity, and duration of Level B harassment;
- (3) The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- (4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- (5) Impacts on habitat affecting rates of recruitment/survival; and
- (6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance, abandonment of the haulout area, injury, serious injury, or mortality:

- (1) The effects of the pinniped and seabird research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.
- (2) The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Point Blue conducted their pinniped and research activities.
- (3) There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers must delay ingress into the landing areas until after the pinnipeds present have slowly entered the water.
- (4) The limited access of Point Blue's researchers to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the pupping season.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Point Blue's proposed activities, and we do not authorize injury, serious injury or

mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area that is surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual monitoring counts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from Point Blue's seabird research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the proposed Authorization. Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haulout sites the day the researchers are present. For each species, these numbers are small numbers (each, less than or equal to two percent) relative to the population size. These incidental harassment numbers represent approximately 3.33 percent of the U.S. stock of California sea lion, 1.74 percent of the California stock of Pacific harbor seal, 0.16 percent of the California breeding stock of northern elephant seal, and 0.17 percent of the eastern distinct population segment of Steller sea lion.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals implicated by this action. Thus, NMFS

has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

On October 23, 2013 NMFS announced the removal of the eastern distinct population segment of Steller sea lions from the list of threatened species under the ESA. No marine mammal species listed under the ESA are anticipated to occur in the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In 2014, we prepared an Environmental Assessment (EA) analyzing the potential effects to the human environment from NMFS' issuance of a proposed Authorization to Point Blue for their seabird research activities. In January 2014, NMFS issued a Finding of No Significant Impact (FONSI) on the issuance of an Authorization for Point Blue's research activities in accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). Point Blue's proposed activities and impacts for 2015-2016 are within the scope of the 2014 EA and FONSI. NMFS has reviewed the 2014 EA and determined that there are no new direct, indirect, or cumulative impacts to the human and natural environment associated with the Authorization requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2014 FONSI.

Authorization

As a result of these determinations, we have issued an Authorization to Point Blue for the take of marine mammals incidental to proposed seabird and pinniped research activities, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: February 3, 2015.

Donna S. Wieting,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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BUREAU OF CONSUMER FINANCIAL PROTECTION

Compliance Bulletin—Treatment of Confidential Supervisory Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance Bulletin.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB) is issuing a compliance bulletin entitled “Treatment of Confidential of Supervisory Information” as a reminder that, with limited exceptions, persons in possession of confidential information, including confidential supervisory information (CSI), may not disclose such information to third parties.

DATES: This bulletin is effective February 25, 2015 and applicable beginning January 27, 2015.

FOR FURTHER INFORMATION CONTACT: Christopher Young, Managing Senior Counsel and Chief of Staff, (202) 435–7408, Office of Supervision Policy.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFPB issues this compliance bulletin as a reminder that, with limited exceptions, persons in possession of confidential information, including CSI, may not disclose such information to third parties.¹ More particularly, this bulletin:

1. Sets forth the definition of CSI;
2. Provides examples of CSI;
3. Highlights certain legal restrictions on the disclosure of CSI; and
4. Explains that private confidentiality and non-disclosure agreements (NDAs) neither alter the legal restrictions on the disclosure of CSI nor impact the CFPB’s authority to obtain information from covered persons² and service providers³ in the exercise of its supervisory authority.

¹ “Confidential information” means “confidential consumer complaint information, confidential investigative information, and confidential supervisory information, as well as any other CFPB information that may be exempt from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. 552(b). Confidential information does not include information contained in records that have been made publicly available by the CFPB or information that has otherwise been publicly disclosed by an employee with the authority to do so.” 12 CFR 1070.2(f). CSI, the focus of this bulletin, is but one type of confidential information. See 12 CFR 1070.2(i) (defining “confidential supervisory information”).

² “Covered person[s]” include “(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.” 12 U.S.C. 5481(6).

³ “Service provider” means “any person that provides a material service to a covered person in

II. Compliance Bulletin

The CFPB has supervisory authority over certain covered persons, including very large depository institutions, credit unions and their affiliates;⁴ certain nonbanks;⁵ and service providers⁶ (collectively, supervised financial institutions).⁷ Many supervised financial institutions became subject to federal supervision for the first time under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).⁸

Pursuant to authority granted under the Dodd-Frank Act,⁹ the CFPB has issued regulations that govern the use and disclosure of CSI.¹⁰ The CFPB expects all supervised financial institutions to know and comply with

connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—(i) participates in designing, operating, or maintaining the consumer financial product or service; or (ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes) The term ‘service provider’ does not include a person solely by virtue of such person offering or providing to a covered person—(i) a support service of a type provided to businesses generally or a similar ministerial service; or (ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.” 12 U.S.C. 5481(26).

⁴ 12 U.S.C. 5515(a).

⁵ Under 12 U.S.C. 5514, the CFPB has supervisory authority over all nonbank covered persons offering or providing three enumerated types of consumer financial products or services: (1) Origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans. 12 U.S.C. 5514(a)(1)(A), (D), (E). The CFPB also has supervisory authority over “larger participant[s] of a market for other consumer financial products or services,” as the CFPB defines by rule. 12 U.S.C. 5514(a)(1)(B), (a)(2). Additionally, the CFPB has the authority to supervise any nonbank covered person that it “has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond[,] . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.” 12 U.S.C. 5514(a)(1)(C).

⁶ 12 U.S.C. 5514(e), 5515(d).

⁷ “Financial institution” means “any person involved in the offering or provision of a ‘financial product or service,’ including a ‘covered person’ or ‘service provider,’ as those terms are defined by 12 U.S.C. 5481.” 12 CFR 1070.2(l). “Supervised financial institution” means “a financial institution that is or that may become subject to the CFPB’s supervisory authority.” 12 CFR 1070.2(q).

⁸ Public Law 111–203 (codified at 12 U.S.C. 5301 *et seq.*).

⁹ 12 U.S.C. 5512(c)(6)(A).

¹⁰ See 12 CFR part 1070. In addition to the confidentiality protections afforded by the CFPB’s regulation, CSI may also be subject to other laws regarding disclosure, including the bank examination or other privileges, privacy laws, and other restrictions.

the regulations governing CSI, and provides the following guidance to assist with such compliance.

A. Definition of CSI

Under the CFPB’s regulations, “confidential supervisory information” means:

- Reports of examination, inspection and visitation, non-public operating, condition, and compliance reports, and any information contained in, derived from, or related to such reports;

- Any documents, including reports of examination, prepared by, or on behalf of, or for the use of the CFPB or any other Federal, State, or foreign government agency in the exercise of supervisory authority over a financial institution, and any supervision information derived from such documents;

- Any communications between the CFPB and a supervised financial institution or a Federal, State, or foreign government agency related to the CFPB’s supervision of the institution;

- Any information provided to the CFPB by a financial institution to enable the CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services, or to assess whether an institution should be considered a covered person, as that term is defined by 12 U.S.C. 5481, or is subject to the CFPB’s supervisory authority; and/or
- Information that is exempt from disclosure pursuant to 5 U.S.C. 552(b)(8).¹¹

CSI does not include documents prepared by a financial institution for its own business purposes and that the CFPB does not possess.¹²

B. Examples of CSI

Supervised financial institutions and other persons that may come into possession of CSI should understand what constitutes CSI in order to comply with the applicable rules.¹³ Examples of CSI include, but are not limited to:

- CFPB examination reports and supervisory letters;
- All information contained in, derived from, or related to those documents, including an institution’s supervisory Compliance rating;

- Communications between the CFPB and the supervised financial institution related to the CFPB’s examination of the institution or other supervisory activities; and

- Other information created by the CFPB in the exercise of its supervisory authority.

¹¹ 12 CFR 1070.2(i).

¹² 12 CFR 1070.2(i)(2).

¹³ See generally 12 CFR 1070.

Thus, CSI includes any workpapers or other documentation that CFPB examiners have prepared in the course of an examination. CSI also includes supervisory information requests from the CFPB to a supervised financial institution, along with the institution's responses. In addition, any CFPB supervisory actions, such as memoranda of understanding between the CFPB and an institution, and related submissions and correspondence, are CSI.

C. Disclosure of Confidential Information Generally Prohibited

Subject to limited exceptions, supervised financial institutions and other persons in possession of CSI of the CFPB may not disclose such information.¹⁴

D. Exceptions to General Prohibition on Disclosure of CSI

There are certain exceptions to the general prohibition against disclosing CSI to third parties. A supervised financial institution may disclose CSI of the CFPB lawfully in its possession to:

- Its affiliates;
- Its directors, officers, trustees, members, general partners, or employees, to the extent that the disclosure of such CSI is relevant to the performance of such individuals' assigned duties;
- The directors, officers, trustees, members, general partners, or employees of its affiliates, to the extent that the disclosure of such CSI is relevant to the performance of such individuals' assigned duties;
- Its certified public accountant, legal counsel, contractor, consultant, or service provider.¹⁵

Supervised financial institutions may also in certain instances disclose CSI to others with the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending, or his or her delegatee (Associate Director).¹⁶ The recipient of CSI shall not, without the prior written approval of the Associate

Director, utilize, make, or retain copies of, or disclose CSI for any purpose, except as is necessary to provide advice or services to the supervised financial institution or its affiliate.¹⁷ Moreover, any supervised financial institution or affiliate disclosing CSI shall take reasonable steps as specified in the regulations to ensure that the recipient complies with the rules governing CSI.¹⁸

Confidential information made available by the CFPB pursuant to 12 CFR part 1070 remains the property of the CFPB. There are other important requirements relating to the disclosure of confidential information, including disclosure pursuant to third-party legally enforceable demands, such as subpoenas or Freedom of Information Act requests. Among a number of other requirements, a recipient of a demand for confidential information must inform the CFPB's General Counsel of the demand.¹⁹

E. NDAs Do Not Supersede Federal Legal Requirements

The CFPB recognizes that some supervised financial institutions may have entered into third-party NDAs that, in part, purport to: (1) Restrict the supervised financial institution from sharing certain information with a supervisory agency; and/or (2) require the supervised financial institution to advise the third party when the institution shares with a supervisory agency information subject to the NDA. However, such provisions in NDAs between supervised financial institutions and third parties do not alter or limit the CFPB's supervisory authority or the supervised financial institution's obligations relating to CSI.

A supervised financial institution should not attempt to use an NDA as the basis for failing to provide information sought pursuant to supervisory authority. The CFPB has the authority to require supervised financial institutions and certain other persons to provide it with reports and other information to conduct supervisory activities, pursuant to the Dodd-Frank Act.²⁰ Failure to provide information required by the CFPB is a violation of law for which the CFPB will pursue all available remedies.²¹

¹⁷ 12 CFR 1070.42(b)(3)(i).

¹⁸ 12 CFR 1070.42(b)(3)(ii).

¹⁹ 12 CFR 1070.47.

²⁰ 12 U.S.C. 5514, 5515.

²¹ See 12 U.S.C. 5536(a)(2) (making it unlawful for a supervised financial institution "to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the CFPB thereunder— (A) to permit access to or copying of records; . . . or (C) to make reports or provide information to the Bureau.").

In addition, a supervised financial institution may risk violating the law if it relies upon provisions of an NDA to justify disclosing CSI in a manner not otherwise permitted. As noted above, any disclosure of CSI outside of the applicable exceptions would require the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending (or his or her delegatee).²²

Supervised financial institutions should contact appropriate CFPB supervisory personnel with any questions regarding this Bulletin.

III. Regulatory Requirements

This compliance bulletin provides nonbinding guidance on matters including limitations on disclosure of CSI under applicable law. It is therefore exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act pursuant to 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²³ In addition, the CFPB has determined that this bulletin summarizes existing requirements and does not establish any new nor revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act.²⁴

Dated: February 2015.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2015-03791 Filed 2-24-15; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD-2015-OS-0021]

Proposed Collection; Comment Request

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Security Cooperation Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether

²² See 12 CFR 1070.42(b)(2)(ii).

²³ 5 U.S.C. 603(a), 604(a).

²⁴ 44 U.S.C. 3501 *et seq.*

¹⁴ See 12 CFR 1070.41(a) (providing that "[e]xcept as required by law or as provided in this part, no . . . person in possession of confidential information[] shall disclose such confidential information by any means (including written or oral communications) or in any format (including paper and electronic formats), to: (1) [a]ny person who is not an employee, contractor, or consultant of the CFPB; or (2) [a]ny CFPB employee, contractor, or consultant when the disclosure of such confidential information . . . is not relevant to the performance of the employee's, contractor's, or consultant's assigned duties"); see also 12 CFR 1070.42(b) (setting forth exceptions relating to the disclosure of "confidential supervisory information of the CFPB" which is "lawfully in [the] possession" of any "supervised financial institution").

¹⁵ 12 CFR 1070.42(b).

¹⁶ 12 CFR 1070.42(b)(2)(ii).

the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 27, 2015.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within the same electronic docket and downloaded for reviewing/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: The Defense Security Cooperation Agency (DSCA) (ATTN: David Frasher, 220 12th Street South, Suite 203, Arlington VA, 22202-5408 or call (703) 601-4459 or Defense Institute of Security Assistance Management (DISAM), ATTN: Donald McCormick, 2475 K Street, Wright-Patterson AFB, OH 45433-7803, or call Director of Academic Support, at 937-713-3340.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: The DISAM Information Technology Mission System (DISM) Collection; DISAM Form GSI-001 and

Student Registration Form; OMB Control Number 0704-XXXX.

Needs and Uses: The DISAM Information Technology Mission System (DISM): Is a web based portal designed to hold several web applications for the purposes of efficient administration of U.S. and international students, and the effective management of DISAM personnel and guest lecturers. The portal provides DISAM personnel the ability to submit travel request and travel arrangements. Finally, the web based portal uses a relational database to record, manage and report information about students, personnel, travel. Reports of annual training of Foreign nationals to Congress as required by 22 U.S. Code 2394 (Foreign Assistance Act (FAA)) and 22 U.S. Code 2770A (Arms Export Control Act (AECA)).

Affected Public: Individuals and Households.

Disam Student Registration Form:
Annual Burden Hours: 2388 hours.
Number of Respondents: 4775.
Responses per Respondent: 2.
Annual Responses: 9551.
Average Burden per Response: 15 minutes.

Frequency: On occasion.
 Disam Guest Speaker Form: (Still in development).
Annual Burden Hours: 62.
Number of Respondents: 249.
Responses per Respondent: 1.
Annual Responses: 249.
Average Burden per Response: 15 min.

Frequency: On occasion.
Average Totals:
Annual Burden Hours: 1884 hours.
Number of Respondents: 5024.
Responses per Respondent: 1.5.
Annual Responses: 7536.
Average Burden per Response: 15 min.

Respondents are contractor personnel, non-DOD U.S. Federal Government, Foreign Service nationals and industry students, guest speakers and lecturers involved in the Security Cooperation initiatives as prescribed by the President of the United States, Congress and Departments of State and Defense. Security Cooperation and Assistance programs as authorized by the Foreign Assistance Act (FAA), and the Arms Export Control Act (AECA) are required to be administered by qualified personnel receiving formal education through the Defense Institute of Security Assistance Management (DISAM) or other authorized Security Cooperation agencies. If the information collected on the student registration form is not collected, personnel looking to verify the qualifications of individuals in the

Security Cooperation workforce database on the SAN, DISAM Student Database or the DISAM Personnel Database would be unable to match personnel to training and ensure compliance with DepSecDef directive and federal law requiring the reporting of training of foreign nationals (ref. AECA). The DISAM Personnel Database in conjunction with the Travel Forms maintains records of the personnel TDY travel and reimbursement as required by federal law and DoD regulations.

Dated: February 19, 2015.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2015-03785 Filed 2-24-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD-2014-HA-0146]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 27, 2015.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571-372-0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Screening and Monitoring of DoD Personnel Deployed to Ebola Outbreak Areas; DD Form 2990, DD Form 2991; OMB Control Number 0720-0056.

Type of Request: Extension.
Number of Respondents: 1,200.
Responses per Respondent: 2.
Annual Responses: 2,400.
Average Burden per Response: 12 minutes.

Annual Burden Hours: 480.
Needs And Uses: The information collection requirement is necessary to ensure DoD personnel deployed in support of Operation UNITED ASSISTANCE are promptly evaluated for possible exposure(s) to the Ebola virus during deployment to, and within 12 hours prior to departing from, an Ebola outbreak country or region (West Africa). Ebola is a Quarantinable Communicable Disease as named in Executive Order 13295 and supported by several DoD regulations and Federal laws. This information will be used by

DoD medical and public health officials to (1) ensure Ebola exposure risk is evaluated, (2) proper prevention and quarantine efforts are implemented, (3) appropriate medical care is provided, (4) medical surveillance programs are robust and (5) the spread of Ebola beyond West Africa is minimized. The DoD has consulted with the Centers for Disease Control and Prevention, the Department of State, the Agency for International Development, and several Defense Agencies regarding disease control efforts and health surveillance in response to the public health emergency in West Africa. DoD has also specifically discussed these new information collections with representatives of the various Military Services, representing deploying military members who have participated in the development of the content of these forms.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet 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 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: February 20, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015-03906 Filed 2-24-15; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel); Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Judicial Proceedings since Fiscal Year 2012 Amendments Panel ("the Judicial Proceedings Panel" or "the Panel"). The meeting is open to the public.

DATES: A meeting of the Judicial Proceedings Panel will be held on Friday, March 13, 2015. The Public Session will begin at 9:00 a.m. and end at 5:00 p.m.

ADDRESSES: U.S. District Court for the District of Columbia, 333 Constitution Avenue NW, Courtroom #20, 6th floor, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Carson, Judicial Proceedings Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: whs.pentagon.em.mbx.judicial-panel@mail.mil Phone: (703) 693-3849. Web site: <http://jpp.whs.mil>.

SUPPLEMENTARY INFORMATION: This public meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150.

Purpose of the Meeting: In Section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), as amended, Congress tasked the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81; 125 Stat. 1404), for the purpose of developing recommendations for improvements to such proceedings. At this meeting, the Panel will consider the adequacy of the provision of compensation and restitution for victims of offenses under the UCMJ, and develop recommendations on expanding such compensation and restitution. Specifically, the Panel will consider

options for providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation; including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the UCMJ); and requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial. The Panel is interested in written and oral comments from the public, including non-governmental organizations, relevant to these issues or any of the Panel's tasks.

Agenda:

- 8:30 a.m.–9:00 a.m. Administrative Session (41 CFR 102–3.160, not subject to notice & open meeting requirements)
- 9:00 a.m.–10:00 a.m. DoD Overview of Compensation and Restitution (*public meeting begins*)
—*Speakers: Department of Defense subject matter experts*
- 10:00 a.m.–11:00 a.m. Economic Needs of Sexual Assault Victims and Barriers to Compensation
—*Speakers: Law school professors with recent scholarship on restitution and compensation for victims of sexual assault crimes*
- 11:00 a.m.–12:15 p.m. State Compensation Programs: History, Purposes, and Use by Military/Dependent Victims
—*Speakers: Representatives from national and state crime victim compensation associations*
- 12:15 p.m.–1:00 p.m. Lunch
- 1:00 p.m.–2:15 p.m. How Victims Can Obtain Restitution or Compensation for Crimes Under the Uniform Code of Military Justice
—*Speakers: Military Services' subject matter experts*
- 2:15 p.m.–4:45 p.m. Perspectives on Compensation and Restitution for Sexual Assault Victims
—*Speakers: Civilian and military practitioners, representatives from victim advocacy organizations*
- 4:45 p.m.–5:00 p.m. Public Comment
Availability of Materials for the Meeting: A copy of the March 13, 2015 meeting agenda or any updates to the agenda, to include individual speakers not identified at the time of this notice, as well as other materials presented related to the meeting, may be obtained at the meeting or from the Panel's Web site at <http://jpp.whs.mil>.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is

open to the public. Seating is limited and is on a first-come basis.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Julie Carson at whs.pentagon.em.mbx.judicial-panel@mail.mil at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Panel about its mission and topics pertaining to this public session. Written comments must be received by Ms. Julie Carson at least five (5) business days prior to the meeting date so that they may be made available to the Judicial Proceedings Panel for their consideration prior to the meeting. Written comments should be submitted via email to Ms. Carson at whs.pentagon.em.mbx.judicial-panel@mail.mil in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the Judicial Proceedings Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. If members of the public are interested in making an oral statement, a written statement must be submitted along with a request to provide an oral statement. Oral presentations by members of the public will be permitted between 4:45 p.m. and 5:00 p.m. on March 13, 2015 in front of the Panel. The number of oral presentations to be made will depend on the number of requests received from members of the public on a first-come basis. After reviewing the requests for oral presentation, the Chairperson and the Designated Federal Officer will, having determined the statement to be relevant to the Panel's mission, allot five minutes to persons desiring to make an oral presentation.

Committee's Designated Federal Officer: The Panel's Designated Federal Officer is Ms. Maria Fried, Judicial Proceedings Panel, 1600 Defense Pentagon, Room 3B747, Washington, DC 20301–1600.

Dated: February 20, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–03904 Filed 2–24–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Remember Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Remember Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Remember Subcommittee, please visit <http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter>.

DATES: The Remember Subcommittee will meet from 0900 a.m.–1000 a.m. on Thursday, March 12, 2015.

ADDRESSES: Women in Service to America Memorial, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the committee and the Remember Subcommittee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at renea.c.yates.civ@mail.mil, or by phone at 703–614–1248.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Remember Subcommittee is to review and provide recommendations on preservation and care for the marble components of the Tomb of the Unknown Soldier, including addressing the cracks in the large marble sarcophagus, the adjacent marble slabs,

and the disposition of the dye block already gifted to the Army.

Proposed Agenda: The subcommittee will review the current status of monument preservation as well as request for a Commemorative Monument to be placed at Arlington National Cemetery from the Vietnam Helicopter Association. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service to America Memorial is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the subcommittee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain

submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015-03860 Filed 2-24-15; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Honor Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Honor Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Honor Subcommittee, please visit <http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter>.

DATES: The Honor Subcommittee will meet from 10:00 a.m.–11:30 a.m. on Thursday, March 12, 2015.

ADDRESSES: Women in Service to America Memorial, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the committee and the Honor Subcommittee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at renea.c.yates.civ@mail.mil, or by phone at 703-614-1248.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102-3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including,

but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Honor Subcommittee is to review and provide recommendations to the parent committee on extending the future locations and availability of active burial gravesites at Arlington National Cemetery, veteran eligibility criteria, and master planning.

Proposed Agenda: The subcommittee will receive an update on the status of all major infrastructure and expansion projects. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service to America Memorial is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102-3.105(j) and 102-3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102-3.140d, the subcommittee is not obligated to allow the public to

speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2015-03861 Filed 2-24-15; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2014-ICCD-0165]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Report on Appeals Process RSA-722

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), 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 March 27, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2014-ICCD-0165 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* 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, Mailstop L-OM-2-2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Edward West, 202-245-6145.

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: Annual Report on Appeals Process RSA-722.

OMB Control Number: 1820-0563.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 80.

Total Estimated Number of Annual Burden Hours: 160.

Abstract: Pursuant to subsection 102(c)(8)(A) and (B) of the Rehabilitation Act of 1973 as amended by the Workforce Innovation and Opportunity Act the RSA-722 is needed to meet specific data collection requirements on the number of requests for mediations, hearings, administrative reviews and other methods of dispute resolution requested and the manner in which they were resolved. The information collected is used to evaluate the types of complaints made by

applicants and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

Dated: February 19, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015-03796 Filed 2-24-15; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2014-ICCD-0164]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Charter Schools Program (CSP) Grant Award Database

AGENCY: Office of Innovation and Improvement (OII), 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 March 27, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2014-ICCD-0164 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available. 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, Mailstop L-OM-2-2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection

activities, please contact Patricia Kilby-Robb, 202-260-2225.

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: Charter Schools Program (CSP) Grant Award Database.

OMB Control Number: 1855-0016.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 81.

Total Estimated Number of Annual Burden Hours: 139.

Abstract: This request is for an extension of OMB approval to collect data for the Charter Schools Program (CSP) Grant Awards Database. This current data collection is being coordinated with the EDFacts Initiative to reduce respondent burden and fully utilize data submitted by States and available to the U.S. Department of Education (ED). Specifically, under the current data collection, ED collects CSP grant award information from grantees (State agencies, charter management organizations, and some schools) to create a new database of current CSP-funded charter schools. Together, these data allow ED to monitor CSP grant performance and analyze data related to accountability for academic purposes,

financial integrity, and program effectiveness.

Dated: February 19, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015-03795 Filed 2-24-15; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2014-ICCD-0162]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; HBCU All Star Student Program

AGENCY: Office of the Secretary/Office of the Deputy Secretary (OS), 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 new information collection.

DATES: Interested persons are invited to submit comments on or before March 27, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2014-ICCD-0162 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available. 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, Mailstop L-OM-2-2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sedika Franklin, (202) 453-5630.

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: HBCU All Star Student Program.

OMB Control Number: 1894-New.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 105.

Total Estimated Number of Annual Burden Hours: 367.

Abstract: This program was designed to recognize current HBCU students for their dedication to academics, leadership and civic engagement. Nominees were asked to submit a nomination package containing a signed nomination form, unofficial transcripts, short essay, resume, and endorsement letter. Items in this package provide the tools necessary to select current HBCU students who are excelling academically and making differences in their community.

Dated: February 19, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015-03793 Filed 2-24-15; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2014-ICCD-0163]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Quarterly Cumulative Caseload Report

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), 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 March 27, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2014-ICCD-0163 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available. 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, Mailstop L-OM-2-2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Joan Ward, 202-245-7565.

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: Quarterly Cumulative Caseload Report.

OMB Control Number: 1820-0013.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 320.

Total Estimated Number of Annual Burden Hours: 320.

Abstract: State agencies that administer vocational rehabilitation programs provide key caseload data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and their program outcomes. The Rehabilitation Services Administration collects this information quarterly from states and reports it in the Annual Report to Congress on the Rehabilitation Act.

Dated: February 19, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015-03794 Filed 2-24-15; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2014-ICCD-0166]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 21st Century Community Learning Centers Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), 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 March 27, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2014-ICCD-0166 or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the www.regulations.gov site is not available. 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, Mailstop L-OM-2-2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Daryn Hedlund, 202-401-3008.

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: 21st Century Community Learning Centers Annual Performance Report.

OMB Control Number: 1810-0668.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 54.

Total Estimated Number of Annual Burden Hours: 2,433.

Abstract: The purpose of the 21st Century Community Learning Centers (21st CCLC) program, as authorized under title IV, part B, of the Elementary and Secondary Education Act, sections 4201 *et seq.*, (20 U.S.C. 7171 *et seq.*, attached to submission package), is to provide expanded academic enrichment opportunities for children attending low-performing schools. Tutorial services and academic enrichment activities are designed to help students meet local and state academic standards in subjects such as reading and math. In addition, 21st CCLC programs provide youth development activities, drug and violence prevention programs, technology education programs, art, music and recreation programs, counseling, and character education to enhance the academic component of the program. In support of this program, Congress appropriated nearly \$1.1 billion for 21st CCLC programs for fiscal year 2013. Consisting of public and nonprofit agencies, community- and faith-based organizations, local businesses, postsecondary institutions, scientific/cultural and other community entities, 4,077 subgrantees—operating 9,989 centers—provided academic and enrichment services and activities to over 1.7 million children.

Dated: February 19, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2015-03797 Filed 2-24-15; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), Office of Postsecondary Education, Department of Education.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

ACTION: Notice of an open (virtual) meeting and the opportunity to make third party comments.

Naciqi's Statutory Authority And Function: The NACIQI is established under Section 114 (d)(2)(B) of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

SUMMARY: This notice sets forth the schedule for the March 23, 2015, virtual meeting of NACIQI, and provides information to members of the public on registering for the meeting, and for submitting written comments and requests to make oral comments. The notice of this virtual meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(2)(B) of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. 1011c.

DATES: The NACIQI virtual meeting will be held on Monday, March 23, 2015, beginning at 1:00 p.m. and ending at 4:00 p.m., Eastern Time. The proposed agenda for this virtual meeting consists of discussion and final action on the draft NACIQI Policy Recommendations Report. The report may be accessed at: <http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2014-fall/naciqi-draft-recommendations-report-01012015.pdf>.

Meeting Registration: The deadline for registering to attend the virtual meeting is Monday, March 9, 2015. Registration space for the virtual meeting is limited. To register to attend the virtual meeting,

email your registration to ThirdPartyComments@ed.gov mailbox and enter "Registration for NACIQI" in the subject line of the message. In the body of the email message, please include your name, title, affiliation, mailing address, email address, and telephone number. All registrants will receive an email with the call-in number.

Submission of Written/Oral Comments Regarding the Committee's Policy Recommendations: Written comments must be received by March 9, 2015, in ThirdPartyComments@ed.gov mailbox and include the subject line "Written Comments: Policy Recommendations 2014". The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Please do not send material directly to the NACIQI members.

To request to make oral comments during the meeting, email your request to ThirdPartyComments@ed.gov mailbox and enter "Registration for NACIQI and Request to Make Oral Comments" in the subject line of the email message. In the body of the email message, please provide your name, title, affiliation, mailing address, email address, and telephone number as well as a brief explanation of no more than five sentences that summarize your anticipated comments.

A total of 30 minutes will be allotted for public comment. Six commenters will be selected on a first-come, first-served basis. Each commenter will be allotted no more than five minutes. The Department will inform all requesters of their selection status in advance of the meeting. Individuals who need accommodations for a disability in order to attend the virtual meeting should contact Patricia Howes at patricia.howes@ed.gov, or email ThirdPartyComments@ed.gov mailbox no later than March 9, 2015. The virtual meeting site is accessible to individuals with disabilities.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006-8129, telephone: (202) 219-7035, fax: (202) 502-7874, or email Carol.Griffiths@ed.gov.

Electronic Access to This Document: The official version of this document is

the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Section 114 (d)(2)(B) of the HEA of 1965, as amended, 20 U.S.C. 1011c.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2015-03612 Filed 2-24-15; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: EC11-119-001.
Applicants: Gabelli, Mario J., GGCP, Inc., GGCP Holdings, LLC, GAMCO Investors, Inc.

Description: Request for Reauthorization and Extension of Blanket Authorizations Under Section 203 of the Federal Power Act and Request for Expedited Consideration of Mario J. Gabelli, et al.

Filed Date: 2/12/15.

Accession Number: 20150212-5210.

Comments Due: 5 p.m. ET 3/5/15.

Docket Numbers: EC15-74-000.
Applicants: Quantum Choctaw Power, LLC.

Description: Application for Authorization of Disposition of Jurisdictional Facilities under FPA Section 203 of Quantum Choctaw Power, LLC.

Filed Date: 2/12/15.

Accession Number: 20150212-5217.

Comments Due: 5 p.m. ET 3/5/15.

Docket Numbers: EC15-75-000.

Applicants: Bluco Energy, LLC.
Description: Application Under Section 203 of Bluco Energy, LLC.
Filed Date: 2/12/15.

Accession Number: 20150212–5219.
Comments Due: 5 p.m. ET 3/5/15.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15–47–000.

Applicants: Shafter Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Shafter Solar, LLC.
Filed Date: 2/13/15.

Accession Number: 20150213–5145.
Comments Due: 5 p.m. ET 3/6/15.

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

Docket Numbers: ER13–80–005.

Applicants: Tampa Electric Company.

Description: Compliance filing per 35: OATT Order No. 1000 Amendment of Compliance Filing to be effective 1/1/2015.

Filed Date: 2/13/15.

Accession Number: 20150213–5065.
Comments Due: 5 p.m. ET 3/6/15.

Docket Numbers: ER13–86–005.

Applicants: Duke Energy Florida, Inc., Duke Energy Carolinas, LLC.

Description: Compliance filing per 35: Additional Enrollees Filing to be effective 1/1/2015.

Filed Date: 2/13/15.

Accession Number: 20150213–5073.
Comments Due: 5 p.m. ET 3/6/15.

Docket Numbers: ER13–104–006.

Applicants: Florida Power & Light Company.

Description: Compliance filing per 35: FPL Order No. 1000 Further Regional Compliance Filings to be effective 1/1/2015.

Filed Date: 2/13/15.

Accession Number: 20150213–5146.
Comments Due: 5 p.m. ET 3/6/15.

Docket Numbers: ER14–2518–002.

Applicants: New York Independent System Operator, Inc.

Description: Tariff Amendment per 35.17(b): Deficiency Response, request to change effective date—Outage States to be effective 5/1/2015.

Filed Date: 2/12/15.

Accession Number: 20150212–5198.
Comments Due: 5 p.m. ET 3/5/15.

Docket Numbers: ER15–838–001.

Applicants: AEP Texas Central Company.

Description: Tariff Amendment per 35.17(b): TCC-San Roman Wind I Interconnection Agreement Amendment to be effective 1/29/2015.

Filed Date: 2/13/15.

Accession Number: 20150213–5088.

Comments Due: 5 p.m. ET 3/6/15.

Docket Numbers: ER15–1033–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4093; Queue Y2–055 (WMPA) to be effective 1/14/2015.

Filed Date: 2/12/15.

Accession Number: 20150212–5171.

Comments Due: 5 p.m. ET 3/5/15.

Docket Numbers: ER15–1034–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement No. 3754; Queue No. Y3–036 to be effective 1/13/2015.

Filed Date: 2/12/15.

Accession Number: 20150212–5177.

Comments Due: 5 p.m. ET 3/5/15.

Docket Numbers: ER15–1035–000.

Applicants: Southern California Edison Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Three GIAs with Boomer Solar 8 LLC, Boomer Solar 22 LLC, Boomer Solar 14 LLC to be effective 2/14/2015.

Filed Date: 2/13/15.

Accession Number: 20150213–5001.

Comments Due: 5 p.m. ET 3/6/15.

Docket Numbers: ER15–1036–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits 4th Quarter 2014 Capital Budget Report.

Filed Date: 2/12/15.

Accession Number: 20150212–5211.

Comments Due: 5 p.m. ET 3/5/15.

Docket Numbers: ER15–1037–000.

Applicants: Wabash Valley Power Association, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amendment to Section 3.002.001.001—Amended T&LF Agreement to be effective 1/1/2015.

Filed Date: 2/13/15.

Accession Number: 20150213–5074.

Comments Due: 5 p.m. ET 3/6/15.

Docket Numbers: ER15–1038–000.

Applicants: Duke Energy Indiana, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amended TL&F Agreement to be effective 1/1/2015.

Filed Date: 2/13/15.

Accession Number: 20150213–5075.

Comments Due: 5 p.m. ET 3/6/15.

Docket Numbers: ER15–1039–000.

Applicants: Homer City Generation, L.P.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Homer City Offer of Settlement to be effective 2/12/2015.

Filed Date: 2/13/15.

Accession Number: 20150213–5090.

Comments Due: 5 p.m. ET 3/6/15.

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

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

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

Dated: February 13, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–03759 Filed 2–24–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0028; FRL–9922–33–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Calciners and Dryers in Mineral Industries (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), “NSPS for Calciners and Dryers in Mineral Industries (40 CFR part 60, subpart UUU) (Renewal)” (EPA ICR No. 0746.09, OMB Control No. 2060–0251), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 2014, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor and a person is not required to respond to a

collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0028, to: (1) EPA online using www.regulations.gov (our preferred method), or by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: Respondents are owners or operators of calciners and dryers at mineral processing plants that either process or produce any of the following minerals and their concentrates or any mixture of which the majority is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite. Particulate matter is the pollutant regulated under this subpart. Feed and product conveyors are not considered part of the affected facility. Facilities subject to NSPS Subpart LL,

Metallic Mineral Processing Plants, are not subject to these standards. There are additional processes and process units at mineral processing plants listed at section 60.730(b) which are not subject to the provisions of this subpart.

In general, all NSPS standards require initial notification reports, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS. Any owner/operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

Form Numbers: None.

Respondents/affected entities: Owners or operators of calciners and dryers at mineral processing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart UUU).

Estimated number of respondents: 167 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 6,436 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$738,649 (per year), which includes \$108,550 in either annualized capital or operation & maintenance costs or both.

Changes in the Estimates: There is an increase of two hours in the total estimated burden as currently identified in the OMB Inventory of Approved ICR Burdens. This increase is not due to any program changes. In the previous ICR, the burden associated with writing the "notification of physical or operation change" was incorrectly calculated with zero respondents. In this ICR, it was corrected to one respondent.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2015–03866 Filed 2–24–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0056; FRL–9923–08–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR part 63, subpart II) (Renewal)" (EPA ICR No. 1712.09, OMB Control No. 2060–0330) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 2014, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0056, to (1) EPA online using www.regulations.gov (our preferred method), by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of

Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The respondents are owners or operators of shipbuilding and ship repair facilities. Operations covered include: primer and top coat application in manufacturing processes and in ship repair processes. Owners or operators of shipbuilding and ship repair facilities are required to report startup, initial performance test, and retest information. Facilities will also periodically report emission exceedances, changes to equipment, and comply with other requirements of the NESHAP.

Form Numbers: None.

Respondents/affected entities: Owners or operators of shipbuilding and ship repair facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart II).

Estimated number of respondents: 56 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 28,594 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$2,799,388 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in the Estimates:

There is no change of hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015-03891 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2014-0047; FRL-9923-61-OE1]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Municipal Solid Waste Landfills (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Municipal Solid Waste Landfills (40 CFR part 60, subpart WWW) (Renewal)" (EPA ICR No. 1557.09, OMB Control No. 2060-0220) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0047, to (1) EPA online using www.regulations.gov (our preferred method), by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of

Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: These regulations apply to MSW landfills for which construction, modification, or reconstruction commences on or after May 30, 1991. A MSW landfill is an entire disposal facility in a contiguous geographical space where household waste is placed in or on. An MSW landfill may also receive other types of RCRA Subtitle D wastes (§ 257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned, and may be a new landfill, an existing landfill, or a lateral expansion. This information is being collected to assure compliance with 40 CFR part 60, subpart WWW.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS. Any owner/operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records.

Form Numbers: None.

Respondents/affected entities: Owners or operators of municipal solid waste landfills for which construction, modification, or reconstruction commences on or after May 30, 1991.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart WWW).

Estimated number of respondents: 195 (total).

Frequency of response: Initially, occasionally, quarterly and annually.

Total estimated burden: 111,471 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$11,677,667 (per year), includes \$764,400 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved ICR Burdens. The change resulted from incorporating comments received, addressing respondent activities that were not included in the previous ICR and increased the burden estimate for activities that were already included.

There is also an increase in the total estimated Capital/Startup and O&M costs. This increase occurred as a result of incorporating comments received, which stated that the previous ICR did not include the purchase price and O&M costs of three additional devices that respondents are required to use.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015-03867 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2014-0033; FRL-9923-60-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Petroleum Refineries (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Petroleum Refineries (40 CFR part 60, subpart J) (Renewal)" (EPA ICR No. 1054.12, OMB Control No. 2060-0022) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May

27, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before *March 27, 2015*.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0033, to (1) EPA online using www.regulations.gov (our preferred method), by email to doctet.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The affected sources are (1) fluid catalytic cracking unit (FCCU) catalyst regenerator or fuel gas combustion device (FGCD) other than a flare that commenced construction, reconstruction or modification after June 11, 1973 and on or before May 14, 2007; (2) FGCD fuel gas combustion device that is also a flare that commenced construction, reconstruction or modification after

June 11, 1973 and on or before June 24, 2008; or (3) any Claus sulfur recovery plant which commenced construction, reconstruction or modification after October 4, 1976 and on or before May 14, 2007. Units that are constructed, reconstructed or modified after the end date of Subpart J applicability are subject to the requirements under regulations at 40 CFR part 60, subpart Ja. At the time of this ICR renewal, all refinery flares are complying with the NSPS Subpart Ja requirements.

Form Numbers: None.

Respondents/affected entities: Petroleum refineries.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart J).

Estimated number of respondents: 150 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 15,784 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$2,264,370 (per year), includes \$719,100 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the respondent labor hours in this ICR compared to the previous ICR because the 2012 rule amendments did not require additional monitoring, recordkeeping and reporting requirements under NSPS J. Modified or reconstructed sources under NSPS Subpart J would trigger NSPS Subpart Ja applicability.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015-03868 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2010-0162; FRL-9922-19-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "Greenhouse

Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles” (EPA ICR No. 2394.03, OMB Control No. 2060-0678), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 53190) on September 8, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number No. EPA-HQ-OAR-2010-0162, to (1) EPA online using www.regulations.gov (our preferred method), by email to a-and-r-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Fakhri Hamady, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 2000 Traverwood Dr., Ann Arbor, MI 48105; telephone number: 734-214-4330; fax number: 734-214-4869; email address: hamady.fakhri@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For

additional information about EPA’s public docket, visit <http://www.epa.gov/dockets>.

Abstract: Under Title II of the Clean Air Act (CAA) (42 U.S.C. 7521 *et seq.*), EPA issues certificates of conformity for motor vehicle designs and engines that comply with applicable emission standards set under section 202(a)(1) of the CAA, such as those for CO₂, N₂O, and CH₄ in the final regulation. Under 49 U.S.C. 32902, NHTSA is mandated to require manufacturers comply with fuel economy and consumption standards. Manufacturers will submit applications to certify their products and respond to the information collection activities detailed in the HD National Program. They will also submit reports, conduct compliance testing, label certified vehicles, provide final year-end reports and retain records of information.

Manufacturer test results will be used by EPA to perform confirmatory testing on a sufficient number of engines and vehicles to confirm manufacturer-reported results. EPA’s emission certification programs and NHTSA’s fuel efficiency programs are statutorily mandated. EPA does not have discretion to cease these functions under Section 206(a) of the CAA (42 U.S.C. 7521).

Form Numbers: None.

Respondents/affected entities: Manufacturers of Medium- and Heavy-Duty Engines and Vehicles; owners of heavy-duty truck fleets.

Respondent’s obligation to respond: Mandatory (42 U.S.C. 7521) (40 CFR 1036.730 and 1037.730).

Estimated number of respondents: 34 (total).

Frequency of response: Quarterly, Annually, On Occasion.

Total estimated burden: 41,305 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: \$4,565,145 (per year), includes \$1,458,333 annualized capital and operation & maintenance costs.

Changes in Estimates: There is no change of hours in the total estimated burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015-03890 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2014-0026; FRL-9922-96-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Metal Coil Surface Coating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), “NSPS for Metal Coil Surface Coating (40 CFR part 60, subpart TT) (Renewal)” (EPA ICR No. 0660.12, OMB Control No. 2060-0107) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 2014, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0026, to (1) EPA online using www.regulations.gov (our preferred method), by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A,

Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, EPA William Jefferson Clinton West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The New Source Performance Standards (NSPS) for Metal Coil Surface Coating (40 CFR part 60, subpart TT) were: Proposed on January 5, 1981; promulgated on November 1, 1982; and amended on June 24, 1986 and October 17, 2000. These regulations apply to the following surface coating lines in the metal coil surface coating industry: Each prime coat operation; each finish coat operation; and each prime and finish coat operation cured simultaneously, where the finish coat is applied wet-on-wet over the prime coat. These regulations apply to facilities commencing construction, modification, or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart TT.

In general, all NSPS standards require initial notification reports, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Any owner/operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the U.S. Environmental Protection Agency (EPA) regional office.

Form Numbers: None.

Respondents/affected entities: Owners and operators of primary copper smelter.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart TT).

Estimated number of respondents: 158 (total).

Frequency of response: Initially, occasionally, quarterly, and semiannually.

Total estimated burden: 15,643 hours (per year). Burden is defined as 5 CFR 1320.3(b).

Total estimated cost: \$1,863,362 (per year), includes \$331,800 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015-03865 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OA-2006-0278; FRL-9923-50-OA]

Proposed Information Collection Request; Comment Request; Participation by Disadvantaged Business Enterprises in Procurements Under EPA Financial Assistance Agreements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements (Renewal)" (EPA ICR No. 2047.05, OMB Control No. 2090-0030) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2015. 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.

DATES: Comments may be submitted on or before April 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OA-2006-0278 online using www.regulations.gov (our preferred method), by email to oei.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Teree Henderson, Office of Small Business Programs, (mail code: 1230T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-566-2222; fax number: 202-566-0548; email address: Henderson.Teree@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for

review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA currently requires an entity to be certified in order to be considered a Minority Business Enterprise (MBE) or Women's Business Enterprise (WBE) under EPA's Disadvantaged Business Enterprise (DBE) Program. To qualify as an MBE or WBE under EPA's programs an entity must establish that it is owned and/or controlled by socially and economically disadvantaged individuals who are of good character and are citizens of the United States. The EPA DBE Program also includes contract administration requirements designed to prevent unfair practices that adversely affect DBEs.

Form Numbers: 6100-1a, 6100-1b, 6100-1c, 6100-1d, 6100-1e, 6100-1f, 6100-1g, 6100-1h, 6100-1i, 6100-2, 6100-3, and 6100-4.

Respondents/Affected Entities: Private Sector.

Respondent's Obligation to Respond: Required to obtain or retain a benefit per 40 CFR 33, Subpart B and 40 CFR 33, Subpart E.

Estimated Number of Respondents: 1,865 (total).

Frequency of Response: Certification: On occasion.

Total Estimated Burden: 11,614 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total Estimated Cost: \$372,817.43 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of \$10,104 in the total estimated cost which reflects updated wage rates as determined by the Department of Labor. There are no changes to the total estimated respondent burden. EPA is currently performing a comprehensive review of the DBE Rule which is scheduled to be completed by September 30, 2015. The ICR will be revised in accordance with lessons learned from this review with a focus on maximizing practical utility and minimizing public burden associated with collection.

Dated: February 5, 2015.

Kimberly Patrick,

Director, Office of Small Business Programs.
[FR Doc. 2015-03918 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2014-0096; FRL-9923-49-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Iron and Steel Foundry Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Iron and Steel Foundry Area Sources (40 CFR part 63, subpart ZZZZZ) (Renewal)" (EPA ICR No. 2267.04, OMB Control No. 2060-0605), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 2014, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0096, to: (1) EPA online using www.regulations.gov (our preferred method), by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of

Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit: <http://www.epa.gov/dockets>.

Abstract: The NESHAP for Iron and Steel Foundry Area Sources applies to either owners or operators of any existing or new iron or steel foundry that is an area source of hazardous air pollutant (HAP) emissions. Research and development facilities are not covered by the rule. Foundries covered by the rule would not be required to obtain a Title V operating permit. Small iron and steel foundries are required to comply with pollution prevention management practices for scrap materials, the removal of mercury switches, and binder formulations. Large iron and steel foundries are required to comply with the same pollution prevention management practices as small foundries in addition to emissions limitations for melting furnaces and foundry operations. Owners or operators must submit an initial notification report that the facility is subject to the rule, notification of performance test, notification of compliance status (including results of performance tests and other initial compliance demonstrations), and the semiannual compliance report.

Form Numbers: None.

Respondents/affected entities: Iron and steel foundries.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart ZZZZZ).

Estimated number of respondents: 427 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 7,893 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$772,735 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most-

recently approved ICR is due to several changes. This ICR adds burden requirements to repeat certain performance tests (PM tests for large foundries and opacity tests for all foundries), and corrects the average number of respondents per year.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015-03902 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2014-0068; FRL-9923-46-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHP for Primary Lead Smelters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHP for Primary Lead Smelters (40 CFR part 63, subpart TTT) (Renewal)" (EPA ICR No. 1856.10, OMB Control No. 2060-0414) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OECA-2014-0068, to (1) EPA online using www.regulations.gov (our preferred method), by email to docket.oeca@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB via email to oira_submission@omb.eop.gov. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-2970; fax number: (202) 564-0050; email address: yellin.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The NESHP is applicable to primary lead processing facilities that are engaged in the production of lead metal from lead sulfide ore concentrate. The final amendment establishes new emission limits, revises testing, reporting, and recordkeeping requirements. Sources subject to the NESHP are required to comply with the stack testing, monitoring, reporting, and recordkeeping requirements of the standard.

Form Numbers: None.

Respondents/affected entities: Owners and operators of primary lead smelting facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart TTT).

Estimated number of respondents: 1 (total).

Frequency of response: Initially, quarterly and semiannually.

Total estimated burden: 6,265 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$782,379 (per year), includes \$169,000 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an overall decrease in the respondent and Agency burden and cost from the OMB Inventory of Approved Burdens. The currently approved burden is the cumulative burden and cost from EPA

ICR Number 1856.06 (existing rule) and EPA ICR Number 1856.08 (2011 amendment). In this ICR renewal, we have combined the two ICRs to reflect current rule requirements and removed duplicate items. In addition, this ICR renewal reflects a decrease in the number of respondents from two to one since EPA ICR Number 1856.06. We have assumed that there are an estimated one respondent subject to NSPS Subpart TTT since rule is still in effect. These changes result in an apparent decrease in labor hours and costs.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015-03901 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2014-0446; FRL-9922-66-OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Certification of Pesticide Applicators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "Certification of Pesticide Applicators (Renewal)" (EPA ICR No. 0155.12, OMB Control No. 2070-0029) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed revision of the ICR, which is currently approved through February 28, 2015. Public comments were previously requested via the **Federal Register** (79 FR 43039) on July 24, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 27, 2015.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OPP-2014-0446, to (1) EPA online using www.regulations.gov (our

preferred method), by email to *OPP_Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lily G. Negash, Office of Pesticide Programs, Field & External Affairs Division, 7605P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703-347-8515; fax number: 703-305-5884; email address: *negash.lily@epa.gov*.

SUPPLEMENTARY INFORMATION:

Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The Environmental Protection Agency (EPA) administers certification programs for pesticide applicators under section 11 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA allows EPA to classify a pesticide as "restricted use" if the pesticide meets certain toxicity or risk criteria. Due to the potential of improperly applied restricted use pesticides (RUPs) to harm human health or the environment, pesticides under this classification may be purchased and applied only by "certified applicators" or by persons under the direct supervision of certified applicators. The completion of a certification program or test is required in order to become a certified applicator.

Personally identifying information (PII) is collected in the process of certifying individuals to apply RUPs as private or commercial applicators. This information is collected to differentiate between individuals sharing the same names and is subject to Agency-wide

security requirements governing all Privacy Act database systems at EPA.

Form Numbers: EPA Form 8500-17 and EPA Form 8500-17-N.

Respondents/affected entities: Registrants, commercial and private applicators, and dealers of restricted use pesticides; Indian tribes and State regulators.

Respondent's obligation to respond: Mandatory (FIFRA Sections 3 & 11).

Estimated number of respondents: 421,000 (total).

Frequency of response: On occasion.

Total estimated burden: 1,320,254 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$42,637,865 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 415 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This net decrease is due to EPA's updates to burden estimates, addition of a recently-implemented optional, voluntary offering, and a change in the number of entities whose certification programs are directly overseen by EPA. This change is both an adjustment and the result of a program change.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2015-03864 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9923-51-OA]

Notification of a Public Teleconference of the Great Lakes Advisory Board

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces a teleconference of the Great Lakes Advisory Board (Board). The purpose of this teleconference is to discuss the Great Lakes Restoration Initiative covering (GLRI) FY15-19 and other relevant matters.

DATES: The teleconference will be held Thursday, March 19, 2015 from 9 a.m. to 11 a.m. Central Time, 10 a.m. to 12 p.m. Eastern Time. An opportunity will be provided to the public to comment.

ADDRESSES: The public teleconference will be held by teleconference only. The teleconference number is: (877) 744-6030; Participant code: 83810127.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Rita Cestaric, Designated Federal Officer (DFO), by email at *Cestaric.Rita@epa.gov*. General information on the GLRI and the Board can be found at <http://www.glri.us> under the "Public Engagement" tab.

SUPPLEMENTARY INFORMATION:

Background: The Board is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. EPA established the Board in 2013 to provide independent advice to the EPA Administrator in her capacity as Chair of the federal Great Lakes Interagency Task Force (IATF). The Board conducts business in accordance with FACA and related regulations.

The Board consists of 16 members appointed by EPA's Administrator in her capacity as IATF Chair. Members serve as representatives of state, local and tribal government, environmental groups, agriculture, business, transportation, foundations, educational institutions, and as technical experts.

Availability of Meeting Materials: The agenda and other materials in support of the teleconference will be available on the GLRI Web site at <http://www.glri.us> under the "Public Engagement" tab in advance of the teleconference.

Procedures for Providing Public Input: Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the Board. Input from the public to the Board will have the most impact if it provides specific information for the Board to consider. Members of the public wishing to provide comments should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public meeting will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by March 17, 2015 to be placed on the list of public speakers for the meeting.

Written Statements: Written statements must be received by March 17, 2015 so that the information may be made available to the Board for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: one each

with and without signatures because only documents without signatures may be published on the GLRI Web page.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least seven days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 12, 2015.

Cameron Davis,

Senior Advisor to the Administrator.

[FR Doc. 2015-03916 Filed 2-24-15; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2014-0888; FRL-9921-65]

Notice of Receipt of Requests for Amendments To Terminate Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of request for amendments by registrants to terminate uses in certain pesticide registrations. FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: Unless a request is withdrawn by March 27, 2015 for registrations for which the registrant requested a waiver of the 180-day comment period, EPA

expects to issue orders terminating these uses. The Agency will consider withdrawal requests postmarked no later than March 27, 2015. Comments must be received on or before March 27, 2015, for those registrations where the 180-day comment period has been waived.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2014-0888, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001. Written Withdrawal Request, ATTN: Christopher Green, Information Technology and Resources Management Division (7502P).
- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Mark Hartman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-5440; email address: hartman.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. What action is the agency taking?

This notice announces receipt by the Agency of applications from registrants to terminate uses in certain pesticide products registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses terminated.

TABLE 1—REQUESTS FOR AMENDMENTS TO TERMINATE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA registration no.	Product name	Active ingredient	Use to be terminated
352-690	DuPont Mankocide Fungicide/ Bactericide.	Mancozeb & Copper hydroxide	Turf, Ornamental plants & Non-bearing citrus.
464-660	Bioban CS-1135 Antimicrobial Agent	4,4-Dimethyloxazolidine	Paints, Inks, Emulsions, Adhesives (Non-Food Contact), Metalworking Fluids, Die-Cast Lubricants, Mold-Release Agents, Consumer, Household & Institutional Products, Mineral Slurries & Surfactants.
1624-120	Borogard ZB	Zinc borate	Paints and coatings.
39967-118	Veriguard OD	Dazomet & o-Phenylphenol (No Inert use).	Arts, Crafts Latex, Finger Paints, Paints, Coating, Inks & Dyes.
71368-61	Imidacloprid Technical	Imidacloprid	Terrestrial Nonfood Crop, Domestic Indoor & Outdoor: Companion Animals.
81598-9	Rotam Methomyl Technical	Methomyl	Barley, Oats & Rye.
83100-27	Rotam Methomyl 29LV Insecticide	Methomyl	Barley, Oats & Rye.

TABLE 1—REQUESTS FOR AMENDMENTS TO TERMINATE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA registration no.	Product name	Active ingredient	Use to be terminated
83100-28	Rotam Methomyl 90SP Insecticide	Methomyl	Barley, Oats & Rye.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, EPA expects to issue orders terminating all of these uses. Users of these pesticides or anyone else

desiring the retention of a use should contact the applicable registrant directly during this 30-day period. Table 2 of this unit includes the names and addresses of record for all

registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO TERMINATE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company name and address
352	E. I. Du Pont De Nemours and Company, 1007 Market Street, Wilmington, DE 19898-0001.
464	The Dow Chemical Co., 1500 E. Lake Cook Road, Buffalo Grove, IL 60089.
1624	U.S. Borax, Inc., Agent Name: Delta Analytical Corporation, 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904.
39967	Lanxess Corporation, 111 RIDC West Park Drive, Pittsburgh, PA 15275-1112.
71368	Nufarm, Inc., 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
81598	Rotam Limited, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.
83100	Rotam Agrochemical Company, Ltd., Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.

III. What is the agency’s authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the EPA Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use termination must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before March 27, 2015, for the requests that the registrants requested to waive the 180-day comment period. This written withdrawal of the request for use termination will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous use termination action, the effective date of termination and all other provisions of any earlier termination action are controlling.

Authority: 7 U.S.C. 136 *et seq.*

Dated: February 10, 2015.
Mark A. Hartman,
Director, Information Technology and Resources Management Division, Office of Pesticide Programs.
 [FR Doc. 2015-03926 Filed 2-24-15; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1154]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the

information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 27, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

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

SUPPLEMENTARY INFORMATION:
OMB Control Number: 3060-1154.
Title: Commercial Advertisement Loudness Mitigation (“CALM”) Act; General Waiver Requests.
Form Number: Not applicable.
Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 20 respondents and 20 responses.

Frequency of Response: On occasion reporting requirement.

Estimated Time per Response: 20 hours.

Total Annual Burden: 400 hours.

Total Annual Cost to Respondents: \$12,000.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i), 303(r) and 621.

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents, but, in accordance with the Commission's rules, 47 CFR 0.459, a station/MVPD may request confidential treatment for financial information supplied with its waiver request.

Privacy Impact Assessment: No impact(s).

Needs and Uses: TV stations and MVPDs may file general waiver requests to request waiver of the rules implementing the CALM Act for good cause. The information obtained by general waiver requests will be used by Commission staff to evaluate whether grant of a waiver would be in the public interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015-03844 Filed 2-24-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[3060-0806]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning:

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 27, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email Nicholas_A_Fraser@omb.eop.gov; and to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <<http://www.reginfo.gov/public/do/PRAMain>>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0806.

Title: Universal Service—Schools and Libraries Universal Service Program, FCC Forms 470 and 471.

Form Numbers: FCC Forms 470 and 471.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, and state, local or tribal government public institutions.

Number of Respondents and Responses: 82,000 respondents, 82,000 responses.

Estimated Time per Response: 3 hours to fill out FCC Form 470 and 4 hours to fill out the FCC Form 471 plus 0.5 hours for each form for the ten-year recordkeeping requirement.

Frequency of Response: On occasion, annual reporting, and recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C.s 151-154, 201-205, 218-220, 254, 303(r), 403, and 405.

Total Annual Burden: 334,000 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no assurance of confidentiality provided to respondents concerning this information collection. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: FCC Forms 470 and 471 collect the information the Commission and the Universal Service Administrative Company (USAC) need to administer the schools and libraries universal service mechanism (informally known as the E-rate program), determine if entities are eligible for funding pursuant to the schools and libraries support mechanism, determine the amount of support entities seeking funding are eligible to receive, determine if entities are complying with the Commission's rules, and prevent waste, fraud, and abuse. The forms collect specific information to establish that economically disadvantaged schools and rural schools receive a greater share of E-rate program funding based on the percentage of students eligible in that school district for the national school lunch program (NSLP) (or other acceptable indicators of economic disadvantage determined by the Commission). The student poverty level needed to determine discounts for

libraries are based on the NSLP information for the school district nearby. In the *E-rate Modernization Order*, among other things, the Commission took steps to streamline the application process, provide exemptions from competitive bidding, implement a “district-wide” discount calculation mechanism, establish budgets for internal broadband connectivity, and extend the document retention period to ten years. FCC Forms 470 and 471 execute these changes for the E-rate application process and enable the Commission to collect data to facilitate measurement of progress towards the adopted performance goals established in the *E-rate Modernization Order*.

In addition, this collection is necessary to allow the Commission to evaluate the extent to which the E-rate program is meeting the statutory objectives specified in section 254(h) of the 1996 Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2015-03845 Filed 2-24-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984.

Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (www.fmc.gov) or by contacting the Office of Agreements at (202) 523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 012288-001.

Title: Hoegh/NYK Atlantic/Pacific Space Charter Agreement.

Parties: Hoegh Autoliners AS and Nippon Yusen Kaisha.

Filing Party: Joshua Stein, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment adds the trade between the U.S. West Coast, on the one hand, and China, South Korea, and Japan, on the other hand, to the geographic scope of the agreement, revises the duration of the agreement, changes the name of the agreement to reflect the new geographic scope, and restates the agreement.

By Order of the Federal Maritime Commission.

Dated: February 20, 2015.

Karen V. Gregory,

Secretary.

[FR Doc. 2015-03893 Filed 2-24-15; 8:45 am]

BILLING CODE 6730-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-15-15FY]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted 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 notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) 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; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to omb@cdc.gov. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

Proposed Project

State Health Department Access to Electronic Health Record Data from Healthcare Facilities during a Healthcare-Associated Infection Outbreak: A Retrospective Assessment—New—National Center for Emerging and Zoonotic Infections Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Two years ago, contaminated steroid injections caused the largest fungal meningitis outbreak in the United States, affecting 20 states and resulting in 751 infections and 64 deaths. The subsequent healthcare-associated infection (HAI) outbreak response required significant collaboration between healthcare providers and facilities and public health departments (HDS). Following the outbreak response, HDS reported that various challenges with access to patient health information in electronic health records (EHRs) hindered the efficient and rapid identification of potential fungal meningitis cases in healthcare facilities. The fungal meningitis outbreak experience highlights the need to better understand the landscape of granting and using access to EHRs for outbreak investigations.

The Division of Healthcare Quality Promotion (a component of NCEZID), the Office for State, Tribal, Local and Territorial Support, and the Office of Public Health Scientific Services at the Centers for Disease Control and Prevention (CDC) are partnering with Association of State and Territorial Health Officials and The Keystone Center to evaluate the challenges surrounding HDS access to EHRs in healthcare facilities' during an HAI outbreak investigation. The evaluation seeks to compile information across states from experts in the public and private sector to assess experiences, identify issues, and seek recommendations for improving HDS access to EHRs during future outbreaks.

In addition to a study report, the insights from healthcare facility staff will be used to build a toolkit to help state HDS understand the perspectives and needs of the healthcare facilities related to EHR access. The toolkit will provide perceived barriers, recommendations to overcome those barriers, best practices that support EHR access, and practical tools such as templates, memorandums of understanding (MOUs), and policies. The toolkit will be distributed to HDS, healthcare facilities, and other stakeholders to support awareness and

strengthen relationships between public health and clinical care.

These activities will facilitate the quick and efficient identification of cases in future outbreaks and protect the health and safety of patients. This request corresponds with an initial ongoing data collection (Phase I), State Health Department Access to Electronic Health Record Data during an Outbreak: A Retrospective Assessment, which involves interviews with four types of Health Department staff: Healthcare-associated infection coordinator, epidemiologist, legal counsel, and informatics director (OMB Number 0920-0879, approved on 04/24/2014). Phase I data analysis is ongoing.

For Phase II of this study, we will be requesting participation from hospital and clinic staff in their official capacities across the same 15 states included in the Phase I request. The

states chosen for Phase I and Phase II data collections are: Florida, Indiana, Kansas, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Tennessee, Texas, and Virginia. Data will be collected from 150 hospital and clinic staff in their official capacities using one 30-minute telephone interview per person and limiting interviews to two hospitals and two clinics per state. Hospital participants include: Infection preventionists, informatics directors, and others as referred. Clinic participants include: Clinic directors and others as referred.

The focus of this OMB request is to conduct interviews with 150 healthcare facilities' staff, hospitals and clinics, in their official capacity who has been asked by HDs to provide access to their EHRs during an HAI outbreak

investigation. In hospitals, the evaluation team will be conducting interviews with staff members serving in one of three roles: Infection preventionist, informatics director, and other as referred (e.g. privacy officer, risk management, etc.). In clinics, the evaluation team will be conducting interviews with the clinic director, and other as referred (e.g. patient records manager, etc.)

The maximum estimates for burden hours are derived from interview guide pilot testing and data collection with HDs during Phase I data collection, in which interviews took 27 minutes. The total annual burden is 90 hours.

The data to be collected do not involve questions of a personal or sensitive nature and should have no impact on the individual's privacy. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
HD Epidemiologist	Interview Guide	15	1	60/60
Infection Preventionist	Interview Guide	30	1	30/60
Informatics Director	Interview Guide	30	1	
Other as referred by Infection Preventionist or Informatics Director (for example, privacy officer or risk management specialist).	Interview Guide	30	1	
Clinic Director	Interview Guide	30	1	
Other as referred by Clinic Director (for example, patient records manager).	Interview Guide	30	1	

Leroy A. Richardson,
Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015-03805 Filed 2-24-15; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-15-15PI]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to

comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404-639-7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

Extended Evaluation of the National Tobacco Prevention and Control Public Education Campaign—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2012, Centers for Disease Control and Prevention (CDC) launched the first federally funded, national mass media campaign to educate consumers about the adverse health consequences of tobacco use (the National Tobacco Prevention and Control Public Education Campaign, or “The Campaign”). The Campaign continued in 2013 and 2014 with advertisements known as “Tips from Former Smokers.” Activities for Phase 3 of the campaign are ongoing. To assess the impact of The Campaign in Phases 1–3, CDC obtained OMB approval to conduct a series of longitudinal surveys of smokers and nonsmokers (OMB Control Number 0920–0923, exp. 3/31/2017).

New media activities for Phases 4 and 5 of The Campaign are scheduled to launch in March 2015. To support evaluation of The Campaign through Phase 5, CDC plans to field four new waves of information collection. The surveys will be fielded in English and

Spanish and will occur during late 2015, 2016, and early 2017. Once enrolled in the first wave of data collection, all participants will be re-contacted for follow-up at subsequent survey waves.

The sample for the data collection will originate from two sources: (1) An online longitudinal cohort of smokers and nonsmokers, sampled randomly from postal mailing addresses in the United States (address-based sample, or ABS); and (2) the existing GfK KnowledgePanel, an established long-term online panel of U.S. adults. The ABS-sourced longitudinal cohort will consist of smokers and nonsmokers who have not previously participated in any established online panels to reduce potential panel conditioning bias from previous participation. The new cohort will be recruited by GfK, utilizing similar recruitment methods that are used in the recruitment of KnowledgePanel. The GfK KnowledgePanel will be used in combination with the new ABS-sourced cohort to support larger sample sizes that will allow for more in-depth subgroup analysis, which is a key objective for CDC. All online surveys, regardless of sample source, will be conducted via the GfK KnowledgePanel Web portal for self-administered surveys.

Information will be collected through Web surveys to be self-administered on computers in the respondents’ homes or in another convenient location. Information will be collected about smokers’ and nonsmokers’ awareness of and exposure to specific campaign advertisements; knowledge, attitudes, beliefs related to smoking and secondhand smoke; and other marketing exposure. The surveys will also measure behaviors related to smoking cessation (among the smokers in the sample) and behaviors related to nonsmokers’ encouragement of smokers to quit smoking, recommendations of cessation services, and attitudes about other tobacco and nicotine products.

It is important to evaluate The Campaign in a context that assesses the dynamic nature of tobacco product marketing and uptake of various tobacco products, particularly since these may affect successful cessation rates. Survey instruments may be updated to include new or revised items on relevant topics, including cigars, noncombustible tobacco products, and other emerging trends in tobacco use.

OMB approval is requested for two years. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General Population	Screening and Consent Questionnaire.	25,000	1	5/60	2,083
Adults Smokers and Nonsmokers, ages 18–54, in the United States.	Smoker Survey (Wave A)	6,500	1	30/60	3,250
	Smoker Survey (Wave B)	4,000	1	30/60	2,000
	Smoker Survey (Wave C)	4,000	1	30/60	2,000
	Smoker Survey (Wave D)	4,000	1	30/60	2,000
	Nonsmoker Survey (Wave A)	2,500	1	30/60	1,250
	Nonsmoker Survey (Wave B)	2,000	1	30/60	1,000
	Nonsmoker Survey (Wave C)	2,000	1	30/60	1,000
	Nonsmoker Survey (Wave D)	2,000	1	30/60	1,000
Total .....	.....	.....	.....	.....	15,583

Leroy A. Richardson,
Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–03825 Filed 2–24–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–0824]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its

continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send

comments to Leroy A. Richardson, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

National Syndromic Surveillance Program (BioSense, OMB Control No. 0920-0824, Expiration Date 10/31/2015)—Revision—Center for Surveillance, Epidemiology and

Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The BioSense Program was created by congressional mandate as part of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and was launched by the Centers for Disease Control and Prevention (CDC) in 2003. The BioSense Program has since been expanded into the National Syndromic Surveillance Program (NSSP) to promote the use of high-quality syndromic surveillance data for improved nationwide all-hazard situational awareness for public health decision making and enhanced responses to hazardous events and outbreaks.

NSSP is a collaboration among individuals and organizations from the local, state, and federal levels of public health; other federal agencies, including the Department of Defense (DoD) and the Department of Veterans Affairs (VA); and associations of public health officials, including the Association of State and Territorial Health Officials. NSSP includes a community of practice, a stakeholder governance process, and a cloud-based syndromic surveillance platform (the NSSP platform) that hosts the BioSense application and other analytic tools and services.

Syndromic surveillance is a process that regularly and systematically uses health and health-related data in near real-time to make information on the health of a community available to public health officials. Patient encounter, laboratory, and pharmacy data from healthcare settings including emergency departments, urgent care, ambulatory care and inpatient settings provide critical information for syndromic surveillance and are used by public health agencies under authorities granted to them by applicable local and state laws.

CDC requests a three-year approval for a Revision for NSSP (BioSense, OMB Control No. 0920-0824, Expiration Date 10/31/2015). With this revision, CDC also requests the following collection

title: National Syndromic Surveillance Program (NSSP). The NSSP will continue to receive and processes four different types of information: (1) Contact information for state and local public health officials who wish to have data from their jurisdictions submitted to NSSP (recruitment data); (2) contact information for public health officials and other new users needed to provide them with access to the NSSP Platform (registration data); (3) NSSP user information needed to determine for development of the NSSP platform and to assess the usability of the platform (user data) (since the number of respondents will not exceed nine non-federal users to assess usability, the associated burden is not applicable to this request); and (4) existing healthcare encounter, pharmacy, and laboratory data (healthcare data) without personally identifiable information (PII).

As in the past, healthcare data will continue to be submitted to NSSP by state and local health departments or hospitals in those jurisdictions, federal agencies including the VA, DoD, a national level private sector clinical laboratory, and a private sector health information exchange company.

In addition, healthcare data will be submitted from urgent care, ambulatory care and inpatient settings. The inclusion of these additional data in NSSP is consistent with the Department of Health and Human Services' criteria for the "meaningful use" by public health of electronic health records for syndromic surveillance.

There are no costs to respondents other than their time. Respondents in this data submission include state and local public health jurisdictions, federal agencies, and the private sector providers of healthcare, laboratory and pharmacy data.

Though a large number of electronic health records are transmitted to NSSP, once the automated interfaces are set up for transmission (developing the data sharing agreements), there is no burden for record transmission. The estimated annual burden is 51 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Recruitment Information Collection				
State and Local Public Health Jurisdictions	20	1	1	20
Federal Government	2	1	1	2
Private Sector	3	1	1	3
Registration Information Collection				
State and Local Public Health Jurisdictions	200	1	5/60	17

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Federal Government	30	1	5/60	3
Private Sector	50	1	5/60	4
Healthcare Information Collection: Administrator Data Sharing Agreements/Permissions				
State and Local Public Health Jurisdictions	20	1	5/60	2
Federal Government	2	0	5/60	0
Private Sector	3	0	0	0
Total				51

Leroy A. Richardson,
*Chief, Information Collection Review Office,
 Office of Scientific Integrity, Office of the
 Associate Director for Science, Office of the
 Director, Centers for Disease Control and
 Prevention.*

[FR Doc. 2015-03826 Filed 2-24-15; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Affordable Care Act Tribal Maternal, Infant, and Early Childhood Home Visiting Program: Guidance for Submitting an Annual Report to the Secretary.

OMB No.: 0970-0409.

Description: Section 511(e)(8)(A) of the Social Security Act, as added by Section 2951 of the Affordable Care Act, requires that grantees under the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program for states and jurisdictions submit an annual report to the Secretary of Health and Human Services regarding the program and activities carried out under the program, including such data and information as the Secretary shall require. Section 511 (h)(2)(A) further states that the requirements for the MIECHV grants to tribes, tribal organizations, and urban Indian

organizations are to be consistent, to the greatest extent practicable, with the requirements for grantees under the MIECHV program for states and jurisdictions.

The Administration for Children and Families, Office of Child Care, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, has awarded grants for the Tribal Maternal, Infant, and Early Childhood Home Visiting Program (Tribal Home Visiting). The Tribal Home Visiting discretionary grants support cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance measures in six legislatively-mandated benchmark areas; and participate in rigorous evaluation activities to build the knowledge base on home visiting among Native populations.

Tribal Home Visiting grantees have been notified that in every year of their grant, after the first year, they must comply with the requirement for submitting an Annual Report to the Secretary that should feature activities carried out under the program during the past reporting period. In order to assist grantees with meeting the requirements of the Annual Report to the Secretary, ACF created guidance for grantees to use when writing their

annual reports. The existing guidance (OMB Control No. 0970-0409, Expiration Date 9/30/15) provides sections where grantees must address the following:

- Update on Home Visiting Program Goals and Objectives
- Update on the Implementation of Home Visiting Program in Targeted Community(ies)
- Progress toward Meeting Legislatively Mandated Benchmark Requirements
- Update on Rigorous Evaluation Activities
- Home Visiting Program Continuous Quality Improvement (CQI) Efforts
- Administration of Home Visiting Program
- Technical Assistance Needs

The proposed data collection form is as follows:

ACF is requesting approval to renew and update the existing Tribal Home Visiting Guidance for Submitting an Annual Report to the Secretary (OMB Control No. 0970-0409) that will include instructions for grantees to submit either an annual or final report (in the final year of the grant) on the progress of their program to the Secretary, depending on the reporting period.

Respondents: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Managers (The information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Total responses	Average burden hours per response	Total annual burden hours
Annual/Final Report to the Secretary (depending on reporting period) ..	25	1	1	50	1250

Estimated Total Annual Burden Hours: 1,250.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015-03830 Filed 2-24-15; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[CFDA Number: 84.133B-1]

Proposed Priority—National Institute on Disability, Independent Living, and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of proposed priority.

SUMMARY: The Administrator of the Administration for Community Living proposes a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). Specifically, this

notice proposes a priority for an RRTC on Employer Practices Leading to Successful Employment Outcomes for Individuals with Disabilities. We take this action to focus research attention on an area of national need. We intend this priority to contribute to improved employment practices and successful employment outcomes for individuals with disabilities.

DATES: We must receive your comments on or before March 27, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail or commercial delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- *Postal Mail or Commercial Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Patricia Barrett, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202-2700.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett. Telephone: (202) 245-6211 or by email: patricia.barrett@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDILRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: www.ed.gov/about/offices/list/osers/nidrr/policy.html.

The Plan identifies a need for research and training regarding employment of individuals with disabilities. To address this need, NIDILRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of research findings, expertise, and other information to advance knowledge and understanding of the needs of individuals with disabilities and their family members, including those from among traditionally underserved populations; (3) determine effective practices, programs, and policies to improve community living and participation, employment, and health and function outcomes for individuals with disabilities of all ages; (4) identify research gaps and areas for promising research investments; (5) identify and promote effective mechanisms for integrating research and practice; and (6) disseminate research findings to all major stakeholder groups, including individuals with disabilities and their family members in formats that are appropriate and meaningful to them.

This notice proposes one priority that NIDILRR intends to use for one or more competitions in fiscal year (FY) 2015 and possibly later years. NIDILRR is under no obligation to make an award under this priority. The decision to make an award will be based on the quality of applications received and available funding. NIDILRR may publish additional priorities, as needed.

Invitation to Comment: We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the final priority, we urge you to identify clearly the specific topic within the priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments by following the instructions found under the "Are you new to the site?" portion of the Federal eRulemaking Portal at www.regulations.gov. Any comments sent to NIDILRR via postal mail or commercial delivery can be viewed in Room 5142, 550 12th Street SW., PCP, 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 the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record 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.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified by NIDILRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: <http://www2.ed.gov/programs/rrtc/index.html#types>.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

RRTC on Employer Practices Leading to Successful Employment Outcomes for Individuals With Disabilities

Background: Individuals with disabilities experience lower rates and quality of employment than those

without disabilities. The percentage of the population that is employed is lower for individuals with disabilities (17.6%) than for individuals without disabilities (64.0%), and this difference has been relatively stable since 2012 (U.S. Department of Labor, 2014a, 2014b). Of those individuals who are employed, individuals with disabilities are more likely to work part time (34%) than are individuals without disabilities (19%) (U.S. Department of Labor, 2014a), and individuals with disabilities earn less than do individuals without disabilities (Brault, 2012; Schur et al., 2009; U.S. Department of Commerce, 2013). In addition, employees with disabilities have more limited opportunities for experiences related to retention and advancement, such as training and participation in decision-making, and less job security (Schur et al., 2009).

Although the employment of individuals with disabilities is the result of a complex interaction among many variables, employer practices comprise an important factor in the employment of individuals with disabilities. In recent years, researchers (Bruyère & Barrington, 2012; Chan et al., 2010a) have recognized the importance of considering demand-side, *i.e.*, employer, variables to understand and decrease the difference in employment outcomes between individuals with and without disabilities. In addition, a number of Federal initiatives have highlighted the need for employers to change their practices to improve employment outcomes for individuals with disabilities (*e.g.*, new regulations for Section 503 of the Rehabilitation Act, establishing nationwide 7% employment goals for qualified individuals with disabilities for companies doing business with the Federal government; Executive Order 13548 (2010), "Increasing Federal Employment of Individuals with Disabilities").

A number of employer practices are associated with better employment outcomes (*i.e.*, hiring, retention, or advancement) for individuals with disabilities. These include, but are not limited to: Employer knowledge of the Americans with Disabilities Act, the inclusion of disability in employer diversity plans, diversity training for management, targeted recruitment, and employer-provided accommodations (Bruyère & Barrington, 2012; Chan et al., 2010b; Hirsh & Kmec, 2009; Schur et al., 2009). Factors associated with employment of individuals with disabilities vary by employer size, industry type, and sector of the economy (U.S. Department of Labor,

2008; Bruyère & Barrington, 2012; Fraser et al., 2010).

However, knowledge of employer practices that are associated with better employment outcomes for individuals with disabilities does not tell us whether those practices actually caused those outcomes (Bruyère & Barrington, 2012; Fraser et al., 2011). In addition to the need for a stronger evidence base for the effectiveness of promising employer practices, there is a need for the development of measures that employers can use to track employment outcomes for individuals with disabilities (Erickson et al., 2013; Von Schrader et al., 2013). Both of these types of knowledge are critical to the development of effective workplace programs and practices to improve employment outcomes for individuals with disabilities.

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Definitions: The research that is proposed under this priority must be focused on one or more stages of research. If the RRTC is to conduct research that can be categorized under more than one research stage, or research that progresses from one stage to another, those research stages must be clearly specified. For purposes of this priority, the stages of research are from the notice of final priorities and definitions published in the **Federal Register** on June 7, 2013 (78 FR 34261).

(a) *Exploration and Discovery* means the stage of research that generates hypotheses or theories by conducting new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results

achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities.

(b) *Intervention Development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed interventions study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(c) *Intervention Efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support “scaling-up” an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(d) *Scale-Up Evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. It examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

Proposed Priority: The Administrator for Community Living proposes a priority for an RRTC on Employer Practices Leading to Successful

Employment Outcomes for Individuals with Disabilities. The purpose of the RRTC is to generate new knowledge about effective employer practices that support successful employment outcomes for individuals with disabilities. The RRTC must contribute to improving the employment outcomes of individuals with disabilities by:

(a) Identifying promising employer practices most strongly associated with desired employment outcomes for individuals with disabilities as well as the prevalence of these practices. Practices should include those related to the hiring, retention, and advancement of individuals with disabilities.

(b) Developing measures of employment outcomes that include hiring, retention, and advancement of individuals with disabilities. These measures must be developed for use by employers and other stakeholders. These measures may also include employment quality, such as, but not limited to, earnings, full- or part-time employment, or opportunities for on-the-job training. In developing these measures, the RRTC must collaborate with the NIDILRR-funded RRTC on Employment Policy and Measurement.

(c) Generating new knowledge of the effectiveness of promising employer practices by identifying or developing, and then implementing and evaluating pilot workplace program(s) based on practices identified in (a). This work should be conducted in employment settings in collaboration with employers, and should include:

(1) Implementation of practices that are particularly likely to be effective in improving employment outcomes for individuals with disabilities;

(2) Implementation of practices among different types of employers (e.g., small v. large employers, private v. public sector employers);

(3) Collection of data using, but not limited to, outcome measures from (b) above.

(d) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages should be clearly justified.

(e) Serving as a national resource center related to employment for individuals with disabilities, their families, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(1) Providing information and technical assistance to employers, employment service providers, employer groups, individuals with

disabilities and their representatives, and other key stakeholders;

(2) Providing training, including graduate, pre-service, and in-service training, to employers and employer groups, to facilitate more effective employer practices for individuals with disabilities. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities;

(3) Disseminating research-based information and materials related to increasing employment levels for individuals with disabilities; and

(4) Involving key stakeholder groups in the activities conducted under paragraphs (a) and (b) of this priority to promote the new knowledge generated by the RRTC.

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register** or in a Funding Opportunity Announcement posted at www.grants.gov.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866.

To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this proposed priority only upon a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years. Projects similar to one envisioned by the proposed priority have been completed successfully, and the proposed priority would generate new knowledge through research. The new RRTC would generate, disseminate, and promote the use of new information that would improve outcomes for individuals with disabilities in the area of employment.

Intergovernmental Review: This program is not subject to Executive Order 12372.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 19, 2015.

Kathy Greenlee,
Administrator.

[FR Doc. 2015–03877 Filed 2–24–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[CFDA Number: 84.133B-5]

Proposed Priority—National Institute on Disability, Independent Living, and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of proposed priority.

SUMMARY: The Administrator of the Administration for Community Living proposes a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). Specifically, this notice proposes a priority for an RRTC on Employment for Individuals with Blindness or other Visual Impairments. We take this action to focus research attention on an area of national need. We intend this priority to contribute to improved employment for individuals with blindness or other visual impairments.

DATES: We must receive your comments on or before March 27, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail or commercial delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Are you new to the site?”

- *Postal Mail or Commercial Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Patricia Barrett, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202-2700.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore,

commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett. Telephone: (202) 245-6211 or by email: patricia.barrett@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR’s currently approved Long-Range Plan (Plan). The Plan, which was published in the *Federal Register* on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: www.ed.gov/about/offices/list/opers/nidrr/policy.html.

The Plan identifies a need for research and training regarding employment of individuals with disabilities. To address this need, NIDILRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of research findings, expertise, and other information to advance knowledge and understanding of the needs of individuals with disabilities and their family members, including those from among traditionally underserved populations; (3) determine effective practices, programs, and policies to improve community living and participation, employment, and health and function outcomes for individuals with disabilities of all ages; (4) identify research gaps and areas for promising research investments; (5) identify and promote effective mechanisms for integrating research and practice; and (6) disseminate research findings to all major stakeholder groups, including individuals with disabilities and their family members in formats that are appropriate and meaningful to them.

This notice proposes one priority that NIDILRR intends to use for one or more competitions in fiscal year (FY) 2015 and possibly later years. NIDILRR is under no obligation to make an award under this priority. The decision to make an award will be based on the quality of applications received and available funding. NIDILRR may publish additional priorities, as needed.

Invitation to Comment: We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the final priority, we urge you to identify clearly the specific topic within the priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

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Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record 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**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified

by NIDILRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: <http://www2.ed.gov/programs/rrtc/index.html#types>.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

RRTC on Employment for Individuals With Blindness or Other Visual Impairments

Background: Employment rates for individuals with blindness or other visual impairments are low compared to other persons with disabilities and the nondisabled population. Of 3.5 million working age adults who report vision loss, only 1.3 million or 37 percent are employed (U.S. Census Bureau, 2012). Key groups within the population of persons with blindness and visual impairments would benefit from research and development to promote better employment outcomes. These groups include:

(a) Deaf blindness—Rough estimates suggest there are approximately 45 to 50 thousand individuals with deaf-blindness in the United States (Gallaudet University, 2010). Among students who received services under the Individuals with Disabilities Education Act (IDEA), 36.1 percent of students with multiple disabilities/deaf-blindness were employed after leaving high school as compared to 62.4 percent among students with visual impairments only (American Federation of the Blind, 2014). For the 2,020 persons with deaf-blindness who received services through the Federal/State Vocational Rehabilitation program from 2008 through 2013, 64.5 percent achieved employment outcomes (Rehabilitation Services Administration, 2014). Prevalence and employment data thus vary considerably and strategies for improving communication, social development, self-determination, and employment for this subpopulation have not kept pace with emerging technologies accessible to most citizens (Hartman, 2010). Development and testing of new technologies focused on improving the employment and quality of life outcomes of people with deaf-blindness is needed along with effective knowledge translation and dissemination.

(b) Blindness or low vision related to traumatic brain injury (TBI)—In 2010,

approximately 2.5 million people received a traumatic brain injury (Center for Disease Control (2010). TBI is also a signature cause of disability among veterans of the wars in Iraq and Afghanistan (U.S. Department of Defense, 2012). Closed head injuries often result in focal axonal swelling and disconnection, damage to optic nerves, impaired visual processing, and eye movement difficulties due to cranial nerve disruption. Research has estimated that among individuals with TBI in the United States, 42 percent were unemployed (Doctor, Castro, Temkin, Fraser, Machamer & Dikmen, 2005). For Vocational Rehabilitation consumers with TBI, 49.4 percent or 6,040 achieved employment in 2013 (Rehabilitation Services Administration, 2014). There are little data on the employment outcomes of individuals with TBI who experience low-vision and blindness, however. Research is needed to document the employment outcomes of individuals who experience low vision and blindness due to or in addition to TBI and to develop effective neuropsychological rehabilitation, psychotherapy, vocational rehabilitation, and other interventions for improving employment outcomes for these individuals.

(c) Transition-age students—High school students with blindness or visual impairments demonstrate higher academic achievement and are more likely to continue with postsecondary education when compared to other students receiving special education services under the IDEA. However, these students are less likely to achieve employment outcomes despite demonstrated academic success (Wagner, Newman, Cameto, Levine & Garza 2006; McDonnall, 2010). Qualitative research suggests that early intervention and planning, family involvement, interagency coordination and early work-based experiences may improve employment outcomes for transition-age students with blindness or visual impairments (Crudden, 2012). Rigorous research evaluating the potential of these and other employment-focused strategies, including vocational rehabilitation, may thus yield results that inform effective policies and practice.

References:

American Federation of the Blind (2014). NLTS2 Tables: Transition of Youth with Visual Impairments, Multiple Impairments, or Deaf-Blindness. Retrieved January 9, 2015, from: <http://www.afb.org/info/programs-and-services/public-policy-center/employment-and-rehabilitation/nlts2-tables/1235#table5>.

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Doctor J.N., Castro J., Temkin N.R., Fraser R.T., Machamer J.E., Dikmen S.S. (2005). Workers' risk of unemployment after traumatic brain injury: a normed comparison. *Journal of International Neuropsychological Society* 11(6):747–52.

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Wagner, M., Newman, L., Cameto, R., Levine, P., and Garza, N. (2006). *An Overview of Findings From Wave 2 of the National Longitudinal Transition Study-2 (NLTS2)*. Retrieved January 9, 2015, from: <http://ies.ed.gov/ncser/pdf/20063004.pdf>.

Definitions: The research that is proposed under this priority must be focused on one or more stages of research. If the RRTC is to conduct research that can be categorized under more than one research stage, or research that progresses from one stage to another, those research stages must be clearly specified. For purposes of this priority, the stages of research are from the notice of final priorities and definitions published in the **Federal Register** on June 7, 2013 (78 FR 34261).

(a) *Exploration and Discovery* means the stage of research that generates hypotheses or theories by conducting new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may

include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities.

(b) *Intervention Development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed interventions study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(c) *Intervention Efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support “scaling-up” an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(d) *Scale-Up Evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. It examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed

studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

Proposed Priority: The Administrator of the Administration for Community Living proposes a priority for an RRTC on Employment for Individuals with Blindness or other Visual Impairments. The purpose of the proposed RRTC is to conduct research that generates new knowledge about the efficacy of rehabilitative services and technology used to support improved employment outcomes of individuals with blindness or other visual impairments, including subpopulations that are the focus of this priority.

The RRTC must contribute to improving the employment outcomes of individuals with blindness or other visual impairments by:

(a) Conducting research on the efficacy of rehabilitation services and technology used to enhance employment outcomes of individuals with blindness or other visual impairments. Outcomes must include but are not limited to obtaining employment, retention, promotion, and quality of salary and benefits. The RRTC must focus its research on the target population of individuals with blindness or other visual impairments, including at least one of the following subpopulations of particular concern: (1) Individuals who are deaf-blind, (2) individuals with blindness or low vision related to traumatic brain injury, and (3) transition-age young people with blindness or other visual impairments;

(b) Generating new knowledge about how the outcomes of the services and technologies investigated in paragraph (a) vary with relevant variables such as service type, consumer characteristics, and provider characteristics;

(c) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages should be clearly justified;

(d) Serving as a national resource center related to employment for individuals with blindness or other visual impairments, their families, and other stakeholders by conducting knowledge translation, technical assistance, and training activities;

(e) Disseminating research-based information and materials related to improving the quality of services to individuals with blindness or other visual impairments; and

(f) Involving key stakeholder groups in the activities conducted under paragraphs (a) and (b) of this priority to

promote the new knowledge generated by the RRTC.

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**, Executive Orders 12866 and 13563 or in a Funding Opportunity Announcement posted at www.grants.gov.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that

their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this proposed priority only upon a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years. Projects similar to one envisioned by the

proposed priority have been completed successfully, and the proposed priority would generate new knowledge through research. The new RRTC would generate, disseminate, and promote the use of new information that would improve employment outcomes for individuals with blindness or other visual impairments.

Intergovernmental Review: This program is not subject to Executive Order 12372.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 19, 2015.

Kathy Greenlee,

Administrator.

[FR Doc. 2015–03885 Filed 2–24–15; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[CFDA Number: 84.133B–4]

Proposed Priority—National Institute on Disability, Independent Living, and Rehabilitation Research— Rehabilitation Research and Training Centers

AGENCY: Administration for Community Living.

ACTION: Notice of proposed priority.

SUMMARY: The Administrator of the Administration for Community Living proposes a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). Specifically, this notice proposes a priority for an RRTC on Self-Directed Care to Promote

Recovery, Health, and Wellness for Individuals with Serious Mental Illness. We take this action to focus research attention on an area of national need. We intend this priority to contribute to improved employment for individuals with serious mental illness (SMI) and co-occurring conditions.

DATES: We must receive your comments on or before March 27, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Are you new to the site?”

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Patricia Barrett, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett. Telephone: (202) 245–6211 or by email: patricia.barrett@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR’s currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: www.ed.gov/about/offices/list/opers/nidrr/policy.html.

The Plan identifies a need for research and training regarding employment of individuals with disabilities. To address this need, NIDILRR seeks to: (1) Improve the quality and utility of disability and

rehabilitation research; (2) foster an exchange of research findings, expertise, and other information to advance knowledge and understanding of the needs of individuals with disabilities and their family members, including those from among traditionally underserved populations; (3) determine effective practices, programs, and policies to improve community living and participation, employment, and health and function outcomes for individuals with disabilities of all ages; (4) identify research gaps and areas for promising research investments; (5) identify and promote effective mechanisms for integrating research and practice; and (6) disseminate research findings to all major stakeholder groups, including individuals with disabilities and their family members in formats that are appropriate and meaningful to them.

This notice proposes one priority that NIDILRR intends to use for one or more competitions in fiscal year (FY) 2015 and possibly later years. NIDILRR is under no obligation to make an award under this priority. The decision to make an award will be based on the quality of applications received and available funding. NIDILRR may publish additional priorities, as needed.

Invitation to Comment: We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the final priority, we urge you to identify clearly the specific topic within the priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments by following the instructions found under the "Are you new to the site?" portion of the Federal eRulemaking Portal at www.regulations.gov. Any comments sent to NIDILRR via postal mail, commercial deliver, or hand delivery can be viewed in room 5142, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will

provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record 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**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified by NIDILRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: <http://www2.ed.gov/programs/rrtc/index.html#types>.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

RRTC on Self-Directed Care To Promote Recovery, Health, and Wellness for Individuals With Serious Mental Illness Background

Mental health disorders are one of the leading causes of disability in the United States. In 2012, there were an estimated 9.6 million adults aged 18 or older in the U.S. with serious mental illness, representing 4.1 percent of all

U.S. adults (U.S. Department of Health and Human Services, 2012a). Most individuals with mental illness today live in community settings—a result of the deinstitutionalization movement of the 1960s to 1980s, the Americans with Disabilities Act of 1990, and the 1999 U.S. Supreme Court *Olmstead* decision (National Council on Disability, 2008; *Olmstead v. L.C.*, 527 U.S. 581 (1999); Salzer, Kaplan, & Atay, 2006). Individuals with mental illness are less likely to achieve successful employment outcomes than individuals without mental illness (Cook, 2006). For those who are employed, mental illness is associated with decreased productivity and lower levels of job retention (Cook, 2006; Lerner et al., 2012). In addition, individuals with mental illness experience higher mortality rates and poorer physical health than individuals without mental illness (Banham & Gilbody, 2010). This disparity in general health is exacerbated by barriers to healthcare delivery services for individuals with mental illness, at both the system and the individual levels (Kelly et al., 2014). Furthermore, employment outcomes and health are related in this population. At the individual level, mental illness symptoms and comorbid medical conditions are associated with poorer employment outcomes (Cook et al., 2007; Frey et al., 2008). At the system level, the relations among health care systems, and those between employment service systems and health care systems, are complex (Frey et al., 2008; Kelly et al., 2014).

Over the last few decades, the concept of self-determination has become more widespread in the design and conceptualization of services for individuals with mental illness. In this context, self-determination refers to individuals' rights to direct their own services, to be involved in decisions that impact their wellbeing, to be meaningfully involved in the design, delivery and evaluation of services and supports, and to develop and use their own personal goals to guide their lives and actions (Cook & Jonikas, 2002). Self-determination is a central component of the Substance Abuse and Mental Health Services Administration's definition of recovery (U.S. Department of Health and Human Services, 2012b) and has become an important component of recovery-oriented mental health treatment and services. It is closely related to the guiding principle of informed choice in vocational rehabilitation and supported employment (Drake, Bond & Becker, 2012; Workforce Innovation and

Opportunity Act of 2014). In the field of general health care, self-determination principles are reflected in the concept of self-direction (e.g., Centers for Medicare and Medicaid Services, no date). Principles of self-determination can be incorporated into many types of services and supports for individuals with mental illness and into efforts to address system and individual-level barriers to health and employment services.

At the system level, the self-determination approach in health care has informed systems in which individuals with disabilities control the services they receive. These systems are known by a variety of names, (e.g., person-centered funding, person-directed services, participant-directed services, cash and counseling) (Barczyk & Lincove, 2010; O'Brien et al., 2005; Powers & Sowers, 2006; Robert Wood Johnson Foundation, 2006). When the system is designed for individuals with serious mental illness, this type of service is frequently referred to as self-directed care. It uses public funds to provide individuals with the cash value of services and allows individuals to choose, organize, and purchase services (Alakeson, 2008), thereby providing both self-direction and a mechanism to purchase services and goods traditionally covered by different funding sources. Individuals may choose services and supports that are not traditionally provided in the mental health system, such as wellness services, transportation, medical or dental services, and tangible items that support community participation (Cook et al., 2008). Individuals are provided with assistance to help them develop their own individual service plans and budgets. The mechanism involved can vary, (e.g., direct payments, individual budgets, flexible funds). Early data on the effectiveness of this approach for individuals with mental illness suggest that self-directed care can yield positive results for a variety of outcomes, including employment, quality of life, and service use (Alakeson, 2008; Cook et al., 2008; O'Brien et al., 2005; Webber et al., 2014). However, self-directed care has been implemented in few States, and very little is known about the effectiveness of this approach for many recovery-oriented outcomes, such as employment.

Other system-level approaches to improving both access to health care and the health of individuals with mental illness have incorporated principles of care coordination to integrate mental health services with general medical services (Barry & Huskamp, 2014; Croft & Parish, 2012; Druss et al., 2010; Kelly et al., 2014;

Mechanic, 2014). Services provided through care coordination models can bridge the gap between mental health and general health services and improve outcomes both in mental and in general medical health (Woltmann et al., 2012). Although care coordination organizations do not necessarily incorporate self-determination features, they can do so. For example, care coordination models may include illness self management programs, which train individuals on how to manage their symptoms and improve their functioning and quality of life. In fact, the Improving Chronic Illness Care Initiative includes illness self-management as a core feature (Kelly et al., 2014; McDonald et al., 2007; Woltmann et al., 2012). Illness self-management interventions can be effective for people with mental illness dealing with general medical problems (Kelly et al., 2014) or mental illness (Roe et al., 2009). In addition, there is preliminary evidence that mental illness self-management may have positive effects on employment outcomes (Michon, 2011).

However, coordinated care systems can be complex for consumers to negotiate. Therefore, many systems provide staff who serve as navigators to help guide clients through the barriers of complex health care systems and provide support for consumers in such self-directed activities as developing plans and making choices. Early research indicates that provision of navigator services can improve health outcomes and use of medical services for individuals with mental illness (Griswold et al., 2010; Kelly et al., 2013). In addition, having peers serve either as navigators or to deliver mental or general healthcare interventions can be effective for individuals with mental illness (Brekke et al., 2013; Chinman et al., 2014; Kelly et al., 2014; Pitt et al., 2013).

Research on the use of self-directed services and supports, and self-directed care, for individuals with mental illness is in preliminary stages. There is a need for better understanding of the optimal use of self-directed strategies in the integration of general health care and mental health care, as well as the optimal involvement of peer supports for people with serious mental illness.

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- Workforce Innovation and Opportunity Act of 2014. Public Law 113–128.

Definitions

The research that is proposed under this priority must be focused on one or more stages of research. If the RRTC is to conduct research that can be categorized under more than one research stage, or research that progresses from one stage to another, those research stages must be clearly specified. For purposes of this priority, the stages of research are from the notice of final priorities and definitions published in the **Federal Register** on June 7, 2013 (78 FR 34261).

(a) *Exploration and Discovery* means the stage of research that generates hypotheses or theories by conducting new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of

interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities.

(b) *Intervention Development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed interventions study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(c) *Intervention Efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support “scaling-up” an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(d) *Scale-Up Evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. It examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

Proposed Priority

The Administrator of the Administration for Community Living proposes a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by

the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). Specifically, this notice proposes a priority on Self-Directed Care to Promote Recovery, Health, and Wellness for Individuals with Serious Mental Illness. This RRTC will be jointly funded by NIDILRR and the Substance Abuse and Mental Health Services Administration. The RRTC will conduct research to develop, adapt, and enhance self-directed models of general medical, mental health, and nonmedical services that are designed to improve health, recovery, and employment outcomes for individuals with serious mental illness. The RRTC must conduct research, knowledge translation, training, dissemination, and technical assistance within a framework of consumer-directed services and self-management. Under this priority, the RRTC must contribute to the following outcomes:

(1) Increased knowledge that can be used to enhance the health and well-being of individuals with serious mental illness and co-occurring conditions. The RRTC must contribute to this outcome by:

(a) Conducting research to develop a better understanding of the barriers to and facilitators of implementing models that integrate general medical and mental health care for individuals with SMI. These models must incorporate self-management and self-direction strategies. This research must specifically examine models that incorporate peer-provided services and supports along with research-based service integration strategies such as health navigation and care coordination.

(b) Conducting research to identify or develop and then test interventions that use individual budgets or flexible funds to increase consumer choice. The RRTC must design this research to determine the extent to which the consumer-choice intervention improves health outcomes and promotes recovery among individuals living with SMI. In carrying out this activity, the grantee must investigate the applicability of strategies that have proven successful with the general population or other subpopulations to determine if they are effective with individuals with SMI and co-occurring conditions.

(2) Improved employment outcomes among individuals with SMI. The RRTC must contribute to this outcome by:

(a) Conducting research to develop a better understanding of the barriers to and facilitators of implementing vocational service and support models that incorporate self management and self-direction features. These features must include self-directed financing and

flexible funding of services that support mental health treatment and recovery, general health, and employment. These services may include services and supports not traditionally supplied by mental health or general medical systems.

(3) Increased incorporation of research findings related to SMI, self-directed care, health management, and employment into practice or policy.

(a) Developing, evaluating, or implementing strategies to increase utilization of research findings related to SMI, co-occurring conditions, health management, and employment.

(b) Conducting training, technical assistance, and dissemination activities to increase utilization of research findings related to self-directed care of individuals living with SMI to promote and co-occurring conditions, health management, and employment.

Final Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register** or in a Funding Opportunity Announcement posted at www.grants.gov.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this proposed priority only upon a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that

this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years. Projects similar to one envisioned by the proposed priority have been completed successfully, and the proposed priority would generate new knowledge through research. The new RRTC would generate, disseminate, and promote the use of new information that would improve recovery, health, and wellness outcomes for individuals with serious mental illness (SMI) and co-occurring conditions.

Intergovernmental Review: This program is not subject to Executive Order 12372.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 19, 2015.

Kathy Greenlee,
Administrator.

[FR Doc. 2015-03880 Filed 2-24-15; 8:45 am]

BILLING CODE 4151-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[CFDA Number: 84.133B-3]

Proposed priority—National Institute on Disability, Independent Living, and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice of proposed priority.

SUMMARY: The Administrator of the Administration for Community Living proposes a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). Specifically, this notice proposes a priority for an RRTC on Employment Policy and Measurement. We take this action to focus research attention on an area of national need. We intend this priority to contribute to improved employment outcomes for individuals with disabilities.

DATES: We must receive your comments on or before March 27, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail or commercial delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- *Postal Mail or Commercial Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Patricia Barrett, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202-2700.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore,

commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett. Telephone: (202) 245-6211 or by email: patricia.barrett@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: www.ed.gov/about/offices/list/opers/nidrr/policy.html.

The Plan identifies a need for research and training regarding employment of individuals with disabilities. To address this need, NIDILRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of research findings, expertise, and other information to advance knowledge and understanding of the needs of individuals with disabilities and their family members, including those from among traditionally underserved populations; (3) determine effective practices, programs, and policies to improve community living and participation, employment, and health and function outcomes for individuals with disabilities; (4) identify research gaps and areas for promising research investments; (5) identify and promote effective mechanisms for integrating research and practice; and (6) disseminate research findings to all major stakeholder groups, including individuals with disabilities and their family members in formats that are appropriate and meaningful to them.

This notice proposes one priority that NIDILRR intends to use for one or more competitions in fiscal year (FY) 2015 and possibly later years. NIDILRR is under no obligation to make an award under this priority. The decision to make an award will be based on the quality of applications received and available funding. NIDILRR may publish additional priorities, as needed.

Invitation to Comment: We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the final priority, we urge you to identify clearly the specific topic within the priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments by following the instructions found under the "Are you new to the site?" portion of the Federal eRulemaking Portal at www.regulations.gov. Any comments sent to NIDILRR via postal mail or commercial delivery can be viewed in Room 5142, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record 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**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified

by NIDILRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: <http://www2.ed.gov/programs/rrtc/index.html#types>.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority

This notice contains one proposed priority.

RRTC on Employment Policy and Measurement

Background

Since the 2007 recession, Social Security Disability Insurance (SSDI) applications and awards have increased rapidly. There are nearly 9 million beneficiaries currently receiving SSDI payments, and this figure is expected to grow as workers age and increase their likelihood of experiencing disability. With this growth in program participation, actuaries estimate that the SSDI trust fund will be depleted in late 2016 unless substantial changes occur (Social Security Administration, 2014). Given this scenario, developing informed employment policy options is essential. These options require sound research to inform policymakers regarding the projected impacts of policies that encourage employment among individuals with disabilities while ensuring an adequate safety net. Research is also needed to evaluate the long-term impacts of policies and programs that aim to facilitate employment and improve the quality of life among people with disabilities.

The interactions between Social Security disability programs and public health insurance programs have long been considered a substantial barrier to employment for people with disabilities (Loprest & Maag, 2001; National Council on Disability, 2007). The 2010 enactment of the Patient Protection and Affordable Care Act (ACA) provided improved access to public and private insurance for all Americans including those with disabilities. For example, the ACA prevents health care coverage denials due to pre-existing conditions, increases coverage requirements, and provides mental health parity for persons with psychiatric disabilities. The impact of the ACA on employment outcomes for people with disabilities is an important research area.

Prior RRTC-EPM work focused on examining and improving extant methods of measuring disability status, as well as measuring employment outcomes among people with disabilities. For example, the RRTC illustrated how self-reported disability status changes over time through an analysis of longitudinal data focusing on youth (Mann & Honeycutt, 2014). These analyses indicated that the proportion of respondents with a disability doubled from 12 percent to nearly 25 percent over the course of 13 years. Multivariate analyses showed that women were more likely than men to report changes in health condition or disability status, and those with mild disabilities were relatively less likely than those without or with severe disabilities to experience changes in disability status. The RRTC also studied extant surveys and found that commonly used measures overestimated employment and underestimated receipt of disability income assistance such as SSDI (Burkhauser, Houtenville and Tennant, 2014). Other researchers have recently explored similar issues related to the reliability and stability of disability measures (Brault, 2013; Davies & Fisher, 2013; Sears & Rupp, 2003). Knowledge gained through this work has highlighted a need to develop improved methods of measuring both disability and employment in ways that generate more reliable and valid research findings. Continued innovation is thus needed to develop measures and metrics that accurately reflect the changing nature of disability across the life span as well as changes in the workforce over time. By doing so, research results may be more relevant for policy and program decisions aimed at improving employment outcomes for people with disabilities.

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Definitions

The research that is proposed under this priority must be focused on one or more stages of research. If the RRTC is to conduct research that can be categorized under more than one research stage, or research that progresses from one stage to another, those research stages must be clearly specified. For purposes of this priority, the stages of research are from the notice of final priorities and definitions published in the **Federal Register** on June 7, 2013 (78 FR 34261).

(a) *Exploration and Discovery* means the stage of research that generates hypotheses or theories by conducting new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of

the exploration and discovery stage of research may also be used to inform decisions or priorities.

(b) *Intervention Development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed interventions study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(c) *Intervention Efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support “scaling-up” an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(d) *Scale-Up Evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. It examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

Proposed Priority

The Administrator of the Administration for Community Living proposes a priority for an RRTC on Employment Policy and Measurement. The purpose of the proposed RRTC on Employment Policy and Measurement

RRTC (RRTC–EPM) is to investigate the impact of Federal and State policies and programs on employment of individuals with disabilities, paying particular attention to the effects of program interactions. The RRTC–EPM will also examine new ways of measuring employment outcomes and facilitate the translation of research findings to guide policymaking and program administration. Applicants must identify targeted research questions in response to the problems identified below and propose rigorous research methodologies to answer these questions. Of particular interest is research that investigates the interaction between the Affordable Care Act (ACA), Social Security Disability Insurance (SSDI), and employment. The desired outcome of this investment is new knowledge about the effect of new or existing policies on employment-related decision-making of individuals with disabilities, and ultimately on rates and quality of employment by these individuals.

The RRTC must contribute to improving the employment outcomes of individuals with disabilities by:

(a) Generating new knowledge about the effects of program interactions on employment outcomes of individuals with disabilities, including but not necessarily limited to the interaction between Social Security disability benefit programs and the ACA. Specifically, the RRTC must generate new knowledge of the potential impacts of varied policy scenarios regarding the SSDI trust fund exhaustion on the employment and economic outcomes of individuals with disabilities.

(b) Developing reliable and valid methods of measuring employment outcomes for people with disabilities;

(c) Serving as a national resource center on policy issues that impact employment outcomes of individuals with disabilities, and

(d) Increasing incorporation of research findings from the RRTC into practice or policy by:

(1) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to increase utilization of research findings;

(2) Conducting training and dissemination activities to facilitate the utilization of research findings by policymakers, employers, and individuals with disabilities;

(3) Providing technical assistance to facilitate use of information produced by the RRTC research; and

(4) Collaborating and sharing information with other agencies across the Federal government. In addition, the RRTC must collaborate with appropriate

NIDILRR-funded grantees, including knowledge translation grantees and grantees involved with employment research.

Final Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register** or in a Funding Opportunity Announcement posted at www.grants.gov.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this proposed priority only upon a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well

established over the years. Projects similar to one envisioned by the proposed priority have been completed successfully, and the proposed priority would generate new knowledge through research. The new RRTC would generate, disseminate, and promote the use of new information that would improve outcomes for individuals with disabilities in the area of employment.

Intergovernmental Review: This program is not subject to Executive Order 12372.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 19, 2015.

Kathy Greenlee,
Administrator.

[FR Doc. 2015–03882 Filed 2–24–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[CFDA Number: 84.133A–7]

Proposed Priority—National Institute on Disability, Independent Living, and Rehabilitation Research—Disability and Rehabilitation Research Projects Program

AGENCY: Administration for Community Living, HHS.

ACTION: Notice of proposed priority.

SUMMARY: The Administrator of the Administration for Community Living proposes a priority for the Disability and Rehabilitation Research Projects (DRRPs) Program administered by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR). Specifically, this notice proposes a priority for Promoting

Universal Design in the Built Environment. We take this action to focus research attention on an area of national need. We intend this priority to contribute to improved access to the built environment by individuals with disabilities.

DATES: We must receive your comments on or before March 27, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail or commercial delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Are you new to the site?"

- *Postal Mail or Commercial Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Patricia Barrett, U.S. Department of Health and Human Services, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202-2700.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett. Telephone: (202) 245-6211 or by email: patricia.barrett@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: www.ed.gov/about/offices/list/ose/nidrr/policy.html.

The Plan identifies a need for research and training regarding employment, community living and participation,

and health and function of individuals with disabilities. To address this need, NIDILRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of research findings, expertise, and other information to advance knowledge and understanding of the needs of individuals with disabilities and their family members, including those from among traditionally underserved populations; (3) determine effective practices, programs, and policies to improve community living and participation, employment, and health and function outcomes for individuals with disabilities of all ages; (4) identify research gaps and areas for promising research investments; (5) identify and promote effective mechanisms for integrating research and practice; and (6) disseminate research findings to all major stakeholder groups, including individuals with disabilities and their family members in formats that are appropriate and meaningful to them.

This notice proposes one priority that NIDILRR intends to use for one or more competitions in fiscal year (FY) 2015 and possibly later years. NIDILRR is under no obligation to make an award under this priority. The decision to make an award will be based on the quality of applications received and available funding. NIDILRR may publish additional priorities, as needed.

Invitation to Comment: We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the final priority, we urge you to identify clearly the specific topic within the priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments by following the instructions found under the "Are you new to the site?" portion of the Federal eRulemaking Portal at www.regulations.gov. Any comments sent to NIDILRR via postal mail or commercial delivery can be viewed in Room 5142, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record 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**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects

The purpose of NIDILRR's DRRPs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most significant disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, utilization, dissemination, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

Promoting Universal Design (UD) in the Built Environment

Background: Universal Design is generally defined as the “design of products and environments that are usable by all people, to the greatest extent possible, without the need for adaptation or specialized design” (Mace, 1985; Ostroff, 2011). UD proponents seek to improve human performance, health and wellness, and social participation for the entire population including individuals with disabilities (Steinfeld & Maisel, 2012).

NIDILRR grantees have substantially contributed to the development, refinement, and application of UD principles. In particular, the NIDILRR-funded Center for Universal Design at North Carolina State University (in collaboration with other researchers and practitioners) developed the seven “Principles of Universal Design” (The Principles of Universal Design, 1997). These principles (equitable use, flexibility in use, simple and intuitive use, perceptible information, tolerance for error, low physical effort, and appropriate size and space for approach and use regardless of users’ body size, posture, and mobility) have increasingly guided designers, builders, developers, and other stakeholders in the provision of accessible housing and built environments. Examples of UD found in the built environment include: curb cuts, building ramps, automatic door openers, fully accessible restrooms, moving walkways, and wayfinding systems that facilitate user access and orientation.

All NIDILRR-funded Rehabilitation Engineering Research Centers (RERCs) must incorporate UD principles in their research and development activities. Funded for the past 15 years, the RERC on Universal Design and the Built Environment is specifically charged with advancing the implementation of UD principles in the built environment. Center outcomes include a tool set for UD research and practice, prototypes for built environments, and UD standards. NIDILRR funding has contributed to the development of 35 state and local visitability ordinances and initiatives across the U.S, which require or encourage affordable and sustainable integration of basic accessibility features into all newly-built homes. NIDILRR funding also supported the inclusion of UD principles in a building manual which the New York City Department of Design and Construction adopted as the

official reference for all architects working in the city (Center for Inclusive Design and Universal Access, 2003).

Despite these notable outcomes, application of UD principles to the built environment has not become a mainstream practice (Ostroff, 2011; Dong 2011). Practical demonstrations of UD applications for buildings, homes, and outdoor environments, as well as a strengthened evidence-base for UD standards and strategies are yet needed. These needs will only increase as the baby boom generation ages while seeking to live and thrive in their own homes and communities (Federal Interagency Forum on Aging-Related Statistics, 2012). Making research-based knowledge about UD accessible to designers, developers, architects, and builders will help to advance UD implementation and realize the goals of improving human performance, health and wellness, and social participation for the entire population, including individuals with disabilities. Accordingly, NIDILRR aims to sponsor a DRRP on Promoting UD in the Built Environment to conduct research, knowledge translation, technical assistance, and training activities aimed at continued implementation of UD principles in the built environment.

References

- Center for Inclusive Design and Universal Access, 2003. *Universal Design New York 2: The NYC Guidebook to Accessibility and Universal Design*. Buffalo New York: Idea Publications.
- Dong, H (2011). Global Perspectives and Reflections. In *Trends in Universal Design*. Tonsberg, Norway: The Delta Centre.
- Federal Interagency Forum on Aging-Related Statistics, (2012). *Older Americans 2012: Key Indicators of Well-Being*. (Washington, DC: U.S. Government Printing Office).
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- Ostroff, E. (2011). Universal design: An evolving paradigm. In Preiser, W. & Smith K. (Eds.). *Universal Design Handbook*. New York, McGraw Hill.
- The Principles of Universal Design (1997). Version 2.0—4/1/97*. Compiled by advocates of universal design, listed in alphabetical order: Bettye Rose Connell, Mike Jones, Ron Mace, Jim Mueller, Abir Mulkick, Elaine Ostroff, Jon Sanford, Ed Steinfeld, Molly Story, and Gregg Vanderheiden. NC State University, The Center for Universal Design.
- Steinfeld, E. & Maisel, J.L. (2012). *Universal Design: Creating Inclusive Environments*. Hoboken, NJ: Wiley and Sons, Inc.

Proposed Priority: The Administrator of the Administration for Community Living proposes a priority for a Disability and Rehabilitation Research

Project on Promoting Universal Design in the Built Environment. The intended outcome of the DRRP on Universal Design is further adoption of universal design principles into mainstream architecture and the development and construction of built environments. The DRRP must contribute to this outcome by:

- (a) Conducting research activities toward developing evidence-based practices for UD implementation in commercial and private facilities, outdoor environments, and housing.
- (b) Creating measurable UD standards and guidelines to facilitate the implementation of UD principles in commercial and private facilities, outdoor environments, and housing.
- (c) Developing and promoting curricula on UD for university-level architecture, engineering, and design students.
- (d) Providing training and technical assistance to designers, architects, and builders to incorporate UD principles and features into their buildings, projects, and communities.
- (e) Providing training and technical assistance to NIDILRR’s engineering and assistive technology grantees to incorporate UD strategies and standards into development projects serving the needs of individuals with disabilities and the broader population.
- (f) Partnering with relevant stakeholders in carrying out all DRRP activities. Stakeholders include but are not limited to: Individuals with disabilities, professional organizations that teach design principles, researchers, engineers, planners, designers, developers, architects, and builders.

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register** or in a Funding Opportunity Announcement posted at www.grants.gov.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is “significant” and, therefore, subject to the requirements of

the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing this proposed priority only upon a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department’s programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years. Projects similar to one envisioned by the proposed priority have been completed successfully, and the proposed priority would generate new knowledge through research. The new DRRP would generate, disseminate, and promote the use of new information that would improve accessibility of the built environment for individuals with disabilities.

Intergovernmental Review: This program is not subject to Executive Order 12372.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 19, 2015.

Kathy Greenlee,
Administrator.

[FR Doc. 2015–03888 Filed 2–24–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0362]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 27, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to oira_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910–0139. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice Regulations for Finished Pharmaceuticals—21 CFR Parts 210 and 211 (OMB Control Number 0910-0139)

Under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351(a)(2)(B)), a drug is adulterated if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practices (CGMPs) to ensure that such drug meets the requirements of the FD&C Act as to safety, and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

The FDA has the authority under section 701(a) of the FD&C Act (21 U.S.C. 371(a)) to issue regulations for the efficient enforcement of the FD&C Act regarding CGMP procedures for manufacturing, processing, and holding drugs and drug products. The CGMP regulations help ensure that drug products meet the statutory requirements for safety and have their purported or represented identity, strength, quality, and purity characteristics. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to protect public health and safety. CGMP requirements establish accountability in the manufacturing and processing of drug products, provide for meaningful FDA inspections, and enable manufacturers to improve the quality of drug products over time. The CGMP recordkeeping requirements also serve preventive and remedial purposes and provide crucial information if it is necessary to recall a drug product.

The general requirements for recordkeeping under part 211 (21 CFR part 211) are set forth in § 211.180. Any production, control, or distribution record associated with a batch and required to be maintained in compliance with part 211 must be retained for at least 1 year after the expiration date of the batch and, for certain over-the-counter (OTC) drugs, 3 years after distribution of the batch (§ 211.180(a)). Records for all components, drug product containers, closures, and labeling are required to be maintained for at least 1 year after the expiration date and 3 years for certain OTC products (§ 211.180(b)).

All part 211 records must be readily available for authorized inspections during the retention period

(§ 211.180(c)), and such records may be retained either as original records or as true copies (§ 211.180(d)). In addition, 21 CFR 11.2(a) provides that for records required to be maintained but not submitted to the Agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that the requirements of this part are met. To the extent this electronic option is used, the burden of maintaining paper records should be substantially reduced, as should any review of such records.

In order to facilitate improvements and corrective actions, records must be maintained so that data can be used for evaluating, at least annually, the quality standards of each drug product to determine the need for changes in drug product specifications or manufacturing or control procedures (§ 211.180(e)). Written procedures for these evaluations are to be established and include provisions for a review of a representative number of batches and, where applicable, records associated with the batch; provisions for a review of complaints, recalls, returned, or salvaged drug products; and investigations conducted under § 211.192 for each drug product.

The specific recordkeeping requirements provided in table 1 are as follows:

Section 211.34—Consultants advising on the manufacture, processing, packing, or holding of drug products must have sufficient education, training, and experience to advise on the subject for which they are retained. Records must be maintained stating the name, address, and qualifications of any consultants and the type of service they provide.

Section 211.67(c)—Records must be kept of maintenance, cleaning, sanitizing, and inspection as specified in §§ 211.180 and 211.182.

Section 211.68—Appropriate controls must be exercised over computer or related systems to assure that changes in master production and control records or other records are instituted only by authorized personnel.

Section 211.68(a)—Records must be maintained of calibration checks, inspections, and computer or related system programs for automatic, mechanical, and electronic equipment.

Section 211.68(b)—All appropriate controls must be exercised over all computers or related systems and control data systems to assure that changes in master production and control records or other records are instituted only by authorized persons.

Section 211.72—Filters for liquid filtration used in the manufacture, processing, or packing of injectable drug products intended for human use must not release fibers into such products.

Section 211.80(d)—Each container or grouping of containers for components or drug product containers or closures must be identified with a distinctive code for each lot in each shipment received. This code must be used in recording the disposition of each lot. Each lot must be appropriately identified as to its status.

Section 211.100(b)—Written production and process control procedures must be followed in the execution of the various production and process control functions and must be documented at the time of performance. Any deviation from the written procedures must be recorded and justified.

Section 211.105(b)—Major equipment must be identified by a distinctive identification number or code that must be recorded in the batch production record to show the specific equipment used in the manufacture of each batch of a drug product. In cases where only one of a particular type of equipment exists in a manufacturing facility, the name of the equipment may be used in lieu of a distinctive identification number or code.

Section 211.122(c)—Records must be maintained for each shipment received of each different labeling and packaging material indicating receipt, examination, or testing.

Section 211.130(e)—Inspection of packaging and labeling facilities must be made immediately before use to assure that all drug products have been removed from previous operations. Inspection must also be made to assure that packaging and labeling materials not suitable for subsequent operations have been removed. Results of inspection must be documented in the batch production records.

Section 211.132(c)—Certain retail packages of OTC drug products must bear a statement that is prominently placed so consumers are alerted to the specific tamper-evident feature of the package. The labeling statement is required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-evident feature chosen is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement.

Section 211.132(d)—A request for an exemption from packaging and labeling requirements by a manufacturer or packer is required to be submitted in the

form of a citizen petition under 21 CFR 10.30.

Section 211.137—Requirements regarding product expiration dating and compliance with 21 CFR 201.17.

Section 211.160(a)—The establishment of any specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms, including any change in such specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms, must be drafted by the appropriate organizational unit and reviewed and approved by the quality control unit. These requirements must be followed and documented at the time of performance. Any deviation from the written specifications, standards, sampling plans, test procedures, or other laboratory control mechanisms must be recorded and justified.

Section 211.165(e)—The accuracy, sensitivity, specificity, and reproducibility of test methods employed by a firm must be established and documented. Such validation and documentation may be accomplished in accordance with § 211.194(a)(2).

Section 211.166—Stability testing program for drug products.

Section 211.173—Animals used in testing components, in-process materials, or drug products for compliance with established specifications must be maintained and controlled in a manner that assures their suitability for their intended use. They must be identified, and adequate records must be maintained showing the history of their use.

Section 211.180(e)—Written records required by part 211 must be maintained so that data can be used for evaluating, at least annually, the quality standards of each drug product to determine the need for changes in drug product specifications or manufacturing or control procedures. Written procedures must be established and followed for such evaluations and must include provisions for a representative number of batches, whether approved or unapproved or rejected, and a review of complaints, recalls, returned, or salvaged drug products, and investigations conducted under § 211.192 for each drug product.

Section 211.180(f)—Procedures must be established to assure that the responsible officials of the firm, if they are not personally involved in or immediately aware of such actions, are notified in writing of any investigations, conducted under § 211.198, 211.204, or 211.208, any recalls, reports of inspectional observations issued, or any regulatory actions relating to good

manufacturing practices brought by FDA.

Section 211.182—Specifies requirements for equipment cleaning records and the use log.

Section 211.184—Specifies requirements for component, drug product container, closure, and labeling records.

Section 211.186—Specifies master production and control records requirements.

Section 211.188—Specifies batch production and control records requirement.

Section 211.192—Specifies the information that must be maintained on the investigation of discrepancies found in the review of all drug product production and control records by the quality control staff.

Section 211.194—Explains and describes laboratory records that must be retained.

Section 211.196—Specifies the information that must be included in records on the distribution of the drug.

Section 211.198—Specifies and describes the handling of all complaint files received by the applicant.

Section 211.204—Specifies that records be maintained of returned and salvaged drug products and describes the procedures involved.

Written procedures, referred to here as standard operating procedures (SOPs), are required for many part 211 records. The current SOP requirements were initially provided in a final rule published in the **Federal Register** of September 29, 1978 (43 FR 45014), and are now an integral and familiar part of the drug manufacturing process. The major information collection impact of SOPs results from their creation. Thereafter, SOPs need to be periodically updated. A combined estimate for routine maintenance of SOPs is provided in table 1. The 25 SOP provisions under part 211 in the combined maintenance estimate include:

Section 211.22(d)—Responsibilities and procedures of the quality control unit;

Section 211.56(b)—Sanitation procedures;

Section 211.56(c)—Use of suitable rodenticides, insecticides, fungicides, fumigating agents, and cleaning and sanitizing agents;

Section 211.67(b)—Cleaning and maintenance of equipment;

Section 211.68(a)—Proper performance of automatic, mechanical, and electronic equipment;

Section 211.80(a)—Receipt, identification, storage, handling, sampling, testing, and approval or

rejection of components and drug product containers or closures;

Section 211.94(d)—Standards or specifications, methods of testing, and methods of cleaning, sterilizing, and processing to remove pyrogenic properties for drug product containers and closures;

Section 211.100(a)—Production and process control;

Section 211.110(a)—Sampling and testing of in-process materials and drug products;

Section 211.113(a)—Prevention of objectionable microorganisms in drug products not required to be sterile;

Section 211.113(b)—Prevention of microbiological contamination of drug products purporting to be sterile, including validation of any sterilization process;

Section 211.115(a)—System for reprocessing batches that do not conform to standards or specifications, to insure that reprocessed batches conform with all established standards, specifications, and characteristics;

Section 211.122(a)—Receipt, identification, storage, handling, sampling, examination and/or testing of labeling and packaging materials;

Section 211.125(f)—Control procedures for the issuance of labeling;

Section 211.130—Packaging and label operations, prevention of mixup and cross contamination, identification and handling of filed drug product containers that are set aside and held in unlabeled condition, and identification of the drug product with a lot or control number that permits determination of the history of the manufacture and control of the batch;

Section 211.142—Warehousing;

Section 211.150—Distribution of drug products;

Section 211.160—Laboratory controls;

Section 211.165(c)—Testing and release for distribution;

Section 211.166(a)—Stability testing;

Section 211.167—Special testing requirements;

Section 211.180(f)—Notification of responsible officials of investigations, recalls, reports of inspectional observations, and any regulatory actions relating to good manufacturing practice;

Section 211.198(a)—Written and oral complaint procedures, including quality control unit review of any complaint involving specifications failures, and serious and unexpected adverse drug experiences;

Section 211.204—Holding, testing, and reprocessing of returned drug products; and

Section 211.208—Drug product salvaging.

In addition, the following regulations in parts 610 and 680 (21 CFR parts 610

and 680) reference certain CGMP regulations in part 211: §§ 610.12(g), 610.13(a)(2), 610.18(d), 680.2(f), and 680.3(f). In table 1, the burden associated with the information collection requirements in these regulations is included in the burden estimates under §§ 211.165, 211.167, 211.188, and 211.194, as appropriate.

Although most of the CGMP provisions covered in this document

were created many years ago, there will be some existing firms expanding into new manufacturing areas and startup firms that will need to create SOPs. As provided in table 1, FDA is assuming that approximately 100 firms will have to create up to 25 SOPs for a total of 2,500 records, and the Agency estimates that it will take 20 hours per

recordkeeper to create 25 new SOPs for a total of 50,000 hours.

In the **Federal Register** of November 10, 2014 (79 FR 66724), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
SOP Maintenance	4,360	1	4,360	25	109,000
New startup SOPs	100	25	2,500	20	50,000
211.34—Consultants	4,360	.25	1,090	.5 (30 minutes)	545
211.67(c)—Equipment cleaning and maintenance.	4,360	50	218,000	.25 (15 minutes)	54,500
211.68—Changes in master production and control records or other records.	4,360	2	8,720	1	8,720
211.68(a)—Automatic, mechanical, and electronic equipment.	4,360	10	43,600	.5 (30 minutes)	21,800
211.68(b)—Computer or related systems.	4,360	5	21,800	.25 (15 minutes)	5,450
211.72—Filters	4,360	.25	1,090	1	1,090
211.80(d)—Components and drug product containers or closures.	4,360	.25	1,090	.10 (6 minutes)	109
211.100(b)—Production and process controls.	4,360	3	13,080	2	26,160
211.105(b)—Equipment identification.	4,360	.25	1,090	.25 (15 minutes)	273
211.122(c)—Labeling and packaging material.	4,360	50	218,000	.25 (15 minutes)	54,500
211.130(e)—Labeling and packaging facilities.	4,360	50	218,000	.25 (15 minutes)	54,500
211.132(c)—Tamper-evident packaging.	1,769	20	35,380	.5 (30 minutes)	17,690
211.132(d)—Tamper-evident packaging.	1,769	.2	354	.5 (30 minutes)	177
211.137—Expiration dating	4,360	5	21,800	.5 (30 minutes)	10,900
211.160(a)—Laboratory controls.	4,360	2	8,720	1	8,720
211.165(e)—Test methodology	4,360	1	4,360	1	4,360
211.166—Stability testing	4,360	2	8,720	.5 (30 minutes)	4,360
211.173—Laboratory animals ..	1,077	1	1,077	.25 (15 minutes)	269
211.180(e)—Production, control, and distribution records.	4,360	.2	872	.25 (15 minutes)	218
211.180(f)—Procedures for notification of regulatory actions.	4,360	.2	872	1	872
211.182—Equipment cleaning and use log.	4,360	2	8,720	.25 (15 minutes)	2,180
211.184—Component, drug product container, closure, and labeling records.	4,360	3	13,080	.5 (30 minutes)	6,540
211.186—Master production and control records.	4,360	10	43,600	2	87,200
211.188—Batch production and control records.	4,360	25	109,000	2	218,000
211.192—Discrepancies in drug product production and control records.	4,360	2	8,720	1	8,720
211.194—Laboratory records ..	4,360	25	109,000	.5 (30 minutes)	54,500
211.196—Distribution records	4,360	25	109,000	.25 (15 minutes)	27,250
211.198—Compliant files	4,360	5	21,800	1	21,800
211.204—Returned drug products.	4,360	10	43,600	.5 (30 minutes)	21,800

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹—Continued

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Total	882,203

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 19, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-03881 Filed 2-24-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0878]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by March 27, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0330. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910-0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350b(a)) provides that at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient, the manufacturer or distributor of the dietary supplement or of the new dietary ingredient is to submit to us (as delegate for the Secretary of Health and Human Services) information upon which the manufacturer or distributor has based its conclusion that a dietary supplement containing the new dietary ingredient will reasonably be expected to be safe. FDA's implementing regulation, 21 CFR 190.6, requires this information to be submitted to the Office of Nutrition, Labeling, and Dietary Supplements (ONLDS) in the form of a notification. Under § 190.6(b), the notification must include the following: (1) The name and complete address of the manufacturer or distributor, (2) the name of the new dietary ingredient, (3) a description of the dietary supplement(s) that contain the new dietary ingredient, including the level of the new dietary ingredient in the dietary supplement and the dietary supplement's conditions of use, (4) the history of use or other evidence of safety establishing that the new dietary ingredient will reasonably be expected to be safe when used under the conditions recommended or suggested in the labeling of the dietary supplement, and (5) the signature of a responsible person designated by the manufacturer or distributor.

These premarket notification requirements are designed to enable us to monitor the introduction into the marketplace of new dietary ingredients and dietary supplements that contain new dietary ingredients, in order to protect consumers from ingredients and products whose safety is unknown. We use the information collected in new dietary ingredient notifications to evaluate the safety of new dietary ingredients in dietary supplements and to support regulatory action against

ingredients and products that are potentially unsafe.

We are developing an electronic portal that interested persons will be able to use to electronically submit their notifications to ONLDS via FDA Unified Registration and Listing System (FURLS). Firms that prefer to submit a paper notification in a format of their own choosing will still have the option to do so, however. Form FDA 3880 prompts a submitter to input the elements of a new dietary ingredient notification (NDIN) in a standard format and helps the submitter organize its NDIN to focus on the information needed for our safety review. Safety information will be submitted via a supplemental form entitled "New Dietary Ingredient (NDI) Safety Information." This form provides a standard format to describe the history of use or other evidence of safety on which the manufacturer or distributor bases its conclusion that the new dietary ingredient will be reasonably expected to be safe under the conditions of use recommended or suggested in the labeling of the dietary supplement, as well as related identity information that is necessary to demonstrate safety by showing that the new dietary ingredient and dietary supplement(s) that are the subject of the notification are the same or similar to the ingredients and products for which safety data and information have been provided. Draft screenshots of Form FDA 3880 and the supplemental safety information form are available for comment at <http://www.fda.gov/Food/DietarySupplements/NewDietaryIngredientsNotificationProcess/ucm356620.htm>.

Description of Respondents: The respondents to this collection of information are manufacturers and distributors in the dietary supplement industry; specifically, firms that manufacture or distribute new dietary ingredients or dietary supplements that contain a new dietary ingredient.

In the **Federal Register** of November 14, 2014 (79 FR 68275), we published a 60-day notice requesting public comment on the proposed extension of this collection of information. We received three comments in response to the notice. Two of the comments were unrelated to the PRA, and therefore we did not consider them.

The third comment asserted that we underestimated the reporting burden of the NDIN procedures under § 190.6 by failing to take into account the recommendations in the draft guidance entitled “Dietary Supplements: New Dietary Ingredient Notifications and Related Issues” (the 2011 draft guidance) (available at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/DietarySupplements/ucm257563.htm>). FDA announced the availability of the 2011 draft guidance for comment in a notice published in the **Federal Register** of July 5, 2011 (76 FR 39111).

Although we agree with the commenter that information collection recommendations in guidance are subject to the PRA, we intend to meet our PRA obligations in that regard separately at a later time. The 2011 draft guidance was published solely for the purpose of seeking comment, and it has not been made final. Moreover, FDA intends to publish a revised draft guidance for comment later this year, and the revised draft guidance will supersede the 2011 draft guidance. Although we expect the revised draft guidance to be followed by a final guidance, there will be an interim period where no guidance on NDINs is in effect. The purpose of the current

PRA proceeding is to seek comment on and obtain OMB approval for the NDIN collections of information in effect during this interim period, which are those found in the FDA’s NDIN regulations at § 190.6 and in the electronic NDIN submission forms that we have made available for comment. After publishing a revised draft guidance on NDINs and related issues, we intend to publish a 60-day notice inviting comment on the proposed collections of information associated with that document. At that time, we will carefully evaluate all comments we receive.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
190.6	55	1	55	20	1,100

¹ There are no operating and maintenance costs associated with this collection of information.

We believe that the burden of the premarket notification requirement on industry is limited and reasonable because we are requesting only safety and identity information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in compliance with the FD&C Act. In the past, commenters have argued that our burden estimate is too low. We carefully considered the issue and believe that burden estimates of greater than 20 hours per notification likely include the burden associated with researching and generating safety data for a new dietary ingredient. Under section 413(a)(2) of the FD&C Act, a dietary supplement that contains a new dietary ingredient is deemed to be adulterated unless there is a history of use or other evidence of safety establishing that the new dietary ingredient will reasonably be expected to be safe under the conditions of use recommended or suggested in the labeling of the dietary supplement. This requirement is separate from and additional to the requirement to submit a premarket notification for the new dietary ingredient. FDA’s regulation on NDINs, § 190.6(a), requires the manufacturer or distributor of the dietary supplement, or of the new dietary ingredient, to submit to FDA the information that forms the basis for its conclusion that a dietary supplement containing the new dietary ingredient will reasonably be expected to be safe. Thus, § 190.6 only requires the

manufacturer or distributor to extract and summarize information that should have already been developed to meet the safety requirement in section 413(a)(2) of the FD&C Act. We estimate that extracting and summarizing the relevant information from what exists in the company’s files and presenting it in a format that meets the requirements of § 190.6 will take approximately 20 hours of work per notification. However, we seek comments on this estimate. We encourage comments offering alternative burden estimates to include documentation to support the alternative estimate.

We further estimate that 55 respondents will submit 1 premarket notification each. We base our estimate of the number of respondents on notifications received over the past 3 years, which averaged about 55 notifications per year.

Dated: February 19, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–03833 Filed 2–24–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0230]

Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled “Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices.” This draft guidance provides industry and Agency staff with recommendations regarding the technical performance assessment data that should be provided for regulatory evaluation of a digital whole slide imaging (WSI) system. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 26, 2015.

ADDRESSES: An electronic copy of the guidance document is available for

download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled “Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices” to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the draft guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nicholas Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5570, Silver Spring, MD 20993-0002, 301-796-4310; or Aldo Badano, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, Rm. 3116, Silver Spring, MD 20993-0002, 301-796-2534.

SUPPLEMENTARY INFORMATION:

I. Background

Recent technological advances in digital microscopy, in particular the development of whole slide scanning systems, have accelerated the adoption of digital imaging in pathology, similar to the digital transformation that radiology departments have experienced over the last decade. FDA regulates WSI systems manufacturers to ensure that the images produced for clinical intended uses are safe and effective for such purposes. Essential to the regulation of these systems is the understanding of the technical performance of the components in the imaging chain, from image acquisition to image display and their effect on pathologist’s diagnostic performance and workflow.

This draft guidance provides industry and Agency staff with recommendations regarding the technical performance assessment data that should be included for regulatory evaluation of a WSI. This document does not cover the clinical submission data that may be necessary to support approval or clearance. The

guidance provides our suggestions on how to best characterize the technical aspects that are relevant to WSI performance for their intended use and determine any possible limitations that might affect their safety and effectiveness.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency’s current thinking on technical performance assessment of digital pathology WSI devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. Guidance documents are also available at <http://www.regulations.gov>. Persons unable to download an electronic copy of “Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number 1400053 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910-0120, the collections of information in 21 CFR part 814 have been approved under OMB control number 0910-0231, and the collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910-0485.

V. Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov>

or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

Dated: February 19, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-03843 Filed 2-24-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2015-N-0001]

Pediatric Ethics Subcommittee of the Pediatric 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: Pediatric Ethics Subcommittee of the Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency regarding ethical protections for children in FDA-regulated clinical trials.

Date and Time: The meeting will be held on Monday, March 23, 2015 from 8:30 a.m. to 4:30 p.m.

Location: Doubletree by Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD 20910. 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: Walter Ellenberg, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5154, Silver Spring, MD 20993, 301-796-0885, email walter.ellenberg@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 Pediatric Ethics Subcommittee of the Pediatric Advisory Committee will meet to discuss the general topic of how procedural sedation for nontherapeutic (research) interventions or procedures in the pediatric population should be considered under the Additional Safeguards for Children in Clinical Investigations at 21 CFR 50 subpart D. A brief summary of the subcommittee's discussion will then be presented to the FDA Pediatric Advisory Committee on Tuesday, March 24, 2015.

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 March 9, 2014. Oral presentations from the public will be scheduled between 11:30 a.m. and 12:30 p.m. on March 23, 2015. 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 February 26, 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 March 2, 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 physical disabilities or special needs. If you require special accommodations due to a disability, please contact Walter Ellenberg 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: February 20, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–03900 Filed 2–24–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0303]

Robotically-Assisted Surgical Devices: Challenges and Opportunities; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the public workshop entitled “Robotically-Assisted Surgical (RAS) Devices: Challenges and Opportunities.” FDA is holding this public workshop to obtain information on the current challenges and opportunities related to robotically-assisted surgical medical devices, which are classified as Class II medical devices. The purpose of this workshop is to obtain public feedback on scientific, clinical, and regulatory considerations associated with RAS

devices. Comments and suggestions generated through this workshop will facilitate further development of regulatory science for RAS technologies.

Dates and Times: The public workshop will be held on July 27 and July 28, 2015, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

Contact Person: Mark Trumbore, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5402, Silver Spring, MD 20993, 301–796–5436, Mark.Trumbore@fda.hhs.gov.

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by July 17, 2015, at 4 p.m. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the meeting/public workshop will be provided beginning at 7 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4321, Silver Spring, MD 20993–0002, 301–796–5661, email: susan.monahan@fda.hhs.gov no later than July 14, 2015.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this meeting/public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Mark Trumbore to register (see *Contact Person*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by Friday, July 17, 2015. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after July 20, 2015. If you have never attended a Connect Pro event before, test your connection at https://collaboration.fda.gov/common/help/en/support/meeting_test.htm. To get a quick overview of the Connect Pro program, visit http://www.adobe.com/go/connectpro_overview. (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Comments: FDA is holding this public workshop to obtain information on the specific topics outlined in section II. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comment on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is August 26, 2015.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments to <http://www.regulations.gov> or written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Please identify comment with the docket number found in brackets in the heading of this document. In addition, when responding to specific topics as outlined in section II, please identify the topic(s) you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>.

It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM-1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg.,

Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

RAS devices, also known as computer-assisted surgical devices, are used by trained physicians in an operating room environment for laparoscopic surgical procedures in general surgery, cardiac, colorectal, gynecologic, head and neck, thoracic, and urologic surgical procedures. These medical devices enable the surgeon to use computer, software, and robotic technologies to control and move surgical instruments through the mouth or through one or more small incisions in the patient's body for a variety of surgical procedures. Some common procedures that may involve RAS devices include gallbladder, uterus, or prostate removal.

As discussed further in section II, there are several clinical and scientific challenges associated with regulation of RAS devices, such as appropriate nonclinical and clinical evaluation of RAS devices, use of third-party surgical instruments with legally marketed RAS devices, and clinical training programs. This workshop seeks to involve industry and academia in addressing these challenges in the development of RAS devices to ensure that there is a reasonable assurance of safety and effectiveness for RAS devices while promoting innovation in a rapidly-developing field. By bringing together relevant stakeholders including scientists, patient advocates, clinicians, researchers, industry representatives, and regulators, we hope to facilitate the improvement of this evolving product area.

II. Topics for Discussion at the Public Workshop

Topics to be discussed at the public workshop include, but are not limited to, the following:

1. The current landscape of RAS devices and the respective Offices, Divisions, and Branches within FDA involved in the review of pre- and postmarket data associated with these devices.
2. Challenges, needs, and benefit/risk profiles for indications in various surgical areas; e.g. cardio/thoracic, gynecological, otolaryngological, urological, general.

3. Unique benefits of RAS devices versus traditional surgical procedures.

4. Scientific and technical considerations for third-party manufacturers seeking to claim that their surgical instruments can be used with legally marketed RAS devices.

5. Design, administration, and certification of training programs and FDA's role in this process.

6. The future landscape of RAS and robotic surgery devices.

7. Considerations regarding appropriate selection of preclinical (bench and animal) test methods and patient-centered outcome metrics in clinical use for different stages of device development.

These topics will be presented by experts in the associated area, followed by more in-depth discussions and Q&A from all participants.

Dated: February 19, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-03769 Filed 2-24-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0359]

National Medical Device Postmarket Surveillance System Planning Board Report; Availability, Web Site Location and Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the report and Web site location where the Agency has posted the report entitled "Strengthening Patient Care: Building an Effective National Medical Device Surveillance System," developed by the National Medical Device Postmarket Surveillance System Planning Board. In addition, FDA has established a docket where stakeholders may provide comments.

DATES: Submit either electronic or written comments by April 27, 2015.

ADDRESSES: Submit electronic comments on this document to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Thomas P. Gross, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2316, Silver Spring, MD 20993-0002, 301-796-5700, email: Thomas.Gross@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

FDA's Center for Devices and Radiological Health is responsible for protecting the public health by assuring the safety and effectiveness of medical devices. A key part of this mission is to monitor medical devices for continued safety and effectiveness after they are in use and to help the public get the accurate, science-based information they need to improve their health.

In September 2012, the FDA published a report, "Strengthening Our National System for Medical Device Postmarket Surveillance," that proposed a strategy for improving the current system for monitoring medical device safety and effectiveness. In April 2013, the FDA issued an update to the September 2012 report that incorporated public input received and described the next steps towards fulfilling the vision for building a national postmarket surveillance system. These reports can be found at FDA's Web site <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHReports/ucm301912.htm>.

One of these next steps consisted of establishing a multistakeholder planning board to identify the governance structure, practices, policies, procedures, methodological approaches, and business model(s) necessary to facilitate the creation of a sustainable, integrated medical device postmarket surveillance system that leverages and complements existing and ongoing efforts. Under a cooperative agreement with the FDA, the Engelberg Center for Health Care Reform at the Brookings Institution convened the National Medical Device Postmarket Surveillance Planning Board (the Planning Board) in 2014. The Planning Board membership included representatives from a broad array of stakeholder groups and areas of expertise including patients, provider organizations, hospitals, health plans, industry, and government agencies, as well as methodologists and academic researchers.

The Planning Board was tasked with developing a set of long-term principles and priorities for a National Postmarket Surveillance System. The task included identifying potential governance and business models that address legal and privacy considerations, system

financing and stability, mechanisms to support the appropriate use of data, and policies to ensure system transparency. The Planning Board was also asked to provide recommendations about how to leverage the system to meet the needs of other medical device stakeholders and groups seeking to develop better evidence (<http://www.brookings.edu/about/centers/health/call-for-nominations> and <https://dcricri.org/events/past-meetings/MDEpiNominations>).

This notice announces the availability and Web site location of the Planning Board's report entitled "Strengthening Patient Care: Building an Effective National Medical Device Surveillance System." FDA invites interested persons to submit comments on this report. We have established a docket where comments may be submitted (see **ADDRESSES**). We believe this docket is an important tool for receiving feedback on this report from interested parties and for sharing this information with the public. The report "Strengthening Patient Care: Building an Effective National Medical Device Surveillance System" can be found at FDA's Web site <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDRH/CDRHReports/ucm301912.htm>.

II. Request for Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

Dated: February 20, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-03886 Filed 2-24-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2014-N-2295]

Request for Information on Specific Areas of Public Health Concern Related to Racial/Ethnic Demographic Subgroups for Additional Research by the Office of Minority Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is opening a docket to obtain information and comments on specific areas of public health concern for racial/ethnic demographic subgroup populations, focusing on certain disease areas where significant outcome differences may be anticipated. The Agency is seeking public input on identifying areas that can be addressed through regulatory science research.

DATES: Submit either electronic or written comments or information by April 27, 2015.

ADDRESSES: You may submit comments by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Written Submissions: Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Docket No. FDA-2014-N-2295 for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number(s), 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: Christine Merenda, Food and Drug

Administration, Office of Minority Health, 10903 New Hampshire Ave., Bldg. 32, Rm. 2382, Silver Spring, MD 20993, 301-796-8453, FAX: 301-847-8601, email: Christine.merenda@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's Office of Minority Health (OMH) was established in 2010, as mandated by the Patient Protection and Affordable Care Act (Pub. L. 111-148). OMH serves as the principal advisor to the Commissioner on minority health and health disparities. OMH provides leadership and direction in identifying Agency actions that can help reduce health disparities, including the coordination of efforts across the Agency.

OMH advances FDA's regulatory mission in addressing the reduction of racial and ethnic health disparities and in achieving the highest standard of health for all. To achieve this mission, OMH has committed to identifying gaps in existing knowledge to shape further research projects intended to lead to better understanding of medical product clinical outcomes in racial/ethnic demographic subgroups. A guiding principle for FDA in meeting the health needs of patients across the demographic spectrum is the importance of encouraging diversity in clinical trials. Thus, FDA is also interested in gaining input for improving clinical trials in therapeutic areas impacted by low rates of inclusion of racial/ethnic demographic subgroup populations, ranging from issues surrounding recruitment and participation in clinical trials to clinical outcome analysis of demographic subgroup populations. Of particular note in this regard is FDA's "Action Plan to Enhance the Collection and Availability of Demographic Subgroup Data" at <http://www.fda.gov/downloads/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticAct/FDCA/SignificantAmendments/totheFDCA/FDASIA/UCM410474.pdf>.

Research in regulatory science is distinctive for developing new tools, standards, and approaches for assessing the safety, efficacy, quality, and performance of all FDA-regulated products. The results can help to transform the way medical products are developed, evaluated, and manufactured. Health disparities research with a regulatory focus seeks to expand and strengthen knowledge of, and the availability of data on, medical product clinical outcomes in racial/

ethnic demographic subgroups, to inform healthcare decisions by providers and patients.

II. Request for Comments and Information

OMH seeks comments and information to identify specific areas of public health concern involving racial/ethnic demographic subgroups that can be addressed through regulatory science research, including new or emerging areas of concern. We encourage comments to include supporting information regarding the topic addressed, such as previously published peer-reviewed literature or new research findings. These comments and information will support OMH in its development of a research agenda that will inform funding decisions for the next fiscal year. (This notice is not a request for specific research or grant proposals from outside entities.) In addition to input on improving clinical trial inclusion and outcome analysis, requested comments and information identifying disease areas with outcome differences for further study may include, but are not limited to, the following:

- An area of study that could lead to a diagnostic or screening test based on the development and evaluation of biomarkers for a disease or condition that disproportionately impacts racial/ethnic demographic subgroups.
- An area of study that could lead to changes in labeled indications, or dosages, for a single or class of drug(s) or biologic(s) used to treat a disease or condition that disproportionately impacts racial/ethnic demographic subgroups.
- An area of study that could lead to changes in the design or use of a device to treat a disease or condition that disproportionately impacts racial/ethnic demographic subgroups.
- Research to identify effective ways to communicate with patients and consumers from racial/ethnic subgroups, including those with low health literacy and limited English proficiency, so they are informed about FDA actions (new approvals, warnings, recalls, etc.) that impact their health.
- Research evaluating methods to accommodate cultural and language differences that can improve health communications to racial/ethnic subgroups, and assess the cost of these methods to the Government.
- Research evaluating the impact of different formats and amounts of numerical information in FDA communications for patients, health care providers, health educators, and informal caregivers.

III. Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

Dated: February 19, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015-03846 Filed 2-24-15; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Division of Cancer Epidemiology and Genetics (DCEG) Fellowship Program and Summer Student Applications (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 9, 2014 (Vol. 79, P. 19632) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, OIRA_submission@omb.eop.gov or by fax to 202-395-6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if

received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Jackie Lavigne, Office of Education, Division of Cancer Epidemiology and Genetics, 9609 Medical Center Drive, MSC 9776, Bethesda, MD 20892–9776 or call non-toll-free number 240–376–7237 or Email your request, including your address to: lavignej@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Division of Cancer Epidemiology and Genetics (DCEG) Fellowship Program and Summer Student Applications (NCI), Existing Collection in Use without OMB Control Number, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Division of Cancer Epidemiology and Genetics (DCEG) Office of Education (OE) administers a variety of programs and initiatives to recruit pre-college through post-doctoral educational level individuals into the Intramural Research Program to facilitate their development into future biomedical scientists. DCEG trains post-doctoral, doctoral candidates, graduate and baccalaureate students, through full time fellowships, summer fellowships, and internships in preparation for research careers in cancer epidemiology and genetics. The proposed information collection involves brief online applications completed by applicants to the full time and the summer fellowship programs. Full-time fellowships include: Full-time Equivalents (FTE) and non-FTE fellowships for US citizens, permanent residents and international fellows. These

applications are essential to the administration of these training programs as they enable OE to determine the eligibility and quality of potential awardees; to assess their potential as future scientists; to determine where mutual research interests exist; and to make decisions regarding which applicants will be proposed and approved for traineeship awards. In each case, completing the application is voluntary, but in order to receive due consideration, the prospective trainee is encouraged to complete all relevant fields. The information is for internal use to make decisions about prospective fellows and students that could benefit from the DCEG program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 175.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Fellowship Program Application	Full-time Fellows	150	1	30/60	75
Summer Program Application	Summer Students	300	1	20/60	100

Dated: February 19, 2015.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015–03789 Filed 2–24–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Assessment of Oncology Nursing Education and Training in Low and Middle Income Countries (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 8, 2014, Vol. 79, page 38542 and allowed 60-days for public comment. One public comment was received on July 9, 2014. The purpose of this notice is to allow an additional 30 days for public comment.

The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, OIRA_submission@omb.eop.gov or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project, contact: Annette Galassi, Center for Global Health, National Cancer Institute, 9609 Medical Center Dr., Rm. 3W250, Rockville, MD 20850 or call non-toll-free number 240–276–6632 or Email your request, including your address to:

agalassi@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Assessment of Oncology Nursing Education and Training in Low and Middle Income Countries, 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This submission is a request for OMB to approve the Assessment of Oncology Nursing Education and Training in Low and Middle Income Countries (LMICs). NCI-Designated Cancer Centers have a range of international activities, some of which are funded by NCI, but many of which are not. These international activities may include oncology nursing education and training in LMICs, but the extent of these activities across cancer centers is unknown. The proposed assessment requests information about oncology nursing education and training projects including: descriptions of projects, partner organizations, types of activities, cost, and impact. The information will be collected annually. NCI’s Center for Global Health (CGH) is in the process of developing its strategic plan for oncology nursing education in LMICs.

This information will help inform this strategic planning process and provide evidence to inform decisions on potential investments in grants for oncology nursing education in LMICs. Additionally, this information will be used in an online, interactive map that is being developed by CGH which will

allow external organizations, such as cancer centers, to explore what projects are being done in which countries, which will facilitate collaborations and minimize duplication. The frequency of the data collection will be once per year although respondents may have more

than one response if they have up to three projects.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 51.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents/year	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Directors of Nursing	68	3	15/60	51

Dated: February 19, 2015.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2015-03788 Filed 2-24-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301-496-7057; fax: 301-402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

HbF Induction Therapy for Sickle Cell Disease and Thalassemias

Description of Technology: Sickle cell disease and thalassemia are hereditary

disorders marked by the disruption in the pathways responsible for carrying oxygen to red blood cells. Symptoms associated with these disorders include anemia, jaundice, and severe pain. It has been shown that mutations during the development of fetal to adult hemoglobin can contribute to a delay in red blood cell maturity underlying sickle cell disease. As a result, there has been an increased focus on treatments that promote the induction of fetal hemoglobin (HbF) to improve clinical symptoms and ameliorate the severity of the diseases. Researchers at the National Institute of Diabetes and Digestive and Kidney Diseases have identified methods of increasing fetal hemoglobin by increasing the expression of Lin28 or decreased expression of let-7 micro-RNAs. The lead inventor and colleagues have developed novel lentiviral expression vectors containing hemoglobin regulators under the control of erythroid-specific promoters that can be used to increase HbF expression without affecting the maturity of red blood cells. In addition, they have found, through the use of tough decoy inhibition of Let-7 micro-RNAs, a selection of Let-7 genes with greater involvement in HbF expression. This technology could lead to development of novel HbF induction therapies that reactivate and reduce the aberrant pathologies associated with human sickle-cell anemia and beta thalassemia.

Potential Commercial Applications:

- Ex vivo and in vivo therapeutics for treatment of sickle-cell anemia and beta thalassemias.
 - Potential use in combination with other transduction methods for unique therapeutic strategies.
- Competitive Advantages:**
- Reduced production of symptom-associated adult hemoglobin.
 - Lin28 overexpression at defined stage of hematopoietic cell development.

• Therapeutic increases in patient HbF expression at lower viral titers than current direct transduction methods.

• Improved safety and reduced toxicity as a result of erythroid-specific expression.

Development Stage:

- Early-stage
- In vitro data available
- In vivo data available (animal)

Inventors: Jeffery L. Miller, Yuanwei T. Lee, Jaira F. de Vasconcellos, Colleen K. Byrnes (all of NIDDK)

Intellectual Property: HHS Reference No. E-249-2014/0—US Provisional Application No. 62/046,247 filed September 5, 2014

Related Technology: HHS Reference No. E-456-2013/2—PCT Application No. PCT/US2013/067811 filed October 31, 2013, which published as WO 2014/200557 on December 18, 2014

Licensing Contact: Vince Contreras, Ph.D.; 301-435-4711; contrerasv@mail.nih.gov

Collaborative Research Opportunity: The National Institute of Diabetes and Digestive and Kidney Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Marguerite J. Miller at miller marg@nid dk.nih.gov or 301-496-9003.

T Cell-Based Adoptive Transfer Immunotherapy for Polyomavirus-Associated Pathologies

Description of Technology: Available for licensing are methods to generate T cells responsive to multiple polyomaviruses. The resulting T cell populations could be useful in treating immunosuppressed individuals with polyomavirus infections or polyomavirus-associated pathologies such as Merkel cell carcinoma (MCC), polyomavirus-associated nephropathy (PVAN), hemorrhagic cystitis,

progressive multifocal leukoencephalopathy (PML), and trichodysplasia spinulosa (TS). The methods could also be used to restore polyomavirus-specific immunity in immunocompromised individuals.

Potential Commercial Applications: Immunotherapy for immunosuppressed individuals with polyomavirus-associated pathologies.

Competitive Advantages: Methods allow development of polyomavirus antigen-specific T cells.

Development Stage:

- Early-stage
- In vitro data available

Inventors: John A. Barrett (NHLBI), Dhanalakshmi Chinnasamy (NHLBI), Pawel J. Muranski (NHLBI), Christopher B. Buck (NCI)

Intellectual Property: HHS Reference No. E-166-2014/0—US Application No. 62/075,726 filed November 5, 2014

Related Technologies:

- HHS Reference No. E-168-2011
- HHS Reference No. E-549-2013

Licensing Contact: Patrick McCue, Ph.D.; 301-435-5560; mccuepat@od.nih.gov

Collaborative Research Opportunity: The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize methods to generate T cells responsive to multiple polyomaviruses. For collaboration opportunities, please contact Dr. Vincent Kolesnitchenko at kolesniv@nhlbi.nih.gov.

⁸⁹Zr-Oxine Complex for In Vivo PET Imaging of Labelled Cells and Associated Methods

Description of Technology: This technology relates to a Zirconium-89 (⁸⁹Zr)-oxine complex for cell labeling, tracking of labeled cells by whole-body positron emission tomography/computed tomography (PET/CT) imaging, and associated methods. A long half-life of ⁸⁹Zr (78.4 hours), high sensitivity of PET and absence of background signal in the recipient enable tracking cells over a week using low levels of labeling radioactivity, without causing cellular toxicity. The ⁸⁹Zr-oxine complex is synthesized quickly by mixing components at room temperature and produces high yields. Cell labeling is achieved by a short, room temperature incubation. The ⁸⁹Zr-oxine complex is capable of labeling a wide range of cell types of therapeutic or pathogenic relevance (natural, disease, engineered cells), independent of factors such as cell cycle or receptor expression. The label is retained during

cell division. ⁸⁹Zr-oxine labeled cells can also be easily cross labeled (for example, optically or magnetically) for multi-modality imaging and analysis. Labeled cell migration and kinetics can be analyzed and quantified in vivo over a week, improving research strategies and ability to develop and improve cell therapies and diagnostics.

Potential Commercial Applications: Cell therapies and diagnostics.

Competitive Advantages: Simple preparation, broadly applicable cell label, high resolution imaging and monitoring over period of a week, low toxicity, easily combined with labeling technologies and cell therapies.

Development Stage: In vivo data available (animal).

Inventors: Noriko Sato (NCI), Haitao Wu (NHLBI), Gary L. Griffiths (NCI), Peter L. Choyke (NCI)

Publications:

1. Sato N, et al. Generation and use of long-lasting cell labeling agent for positron emission tomography (PET) imaging. *J Nucl Med.* May 2014; 55 (Supplement 1):273.

2. Sato N, et al. ⁸⁹Zr-oxine complex positron emission tomography (PET) cell imaging for monitoring cell-based therapies. *Radiology*, 2015, In press.

Intellectual Property: HHS Reference No. E-080-2014/0—US Patent Application No. 61/973,706 filed April 1, 2014

Licensing Contact: Edward (Tedd) Fenn; 424-297-0336; Tedd.fenn@nih.gov

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize cell labeling, cell tracking, cell trafficking, cell-based therapy, PET imaging. For collaboration opportunities, please contact John D. Hewes, Ph.D. at john.hewes@nih.gov or 240-276-5515.

Dated: February 18, 2015.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2015-03779 Filed 2-24-15; 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 Meetings

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

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

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Autoimmunity Transplantation Intolerance.

Date: March 11, 2015.

Time: 3:00 p.m. to 7:00 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: Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301-435-1223, haydenb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Drug Discovery and Mechanisms of Antimicrobial Resistance.

Date: March 13, 2015.

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

Agenda: To review and evaluate grant applications

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301-435-1146, jig@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Skeletal Muscle related SBIR/STTR.

Date: March 17, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

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

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301-496-8551, ingrahamrh@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Regulation of Cell Survival and Death Pathways by Fe-S Proteins.

Date: March 19-20, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

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

Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435-1726, greenbergwa@csr.nih.gov.

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

Dated: February 19, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015-03778 Filed 2-24-15; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2013-1084]

Policy Letters: Guidance for the Use of Liquefied Natural Gas as a Marine Fuel

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: On February 7, 2014, the Coast Guard announced the availability, in the docket, of two draft policy letters for which it sought public comment. This notice announces the availability of the finalized Coast Guard policy letters, including explanations of changes made to the policy letters and enclosures based on the public comments received. The first policy letter provides voluntary guidance for liquefied natural gas (LNG) fuel transfer operations on vessels using natural gas as fuel in U.S. waters, and training of personnel on those vessels. It recommends transfer and personnel training measures that we believe will achieve a level of safety that is at least equivalent to that provided for traditional fueled vessels. It applies to vessels equipped to receive LNG for use as fuel, but not to vessels regulated as LNG carriers that utilize boil-off gas as fuel. The second policy letter discusses voluntary guidance and existing regulations applicable to vessels and waterfront facilities conducting LNG marine fuel transfer (bunkering) operations. The second policy letter provides voluntary guidance on safety, security, and risk assessment measures we believe will enhance safe LNG bunkering operations. Both policy letters are available on the public docket. They have been updated to reflect publication numbers of the current year. Accordingly, as discussed

in this notice, Policy Letter 01-14 became Policy Letter 01-15 and Policy Letter 02-14 became Policy Letter 02-15.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ken Smith, Vessel and Facility Operating Standards Division (CG-OES-2), U.S. Coast Guard; telephone 202-372-1413, email Ken.A.Smith@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Viewing material in the docket: To view the policy letters and related material, go to <http://www.regulations.gov>, type the docket number (USCG-2013-1084) in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this notice. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

The shipping industry is exploring conversion from oil-based fuel to cleaner burning natural gas, because the use of natural gas as fuel would substantially reduce carbon emissions, sulfur emissions, and nitrogen oxide emissions. This natural gas fuel would be stored on and transferred to vessels in the form of liquefied natural gas (LNG). Existing regulations cover design, equipment, operations, and training of personnel on vessels that carry LNG as cargo and at waterfront facilities that handle LNG in bulk. They also cover conventional oil fuel transfer operations, but do not address LNG transferred as fuel.¹

¹ 33 CFR parts 127, 155 and 156; 46 CFR parts 10-15, 30-39, and 154.

On February 7, 2014, the Coast Guard published two draft policy letters (CG-OES 01-14 and CG-OES 02-14), requesting comments, that recommended the transfer procedures and other operating guidelines for vessels and waterfront facilities providing LNG to vessels for use as fuel and for vessels operating in U.S. waters that will be fueled with natural gas that will be stored onboard as LNG. The Coast Guard has revised these policy letters based on comments received and now makes the final policy letters available to the public.

The policy letters and voluntary guidance do not apply to vessels regulated as LNG carriers that utilize their boil-off gas as fuel. They also do not provide guidance on vessel design criteria for natural gas fuel systems or design of vessels providing LNG for use as fuel. If you have questions about the design of these systems, please contact the Coast Guard's Office of Design and Engineering Standards (CG-ENG, formerly CG-521). See **FOR FURTHER INFORMATION CONTACT** section for contact information.

Discussion

The Coast Guard received 27 letters from the public containing a combined total of 185 individual comments which are discussed below. We discuss more fully the changes we made to the policy letters in response to comments.

All letters received were generally supportive of the Coast Guard's effort to provide guidance on the use and transfer of LNG as a marine fuel and the Coast Guard appreciates this important feedback.

We also received various comments recommending changes that cannot be made in a policy document because the Coast Guard would need to undergo rulemaking to make these recommended changes enforceable. For example, one submitter suggested that we provide specific details concerning the information that risk assessments should contain. Another submitter suggested that we provide common checklists for industry to follow when conducting bunkering operations. The Coast Guard will consider these comments and determine whether any further action is necessary. Additionally, the Coast Guard received comments on matters unrelated to the two policy letters discussed in this notice. Those comments have been reviewed but did not effect any changes to these policy letters. Examples of some of the comments we received pertaining to design were related to venting arrangements, LNG tank design, and gas detection.

Vessel design issues relating to the technical aspects and problems inherent in vessel design are not discussed in Policy Letters 01–15 and 02–15. We do not intend to include vessel design recommendations or equivalencies in either policy letter and thus comments requesting design related revisions cannot be incorporated. Information concerning design criteria for natural gas fuel systems can be found in CG–521 Policy Letter 01–12, “Equivalency Determination—Design Criteria For Natural Gas Fuel Systems,” which can be viewed at the following location: <http://www.uscg.mil/hq/cg5/cg521/docs/CG-521.PolicyLetter.01-12.pdf>.

The Coast Guard also identified certain non-substantive recommendations in comments. Many of these are useful and have been incorporated where appropriate.

Six comments were submitted recommending that Compressed Natural Gas (CNG) and other alternative fuels be addressed in our policy letters. The Coast Guard believes it is better at this time to evaluate other alternative fuels on a case-by-case basis and will continue to gather information on how these alternative fuels are used to determine whether guidance is necessary and appropriate. One submitter suggested that it would be useful if we added language indicating how LNG differs from other “conventional” liquid hydrocarbon fuels. The Coast Guard agrees and added additional information in Policy Letter 01–15, Enclosure (1).

Five comments were submitted on the topic of hot work. Based on the comments received, the Coast Guard revised its discussion on hot work in Policy Letter 01–15, Enclosure (1) to further clarify that hot work must be conducted in accordance with the existing regulations to which vessels are inspected. Where no regulations are specified, we recommend that the regulations in 46 CFR 91.50–1 be followed.

Six comments were received on the Coast Guard’s use of the term “in bulk.” Three comments asked whether LNG packaged in ISO tanktainers, and loaded on a vessel, is not “in bulk” and therefore not subject to 33 CFR Part 127. The Coast Guard confirms that LNG in packaged form such as LNG in ISO tanktainers is not considered an “in bulk” shipment and the facility where those packages are loaded does not need to comply with 33 CFR Part 127. The Coast Guard further clarifies that LNG in ISO tanktainers is a hazardous material in packaged form and as such must be loaded from a facility that complies with 33 CFR Part 126. Three additional

comments requested clarification on the Coast Guard’s definition of the term “bulk.” In response to these requests, the Coast Guard clarifies in Policy Letter 01–15, Enclosure (1) that “bulk” has the meaning defined in the Marine Safety Manual as a material that is transported on board a vessel without mark or count and which is directly loaded into a hold or tank on a vessel without containers or wrappers.

Six comments were received on LNG tank truck operations. Three spoke to matters involving the driving and transfer of LNG from tank trucks directly on a vessel, and one wanted to know why the Coast Guard doesn’t discuss the activity. The Coast Guard does not discuss this type of operation because the operation is not considered as safe as other forms of transfer operations available. Driving LNG tank trucks aboard a vessel and conducting LNG transfer operations while aboard is considered to be a transfer involving a greater risk than other forms of LNG transfers because vessels and LNG tank trucks cannot remove themselves from the area in the event of an emergency. The Coast Guard does not wish to promote the operation in general, but remains open to evaluating requests on a case-by-case basis. One submitter requested to know if all of 33 CFR Part 127 would apply to LNG tank truck and rail car transfers. As discussed in Enclosure 1 of Policy Letter 02–15, existing regulatory standards may not be appropriate for small scale (e.g., LNG fuel transfer) operations and the Coast Guard Captain of the Port (COTP) may consider alternatives under 33 CFR 127.017.

Five comments were received concerning ISO type tanks. One submitter noted that ISO tanks need to be properly approved and designed and are not as robust as type “C” tanks. The Coast Guard notes that LNG in portable tanks must meet specifications outlined by the Department of Transportation for transport and carriage of hazardous materials in accordance with the Hazardous Material Regulations contained in Title 49 of the U.S. Code of Federal Regulations. The Coast Guard Office of Design and Engineering (CG–ENG) and/or the Marine Safety Center will evaluate as part of their plan review and approval process the design and construction of tanks used to store LNG as fuel on board U.S. vessels.

Four comments were received concerning guidance to the COTP for considering alternatives to the requirements in 33 CFR Part 127. Of those comments received, two comments also recommended Coast Guard Headquarters oversight so as to

ensure greater consistency from port to port. The Coast Guard recognizes the need and desire for consistency from port to port and throughout the Coast Guard. To help COTPs understand alternatives which may be considered for the requirements in 33 CFR Part 127, we have added a new enclosure. Enclosure (4) to Policy letter 02–15 has been added to provide COTPs with guidance as to alternatives which may be considered in lieu of the requirements of 33 CFR Part 127 for LNG fuel facilities. Through publication of these policy letters and continued work within the Coast Guard, we hope to provide consistent application of regulations and policies for LNG operations throughout the country.

Ten comments were received on the topic of conducting Risk Assessments. One of the submitters recommended we add more wording concerning identification of hazards (HAZID’s), operational hazards (HAZOP’s) and quantitative risk assessments (QRA’s). The Coast Guard agrees and added additional guidance and information concerning the need to conduct risk assessments. We have revised Enclosure 1 of Policy Letter 01–15 and Enclosures 1 and 2 of Policy Letter 02–15 to include more information on recommendations for risk assessments established by recognized industry organizations. Finally, one submitter stated that there is no clearly defined or broadly accepted standard for evaluating risk assessments and noted that NFPA standard 551 has some guidance which should be considered. For the purpose of harmonizing with the international community, we recommend and reference in the policy letters the publications of the classification society Det Norske Veritas—Germanischer Lloyd (DNV–GL) and the International Organization for Standardization (ISO) as guides which should be used to conduct risk assessments.

The Coast Guard received twelve comments on training and drills. One submitter indicated that the Coast Guard should establish and specify definite training intervals in order to avoid differing interpretations. The Coast Guard agrees that guidance on appropriate intervals would be helpful and suggests as an example that the drills be conducted quarterly. One submitter indicated that they strongly support having defined training requirements and believe this will significantly contribute to a safer industry. The Coast Guard agrees. The amendments to this policy include recommended training provisions. This guidance identifies a two-tier system—basic and advanced training that

companies may use to structure their training. In addition, the company is also responsible for the vessel familiarization of the crew members which is ship and fuel specific and tailored to each mariner's onboard duties. The recommendations are consistent with the proposed International Maritime Organization (IMO) "Interim guidance on training for seafarers on board ships using gases or other low-flashpoint fuels", STCW.7/Circ.23, the draft amendments to the STCW Convention, and the MERPAC recommendations on this issue. The Coast Guard has added a new Enclosure (3) to Policy Letter 01-15 which is based upon "Interim guidance on training for seafarers on board ships using gases or other low-flashpoint fuels", STCW.7/Circ.23. STCW.7/Circ.23 is the final version of HTW 1/WP.3, Annex 5 that is referenced by the submitters. Another submitter also indicated they believed the Coast Guard should ensure the transitional provisions are followed as an interim measure until relevant STCW requirements come into force to allow for initial personnel training for the new technology. The Coast Guard agrees and is recommending interim steps as part of this policy letter to help ensure an orderly transition to future mandatory requirements. One submitter suggested that Enclosure (2) of Policy Letter 01-14 be deleted in its entirety because the guidelines contained in Resolution MSC.285(86) are expected to be superseded by new interim guidance recommended in HTW 1/WP.3, Annex 5 once the guidance is adopted by MSC. The Coast Guard agrees in part. Enclosure 2 repeats Chapter 8 of IMO Resolution MSC.285(86), "Interim guidelines on safety for natural gas-fuelled engine installations in ships," which contains both training and operational components. We've retained the operational components from Enclosure 2 and replaced the training components with the product from STCW.7/Circ.23, "Interim guidance on training for seafarers on board ships using gases or other low-flashpoint fuels" as Enclosure (3). STCW.7/Circ.23 is the current IMO circular which is based upon the HTW 1/WP.3, Annex 5 that is being referenced by the submitters. One submitter recommended that the Coast Guard work towards approving training courses that meet the proposed requirements of part A (Annex 4) of HTW 1/WP.3 and look to begin issuing endorsements as quickly as possible. The Coast Guard agrees in principle but is unable to approve courses or issue endorsements until enabling regulations

are in place. However, the Coast Guard is endeavoring to provide within CG-OES Policy Letter 01-15, interim guidance that can be used by maritime training providers, maritime companies and mariners to develop training courses and will review courses submitted on a voluntary basis that are designed to meet the training guidance outlined in Enclosure (3). The Coast Guard will issue a letter to maritime training providers attesting to the Coast Guard's review and conformance of these courses with the training recommended in this guidance. One submitter additionally noted that the various means of transfer would require various levels of qualification and training specific to transfers. The Coast Guard agrees that training guidelines would be helpful to companies involved in transfers. The Coast Guard has expanded the training guidelines in line with work currently ongoing at IMO and MERPAC recommendations. MERPAC provided recommendations on the content of the training, transitional provisions, and the proof of training. Their recommendations are included in the revised policy letter. As for mariners holding tankerman PIC (LG), tankerman-engineer (LG) and tankerman assistant (LG) endorsements, transition requirements have also been addressed.

One submitter presumed that the Coast Guard will not require a special endorsement on a license or Merchant Mariner Document (MMD) for mariners serving aboard an LNG powered vessel other than the PIC, who must hold a proper endorsement in order to conduct the transfer operation. The submitter also stated that the policy letter was silent as to the level of competency that each company must provide for other shipboard personnel involved in LNG bunkering operations. In response, the Coast Guard has expanded the training section of the policy letter to include recommended training for members of the vessel's crew who have safety responsibilities in regard to the gases or low flashpoint fuels being used and that documentary evidence such as course completion certificates, company letters, etc., should be issued indicating that the holder has successfully completed the basic or advanced training, as appropriate—See Enclosure 3 of Policy Letter 01-15. One submitter indicated that care should be taken to assure that training for personnel on board vessels using gas fuels are differentiated from a full tankerman (LG endorsement) as appropriate and that referencing the parts of 46 CFR that are for Tankerman should be eliminated. The Coast Guard agrees that vessel personnel on vessels

using gases and low flashpoint fuels should be differentiated from full tankerman. As a result, recommendations specific to their training have been provided in Enclosure (3) accordingly.

The Coast Guard received three comments concerning PICs. One submitter indicated that the Coast Guard needs to clarify the meaning of the word "enough" where it is stated that, ". . . there must be enough Tankerman-PICs on duty . . ." noting that the word "enough" is too vague. The Coast Guard notes the submitters concern, and understands that the term may be ambiguous. However, the term is carried forth from the existing regulations for cargo handling operations in 46 CFR 35.35-1 allowing flexibility to owners, managing operators, masters, and PICs in determining the number of qualified personnel needed to safely transfer liquid cargo based on the details of a specific transfer operation. Enclosure 2 of Policy Letter 02-15, pertaining to tank vessels transferring LNG, remains unchanged in this regard and points to the regulations in 46 CFR 35.35-1 and 154.1831 outlining the qualifications for personnel involved in liquid cargo transfer. However, aboard the receiving vessel that uses gases or low flashpoint fuels, the Coast Guard recommends in Enclosure (1) of Policy Letter 01-15, that the Master of a vessel using LNG as fuel should ensure that all personnel involved with LNG fuel use, transfer, or emergency response meet the standards of competence or advanced standards of competence outlined in Enclosure (3) of Policy Letter 01-15 for the duties to which they are assigned. One submitter noted that both the receiving vessel and supplier of LNG have PICs but our policy letters did not discuss an overall PIC, and requested to know who the overall PIC is. The Coast Guard does not discuss designation of an overall PIC, because the Coast Guard does not believe an overall PIC is necessary. Similar to conventional fuel transfer operations, no one individual is designated as having overall control and responsibility for the transfer. Each PIC is responsible for their part of the transfer operation (supplier and receiver) and each side of the transfer should have a means to stop the transfer in the event of an emergency (See 33 CFR 127.205 and 155.780). Both supplier and receiver must have a means for dedicated voice communication with each other in order to maintain oversight and control of LNG tanks and transfer lines (See 33 CFR 127.111 and 155.785). Given that personnel on either side of the transfer

may not be familiar or experienced with equipment on the other side, it would be improper to assign one entity as being in charge overall. For this reason, the transfer operation should be an event highly coordinated by both PICs. One submitter suggested the Coast Guard add three additional points covering PIC responsibilities—“Establishment of safety zone encompassing both supplier and receiving vessel,” “Emergency response personnel defined and readiness,” and “Monitoring of climatic conditions prior to and during transfer operations.” The Coast Guard agrees in part and has modified the section in Enclosure (1) of Policy Letter 01–15 discussing PIC responsibilities to include checking for climatic conditions and setting safety and security areas around the LNG transfer area. Information related to emergency response is covered in item 2 of the same section.

Two comments were submitted on portable gas detectors. Both expressed a belief that it was unnecessary for all personnel involved in an LNG transfer to have a portable gas detector and suggested that the policy letter align with existing regulations (See 33 CFR 127.203 and 46 CFR 154.1345) which require at least 2 portable gas detectors in the marine transfer area. The Coast Guard agrees and has modified the policy letters to align with existing regulations.

Eight comments were received concerning simultaneous operations. All but one supported the need to conduct simultaneous operations. The one comment submitted against simultaneous operations stated that simultaneous operations create a significant risk factor, dramatically increasing the likelihood of a casualty while fueling. The Coast Guard agrees that simultaneous operations may introduce increased risk, but believes that performance of a risk analysis and incorporation of risk mitigation measures can be useful toward decreasing the likelihood of a casualty occurring while fueling. One comment stated that simultaneous operations should not be treated any differently than current fueling operations. One comment indicated that simultaneous operations should only be allowed after a detailed risk analysis and dispersion analysis are completed. Two comments indicated the need to have a definitive statement that the Coast Guard recognizes the need to allow simultaneous operations. The Coast Guard agrees with the majority of commenters and has modified the discussion of simultaneous operations in Policy Letter 01–15, Enclosure (1) to

include a more definitive statement concerning the need for considering simultaneous operations and identifies recommended industry standards which may be used by facility owners to conduct risk assessments. The Coast Guard does not wish to specify what operations may or may not be conducted simultaneously while LNG transfer operations are in progress and the COTP will evaluate each proposal on a case-by-case basis based on the specific hazards involved.

Three comments were submitted on emergency shutdown devices (ESD). One submitter said all ESD components are to be tested no more than 24 hours before commencement of the actual bunkering operation and that the tests should be documented in accordance with the bunkering procedure. The Coast Guard agrees. In accordance with 33 CFR 127.315(i), and 156.120(r), the ESD system is currently required to be tested by the PIC prior to transfer which should be well within the 24 hour period suggested. One submitter suggested that there could be an exemption for testing bunker tanker ESD equipment, provided evidence of regular testing is available or alternative requirements are deemed as an acceptable equivalence. The Coast Guard disagrees. As noted previously, testing of the ESD system must be conducted by the PIC prior to the transfer as required by existing regulations 33 CFR 127.315(i), and 156.120(r). One submitter suggested that automatic activation of the ESD system due to a gas detection alarm should be reconsidered noting that gas detection systems have been prone to false alarms, particularly if located in humid areas, and repeated shutdowns due to erroneous alarms could create an unanticipated hazard. The Coast Guard is unaware of this being a widespread problem attributed to the performance of all gas detection systems available on the market. However, we have amended Policy Letter 01–15, Enclosure (1) such that gas detection is one of eight items that can be considered as a means to activate the ESD system.

Two comments were received on checklists. One commenter indicated that compatibility between the LNG supplier and the vessel receiving LNG must be ensured in terms of LNG transfer system design, operational manuals, emergency response procedures and a common checklist for the LNG transfer operation. Another comment requested that we consider adopting a professional industry organization’s bunker checklists into our policy letters. The Coast Guard agrees that the use of checklists is

valuable. We have provided a hyperlink in our policy letters recommending that owners and operators involved in LNG transfer operations consider using checklists in order to help globally standardize LNG transfer operations.

Five comments were submitted concerning hazard zones, safety distances, and transfer areas. One submitter questioned whether or not the transfer area is considered to be a hazardous area and asserted that no ignition sources should exist in the transfer area. The Coast Guard agrees and confirms that the transfer area is considered to be a hazardous area. Details concerning removal of ignition sources associated with LNG supply are addressed in Policy Letter 02–15 which focuses on vessels and facilities providing LNG as fuel. One submitter noted that we refer to transfer area and hazardous area, but believed that consideration on ‘Determination of safety and security zones’ should be given. They also pointed out a key aspect with regard to the responsibility of the PIC is to establish the exchange of sufficient information to allow completion of a Declaration of Security (if required), agreement on how and between whom, communications regarding security that are to be made and actions to be taken in the event of a breach of security. Another submitter commented that there should be a discussion about hazardous areas and safety and security areas around the LNG transfer area. The Coast Guard agrees and has added a new paragraph discussing the items in Enclosure (1) of Policy Letter 01–15. One additional submitter stated that advice needs to be given regarding safety distances at different transfer rates, due to increasing “largest credible spills” and that dispersion analysis needs to be included. The Coast Guard agrees with the need to provide additional information concerning safety and security areas and has added information in Policy Letter 01–15, Enclosure (1) indicating they should be established in accordance with industry standards established by the International Organization for Standardization (ISO) which is a recognized organization that has published information related to determining the size of safety and security areas around LNG transfer points. The Coast Guard doesn’t agree with the need to require a declaration of security at this time, and notes that existing regulations concerning the declaration of inspection (33 CFR 127.317, and 33 CFR 156.150) require PICs to conduct a series of checks before

transfer operations, including ensuring that communications are operable between PICs involved in the transfer. The Coast Guard agrees that breaches in safety and security areas should be evaluated and has included a recommendation that a contingency plan be developed concerning how to handle and respond to them. One submitter stated that consideration should be given to include the scope for interaction of a vessel's hazardous areas, emergency response equipment (firefighting, mechanical ventilation, etc.) emergency response procedures and linked ESD systems. The Coast Guard agrees. These items should be considered as part of the compatibility assessment we recommend to be conducted between suppliers and receivers of LNG. We also recommend that emergency response manuals be developed and provide a list of recommended information they should contain.

Four comments were submitted concerning pipelines. One comment suggested that we delete references to bonding of pipelines in Policy Letter 01-14, Enclosure (1) in the section discussing detailed diagrams of the transfer area. The submitter indicated it was not clear how this would be shown on a diagram. The Coast Guard agrees and has removed the item as suggested. One submitter addressed the discussion on, "Conduct before a LNG Fuel Transfer" under Regulations and Recommendations for Vessels Bunkering LNG, of Enclosure (2) to CG-OES Policy Letter No. 02-14. The submitter noted the policy letter states that before transferring LNG to a vessel for use of gas as fuel, the PIC for transferring LNG should inspect the accessible portions of the transfer piping system and equipment to be used during the transfer and ensure that any worn or inoperable parts are replaced and any leaks are identified. The Coast Guard agrees and has added an item recommending that the transfer piping be tested for leaks prior to the transfer of LNG. Finally, one comment was received concerning Policy Letter 02-14, Enclosure (2) section discussing, "Conduct after a LNG Fuel Transfer." The submitter requested adding a requirement to ensure that transfer hoses, manifolds, and associated piping are purged so that natural gas levels are below the lower flammability level. The Coast Guard has amended the section to recommend these types of safety measures.

We received one comment on loading flanges. The submitter indicated the existing regulations contain seemingly contradictory provisions which could

complicate the siting, permitting and operation of such facilities. The submitter noted that Part 127 and Part 193 contain differing requirements in terms of the location of LNG loading flanges in relation to nearby bridges. The Coast Guard understands the concerns, but notes that any correction to these regulations would need to go through the Department of Transportation or USCG rulemaking process. Therefore, the noted discrepancies cannot be rectified through these policy letters.

We received one comment concerning transfer hoses. The submitter referenced an early draft version of our policy letter suggesting that the transfer hose should include provisions to prevent electrical flow during connection or disconnection of the transfer hose string through the hose string or loading arm. The insertion of one short length of non-conducting hose without internal bonding in each hose string, or installation of an insulating flange, should be addressed. In addition, the submitter suggested that each transfer hose string should contain only one electrically discontinuous length of hose or insulating flange, to prevent electrostatic build-up in the hose string. The Coast Guard agrees and has amended Policy Letter 02-15, Enclosure (2) to include these recommendations.

One comment was received on lighting whereby the submitter suggested that the intensity levels should not be specified. The Coast Guard disagrees as the lighting intensity levels specified in the policy letters simply mirror existing federal regulations already imposed for transfer operations. See 33 CFR 127.109 and 155.790.

One comment was submitted concerning operations manuals whereby the submitter said there should be a provision to demonstrate that all relevant personnel are familiar with the operations manual. The Coast Guard agrees and has modified the opening paragraph discussing operation, emergency, and maintenance manuals in policy letter 01-15, Enclosure (1) indicating that the master of a vessel using LNG as fuel should ensure that all personnel involved with LNG fuel use, transfer, or emergency response are familiar with the contents of the LNG fuel transfer system operations manual.

We received three comments concerning emergency procedures. One commenter stated that simultaneous operations imposes the need for more requirements, especially where passengers, public or non-qualified/briefed personnel are in proximity of the bunkering operation. At a minimum, the

submitter stated a need to consider emergency procedures for handling of passengers in the event of an incident during bunkering. The Coast Guard agrees and has modified Policy Letter 01-15, Enclosure (1) to include a provision in the emergency manual for removing or relocating passengers in the event of an LNG incident during bunkering. One commenter suggested that the LNG bunkering and emergency response procedures take into account the LNG bunkering system in place and that the results of the risk assessment studies are adequately managed. The Coast Guard agrees and has included reference to recognized standards for conducting risk assessments which are identified in Enclosure 1 of Policy Letter 01-15 and Enclosures 1 and 2 of Policy Letter 02-15. The risk assessment we recommend should be based on specific details of the operation intended and identify associated risks and hazards and the means to mitigate those risks. The risk assessment is expected to be used as a guide to assist owners and operators in developing their bunkering and emergency response procedures. One commenter asked for guidance on what security requirements, if any, will be required for the vessel arriving at the facility to receive LNG for fuel. If applicable, the security requirements for vessels may be based on the requirements of 33 CFR part 104—Maritime Security: Vessels. Additionally, a safety or security zone may be established around a vessel by the COTP if it is determined necessary based on the results of a risk assessment.

Six comments were received concerning the topic of LNG bunkering. One commenter suggested that LNG bunkering procedures should ensure that unauthorized and non-essential personnel cannot enter the bunkering area. The Coast Guard agrees and has amended Policy Letter 01-15, Enclosure (1) to include a recommendation that procedures be established for setting, securing, and clearing safety and security areas around the LNG transfer point. Two commenters recommended that the operator define the operational envelope under which transfer can take place noting that this should be indicated as a "permissible range of motion where transfer operations can proceed (to be defined for the operation as well as the transfer equipment)", and be included in the Operations manual. The Coast Guard agrees and has amended Policy Letter 01-15, Enclosure (1) recommending that the operations manual define the operating envelope for which safe transfer operations can

and cannot occur. One submitter suggested that paragraph 5b. of Policy Letter No. 01–14 be modified to impose a mutual obligation on both the transferring vessel operator and the receiving vessel operator to ensure that both parties have the personnel and equipment to safely conduct LNG bunkering operations. The Coast Guard agrees and has added recommended information related to the declaration of inspection which must be signed and completed by both persons in charge of the transfer in accordance with 33 CFR 156.150 signifying a mutual obligation on the part of both parties. One commenter stated that it is critical to have a common set of regulatory procedures for all LNG bunkering operations in all ports in the United States (as exists today under 33 CFR part 127 and elsewhere) which companies could incorporate into their operational plans and crew training. The Coast Guard agrees that standardized procedures help ensure safe transfer operations and believes the policy letters will help establish guidelines for standardized industry procedures.

Eight comments were submitted concerning referenced standards. The Coast Guard received one comment pointing out that the reference to SIGTTO's LNG Ship to Ship Transfer Guidelines, 1st Edition, 2011, was outdated and should be replaced with SIGTTO's "Ship to Ship Transfer Guide—Petroleum, Chemicals, & Liquefied Gases," 1st Edition, 2013, whenever referenced. The Coast Guard agrees and has modified the policy letters as suggested to reflect the updated industry standard. One comment requested referencing NFPA 59A, the "Standard for the Production, Storage, and Handling of Liquefied Natural Gas" and SIGTTO's "Liquid Gas Fire Hazard Management" in our discussion of firefighting equipment in Policy Letter 02–14, Enclosure (2). The Coast Guard agrees in part and has added a reference to the SIGTTO publication, but does not reference NFPA 59A because the standard refers to shore based LNG storage and production facilities and Enclosure (2) of Policy Letter 02–15 is focused on vessels providing LNG as fuel. We received a comment suggesting that we add a reference to SIGTTO 2009 publication, "ESD Arrangements & Linked Ship/Shore Systems for Liquefied Gas Carriers" in the discussion of emergency shutdown devices in Enclosure (1) of Policy Letter 01–14. The Coast Guard agrees and has modified the section as requested. Two comments suggested full incorporation

of International Maritime Organization (IMO) standards and guidelines. Policy letter 01–15 outlines these operational items in great detail but we have added a recommendation to better align with IMO guidance noting that procedures for confined space entry should be included in the operations manual. One submitter provided a list of industry standards and guides which the Coast Guard should consider recognizing. The Coast Guard has provided a hyperlink to a free publication provided by the LNG Ship Fuel Advisory Group, titled, "Standards and Guidelines for Natural Gas Fuelled Ship Projects" which identifies many of these standards and recommends that owners and operators become familiar with its contents. This change can be found in Policy Letter 01–15, Enclosure (1), and Policy Letter 02–15, Enclosures (1) and (2) under the section labeled Job Aides.

One submitter suggested Policy Letter 01–14, Enclosure (1) not recommend installation of firefighting equipment on unmanned barges because potential operating scenarios of a barge may include operations away from the LNG facility and firefighting capabilities of a towing vessel during vessel-to-vessel operations could be difficult to ensure. The Coast Guard disagrees and believes operators should consider all firefighting equipment available in the vicinity of an LNG transfer operation whether the transfer is off port or at shore. When conducting a safety assessment for a particular operation, all available firefighting equipment and emergency response equipment should be considered.

One comment suggested that due to the cryogenic properties of LNG, personal protective equipment should be listed with more specificity, including such items as leather working boots (no canvas sneakers should be worn during fueling or transfer operations), loose fitting fire resistant gloves, full face shields, and fit-for purpose multi-layer clothing. The Coast Guard agrees and has modified the sections in Policy Letter 01–15, Enclosure (1) and Policy Letter 02–15, Enclosure (2) discussing recommended personal protective equipment.

The Coast Guard received comments about how the policy letters will be enforced. One commenter raised concerns regarding the notice and comment process of the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*, with regard to the guidance document process and Due Process concerns of appealing a Coast Guard decision. The Coast Guard notes that guidance documents are by their nature non-binding as they are created to assist

the industry in absence of other sources or in explaining existing regulatory requirements. These policy letters provide clarification to industry of existing requirements and how to apply them in this quickly changing environment. These policy letters do not impose legally binding requirements and a company can choose not to adopt the recommendations in the policy letter if it desires. There is no enforcement action associated with these recommendations and thus no appeal process is necessary. However, it is important to note that anyone affected by a direct decision of an OCMI/COTP can appeal that decision to the District Commander as provided for in 46 CFR 1.03–20 and 33 CFR 127.015. Finally, the Coast Guard received one comment requesting clarification on the statement in Policy Letter 01–14 indicating that it is the responsibility of the operator of the facility and/or the transferring vessel to ensure that the receiving vessel has the necessary personnel and equipment to safely and securely participate in the conduct of an LNG transfer operation. While the regulations in 33 CFR Part 127, Subpart B, indicate the primary responsibility for ensuring appropriate LNG transfer protocols are followed lies with the facility operator, the receiving vessel is required by 33 CFR 156.120 and 156.150 to identify a PIC of transfer operations on the vessel who will assist the PIC of shoreside transfer operations in conducting the preliminary transfer inspection required and completing the declaration of inspections required by 33 CFR 127.317 and 156.150. The qualifications set forth at 33 CFR 127.301 and 33 CFR 155.710 (Qualifications of person in charge) are good guidance for assigning a PIC. Additionally, this policy sets forth recommended personnel training guidelines for those personnel who will participate in the transfer operation.

We received one comment asking for guidance on the topic of roll over. As a result of this comment, the Coast Guard added roll over to the list of items in Policy Letter 01–15, Enclosure (1) for which emergency actions and response measures should be described in the emergency manual.

One comment suggested that the word, "if used" be deleted in enclosure (1) to CG–OES Policy Letter No. 01–14, on page 2, under the heading, "Operations, Emergency, and Maintenance Manuals," noting that inert gas must be used to prevent potentially explosive conditions. The Coast Guard agrees and has amended the policy letter as suggested.

Finally, one comment was submitted requesting that the Coast Guard

elaborate what is meant by the boundary of a facility conducting bunkering. In response, the Coast Guard provides that the boundaries of an LNG facility handling LNG should be based on the requirements for design and spacing in NFPA 59A as outlined in 33 CFR Part 127 and any risk or fire safety assessments that may be prepared for the specific operation. The boundary of each facility conducting bunkering should be based on details of the specific bunkering operation.

Voluntary Policy

The Coast Guard's intent in issuing these policy letters is to assist the industry, public, Coast Guard, and other Federal and State regulators in applying existing statutory and regulatory requirements. Following the policy and guidance recommended in these policy letters is voluntary. The policy letters are not a substitute for applicable legal requirements nor are they regulations themselves. The policy letters, however, do contain references to existing regulations which may require certain action where applicable. The Coast Guard notes those instances where it discusses requirements under existing regulations instead of policy or guidance. Nothing in the policy letters and guidance they contain are meant to override or subvert the discretion of the COTP when addressing the unique safety and security concerns of an LNG operation.

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: February 19, 2015.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2015-03852 Filed 2-24-15; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2014-0941]

Port Access Route Study: In the Chukchi Sea, Bering Strait and Bering Sea

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard announces three public meetings to receive comments on a port access route study (PARS) published in the **Federal Register** on December 5, 2014, under the title "Port Access Route Study: In the Chukchi Sea, Bering Strait and Bering Sea." The goal of this study is to help

reduce the risk of marine casualties and increase the efficiency of vessel traffic in the region. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: The first meeting will be held in Juneau, Alaska on March 9, 2015 from 2 p.m. to 7 p.m. The second meeting will be held in Anchorage, Alaska on March 30, 2015 from 12 p.m. to 6 p.m. The third and final meeting will be held in Nome, Alaska on April 2, 2015 from 3 p.m. to 6 p.m.

ADDRESSES: Meeting Locations: Juneau Meeting: Elizabeth Peratrovich Event Center located at 320 W. Wiloughby Ave, Juneau, AK 99801; Anchorage Meeting: Hotel Captain Cook located at 939 West 5th Ave., Anchorage, AK 99501; Nome Meeting: City Of Nome Council Chambers located at 102 Division St, Nome, AK 99762.

Comment submission: You may submit comments associated with docket number USCG-2014-0941 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study or any of the meetings, call or email LT Kody Stitz, Seventeenth Coast Guard District (dpw); telephone (907) 463-2270; email Kody.J.Stitz@uscg.mil or Mr. David Seris, Seventeenth Coast Guard District (dpw); telephone (907) 463-2267; email David.M.Seris@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials as well as attending a public meeting. All comments received will be posted without change to <http://www.regulations.gov> and will include

any personal information you have provided.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Requirement for Port Access Route Studies

Under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223(c)), the Commandant of the Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports.

Schematic of proposed vessel routing system: A chart showing the Coast Guard's proposed two-way route can be downloaded from <http://www.regulations.gov>, type "USCG-2014-0941" into the search bar and click search, next to the displayed search results click "Open Docket Folder", which will display all comments and documents associated with this docket.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Kody Stitz at the telephone number or email address provided under the **FOR FURTHER INFORMATION CONTACT** section of this document.

Meeting Details

All meetings are open to the public. The purpose of the meetings is to increase awareness of the PARS and to receive feedback and comments from the public regarding the PARS. Each meeting will begin with the Coast Guard meeting facilitator presenting an explanation of and the purpose for the PARS along with an overview of the Coast Guard's proposed two-way route through the region. Public participants will then be able to provide comments and feedback to the meeting facilitator. Public participants are not required to stay for the entire meeting duration as the process of the meeting facilitator presenting the PARS information followed by a public comment period will be repeated hourly throughout the allotted meeting time.

Copies of the PARS announced in the **Federal Register** on December 5, 2014 as well as the schematic showing the two-way route will be available at the public meeting. The meeting facilitator will accept written comments from participants who wish to comment in writing. All written comments received by the meeting facilitator will be uploaded to the PARS docket (USCG–2014–0941) without change. Comments made verbally will be summarized by the meeting facilitator and incorporated into the study. The public comment period closes on June 3, 2015 and comments may be submitted up until that time using one of the methods detailed under the COMMENT SUBMISSION section of this document. The Coast Guard will not make any decisions at the meetings and will only begin analyzing the comments and information received after the public comment period closes on June 3, 2015.

D.B. Abel,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2015–03859 Filed 2–24–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2014–0031; OMB No. 1660–0069]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Fire Incident Reporting System (NFIRS) v5.0

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 March 27, 2015.

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 oir.submission@omb.eop.gov or faxed to (202) 395–5806.

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., Room 7NE, Washington, DC 20472, facsimile number (202) 212–4701, or email address FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: On October 10, 2014, FEMA published in the **Federal Register** at 79 FR 64610 a 60 day **Federal Register** notice requesting comment on FEMA's proposed revision to the National Fire Incident Reporting System (NFIRS) v5.0 informaton collection. FEMA subsequently received 8 comments providing positive and constructive feedback regarding the information collected by NFIRS. The cost and hour burden of the NFIRS to users was not addressed directly in any of the comments received. All comments received regarding the content of information collected, the suggested combination of the NFIRS with other data collection systems, the suggested enhancements to the user interface experience of some specific systems (which would impact average time burden in reporting), the suggested "mandatory reporting" by all fire agencies (including Wildland), and the capability for fire departments to review other fire department and regional fire incident data were provided to the program office for their consideration when updating or modifying the NFIRS.

Collection of Information

Title: National Fire Incident Reporting System (NFIRS) v5.0.

Type of information collection: Revision of a currently approved information collection.

Form Titles and Numbers: FEMA Form The National Fire Incident Reporting System (NFIRS) v5.0.

Abstract: NFIRS was established in 1975 by the USFA as a cooperative effort of local, State, and Federal authorities to improve uniformity in fire incident reporting and to ensure that data are useable for fire protection planning and management. The program provides a well-established mechanism, using standardized reporting methods,

to collect and analyze fire incident data at the Federal, State, and local levels with a myriad of life and property saving uses and benefits.

Affected Public: State, Local or Tribal, and Federal Governments.

Estimated Number of Respondents: 23,856. The number of respondents has increased by 856 since FEMA published the 60 day **Federal Register** notice on October 30, 2014 because of a clerical error.

Estimated Total Annual Burden Hours: 13,500,230. The annual burden hours decreased by 204,670 hours from the previous inventory due to discontinuation of use of NFIRS paper forms and a small decrease in the number of students receiving the NFIRS Program Management Training and Orientation.

Estimated Cost: The estimated annual operations and maintenance costs to respondents or record keepers resulting from the collection of information is \$13,915,000. The estimated annual cost to the Federal Government is \$2,416,255.

Dated: February 5, 2015.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–03838 Filed 2–24–15; 8:45 am]

BILLING CODE 9111–76–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's

(FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of March 2, 2015 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at www.msc.fema.gov by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering

Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) Luis.Rodriguez3@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973,

42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at www.msc.fema.gov. The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance")

Dated: February 11, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Yavapai County, Arizona, and Incorporated Areas Docket No.: FEMA-B-1351	
Unincorporated Areas of Yavapai County	Yavapai County Flood Control, District Office, 1120 Commerce Drive, Prescott, AZ 86305.
Henry County, Indiana, and Incorporated Areas Docket No.: FEMA-B-1348	
City of New Castle	City Hall, 227 North Main Street, New Castle, IN 47362.
Town of Dunreith	Henry County Planning Commission, 101 South Main Street, New Castle, IN 47362.
Town of Greensboro	Henry County Planning Commission, 101 South Main Street, New Castle, IN 47362.
Town of Kennard	Kennard Town Hall, 100 North Main Street, Kennard, IN 47351.
Town of Lewisville	Henry County Planning Commission, 101 South Main Street, New Castle, IN 47362.
Town of Middletown	Henry County Planning Commission, 101 South Main Street, New Castle, IN 47362.
Town of Mooreland	Henry County Planning Commission, 101 South Main Street, New Castle, IN 47362.
Unincorporated Areas of Henry County	Henry County Planning Commission, 101 South Main Street, New Castle, IN 47362.
Noble County, Indiana, and Incorporated Areas Docket No.: FEMA-B-1348	
City of Kendallville	City Hall, 234 South Main Street, Kendallville, IN 46755.
City of Ligonier	City Hall, 301 South Cavin Street, Suite 2, Ligonier, IN 46767.
Town of Albion	Municipal Building, 211 East Park Drive, Albion, IN 4670.
Town of Avilla	Town Hall, 108 South Main Street, Avilla, IN 46710.
Town of Rome City	Town Hall, 402 Kelly Street, Rome City, IN 46784.
Unincorporated Areas of Noble County	Noble County South Complex, 2090 North State Road 9, Suite A, Albion, IN 46701.
Woodbury County, Iowa, and Incorporated Areas Docket No.: FEMA-B-1342	
City of Sioux City	City Hall, 405 6th Street, Sioux City, Iowa 51102.
Unincorporated Areas of Woodbury County	Woodbury County Courthouse, Office of Planning and Zoning, 620 Douglas Street, Sioux City, Iowa 51101.
Northampton County, Virginia, and Incorporated Areas Docket No.: FEMA-B-1359	
Town of Cape Charles	Town Hall, 2 Plum Street, Cape Charles, VA 23310.
Town of Cheriton	Northampton County Department of Planning and Zoning, 16404 Courthouse Road, Eastville, VA 23347.
Unincorporated Areas of Northampton County	Northampton County Department of Planning and Zoning, 16404 Courthouse Road, Eastville, VA 23347.

[FR Doc. 2015-03836 Filed 2-24-15; 8:45 am]
 BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2014-0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM

and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of March 16, 2015 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at www.msc.fema.gov by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) Luis.Rodriguez3@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified

flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at www.msc.fema.gov. The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance")

Dated: February 11, 2015.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

UPPER CUMBERLAND WATERSHED

Community	Community map repository address
Bell County, Kentucky, and Incorporated Areas Docket No.: FEMA-B-1351	
City of Middlesboro	County Clerk's Office, 121 North 21st Street, Middlesboro, KY 40965.
City of Pineville	City Hall, 300 Virginia Avenue, Pineville, KY 40977.
Unincorporated Areas of Bell County	Bell County Courthouse, 1 Courthouse Square, Pineville, KY 40977.
Harlan County, Kentucky, and Incorporated Areas Docket No.: FEMA-B-1351	
City of Benham	City Hall, 230 Main Street, Benham, KY 40807.
City of Cumberland	City Clerk's Office, 402 West Main Street, Cumberland, KY 40823.
City of Evarts	City Office, 101 Harlan Street, Evarts, KY 40828.
City of Harlan	City Clerk's Office, 218 South Main Street, Harlan, KY 40831.
City of Loyall	Mayor's Office, 306 Carter Avenue, Loyall, KY 40854.
City of Lynch	City Office, 6 East Main Street, Lynch, KY 40855.
City of Wallins Creek	City Hall, 3280 Main Street, Wallins Creek, KY 40873.
Unincorporated Areas of Harlan County	Judge Executives Office, 210 East Central Street, Suite 111, Harlan, KY 40831.
Knox County, Kentucky, and Incorporated Areas Docket No.: FEMA-B-1351	
City of Barbourville	City Government of Barbourville, 196 Daniel Boone Drive, Barbourville, KY 40906.
Unincorporated Areas of Knox County	Knox County PVA Office, 401 Court Square, Suite 101, Barbourville, KY 40906.
Laurel County, Kentucky, and Incorporated Areas Docket No.: FEMA-B-1351	
City of London	City Hall, 501 South Main Street, London, KY 40741.

UPPER CUMBERLAND WATERSHED—Continued

Community	Community map repository address
Unincorporated Areas of Laurel County	Laurel County Courthouse, 101 South Main Street, Room 320, London, KY 40741.

Letcher County, Kentucky, and Incorporated Areas Docket No.: FEMA-B-1351

City of Blackey	Public Library, 95 Main Street, Blackey, KY 41804.
City of Fleming-Neon	City Hall, 955 KY Highway 317, Fleming-Neon, KY 41840.
City of Jenkins	City Hall, 853 Lakeside Drive, Jenkins, KY 41537.
City of Whitesburg	City Hall, 38 East Main Street, Whitesburg, KY 41858.
Unincorporated Areas of Letcher County	Letcher County Courthouse, 156 Main Street, Suite 107, Whitesburg, KY 41858.

McCreary County, Kentucky, and Incorporated Areas Docket No.: FEMA-B-1351

Unincorporated Areas of McCreary County	McCreary County Courthouse, 1 North Main Street, Whitley City, KY 42653.
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Whitley County, Kentucky, and Incorporated Areas Docket No.: FEMA-B-1351

City of Corbin	City Hall, 805 South Main Street, Corbin, KY 40701.
City of Williamsburg	City Hall, 423 Main Street, Williamsburg, KY 40769.
Unincorporated Areas of Whitley County	Whitley County Health Department, 368 Penny Lane, Williamsburg, KY 40769.

Claiborne County, Tennessee, and Incorporated Areas Docket No.: FEMA-B-1351

Unincorporated Areas of Claiborne County	Claiborne County Courthouse, 1740 Main Street, Tazewell, TN 37879.
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II. Non-watershed-based studies:

Community	Community map repository address
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Martin County, Florida, and Incorporated Areas Docket No.: FEMA-B-1351

City of Stuart	Development Department, 121 Southwest Flagler Avenue, Stuart, FL 34994.
Town of Jupiter Island	Town Hall, 2 Southeast Bridge Road, Hobe Sound, FL 33455.
Town of Ocean Breeze	Town Hall, 7 Northeast 3rd Avenue, Jensen Beach, FL 34957.
Town of Sewalls Point	Town Hall, 1 South Sewall's Point Road, Sewall's Point, FL 34996.
Unincorporated Areas of Martin County	Martin County Administration Center, 2401 Southeast Monterey Road, 2nd Floor, Stuart, FL 34996.

Effingham County, Georgia, and Incorporated Areas Docket No.: FEMA-B-1310

City of Rincon	City Hall, 302 South Columbia Avenue, Rincon, GA 31326.
City of Springfield	City Hall, 130 South Laurel Street, Springfield, GA 31329.
Town of Guyton	City Hall, 310 Central Boulevard, Guyton, GA 31312.
Unincorporated Areas of Effingham County	Effingham County Administrative Complex, 601 North Laurel Street, Springfield, GA 31329.

Stephenson County, Illinois, and Incorporated Areas Docket No.: FEMA-B-1356

City of Freeport	Freeport City Hall, 524 West Stephenson Street, Freeport, IL 61032.
Unincorporated Areas of Stephenson County	Stephenson County Planning and Zoning Department, 295 West Lamm Road, Freeport, IL 61032.
Village of Ridott	Ridott Village Hall, 200 East 3rd Street, Ridott, IL 61067.
Village of Winslow	Winslow Village Hall, 501 School Street, Winslow, IL 61089.

Pottawatomie County, Kansas, and Incorporated Areas Docket No.: FEMA-B-1340

City of St. George	City Hall, 220 First Street, St. George, KS 66535.
Unincorporated Areas of Pottawatomie County	County Office Building, 207 North First Street, Westmoreland, KS 66549.

Riley County, Kansas, and Incorporated Areas Docket No.: FEMA-B-1336

City of Manhattan	City Hall, 1101 Poyntz Avenue, Manhattan, KS 66502.
City of Ogden	City Hall, 222 Riley Avenue, Ogden, KS 66517.
City of Riley	City Hall, 902 West Walnut Street, Riley, KS 66531.
Unincorporated Areas of Riley County	County Office Building, 110 Courthouse Plaza, Manhattan, KS 66502.

Community	Community map repository address
Dorchester County, Maryland, and Incorporated Areas Docket No.: FEMA-B-1359	
City of Cambridge	Department of Public Works, 1025 Washington Street, Cambridge, MD 21613.
Town of Brookview	Brookview Town Council Office, 5649 Indian Town Road, Rhodesdale, MD 21659.
Town of Church Creek	Fire Hall, 1902 Church Creek Road, Church Creek, MD 21622.
Town of Eldorado	Eldorado Town Commission Office, 5808 Eldorado Road, Rhodesdale, MD 21659.
Town of Galestown	Town Hall, 5538 Old Schoolhouse Road, Galestown, MD 19973.
Town of Hurlock	Town Council Office, 311 Charles Street, Hurlock, MD 21643.
Town of Secretary	Town Commission Office, 122 Main Street, Secretary, MD 21664.
Town of Vienna	Town Hall, 214 Market Street, Vienna, MD 21869.
Unincorporated Areas of Dorchester County	Dorchester County Office Building, 501 Court Lane, Cambridge, MD 21613.
Arenac County, Michigan (All Jurisdictions) Docket No.: FEMA-B-1342	
City of Au Gres	City Hall, 124 West Huron Road, Au Gres, MI 48703.
City of Omer	City Hall, 201 East Center Street, Omer, MI 48749.
City of Standish	City Hall, 399 East Beaver Street, Standish, MI 48658.
Township of Arenac	Township Office, 2596 State Road, Standish, MI 48658.
Township of Au Gres	Township Office, 1865 Swenson Road, Au Gres, MI 48703.
Township of Clayton	Township Office, 1057 Dobler Road, Sterling, MI 48659.
Township of Deep River	Township Office, 525 East State Street, Sterling, MI 48659.
Township of Lincoln	Township Office, 5173 Johnsfield Road, Standish, MI 48658.
Township of Mason	Township Office, 1225 West Maple Ridge Road, Twining, MI 48766.
Township of Moffatt	Township Office, 7842 Newberry Street, Alger, MI 48610.
Township of Sims	Township Office, 4489 East Huron Road, Au Gres, MI 48703.
Township of Standish	Township Hall, 4997 Arenac State Road, Standish, MI 48658.
Township of Turner	Township Office, 110 Park Street, Twining, MI 48766.
Township of Whitney	Township Office, 1515 North Huron Road, Tawas City, MI 48763.
Village of Turner	Town Hall, 109 West Main Street, Turner, MI 48765.
Forrest County, Mississippi, and Incorporated Areas Docket No.: FEMA-B-1351	
City of Hattiesburg	Building and Inspections Department, City Hall, 200 Forrest Street, Hattiesburg, MS 39401.
Unincorporated Areas of Forrest County	Forrest County Board of Supervisor's Office, County Courthouse, 629 Main Street, Hattiesburg, MS 39401.
Albany County, New York (All Jurisdictions) Docket No.: FEMA-B-1272	
City of Albany	City Hall, 24 Eagle Street, Albany, NY 12207.
City of Cohoes	City Hall, 97 Mohawk Street, Cohoes, NY 12047.
City of Watervliet	City Hall, 2 15th Street, Watervliet, NY 12189.
Town of Berne	Town Hall, 1615 Helderberg Trail, Berne, NY 12023.
Town of Bethlehem	Bethlehem Town Hall, 445 Delaware Avenue, Delmar, NY 12054.
Town of Coeymans	Coeymans Town Hall, 18 Russell Avenue, Ravena, NY 12143.
Town of Colonie	Colonie Town Hall, 534 Loudon Road, Newtonville, NY 12128.
Town of Guilderland	Guilderland Town Hall, 5209 Western Turnpike, Altamont, NY 12009.
Town of New Scotland	New Scotland Town Hall, 2029 New Scotland Road, Slingerlands, NY 12159.
Town of Rensselaerville	Rensselaerville Town Hall, 87 Barger Road, Medusa, NY 12120.
Town of Westerlo	Town Hall, 671 County Route 401, Westerlo, NY 12193.
Township of Knox	Town Hall, 2192 Berne-Altamont Road, Knox, NY 12107.
Village of Altamont	Village Hall, 115 Main Street, Altamont, NY 12009.
Village of Green Island	Village Hall, 20 Clinton Street, Green Island, NY 12183.
Village of Menands	Village Hall, 250 Broadway, Menands, NY 12204.
Village of Ravena	Village Hall, 15 Mountain Road, Ravena, NY 12143.
Village of Voorheesville	Village Hall, 29 Voorheesville Avenue, Voorheesville, NY 12186.
Licking County, Ohio, and Incorporated Areas Docket No.: FEMA-B-1356	
City of Heath	Municipal Building, 1287 Hebron Road, Heath, OH 43056.
City of Newark	City Hall, 40 West Main Street, Newark, OH 43055.
City of Pataskala	City Hall, 621 West Broad Street, Pataskala, OH 43062.
City of Reynoldsburg	City Hall, 7232 East Main Street, Reynoldsburg, OH 43068.
Unincorporated Areas of Licking County	The Donald D. Hill County Administration Building, 20 South Second Street, Newark, OH 43055.
Village of Alexandria	Village Office, 4 West Main Street, Alexandria, OH 43001.
Village of Granville	Village Office, 141 East Broadway, Granville, OH 43023.
Village of Hanover	Village Office, 200 New Home Drive NE, Newark, OH 43055.
Village of Hartford	Hartford Village Town Hall, 2 North High Street, Croton, OH 43013.
Village of Hebron	Village Office, 934 West Main Street, Hebron, OH 43025.

Community	Community map repository address
Village of Johnstown	Village Office, 599 South Main Street, Johnstown, OH 43031.
Village of Kirkersville	Kirkersville Mayor's Office, 135 North Fourth Street, Kirkersville, OH 43033.
Village of Utica	Village Office, 39 Spring Street, Utica, OH 43080.

Bucks County, Pennsylvania (All Jurisdictions) Docket No.: FEMA-B-1293

Borough of Bristol	Borough Municipal Building, 250 Pond Street, Bristol, PA 19007.
Borough of Chalfont	Borough Hall, 40 North Main Street, Chalfont, PA 18914.
Borough of Doylestown	Borough Hall, 57 West Court Street, Doylestown, PA 18901.
Borough of Hulmeville	Borough Hall, 321 Main Street, Hulmeville, PA 19047.
Borough of Langhorne	Borough Office, 114 East Maple Avenue, Langhorne, PA 19047.
Borough of Langhorne Manor	Langhorne Manor Borough Municipal Building, 618 Hulmeville Avenue, Langhorne, PA 19047.
Borough of Morrisville	Borough Hall, 35 Union Street, Morrisville, PA 19067.
Borough of New Britain	Borough Hall, 45 Keeley Avenue, New Britain, PA 18901.
Borough of New Hope	Borough Hall, 123 New Street, New Hope, PA 18938.
Borough of Newtown	Pickering, Corts, & Summerson, 642 Newtown-Yardley Road, Suite 300, Newtown, PA 18940.
Borough of Penndel	Borough Hall, 300 Bellevue Avenue, Penndel, PA 19047.
Borough of Perkasie	Borough Municipal Building, 620 West Chestnut Street, Perkasie, PA 18944.
Borough of Quakertown	Borough Hall, 35 North 3rd Street, Quakertown, PA 18951.
Borough of Riegelsville	Borough Municipal Building, 615 Easton Road, Riegelsville, PA 18077.
Borough of Sellersville	Borough Municipal Building, 140 East Church Street, Sellersville, PA 18960.
Borough of Silverdale	Borough Hall, 100 West Park Avenue, Silverdale, PA 18962.
Borough of Trumbauersville	Borough Hall, 1 Evergreen Drive, Trumbauersville, PA 18970.
Borough of Tullytown	Borough Municipal Building, 500 Main Street, Tullytown, PA 19007.
Borough of Yardley	Borough Hall, 56 South Main Street, Yardley, PA 19067.
Township of Bedminster	Township of Bedminster, Land and Municipal Office, 432 Elephant Road, Perkasie, PA 18944.
Township of Bensalem	Township Building, 2400 Byberry Road, Bensalem, PA 19020.
Township of Bridgeton	Bridgeton Township Office, 1370 Bridgeton Hill Road, Upper Black Eddy, PA 18972.
Township of Bristol	Township Hall, 2501 Bath Road, Bristol, PA 19007.
Township of Buckingham	Township Office, 4613 Hughesian Drive, Buckingham, PA 18912.
Township of Doylestown	Township Administration Building, 425 Wells Road, Doylestown, PA 18901.
Township of Durham	Township Municipal Building, 215 Old Furnace Road, Durham, PA 18039.
Township of East Rockhill	East Rockhill Township Hall, 1622 North Ridge Road, Perkasie, PA 18944.
Township of Falls	Falls Township Building, 188 Lincoln Highway, Suite 100, Fairless Hills, PA 19030.
Township of Haycock	Haycock Township Municipal Building, 640 Harrisburg School Road, Quakertown, PA 18951.
Township of Hilltown	Township Hall, 13 West Creamery Road, Hilltown, PA 18927.
Township of Lower Makefield	Lower Makefield Township Building, 1100 Edgewood Road, Yardley, PA 19067.
Township of Lower Southampton	Lower Southampton Township Municipal Building, 1500 Desire Avenue, Feasterville, PA 19053.
Township of Middletown	Middletown Township Municipal Center, 3 Municipal Way, Langhorne, PA 19047.
Township of Milford	Milford Township Hall, 2100 Krammes Road, Quakertown, PA 18951.
Township of New Britain	New Britain Township Municipal Building, 207 Park Avenue, Chalfont, PA 18914.
Township of Newtown	Township Building, 100 Municipal Drive, Newtown, PA 18940.
Township of Nockamixon	Nockamixon Township Office, 589 Lake Warren Road, Upper Black Eddy, PA 18972.
Township of Northampton	Northampton Township Administrative Building, 55 Township Road, Richboro, PA 18954.
Township of Plumstead	Plumstead Township Hall, 5186 Stump Road, Pipersville, PA 18947.
Township of Richland	Richland Township Municipal Building, 1328 California Road, Suite A, Quakertown, PA 18951.
Township of Solebury	Township Hall, 3092 North Sagan Road, Solebury, PA 18963.
Township of Springfield	Springfield Township Hall, 2320 Township Road, Quakertown, PA 18951.
Township of Tinicum	Tinicum Township Municipal Building, 163 Municipal Road, Pipersville, PA 18947.
Township of Upper Makefield	Upper Makefield Township Building, 1076 Eagle Road, Newtown, PA 18940.
Township of Upper Southampton	Upper Southampton Township Building, 939 Street Road, Southampton, PA 18966.

Community	Community map repository address
Township of Warminster	Municipal Building, 401 Gibson Avenue, Warminster, PA 18974.
Township of Warrington	Township Building, 852 Easton Road, Warrington, PA 18976.
Township of Warwick	Warwick Township Hall, 1733 Township Greene, Jamison, PA 18929.
Township of West Rockhill	West Rockhill Township Office, 1028 Ridge Road, Sellersville, PA 18960.
Township of Wrightstown	Township Building, 2203 Second Street Pike, Wrightstown, PA 18940.

[FR Doc. 2015-03837 Filed 2-24-15; 8:45 am]
 BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2015-0006]

Notice of Public Meetings on the Proposed Revised Guidelines for Implementing Executive Order 11988, Floodplain Management, as Revised Through the Federal Flood Risk Management Standard

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice is to announce four public meetings to solicit public input on the proposed “Revised Guidelines for Implementing Executive Order 11988, Floodplain Management.”

DATES: The first public meeting will be held in Ames, IA on March 3, 2015, from 3:00 p.m. to 5:30 p.m. Central Standard Time (CST). The second public meeting will be held in Biloxi, MS on March 5, 2015, from 9:00 a.m. to 12:00 p.m. Central Standard Time (CST). The third public meeting will be held in Sacramento, CA on March 11, 2015, from 2:00 p.m. to 5:00 p.m. Pacific Standard Time (PST). The fourth public meeting will be held in Hampton Roads, VA on March 11, 2015, from 9:00 a.m. to 12:00 p.m. Eastern Standard Time (EST).

ADDRESSES: The first public meeting will be held in Ames, IA, at the Iowa Water Conference Venue, Iowa State University, Scheman Building, 1810 Lincoln Way, Ames, IA 50011. The second public meeting will be held in Biloxi, MS at the Mississippi Recovery Office, 220 Popps Ferry Road, Biloxi, MS 39591. The third public meeting will be held in Sacramento, CA at the CA Office of Emergency Services, 3650 Schriever Ave, Mather, CA 95655. The fourth public meeting will be held in Hampton Roads, VA at Old Dominion University, 4320 Hampton Blvd., Norfolk, VA 23529.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by February 26, 2015 for the first meeting, by March 2, 2015 for the second meeting, by March 6, 2015 for the third meeting, and by March 6, 2015 for the fourth meeting.

Due to space constraints of the facilities, seating will be limited to 300 participants for the Ames, IA meeting, 100 participants for the Biloxi, MS meeting, 200 participants for the Sacramento, CA meeting, and 225 participants for the Hampton Roads meeting. To reserve a seat in advance, please provide a request via email or mail with the contact information of the participant (including name, mailing address, and email address), the meeting(s) to be attended, and include the subject/attention line (or on the envelope if by mail): Reservation Request for FFRMS Meeting. Advance reservations must be received 3 business days prior to each meeting to ensure processing. Unregistered participants will be accepted after all participants with reservations have been accommodated and will be admitted on a first-come, first-serve basis, provided the person capacity is not exceeded. To submit reservations, please email: FEMA-FFRMS@fema.dhs.gov or send by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** caption.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered at the public meetings. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472-3100.

Instructions: All submissions received must include the docket ID FEMA-2015-0006. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read comments received, go to <http://www.regulations.gov>, and search for the Docket ID FEMA-2015-0006.

www.regulations.gov, and search for the Docket ID FEMA-2015-0006.

FOR FURTHER INFORMATION CONTACT: Bradley Garner, 202-646-3901 or FEMA-FFRMS@fema.dhs.gov. Mailing Address: FFRMS, 1800 South Bell Street, Room 627, Arlington, VA 20598-3030. The Web site is <https://www.fema.gov/federal-flood-risk-management-standard-ffrms>.

SUPPLEMENTARY INFORMATION: On January 30, 2015, the President signed Executive Order 13690, directing FEMA, on behalf of the Mitigation Framework Leadership Group, to publish for public comment draft revised Floodplain Management Guidelines to provide guidance to agencies on the implementation of Executive Order 11988, as amended, consistent with a new Federal Flood Risk Management Standard. These draft revised Guidelines were developed by the Mitigation Framework Leadership Group in consultation with the Federal Interagency Floodplain Management Task Force. FEMA is publishing this Notice on behalf of the Mitigation Framework Leadership Group, which is chaired by FEMA, to solicit and consider public input on the draft revised Guidelines at four public meetings.

Background information about these topics is available on the FFRMS Web site at <https://www.fema.gov/federal-flood-risk-management-standard-ffrms> or in the docket for this Notice at www.regulations.gov, Docket ID FEMA-2015-0006.

These meetings are exempt from the Federal Advisory Committee Act (FACA), as the Mitigation Framework Leadership Group is an intergovernmental committee and falls under the intergovernmental committee exception to FACA, 41 CFR 102-3.40(g).

Authority: Executive Order 11988, as amended; Executive Order 13690.

Roy Wright,
 Deputy Associate Administrator for Mitigation, Federal Emergency Management Agency.

[FR Doc. 2015-03840 Filed 2-24-15; 8:45 am]
 BILLING CODE 9111-47-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA-2009-0024]

Enforcement Actions Summary

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of availability.

SUMMARY: The Transportation Security Administration (TSA) is providing notice that it has issued an annual summary of all enforcement actions taken by TSA under the authority granted in the Implementing Recommendations of the 9/11 Commission Act of 2007.

FOR FURTHER INFORMATION CONTACT: Emily Su, Assistant Chief Counsel, Civil Enforcement, Office of the Chief Counsel, TSA-2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6002; telephone (571) 227-2305; facsimile (571) 227-1378; email emily.su@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2007, section 1302(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the 9/11 Act), Public Law 110-53, 121 Stat. 392, gave TSA new authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code (U.S.C.) and for any violations of chapter 701 of title 46 of the U.S. Code, which governs transportation worker identification credentials (TWICs).

Section 1302(a) of the 9/11 Act, codified at 49 U.S.C. 114(v), authorizes the Secretary of the Department of

Homeland Security (DHS) to impose civil penalties of up to \$10,000 per violation of any surface transportation requirement under 49 U.S.C. or any requirement related to TWICs under 46 U.S.C. chapter 701. TSA exercises this function under delegated authority from the Secretary. See DHS Delegation No. 7060-2.

Under 49 U.S.C. 114(v)(7)(A), TSA is required to provide the public with an annual summary of all enforcement actions taken by TSA under this subsection; and include in each such summary the identifying information of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty. This summary is for calendar year 2014. TSA will publish a summary of all enforcement actions taken under the statute in January to cover the previous calendar year.

Document Availability

You can get an electronic copy of both this notice and the enforcement actions summary on the Internet by searching the electronic Federal Docket Management System (FDMS) Web page at <http://www.regulations.gov>, Docket No. TSA-2009-0024;

You can get an electronic copy of only this notice on the Internet by—

(1) Accessing the Government Publishing Office's Web page at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> to view the daily published **Federal Register** edition; or accessing the "Search the **Federal Register** by Citation" in the "Related Resources" column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates; or

(2) Visiting TSA's Security Regulations Web page at <http://www.tsa.gov> and accessing the link for "Stakeholders" at the top of the page, then the link "Research Center" in the left column.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Issued in Arlington, Virginia, February 19, 2015.

Margot F. Bester,
Principal Deputy Chief Counsel.

February 19, 2015

Annual Summary of Enforcement Actions Taken Under 49 U.S.C. 114(v) Annual Report

Pursuant to 49 U.S.C. 114(v)(7)(A), TSA provides the following summary of enforcement actions taken by TSA in calendar year 2014 under section 114(v).¹

Background

Section 114(v) of title 49 of the U.S. Code gave the Transportation Security Administration (TSA) new authority to assess civil penalties for violations of any surface transportation requirements under 49 U.S.C. and for any violations of chapter 701 of title 46 of the U.S. Code, which governs transportation worker identification credentials (TWICs). Specifically, section 114(v) authorizes the Secretary of the Department of Homeland Security (DHS) to impose civil penalties of up to \$10,000 per violation of any surface transportation requirement under title 49 U.S.C. or any requirement related to TWICs under 46 U.S.C. chapter 701.²

ENFORCEMENT ACTIONS TAKEN BY TSA IN CALENDAR YEAR 2014

TSA Case number/type of violation	Penalty proposed/assessed
TSA Case # 2013TPA0154—Rail Car Transfer of Custody (49 CFR 1580.107)	None (Warning Notice).
TSA Case # 2013MEM0087—Rail Car Transfer of Custody (49 CFR 1580.107)	\$30,000/\$30,000.
TSA Case # 2013MEM0049—Rail Car Transfer of Custody (49 CFR 1580.107)	None (Warning Notice).
TSA Case # 2013MEM0090—Rail Car Transfer of Custody (49 CFR 1580.107)	\$20,000/\$15,000.
TSA Case # 2014ATL0832—Rail Car Location (49 CFR 1580.103)	None (Letter of Correction).
TSA Case # 2015BOS0008—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	None (Warning Notice).
TSA Case # 2015PHL0014—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	None (Warning Notice).
TSA Case # 2015MOB0002—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	None (Warning Notice).
TSA Case # 2015JAX0007—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	None (Warning Notice).
TSA Case # 2015JAX0006—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	None (Warning Notice).
TSA Case # 2013MCO0310—Reporting Security Concerns (49 CFR 1580.203)	None (Letter of Correction).
TSA Case # 2014IAD0084—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	\$4,000/\$4,000.

¹ 49 U.S.C. 114(v)(7)(A) states: In general. Not later than December 31, 2008, and annually thereafter, the Secretary shall—(i) provide an annual summary to the public of all enforcement actions taken by the Secretary under this

subsection; and (ii) include in each such summary the docket number of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty.

² TSA exercises this function under delegated authority from the Secretary. See DHS Delegation No. 7060-2.

ENFORCEMENT ACTIONS TAKEN BY TSA IN CALENDAR YEAR 2014—Continued

TSA Case number/type of violation	Penalty proposed/assessed
TSA Case # 2014IAD0082—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	\$4,000/\$4,000.
TSA Case # 2014IAD0083—TWIC—Fraudulent Use or Manufacture (49 CFR 1570.7)	\$4,000/\$2,000.

[FR Doc. 2015–03798 Filed 2–24–15; 8:45 am]
 BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5851–N–01]

Rental Assistance Demonstration (RAD)—Alternative Requirements or Waivers: Waiving and Specifying Alternative Requirements for the 20 Percent Portfolio Cap on Project-Basing and Certain Tenant Protection and Participation Provisions for the San Francisco Housing Authority’s RAD Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The RAD statute gives HUD authority to establish waivers and alternative requirements. Pursuant to this authority, HUD has waived, to date, the statutory 20 percent cap on project-basing of a PHA’s tenant-based voucher funding for RAD-converted units. This notice advises that HUD is waiving for the San Francisco Housing Authority (SFHA), to a limited extent and subject to certain conditions, the 20 percent cap on project-basing and certain other provisions governing project-based assistance with respect to an identified portfolio that includes RAD funding. These waivers are in response to plans submitted by SFHA to address capital needs of the portfolio and preserve available affordable housing for the SFHA’s jurisdiction. Without this waiver, SFHA states that its plan for improving its affordable housing portfolio with RAD would not be workable, and the conversion of units under RAD would not be effective for its purpose.

DATES: *Effective Date:* March 9, 2015.

FOR FURTHER INFORMATION CONTACT: Janet Golrick, Acting Director of the Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number 202–708–0001 (this is not a toll-free number). Hearing- and speech-

impaired persons may access these numbers through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Background and Action

The RAD statute (Pub. L. 112–55, approved November 18, 2011) gives HUD authority to waive or specify alternative requirements for, among other things, section 8(o)(13) of the United States Housing Act of 1937 (the 1937 Act). In order to utilize this authority, the RAD statute requires HUD to publish by notice in the **Federal Register** any waiver or alternative requirement no later than 10 days before the effective date of such notice. This notice meets this publication requirement.

On July 2, 2013, notice 2012–32 Rev-1 (as corrected by the technical correction issued February 6, 2014) (“the revised notice”) superseded PIH Notice 2012–32. The revised notice is found at the following URL: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices/2012.

The revised notice at section 1.9, paragraph F, entitled “Portfolio Awards,” also sets forth a new option of a “portfolio award,” which allows PHAs to apply for RAD conversions affecting a group of projects. This type of award is meant to enable PHAs to create a comprehensive revitalization plan for multiple buildings they oversee. SFHA has submitted an application for a portfolio award under RAD.

The revised notice contains a waiver of 8(o)(13)(B) and other sections of the 1937 Act. Section 1.6, “Special Provisions Affecting Conversions to PBVs,” at paragraph A.1, allows a project that converts from one form of rental assistance to another under RAD to exceed the 20 percent project-basing cap. Section 1.6.A.2 allows sets alternate requirements for the percent limitation on the number of units in a project that may receive PBV assistance. Section 1.6.C. sets forth alternative requirements for resident rights and participation. (Collectively, the waivers and alternative requirements set forth in Sections 1.6.A.1, 1.6.A.2 and 1.6.C are referred to herein as the “Applicable Alternative Tenanting Requirements.”)

As part of its application for a portfolio award, SFHA’s comprehensive

revitalization planning contemplates not only the conversion of assistance pursuant to RAD, but also to supplement such converted projects by project-basing additional voucher assistance. SFHA has submitted a waiver request that seeks permission to apply the Applicable Alternative Tenanting Requirements to all units in those projects with assistance converted under RAD. HUD has granted that request, subject to certain conditions which SFHA has agreed to carry out.

Dated: February 13, 2015.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

Biniam T. Gebre,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2015–03780 Filed 2–24–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.1A000113]

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: These updated guidelines provide guidance to State courts and child welfare agencies implementing the Indian Child Welfare Act’s (ICWA) provisions in light of written and oral comments received during a review of the Bureau of Indian Affairs (BIA) *Guidelines for State Courts in Indian Child Custody Proceedings* published in 1979. They also reflect recommendations made by the Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence and significant developments in jurisprudence since ICWA’s inception. The updated BIA *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* promote compliance with ICWA’s stated goals and provisions by providing a framework for State courts and child

welfare agencies to follow, as well as best practices for ICWA compliance. Effective immediately, these guidelines supersede and replace the guidelines published in 1979.

DATES: These guidelines are effective on February 25, 2015.

FOR FURTHER INFORMATION CONTACT: Hankie Ortiz, Deputy Director—Indian Services, Bureau of Indian Affairs, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, (202) 208–2874; *hankie.ortiz@bia.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

These updated BIA guidelines provide standard procedures and best practices to be used in Indian child welfare proceedings in State courts. The updated guidelines are issued in response to comments received during several listening sessions, written comments submitted throughout 2014, and recommendations of the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence.

Congress enacted ICWA in 1978 to address the Federal, State, and private agency policies and practices that resulted in the “wholesale separation of Indian children from their families.” H. Rep. 95–1386 (July 24, 1978), at 9. Congress found “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions” 25 U.S.C. 1901(4). Congress determined that cultural ignorance and biases within the child welfare system were significant causes of this problem and that state administrative and judicial bodies “have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” 25 U.S.C. 1901(5); H. Rep. 95–1386, at 10. Congress enacted ICWA to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture.” H. Rep. 95–1386, at 8. ICWA thus articulates a strong “federal policy that, where possible, an Indian child should remain in the Indian community.” *Mississippi Band of*

Choctaw Indians v. Holyfield, 490 U.S. 30 (1989) (citing H. Rep. 95–1386 at 24).

Following ICWA's enactment, in July 1979, the Department of the Interior (Department) issued regulations addressing notice procedures for involuntary child custody proceedings involving Indian children, as well as governing the provision of funding for and administration of Indian child and family service programs as authorized by ICWA. See 25 CFR part 23. Those regulations did not address the specific requirements and standards that ICWA imposes upon State court child custody proceedings, beyond the requirements for contents of the notice. Also, in 1979, the BIA published guidelines for State courts to use in interpreting many of ICWA's requirements in Indian child custody proceedings. 44 FR 67584 (Nov. 26, 1979). Although there have been significant developments in ICWA jurisprudence, the guidelines have not been updated since they were originally published in 1979. Much has changed in the 35 years since the original guidelines were published, but many of the problems that led to the enactment of ICWA persist.

In 2014, the Department invited comments to determine whether to update its guidelines and what changes should be made. The Department held several listening sessions, including sessions with representatives of federally recognized Indian tribes, State court representatives (e.g., the National Council of Juvenile and Family Court Judges and the National Center for State Courts' Conference of Chief Justices Tribal Relations Committee), the National Indian Child Welfare Association, and the National Congress of American Indians. The Department received comments from those at the listening sessions and also received written comments, including comments from individuals and additional organizations, such as the Christian Alliance for Indian Child Welfare and the American Academy of Adoption Attorneys. An overwhelming proportion of the commenters requested that the Department update its ICWA guidelines and many had suggestions for revisions that have been included. The Department reviewed and considered each comment in developing these revised Guidelines.

II. Statutory Authority

The Department is issuing these updated guidelines under ICWA, 25 U.S.C. 1901 *et seq.*, and its authority over the management of all Indian affairs under 25 U.S.C. 2.

III. Summary of Updates

The 1979 guidelines included “commentary” for each section, which was intended to explain the requirements of each section. The updated guidelines are clearer, making the commentary unnecessary. Recognizing the important role that child welfare agencies play in ICWA compliance, these updated guidelines broaden the audience of the guidelines to include both State courts and any agency or other party seeking placement of an Indian child. The guidelines identify procedures to address circumstances in which a parent desires anonymity in a voluntary proceeding. Those procedures clarify that a parent's desire for anonymity does not override the responsibility to comply with ICWA. The guidelines also establish that agencies and courts should document their efforts to comply with ICWA. The following paragraphs include section-by-section highlights of the substantive updates that these guidelines make to the 1979 version.

Section A. General Provisions (formerly, entitled “Policy”)

The updated guidelines add several provisions to section A, to provide better context for the guidelines and clear direction on implementing the guidelines. For example, this section includes definitions of key terms used throughout the guidelines, such as “active efforts” and “child custody proceeding.” The phrase “active efforts” has been inconsistently interpreted. The guidelines' definition is intended to provide clarity—particularly in establishing that “active efforts” require a level of effort beyond “reasonable efforts.”

Section A also includes an applicability section, which incorporates many of the provisions of the 1979 guidelines' section B.3. In addition, section A:

- Clarifies that agencies and State courts must ask, in every child custody proceeding, whether ICWA applies;
- Clarifies that courts should follow ICWA procedures even when the Indian child is not removed from the home, in order to allow tribes to intervene as early as possible to assist in preventing a breakup of the family; and
- Provides that, where agencies and State courts have reason to know that a child is an Indian child, they must treat that child as an Indian child unless and until it is determined that the child is not an Indian child.

These clarifications are necessary to ensure that the threshold question for determining whether ICWA applies (is

the child an Indian child?) is asked, and asked as soon as possible. If such inquiry is not timely made, a court proceeding may move forward without appropriate individuals aware that ICWA applies and that certain procedures must be followed. Tragic consequences may result.

The updated guidelines also add a section regarding how to contact a tribe, in case the agency or State court is unfamiliar with whom to contact.

Section A is intended to make clear that there is no existing Indian family (EIF) exception to application of ICWA. The EIF doctrine is a judicially-created exception to the application of ICWA. Since first recognition of the EIF in 1982, the majority of State appellate courts that have considered the EIF have rejected it as contrary to the plain language of ICWA. Some State legislatures have also explicitly rejected the EIF within their State ICWA statutes. The Department agrees with the States that have concluded that there is no existing Indian family exception to application of ICWA.

Section A also clarifies that ICWA and the guidelines apply in certain voluntary placements.

Section B. Pretrial Requirements

The updated guidelines, and section B in particular, promote the early identification of ICWA applicability. Such identifications will promote proper implementation of ICWA at an early stage, to prevent—as much as possible—delayed discoveries that ICWA applies. Often, those circumstances resulting from delayed discoveries have caused heartbreaking separations and have sometimes led to noncompliance with ICWA's requirements. By requiring agencies and courts to consider, as early as possible, whether ICWA applies, the updated guidelines will ensure that proper notice is given to parents/Indian custodians and tribes, that tribes have the opportunity to intervene or take jurisdiction over proceedings, as appropriate, and that ICWA's placement preferences are respected.

With regard to early discovery, section B requires agencies and courts to consider whether the child is an Indian child, and sets out the steps for verifying the tribe(s) and providing notice to the parents/Indian custodians and tribe(s). Section B also adds guidance regarding the evidence a court may require an agency to provide of the agency's investigations into whether the child is an Indian child.

With regard to application of ICWA, the updated section B clarifies when the Act's requirement to conduct "active

efforts" begins. ICWA requires "active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family." See 25 U.S.C. 1912(d). The updated section B clarifies that active efforts must begin from the moment the possibility arises that the Indian child may be removed. This updated section also clarifies that active efforts should be conducted while verifying whether the child is an Indian child; this clarification ensures compliance with ICWA in cases in which the status of whether the child is an Indian child is not verified until later in the proceedings.

Section B adds a new paragraph clarifying that the tribe alone retains the responsibility to determine tribal membership. This section makes clear that there is no requirement for the child to have a certain degree of contact with the tribe or for a certain blood degree, and notes that a tribe may lack written rolls. The updated guidelines delete the provision allowing BIA, in lieu of the tribe, to verify the child's status. This provision has been deleted because it has become increasingly rare for the BIA to be involved in tribal membership determinations, as tribes determine their own membership. See *e.g.*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). ("Congress' authority over Indian matters is extraordinarily broad, and the role of courts in adjusting relations between and among tribes and their members correspondingly restrained.") BIA may assist in contacting the tribe to ensure a determination, however.

The updated section B also expands upon procedures for determining a child's tribe in the event that more than one tribe is identified as the child's tribe. Specifically, it changes the criteria for determining with which tribe the child has "significant contacts," adding that the parents' preference for membership will be considered, and deleting factors that are subjective or inapplicable to infants.

With regard to providing notice to Indian tribes and the child's parents/Indian custodians, the updated section B:

- Clarifies that notice is required for each proceeding (not just for the first or last proceeding);
- States that notice must be sent, at a minimum, by registered mail, return receipt requested, and that personal service or other types of service may be in addition to, but not in lieu of, such mail; and
- Clarifies that the tribe has the right to intervene at any time.

This section also clarifies how guidelines apply if the child is transferred interstate.

The updated guidelines expand upon the emergency procedure provisions in light of evidence that some States routinely rely upon emergency removals and placements in a manner that bypasses implementation of ICWA. See *Oglala Sioux Tribe v. Hunnik*, Case No. 5:13-cv-05020-JLV, *Amicus Brief of the United States*, at *5-6 (D.S.D. Aug. 14, 2014) (involving allegations that: (1) Defendants are conducting perfunctory 48-hour hearings that do not adequately gather or evaluate information necessary to determine whether emergency removals or placements should be terminated, and that the orders issued at the end of the 48-hour hearing do not adequately instruct State officials to return the child to the home as soon as the emergency has ended; (2) Defendants are violating the Due Process Clause by preventing parents from testifying, presenting evidence, or cross-examining the State's witnesses at the 48-hour hearing; and (3) parents are not being provided adequate notice or the opportunity to be represented by appointed counsel and that the State courts are issuing orders to remove Indian children from their homes without basing those orders on evidence adduced in the hearing). Because ICWA was intended to help prevent the breakup of Indian families; therefore, emergency removals and emergency placements of Indian children should be severely limited, applying only in circumstances involving imminent physical damage or harm. The updated section B clarifies that the guidelines for emergency removal or placement apply regardless of whether the Indian child is a resident of or domiciled on a reservation. This section also explicitly states the standard for determining whether emergency removal or emergency placement is appropriate—*i.e.*, whether it is necessary to prevent imminent physical damage or harm to the child—and provides examples. The guidelines clearly state that the emergency removal/placement must be as short as possible, and provides guidance on how to ensure it is as short as possible. It also shortens the time period for temporary custody without a hearing or extraordinary circumstances from 90 days to 30 days. This shortened timeframe promotes ICWA's important goal of preventing the breakup of Indian families.

Section C. Procedures for Transfer to Tribal Court

The updated section C deletes the requirement that requests to transfer to

tribal court be made “promptly after receiving notice of the proceeding” because there is no such requirement in ICWA. Instead, the updated guidelines clarify that the right to transfer is available at any stage of a proceeding, including during an emergency removal. The updated section C also clarifies that the right to request a transfer occurs with each distinct proceeding. ICWA contains no restriction on the right to request a transfer occurring at the first, last, or any specific child custody proceeding. A tribe may decide that transfer is not appropriate until it reaches the stage where parental termination is being determined.

The updated section C also updates the “good cause” factors for denying transfer to tribal court. The updated criteria are more general; in summary, good cause may be found if either parent objects, the tribal court declines, or the State court otherwise determines that good cause exists. The updated guidelines specifically omit some of the factors that were the basis for finding that “good cause” exists under the 1979 guidelines. One such factor that should no longer be considered is whether the proceeding was at an advanced stage. As mentioned above, there may be valid reasons for waiting to transfer a proceeding until it reaches an advanced stage. Another factor that should no longer be considered is the level of contacts the child has had with the tribe—this factor unnecessarily introduces an outsider’s evaluation of the child’s relationship with the tribe and cannot sensibly be applied to infants.

The updated guidelines also specify that it is inappropriate to conduct an independent analysis, inconsistent with ICWA’s placement preferences, of the “best interest” of an Indian child. The provisions of ICWA create a presumption that ICWA’s placement preferences are in the best interests of Indian children; therefore, an independent analysis of “best interest” would undermine Congress’s findings. Finally, the updated guidelines provide that the tribal court’s prospective placement of an Indian child should not be considered, because it invites speculation regarding the tribal court’s findings and conclusions and, therefore, undermines the independence of tribal court decision making.

Section D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

The updated section D establishes that parties have the right to examine records and reports in a timely manner; this ensures that parents/Indian

custodians and tribes have the opportunity to examine information necessary to protect their rights under ICWA. This updated section also expands significantly on how to comply with the Act’s “active efforts” requirement. Specifically, the updated guidelines:

- Require demonstration that “active efforts” were made, not only “prior to” the commencement of the proceeding, but also “until” the commencement of the proceeding;
- Require documentation of what “active efforts” were made; and

Require a showing that active efforts have been unsuccessful. The updated section D also provides guidance regarding how to identify an appropriate “qualified expert witness.” Commenters indicated that some States rely on witnesses’ qualifications as child care specialists, or on other areas of expertise, but do not require any expert knowledge related to the tribal community. The updated guidelines establish a preferential order for witnesses who are experts in the culture and customs of the Indian child’s tribe. This will ensure that the expert witness with the most knowledge of the Indian child’s tribe is given priority.

Section E. Voluntary Proceedings

ICWA applies to voluntary proceedings that operate to prohibit an Indian child’s parent or Indian custodian from regaining custody of the child upon demand; nevertheless, evidence suggests that ICWA is sometimes ignored or intentionally bypassed in voluntary proceedings. The updated section E clarifies that, even in voluntary proceedings, it is necessary to determine whether ICWA applies, and to comply with ICWA’s provisions. To ensure that parents and Indian custodians understand the significance of their consent, the updated section E requires the consent document to identify any conditions to the consent and requires the court to explain the consequences of the consent before its execution. It also addresses steps for withdrawal of consent. The updated section E further restates the statutory restriction that a consent given prior to or within 10 days after birth of an Indian child is not valid.

Section F. Dispositions

The updated guidelines provide more information regarding when and how to apply ICWA’s placement preferences for foster and adoptive placements. In some cases, agencies fail to conduct any investigation of whether placements that conform to ICWA’s placement

preferences are available. The updated section F requires that:

- The agency bears the burden of proof if it departs from any of the placement preferences and must demonstrate that it conducted a diligent search to identify placement options that satisfy the placement preferences, including notification to the child’s parents or Indian custodians, extended family, tribe, and others; and
- The court determines whether “good cause” to deviate from the placement preferences exists before departing from the placement preferences.

The updated section F also adds provisions to ensure that “good cause” determinations are explained to all parties and documented.

Evidence suggests that “good cause” has been liberally relied upon to deviate from the placement preferences in the past. Commenters noted that, in some cases, a State court departed from the placement preferences because an Indian child has spent significant time in a family’s care, despite the fact that the placement was made in violation of ICWA. The guidelines attempt to prevent such circumstances from arising by encouraging early compliance with ICWA (see sections A and B, in particular). The guidelines also specify in section F that “good cause” does not include normal bonding or attachment that may have resulted from a placement that failed to comply with the Act. As in other parts of the guidelines, this section clarifies that an independent consideration of the child’s “best interest” is inappropriate for this determination because Congress has already addressed the child’s best interest in ICWA. Because ICWA does not allow for consideration of socioeconomic status in the placement preferences, this section also now clarifies that the court may not depart from the preferences based on the socioeconomic status of one placement relative to another, except in extreme circumstances.

Section G. Post-Trial Rights

ICWA is intended to protect the rights, not only of Indian children, parents and Indian custodians, but also of Indian tribes. The updated guidelines establish that an Indian child, parent or Indian custodian, or tribe may petition to invalidate an action if the Act or guidelines have been violated, regardless of which party’s rights were violated. This approach promotes compliance with ICWA and reflects that ICWA is intended to protect the rights of each of these parties.

Adults who had been adopted by non-Indian families and seek to reconnect with their tribes often face significant hurdles in obtaining needed information. The updated guidelines attempt to protect those adults' rights to obtain information about their tribal relationship by specifying that, even in States where adoptions remain closed, the relevant agency should facilitate communication directly with the tribe's enrollment office.

The guidelines also recommend that courts work with tribes to identify tribal designees who can assist adult adoptees to connect with their tribes.

Finally, the updated guidelines clarify that the requirement to maintain records on foster care, preadoptive placement and adoptive placements applies not only in involuntary proceedings, but also in voluntary proceedings.

IV. Guidance

These guidelines supersede and replace the guidelines published at 44 FR 67584 (November 28, 1979).

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

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6. How must the State maintain records?

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

A. General Provisions

A.1. What is the purpose of these guidelines?

These guidelines clarify the minimum Federal standards, and best practices, governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express language, Congress' intent in enacting the statute, and the canon of construction that statutes enacted for the benefit of Indians are to be liberally construed to their benefit. In order to fully implement ICWA, these guidelines should be applied in all proceedings and stages of a proceeding in which the Act is or becomes applicable.

A.2. What terms do I need to know?

Active efforts are intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts as required by Title IV-E of the Social Security Act (42 U.S.C. 671(a)(15)). Active efforts include, for example:

(1) Engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);

(2) Taking steps necessary to keep siblings together;

(3) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(4) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate;

(5) Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;

(6) Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;

(7) Offering and employing all available and culturally appropriate family preservation strategies;

(8) Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(9) Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;

(10) Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;

(11) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;

(12) Monitoring progress and participation in services;

(13) Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;

(14) Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and

(15) Providing post-reunification services and monitoring.

"Active efforts" are separate and distinct from requirements of the Adoption and Safe Families Act

(ASFA), 42 U.S.C. 1305. ASFA's exceptions to reunification efforts do not apply to ICWA proceedings.

Agency means a private State-licensed agency or public agency and their employees, agents or officials involved in and/or seeking to place a child in a child custody proceeding.

Child custody proceeding means and includes any proceeding or action that involves:

(1) *Foster care placement*, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, although parental rights have not been terminated;

(2) *Termination of parental rights*, which is any action resulting in the termination of the parent-child relationship;

(3) *Preadoptive placement*, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(4) *Adoptive placement*, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Continued custody means physical and/or legal custody that a parent already has or had at any point in the past. The biological mother of a child has had custody of a child.

Custody means physical and/or legal custody under any applicable tribal law or tribal custom or State law. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or State law.

Domicile means:

(1) For a parent or any person over the age of eighteen, physical presence in a place and intent to remain there;

(2) For an Indian child, the domicile of the Indian child's parents. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's mother. Under the principle for determining the domicile of an Indian child, it is entirely logical that "[o]n occasion, a child's domicile of origin will be in a place where the child has never been." *Holyfield*, 490 U.S. at 48. *Holyfield* notes that tribal jurisdiction under 25 U.S.C. 1911(a) was not meant to be defeated by the actions of individual members of the tribe, because Congress was concerned not solely about the interests of Indian children and families, but also about the impact of large numbers of Indian

children adopted by non-Indians on the tribes themselves. *Id.* at 49.

Extended family member is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, is a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

Imminent physical damage or harm means present or impending risk of serious bodily injury or death that will result in severe harm if safety intervention does not occur.

Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 43 CFR part 1606.

Indian child means any unmarried person who is under age eighteen and is either: (1) a member of an Indian tribe; or (2) eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

Indian child's tribe means: (1) the Indian tribe in which an Indian child is a member or eligible for membership; or (2) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts.

Indian Child Welfare Act (ICWA) or Act means 25 U.S.C. 1901 *et seq.*

Indian custodian means any person who has legal custody of an Indian child under tribal law or custom or under State law, whichever is more favorable to the rights of the parent, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a tribe, or a majority of whose members are Indians.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c).

Parent means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed father where paternity has not been acknowledged or established. To qualify as a parent, an unwed father need only take reasonable steps to establish or acknowledge paternity. Such steps may include acknowledging

paternity in the action at issue or establishing paternity through DNA testing.

Reservation means Indian country as defined in 18 U.S.C 1151, including any lands, title to which is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

Status offenses mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (*e.g.*, truancy, incorrigibility).

Tribal court means a court with jurisdiction over child custody proceedings, including a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe vested with authority over child custody proceedings.

Upon demand means that the parent or Indian custodians can regain custody simply upon request, without any contingencies such as repaying the child's expenses.

Voluntary placement means a placement that either parent has, of his or her free will, chosen for the Indian child, including private adoptions.

A.3. When does ICWA apply?

(a) ICWA applies whenever an Indian child is the subject of a State child custody proceeding as defined by the Act. ICWA also applies to proceedings involving status offenses or juvenile delinquency proceedings if any part of those proceedings results in the need for placement of the child in a foster care, preadoptive or adoptive placement, or termination of parental rights.

(b) There is no exception to application of ICWA based on the so-called "existing Indian family doctrine." Thus, the following non-exhaustive list of factors should not be considered in determining whether ICWA is applicable: the extent to which the parent or Indian child participates in or observes tribal customs, votes in tribal elections or otherwise participates in tribal community affairs, contributes to tribal or Indian charities, subscribes to tribal newsletters or other periodicals of special interest in Indians, participates in Indian religious, social, cultural, or political events, or maintains social contacts with other members of the tribe; the relationship between the Indian child and his/her Indian parents;

the extent of current ties either parent has to the tribe; whether the Indian parent ever had custody of the child; and the level of involvement of the tribe in the State court proceedings.

(c) Agencies and State courts, in every child custody proceeding, must ask whether the child is or could be an Indian child and conduct an investigation into whether the child is an Indian child. Even in those cases in which the child is not removed from the home, such as when an agency opens an investigation or the court orders the family to engage in services to keep the child in the home as part of a diversion, differential, alternative response or other program, agencies and courts should follow the verification and notice provisions of these guidelines. Providing notice allows tribes to intervene as early as possible in a child custody proceeding and provides an opportunity for the tribe to bring resources to bear to assist the family in preventing a breakup of the family.

(d) If there is any reason to believe the child is an Indian child, the agency and State court must treat the child as an Indian child, unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

(e) ICWA and these guidelines or any associated Federal guidelines do not apply to:

(1) Tribal court proceedings;

(2) Placements based upon an act by the Indian child which, if committed by an adult, would be deemed a criminal offense; or

(3) An award, in a divorce proceeding, of custody of the Indian child to one of the parents.

(f) Voluntary placements that do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand are not covered by the Act.

(1) Such placements should be made pursuant to a written agreement, and the agreement should state explicitly the right of the parent or Indian custodian to regain custody of the child upon demand.

(2) Nevertheless, it is a best practice to follow the procedures in these guidelines to determine whether a child is an Indian child and to notify the tribe.

(g) Voluntary placements in which a parent consents to a foster care placement or seeks to permanently terminate his or her rights or to place the child in a preadoptive or adoptive placement are covered by the Act.

A.4. How do I contact a tribe under these guidelines?

To contact a tribe to provide notice or obtain information or verification under these Guidelines, you should direct the notice or inquiry as follows:

(1) Many tribes designate an agent for receipt of ICWA notices. The Bureau of Indian Affairs publishes a list of tribes' designated tribal agents for service of ICWA notice in the **Federal Register** each year and makes the list available on its Web site at www.bia.gov.

(2) For tribes without a designated tribal agent for service of ICWA notice, contact the tribe(s) to be directed to the appropriate individual or office.

(3) If you do not have accurate contact information for the tribe(s) or the tribe(s) contacted fail(s) to respond to written inquiries, you may seek assistance in contacting the Indian tribe(s) from the Bureau of Indian Affairs' Regional Office and/or Central Office in Washington DC (see www.bia.gov).

A.5. How do these guidelines interact with State laws?

(a) These guidelines provide minimum Federal standards and best practices to ensure compliance with ICWA and should be applied in all child custody proceedings in which the Act applies.

(b) In any child custody proceeding where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires that the State court must apply the higher standard.

B. Pretrial Requirements

B.1. When does the requirement for active efforts begin?

(a) The requirement to engage in "active efforts" begins from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal.

(b) Active efforts to prevent removal of the child must be conducted while investigating whether the child is a member of the tribe, is eligible for membership in the tribe, or whether a biological parent of the child is or is not a member of a tribe.

B.2. What actions must an agency and State court undertake in order to determine whether a child is an Indian child?

(a) Agencies must ask whether there is reason to believe a child that is subject to a child custody proceeding is

an Indian child. If there is reason to believe that the child is an Indian child, the agency must obtain verification, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.

(b) State courts must ask, as a threshold question at the start of any State court child custody proceeding, whether there is reason to believe the child who is the subject of the proceeding is an Indian child by asking each party to the case, including the guardian ad litem and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.

(1) In requiring this certification, the court may require the agency to provide:

(i) Genograms or ancestry charts for both parents, including all names known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(ii) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(2) If there is reason to believe the child is an Indian child, the court must confirm that the agency used active efforts to work with all tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe, under paragraph (a).

(c) An agency or court has reason to believe that a child involved in a child custody proceeding is an Indian child if:

(1) Any party to the proceeding, Indian tribe, Indian organization or public or private agency informs the agency or court that the child is an Indian child;

(2) Any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the agency or court reason to believe he or she is an Indian child;

(4) The domicile or residence of the child, parents, or the Indian custodian is known by the agency or court to be, or is shown to be, on an Indian

reservation or in a predominantly Indian community; or

(5) An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(d) In seeking verification of the child's status, in a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the agency or court must keep relevant documents confidential and under seal. A request for anonymity does not relieve the obligation to obtain verification from the tribe(s) or to provide notice.

B.3. Who makes the determination as to whether a child is a member of a tribe?

(a) Only the Indian tribe(s) of which it is believed a biological parent or the child is a member or eligible for membership may make the determination whether the child is a member of the tribe(s), is eligible for membership in the tribe(s), or whether a biological parent of the child is a member of the tribe(s).

(b) The determination by a tribe of whether a child is a member, is eligible for membership, or whether a biological parent is or is not a member of that tribe, is solely within the jurisdiction and authority of the tribe.

(c) No other entity or person may authoritatively make the determination of whether a child is a member of the tribe or is eligible for membership in the tribe.

(1) There is no requirement that the child maintain a certain degree of contacts with the tribe or for a certain blood quantum or degree of Indian blood.

(2) A tribe need not formally enroll its members for a child to be a member or eligible for membership. In some tribes, formal enrollment is not required for tribal membership. Some tribes do not have written rolls and others have rolls that list only persons that were members as of a certain date. *See United States v. Broncheau*, 597 F.2d 1260, 1263 (9th Cir. 1979). The only relevant factor is whether the tribe verifies that the child is a member or eligible for membership.

(d) The State court may not substitute its own determination regarding a child's membership or eligibility for membership in a tribe or tribes.

B.4. What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?

(a) Agencies are required to notify all tribes, of which the child may be a member or eligible for membership, that the child is involved in a child custody

proceeding. The notice should specify the other tribe or tribes of which the child may be a member or eligible for membership.

(b) If the Indian child is a member or eligible for membership in only one tribe, that tribe should be designated as the Indian child's tribe.

(c) If an Indian child is a member or eligible for membership in more than one tribe, ICWA requires that the Indian tribe with which the Indian child has the more significant contacts be designated as the Indian child's tribe.

(1) In determining significant contacts, the following may be considered:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each tribe;

(iii) Tribal membership of custodial parent or Indian custodian; and

(iv) Interest asserted by each tribe in response to the notice that the child is involved in a child custody proceeding;

(d) When an Indian child is already a member of a tribe, but is also eligible for membership in another tribe, deference should be given to the tribe in which the Indian child is a member, unless otherwise agreed to by the tribes.

However, if the Indian child is not a member of any tribe, an opportunity should be provided to allow the tribes to determine which of them should be designated as the Indian child's tribe.

(i) If the tribes are able to reach an agreement, the agreed upon tribe should be designated as the Indian child's tribe.

(ii) If the tribes do not agree, the following factors should be considered in designating the Indian child's tribe:

(A) The preference of the parents or extended family members who are likely to become foster care or adoptive placements; and/or

(B) Tribal membership of custodial parent or Indian custodian; and/or

(C) If applicable, length of past domicile or residence on or near the reservation of each tribe; and/or

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and/or

(E) Self-identification by the child; and/or

(F) Availability of placements.

(iii) In the event the child is eligible for membership in a tribe but is not yet a member of any tribe, the agency should take the steps necessary to obtain membership for the child in the tribe that is designated as the Indian child's tribe.

(3) Once an Indian tribe is designated as the child's Indian tribe, all tribes which received notice of the child

custody proceeding must be notified in writing of the determination and a copy of that document must be filed with the court and sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

(4) A determination of the Indian child's tribe for purposes of ICWA and these guidelines does not constitute a determination for any other purpose or situation.

(d) The tribe designated as the Indian child's tribe may authorize another tribe to act as a representative for the tribe in a child custody case, including, for example, having the representative tribe perform home studies or expert witness services for the Indian child's tribe.

B.5. When must a State court dismiss an action?

Subject to B.8 (emergency procedures), the following limitations on a State court's jurisdiction apply:

(a) The court must dismiss any child custody proceeding as soon as the court determines that it lacks jurisdiction.

(b) The court must make a determination of the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal based on the tribe's exclusive jurisdiction, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

(c) If the Indian child has been domiciled or previously resided on an Indian reservation, the State court must contact the tribal court to determine whether the child is a ward of the tribal court. If the child is a ward of a tribal court, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

B.6. What are the notice requirements for a child custody proceeding involving an Indian child?

(a) When an agency or court knows or has reason to know that the subject of an involuntary child custody proceeding is an Indian child, the agency or court must send notice of each such proceeding (including but not limited to a temporary custody hearing, any removal or foster care placement, any adoptive placement, or any termination of parental or custodial

rights) by registered mail with return receipt requested to:

- (1) Each tribe where the child may be a member or eligible for membership;
 - (2) The child's parents; and
 - (3) If applicable, the Indian custodian.
- (b) Notice may be sent via personal service or electronically in addition to the methods required by the Act, but such alternative methods do not replace the requirement for notice to be sent by registered mail with return receipt requested.
- (c) Notice must be in clear and understandable language and include the following:
- (1) Name of the child, the child's birthdate and birthplace;
 - (2) Name of each Indian tribe(s) in which the child is a member or may be eligible for membership;
 - (3) A copy of the petition, complaint or other document by which the proceeding was initiated;
 - (4) Statements setting out:
 - (i) The name of the petitioner and name and address of petitioner's attorney;
 - (ii) The right of the parent or Indian custodian to intervene in the proceedings.
 - (iii) The Indian tribe's right to intervene at any time in a State court proceeding for the foster care placement of or termination of a parental right.
 - (iv) If the Indian parent(s) or, if applicable, Indian custodian(s) is unable to afford counsel based on a determination of indigency by the court, counsel will be appointed to represent the parent or Indian custodian where authorized by State law.
 - (v) The right to be granted, upon request, a specific amount of additional time (up to 20 additional days) to prepare for the proceedings due to circumstances of the particular case.
 - (vi) The right to petition the court for transfer of the proceeding to tribal court under 25 U.S.C. 1911, absent objection by either parent: *Provided, that* such transfer is subject to declination by the tribal court.
 - (vii) The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section.
 - (viii) The potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.
 - (d) In order to assist the Indian tribe(s) in making a determination regarding whether the child is a member or eligible for membership, the agency or court should include additional information in the notice, such as:
 - (1) Genograms or ancestry charts for both parents, including all names

known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(2) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(3) In the event that a parent has requested anonymity, the agency and court must take steps to keep information related to the parent confidential and sealed from disclosure.

(e) If the identity or location of the Indian parents, Indian custodians or tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to believe the child is an Indian child, notice of the child custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see www.bia.gov). To establish tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided (see section B.6.(c) of these guidelines regarding notice requirements). The Bureau of Indian Affairs will not make a determination of tribal membership, but may, in some instances, be able to identify tribes to contact.

(f) Because child custody proceedings are usually conducted on a confidential basis, information contained in the notice should be kept confidential to the extent possible.

(g) The original or a copy of each notice sent under this section should be filed with the court together with any return receipts or other proof of service.

(h) If a parent or Indian custodian appears in court without an attorney, the court must inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court, the right to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian is not already a party) to intervene in the proceedings.

(i) If the court or an agency has reason to believe that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court or agency must, at no cost,

provide a translated version of the notice or have the notice read and explained in a language that the parent or Indian custodian understands. To secure such translation or interpretation support, a court or agency should contact the Indian child's tribe or the local BIA agency for assistance in locating and obtaining the name of a qualified translator or interpreter.

(j) In voluntary proceedings, notice should also be sent in accordance with this section because the Indian tribe might have exclusive jurisdiction and/or the right to intervene. Further, notice to and involvement of the Indian tribe in the early stages of the proceedings aids the agency and court in satisfying their obligations to determine whether the child is an Indian child and in complying with 25 U.S.C. 1915.

(k) If the child is transferred interstate, regardless of whether the Interstate Compact on the Placement of Children (ICPC) applies, both the originating State court and receiving State court must provide notice to the tribe(s) and seek to verify whether the child is an Indian child.

(l) The notice requirement includes providing responses to requests for additional information, where available, in the event that a tribe indicates that such information is necessary to determine whether a child is an Indian child.

B.7. What time limits and extensions apply?

(a) No hearings regarding decisions for the foster care or termination of parental rights may begin until the waiting periods to which the parents or Indian custodians and to which the Indian child's tribe are entitled have passed. Additional extensions of time may also be granted beyond the minimum required by the Act.

(b) A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional 20 days from the date upon which notice was received in accordance with 25 U.S.C. 1912(a) to prepare for participation in the proceeding.

(c) The proceeding may not begin until all of the following dates have passed:

- (1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice in accordance with 25 U.S.C. 1912(a);
- (2) 10 days after the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the party

seeking placement) has received notice in accordance with 25 U.S.C. 1912(a);

(3) 30 days after the parent or Indian custodian has received notice in accordance with 25 U.S.C. 1912(a), if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding; and

(4) 30 days after the Indian child's tribe has received notice in accordance with 25 U.S.C. 1912(a), if the Indian child's tribe has requested an additional 20 days to prepare for the proceeding.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

B.8. What is the process for the emergency removal of an Indian child?

(a) The emergency removal and emergency placement of an Indian child in a foster home or institution under applicable State law is allowed only as necessary to prevent imminent physical damage or harm to the child. This requirement applies to all Indian children regardless of whether they are domiciled or reside on a reservation. This does not, however, authorize a State to remove a child from a reservation where a tribe exercises exclusive jurisdiction.

(b) Any emergency removal or emergency placement of any Indian child under State law must be as short as possible. Each involved agency or court must:

(1) Diligently investigate and document whether the removal or placement is proper and continues to be necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing to hear evidence and evaluate whether the removal or placement continues to be necessary whenever new information is received or assertions are made that the emergency situation has ended; and

(3) Immediately terminate the emergency removal or placement once the court possesses sufficient evidence to determine that the emergency has ended.

(c) If the agency that conducts an emergency removal of a child whom the agency knows or has reason to know is an Indian child, the agency must:

(1) Treat the child as an Indian child until the court determines that the child is not an Indian child;

(2) Conduct active efforts to prevent the breakup of the Indian family as early as possible, including, if possible, before removal of the child;

(3) Immediately take and document all practical steps to confirm whether the child is an Indian child and to verify the Indian child's tribe;

(4) Immediately notify the child's parents or Indian custodians and Indian tribe of the removal of the child;

(5) Take all practical steps to notify the child's parents or Indian custodians and Indian tribe about any hearings regarding the emergency removal or emergency placement of the child; and

(6) Maintain records that detail the steps taken to provide any required notifications under section B.6 of these guidelines.

(d) A petition for a court order authorizing emergency removal or continued emergency physical custody must be accompanied by an affidavit containing the following information:

(1) The name, age and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) If such persons are unknown, a detailed explanation of what efforts have been made to locate them, including notice to the appropriate Bureau of Indian Affairs Regional Director (see www.bia.gov);

(4) Facts necessary to determine the residence and the domicile of the Indian child;

(5) If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation;

(6) The tribal affiliation of the child and of the parents and/or Indian custodians;

(7) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(8) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to transfer the child to the tribe's jurisdiction;

(9) A statement of the specific active efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody; and

(10) A statement of the imminent physical damage or harm expected and any evidence that the removal or emergency custody continues to be necessary to prevent such imminent physical damage or harm to the child.

(e) At any court hearing regarding the emergency removal or emergency placement of an Indian child, the court must determine whether the removal or placement is no longer necessary to prevent imminent physical damage or

harm to the child. The court should accept and evaluate all information relevant to the agency's determination provided by the child, the child's parents, the child's Indian custodians, the child's tribe or any participants in the hearing.

(f) Temporary emergency custody should not be continued for more than 30 days. Temporary emergency custody may be continued for more than 30 days only if:

(1) A hearing, noticed in accordance with these guidelines, is held and results in a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in imminent physical damage or harm to the child; or

(2) Extraordinary circumstances exist.

(g) The emergency removal or placement must terminate as soon as the imminent physical damage or harm to the child which resulted in the emergency removal or placement no longer exists, or, if applicable, as soon as the tribe exercises jurisdiction over the case, whichever is earlier.

(h) Once an agency or court has terminated the emergency removal or placement, it must expeditiously:

(1) Return the child to the parent or Indian custodian within one business day; or

(2) Transfer the child to the jurisdiction of the appropriate Indian tribe if the child is a ward of a tribal court or a resident of or domiciled on a reservation; or

(3) Initiate a child custody proceeding subject to the provisions of the Act and these guidelines.

(i) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

B.9. What are the procedures for determining improper removal?

(a) If, in the course of any Indian child custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained, such as after a visit or other temporary relinquishment of custody, the court must immediately stay the proceeding until a determination can be made on the question of improper removal or retention, and such

determination must be conducted expeditiously.

(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parents or Indian custodian, unless returning the child to his parent or custodian would subject the child to imminent physical damage or harm.

C. Procedures for Making Requests for Transfer to Tribal Court

C.1. How are petitions for transfer of proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's tribe may request, orally on the record or in writing, that the State court transfer each distinct Indian child custody proceeding to the tribal court of the child's tribe.

(b) The right to request a transfer occurs with each proceeding. For example, a parent may request a transfer to tribal court during the first proceeding for foster placement and/or at a proceeding to determine whether to continue foster placement, and/or at a later proceeding, for example at a hearing for termination of parental rights.

(c) The right to request a transfer is available at any stage of an Indian child custody proceeding, including during any period of emergency removal.

(d) The court should allow, if possible, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

C.2. What are the criteria and procedures for ruling on transfer petitions?

(a) Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the State court must transfer the case unless any of the following criteria are met:

(1) Either parent objects to such transfer;

(2) The tribal court declines the transfer; or

(3) The court determines that good cause exists for denying the transfer.

(b) To minimize delay, the court should expeditiously provide all records related to the proceeding to the tribal court.

C.3. How is a determination of "good cause" made?

(a) If the State court believes, or any party asserts, that good cause not to transfer exists, the reasons for such

belief or assertion must be stated on the record or in writing and made available to the parties who are petitioning for transfer.

(b) Any party to the proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court may not consider whether the case is at an advanced stage or whether transfer would result in a change in the placement of the child because the Act created concurrent, but presumptively, tribal jurisdiction over proceedings involving children not residing or domiciled on the reservation, and seeks to protect, not only the rights of the Indian child as an Indian, but the rights of Indian communities and tribes in retaining Indian children. Thus, whenever a parent or tribe seeks to transfer the case it is presumptively in the best interest of the Indian child, consistent with the Act, to transfer the case to the jurisdiction of the Indian tribe.

(d) In addition, in determining whether there is good cause to deny the transfer, the court may not consider:

(1) The Indian child's contacts with the tribe or reservation;

(2) Socio-economic conditions or any perceived inadequacy of tribal or Bureau of Indian Affairs social services or judicial systems; or

(3) The tribal court's prospective placement for the Indian child.

(e) The burden of establishing good cause not to transfer is on the party opposing the transfer.

C.4. What happens when a petition for transfer is made?

(a) Upon receipt of a transfer petition the State court must promptly notify the tribal court in writing of the transfer petition and request a response regarding whether the tribal court wishes to decline the transfer. The notice should specify how much time the tribal court has to make its decision; provided that the tribal court has at least 20 days from the receipt of notice of a transfer petition to decide whether to accept or decline the transfer.

(b) The tribal court should inform the State court of its decision to accept or decline jurisdiction within the time required or may request additional time; provided that the reasons for additional time are explained.

(c) If the tribal court accepts the transfer, the State court should promptly provide the tribal court with all court records.

D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

D.1. Who has access to reports or records?

(a) The court must inform each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child of his or her right to timely examination of all reports or other documents filed with the court and all files upon which any decision with respect to such action may be based.

(b) Decisions of the court may be based only upon reports, documents or testimony presented on the record.

D.2. What steps must a party take to petition a State court for certain actions involving an Indian child?

(a) Any party petitioning a State court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to, and until the commencement of, the proceeding, active efforts have been made to avoid the need to remove the Indian child from his or her parents or Indian custodians and show that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail and, to the extent possible, should involve and use the available resources of the extended family, the child's Indian tribe, Indian social service agencies and individual Indian care givers.

D.3. What are the applicable standards of evidence?

(a) The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody with the child's parents or Indian custodian is likely to result in serious harm to the child.

(b) The court may not order a termination of parental rights unless the court's order is supported by evidence beyond a reasonable doubt, supported by the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious harm to the child.

(c) Clear and convincing evidence must show a causal relationship between the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. Evidence that shows only the existence of

community or family poverty or isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.

D.4. Who may serve as a qualified expert witness?

(a) A qualified expert witness should have specific knowledge of the Indian tribe's culture and customs.

(b) Persons with the following characteristics, in descending order, are presumed to meet the requirements for a qualified expert witness:

(1) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

(2) A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe.

(3) A layperson who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(4) A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

(c) The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

E. Voluntary Proceedings

E.1. What actions must an agency and State court undertake in voluntary proceedings?

(a) Agencies and State courts must ask whether a child is an Indian child in any voluntary proceeding under sections B.2. to B.4. of these guidelines.

(b) Agencies and State courts should provide the Indian tribe with notice of the voluntary child custody proceedings, including applicable pleadings or executed consents, and their right to intervene under section B.6. of these guidelines.

E.2. How is consent to termination of parental rights, foster care placement or adoption obtained?

(a) A voluntary termination of parental rights, foster care placement or adoption must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain the consequences of the consent in detail, such as any conditions or timing limitations for withdrawal of consent and, if applicable, the point at which such consent is irrevocable.

(c) A certificate of the court must accompany a written consent and must certify that the terms and consequences of the consent were explained in detail in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian.

(d) Execution of consent need not be made in open court where confidentiality is requested or indicated.

(e) A consent given prior to or within 10 days after birth of the Indian child is not valid.

E.3. What information should a consent document contain?

(a) The consent document must contain the name and birthdate of the Indian child, the name of the Indian child's tribe, identifying tribal enrollment number, if any, or other indication of the child's membership in the tribe, and the name and address of the consenting parent or Indian custodian. If there are any conditions to the consent, the consent document must clearly set out the conditions.

(b) A consent to foster care placement should contain, in addition to the information specified in subsection (a), the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

E.4. How is withdrawal of consent achieved in a voluntary foster care placement?

(a) Withdrawal of consent must be filed in the same court where the consent document was executed.

(b) When a parent or Indian custodian withdraws consent to foster care placement, the child must be returned to that parent or Indian custodian immediately.

E.5. How is withdrawal of consent to a voluntary adoption achieved?

(a) A consent to termination of parental rights or adoption may be withdrawn by the parent at any time

prior to entry of a final decree of voluntary termination or adoption, whichever occurs later. To withdraw consent, the parent must file, in the court where the consent is filed, an instrument executed under oath asserting his or her intention to withdraw such consent.

(b) The clerk of the court in which the withdrawal of consent is filed must promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing and the child must be returned to the parent or Indian custodian as soon as practicable.

F. Dispositions

F.1. When do the placement preferences apply?

(a) In any preadoptive, adoptive or foster care placement of an Indian child, the Act's placement preferences apply; except that, if the Indian child's tribe has established by resolution a different order of preference than that specified in the Act, the agency or court effecting the placement must follow the tribe's placement preferences.

(b) The agency seeking a preadoptive, adoptive or foster care placement of an Indian child must always follow the placement preferences. If the agency determines that any of the preferences cannot be met, the agency must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences specified in sections F.2. or F.3. of these guidelines, and explain why the preferences could not be met. A search should include notification about the placement hearing and an explanation of the actions that must be taken to propose an alternative placement to:

(1) The Indian child's parents or Indian custodians;

(2) All of the known, or reasonably identifiable, members of the Indian child's extended family members;

(3) The Indian child's tribe;

(4) In the case of a foster care or preadoptive placement:

(i) All foster homes licensed, approved, or specified by the Indian child's tribe; and

(ii) All Indian foster homes located in the Indian child's State of domicile that are licensed or approved by any authorized non-Indian licensing authority.

(c) Where there is a request for anonymity, the court should consider whether additional confidentiality protections are warranted, but a request for anonymity does not relieve the

agency or the court of the obligation to comply with the placement preferences.

(d) Departure from the placement preferences may occur only after the court has made a determination that good cause exists to place the Indian child with someone who is not listed in the placement preferences.

(e) Documentation of each preadoptive, adoptive or foster care placement of an Indian child under State law must be provided to the State for maintenance at the agency. Such documentation must include, at a minimum: the petition or complaint; all substantive orders entered in the proceeding; the complete record of, and basis for, the placement determination; and, if the placement deviates from the placement preferences, a detailed explanation of all efforts to comply with the placement preferences and the court order authorizing departure from the placement preferences.

F.2. What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, preference must be given in descending order, as listed below, to placement of the child with:

- (1) A member of the child's extended family;
- (2) Other members of the Indian child's tribe; or
- (3) Other Indian families, including families of unwed individuals.

(b) The court should, where appropriate, also consider the preference of the Indian child or parent.

F.3. What placement preferences apply in foster care or preadoptive placements?

In any foster care or preadoptive placement of an Indian child:

(a) The child must be placed in the least restrictive setting that:

- (1) Most approximates a family;
- (2) Allows his or her special needs to be met; and
- (3) Is in reasonable proximity to his or her home, extended family, and/or siblings.

(b) Preference must be given, in descending order as listed below, to placement of the child with:

- (1) A member of the Indian child's extended family;
- (2) A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a

program suitable to meet the child's needs.

F.4. How is a determination for "good cause" to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child's tribe.

(b) The party seeking departure from the preferences bears the burden of proving by clear and convincing evidence the existence of "good cause" to deviate from the placement preferences.

(c) A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

(1) The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.

(2) The request of the child, if the child is able to understand and comprehend the decision that is being made.

(3) The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with the Act. The good cause determination does not include an independent consideration of the best interest of the Indian child because the preferences reflect the best interests of an Indian child in light of the purposes of the Act.

(4) The unavailability of a placement after a showing by the applicable agency in accordance with section F.1., and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socio-economic status of any placement relative to another placement.

G. Post-Trial Rights

G.1. What is the procedure for petitioning to vacate an adoption?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, a parent who executed a consent to termination of paternal rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that consent was obtained by fraud or duress, or that the proceeding failed to comply with ICWA.

(b) Upon the filing of such petition, the court must give notice to all parties to the adoption proceedings and the Indian child's tribe.

(c) The court must hold a hearing on the petition.

(d) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the decree of adoption, order the consent revoked and order that the child be returned to the parent.

G.2. Who can make a petition to invalidate an action?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster care placement or termination of parental rights where it is alleged that the Act has been violated:

(1) An Indian child who is the subject of any action for foster care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's tribe.

(b) Upon a showing that an action for foster care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) There is no requirement that the particular party's rights under the Act be violated to petition for invalidation; rather, any party may challenge the action based on violations in implementing the Act during the course of the child custody proceeding. For example, it is acceptable for the tribe to petition to invalidate an action because

it violated the rights of a parent, or for a parent to petition to invalidate an action because the action violated the statutory rights of the tribe. ICWA is designed to provide rights to ensure that tribes, parents, and children are protected. In light of Congressional findings in ICWA, it is presumed that the Indian child is disadvantaged if any of those rights are violated.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

G.3. What are the rights of adult adoptees?

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree must inform such individual of the tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include tribal membership, resulting from the individual's tribal relationship.

(b) This section should be applied regardless of whether the original adoption was subject to the provisions of the Act.

(c) Where State law prohibits revelation of the identity of the biological parent, assistance of the Bureau of Indian Affairs should be sought to help an adoptee who is eligible for membership in a tribe to become a tribal member without breaching the Privacy Act or confidentiality of the record.

(d) In States where adoptions remain closed, the relevant agency should, at a minimum, communicate directly with the tribe's enrollment office and provide the information necessary to facilitate the establishment of the adoptee's tribal membership.

(e) Agencies should work with the tribe to identify at least one tribal designee familiar with 25 U.S.C. 1917 to assist adult adoptees statewide with the process of reconnecting with their tribes and to provide information to State judges about this provision on an annual basis.

G.4. When must notice of a change in child's status be given?

(a) Notice by the court, or an agency authorized by the court, must be given to the child's biological parents or prior Indian custodians and the Indian child's tribe whenever:

(1) A final decree of adoption of an Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child; or

(3) Whenever an Indian child is removed from a foster care home or institution to another foster care placement, preadoptive placement, or adoptive placement.

(b) The notice must inform the recipient of the right to petition for return of custody of the child.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. The waiver may be revoked at any time by filing with the court a written notice of revocation. A revocation of the right to receive notice does not affect any proceeding which occurred before the filing of the notice of revocation.

G.5. What information must States furnish to the Bureau of Indian Affairs?

(a) Any state entering a final adoption decree or order must furnish a copy of the decree or order to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information:

(1) Birth name of the child, tribal affiliation and name of the child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to the enrollment or eligibility for enrollment of the adopted child.

(b) Confidentiality of such information must be maintained and is not subject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

G.6. How must the State maintain records?

(a) The State must establish a single location where all records of every voluntary or involuntary foster care, preadoptive placement and adoptive placement of Indian children by courts of that State will be available within seven days of a request by an Indian child's tribe or the Secretary.

(b) The records must contain, at a minimum, the petition or complaint, all

substantive orders entered in the proceeding, and the complete record of the placement determination.

Dated: February 19, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-PWR-PWRO-17253;
PX.PD0771601.00.4]

Draft Environmental Impact Statement for Alcatraz Ferry Embarkation Plan, San Francisco County, California.

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Draft Environmental Impact Statement (DEIS) for the Alcatraz Ferry Embarkation project. The project would establish a new, long-term ferry embarkation site for passenger service between the northern San Francisco waterfront and Alcatraz Island. It would also establish occasional special ferry service between the selected Alcatraz ferry embarkation site and the existing Fort Baker pier, as well as between Fort Mason and other destinations in San Francisco Bay.

DATES: All comments must be postmarked or transmitted not later than 90 days from the date of publication in the **Federal Register** of the Environmental Protection Agency's notice of filing and release of the DEIS. Upon confirmation of this date, we will notify all entities on the project mailing list, and public announcements about the DEIS review period will be posted on the project Web site (<http://parkplanning.nps.gov/ALCAembarkation>) and distributed via local and regional press media.

FOR FURTHER INFORMATION CONTACT: Please contact the Golden Gate National Recreation Area Planning Division at (415) 561-4930 or goga_planning@nps.gov.

SUPPLEMENTARY INFORMATION: The purpose and need for the project is driven by the following factors: (1) Alcatraz Island ferry service has been subject to location changes every 10 years, which has led to visitor confusion, community concerns, and inconsistency in visitor support services. The site and associated connections should be a consistent feature for visitors to Golden Gate National Recreation Area (GGNRA). (2)

The ability to make improvements at the existing site is constrained by lease provisions between the Port of San Francisco and the concessioner. The site should allow for efficiency in making facility improvements when necessary and for consistency in projecting facility costs. (3) Condition of existing facilities constrains and negatively affects NPS and the concessioner's abilities to create a quality visitor experience. The site and associated facilities should serve as a gateway to GGNRA, reflecting the NPS's identity and providing a quality experience for recreational visitors. (4) The current facility has insufficient space to appropriately orient visitors to Alcatraz Island or provide information to the many visitors who are unable to visit the island. The site should provide the space, circulation, and interpretive materials to appropriately and effectively orient recreational visitors to Alcatraz Island and GGNRA. (5) There is currently very limited opportunity to provide cross-bay ferry service to other GGNRA areas.

Key project objectives include: (1) Establish a long-term (50 years or more) primary location that is economically feasible and sustainable, and enables substantial reinvestment in Alcatraz Island and other park facilities and visitor programs; (2) provide visitor access to Alcatraz Island that is compatible with nearby land uses, including neighborhoods, businesses, and transportation services; (3) accommodate the critical facilities and programs needed for the safety and comfort of visitors and staff, and provide for efficient ferry operations; (4) locate within a reasonable crossing time from Alcatraz Island and meet specific basic program element requirements for logistics; (5) provide an identifiable area for a quality welcome, orientation, and interpretation of the natural, cultural, scenic, and recreational resources of Alcatraz Island, other GGNRA system parklands, and the larger national park system; and (6) provide facilities for expanded ferry service to accommodate existing and future visitor demand for travel to Alcatraz Island and other GGNRA sites and NPS units.

Alternatives: The DEIS describes and analyzes the following four alternatives:

No Action Alternative: Ferry service to Alcatraz Island would continue from Pier 31½, controlled by the Port of San Francisco, with no changes to management or site operations and infrastructure. This alternative serves as the environmental baseline from which potential effects of the three "action" alternatives were compared.

Pier 31½ Alternative: Retrofit existing structures (parts of piers 31, 33 and

associated bulkhead buildings) and establish long-term ferry service and embarkation site operations at Pier 31½ along the Embarcadero. A third berth would be constructed to support ferry travel to other GGNRA sites. This has been determined to be the "environmentally preferred" alternative.

Pier 41 Alternative: Retrofit and expand existing structures and establish long-term ferry service and embarkation site operations at Pier 41, controlled by the Port of San Francisco in Fisherman's Wharf. A third berth would be constructed to support ferry travel to other GGNRA sites.

Pier 3 Alternative: Retrofit existing structures and establish a long-term embarkation site at Pier 3 in Fort Mason, a federal property managed by GGNRA. A third berth between Piers 1 and 2 would also be constructed.

All action alternatives analyzed in the DEIS would also provide the aforementioned occasional, special ferry service operated to/from Fort Baker and to/from Fort Mason. At this time, the "Preferred Alternative" has not been identified. Determination of which alternative is preferred will be informed by public comment on the DEIS and the outcome of ongoing discussions with the Port which may affect cost and logistics at the potential Port sites—Piers 31½ and 41. The "Preferred Alternative" will be identified in the Final EIS.

Public Involvement: The Notice of Intent to prepare an EIS was published in the **Federal Register** on June 1, 2012. Two public meetings were held; on June 26, 2012, at Fort Mason in San Francisco, and on June 28, 2012, in Sausalito. Both meetings presented information about the purpose, need, and objectives of the project and concepts for possible alternatives in an open-house format. The primary goal of these meetings was to solicit public input on the preliminary alternatives. A summary of all comments received during the initial 60-day scoping period was documented by the Park Service in a report titled "Public Scoping Comment Summary." Comments from these meetings, as well from additional stakeholder and agency outreach meetings and subsequent internal planning workshops, were used to further refine the alternatives and identify the key topics to be addressed in the DEIS.

In preparing the DEIS, the NPS consulted with elected officials in San Francisco and Sausalito, representatives of the Port of San Francisco, the Fort Mason Center, the State Office of Historic Preservation, and numerous other stakeholders, among them

neighborhood associations, ferry boat operators and Native American tribes. The NPS completed over a dozen working papers and reports for this DEIS, including a feasibility analysis, visitor flow survey report, wind-wave analysis, value analysis report, and transportation and circulation study.

During the public review and comment period, visits to alternative sites will be offered and a public meeting will be conducted in San Francisco. The date, time, and location of the meeting and site visits will be publicized through local and regional news media, via the project Web site (<http://parkplanning.nps.gov/ALCAembarkation>), and email to the park mailing list. Interested individuals, organizations, and agencies are invited to attend this meeting to discuss the DEIS with the planning team and/or provide written comments.

Copies of the DEIS (printed and electronic) will be distributed to congressional delegations, state and local elected officials, federal and state agencies, tribes, organizations, local businesses, public libraries, and the news media. Printed copies (in limited quantity) and CDs will be supplied in response to email, phone or mail requests. Printed copies will be available at public libraries in San Francisco and Sausalito.

How to Comment: Written comments may be transmitted electronically through the project Web site (noted above). If preferred, comments may be mailed to the General Superintendent, GGNRA, Attn: Alcatraz Ferry Embarkation DEIS, Fort Mason, Building 201, San Francisco, CA, 94123. 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.

Decision Process: All comments received on the DEIS will be duly considered in preparing the Final EIS, which is expected to be available in late 2015. Availability of the Final EIS will be announced in the **Federal Register**, as well as through regional and local press media and park Web site postings. A Record of Decision will be prepared not sooner than 30 days after release of the Final EIS. As a delegated EIS, the NPS official responsible for approval of the project is the Regional Director, Pacific West Region. The official

responsible for project implementation is the Superintendent, Golden Gate National Recreation Area.

Dated: January 29, 2015.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2015-03847 Filed 2-24-15; 8:45 am]

BILLING CODE 4312-FF-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries Containing Same, and Products with Lithium-Ion Batteries Containing Same, DN 3058*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS¹, and 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 United States International Trade Commission (USITC) at USITC². The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS³. 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 has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of BASF Corporation and UChicago Argonne LLC on February 20, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lithium metal oxide cathode materials, lithium-ion batteries containing same, and products with lithium-ion batteries containing same. The complaint name as respondents Umicore N.V. of Belgium; Umicore USA Inc. of Raleigh, NC; Makita Corporation of Japan; Makita Corporation of America of Buford, GA and Makita U.S.A Inc. of La Mirada, CA. The complainant requests that the Commission issue a permanent exclusion order, permanent cease and desist order, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested

exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 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 docket number ("Docket No. 3058") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures⁴). 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. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS⁵.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 20, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015-03887 Filed 2-24-15; 8:45 am]

BILLING CODE 7020-02-P

⁴ Handbook for Electronic Filing Procedures: http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf

⁵ Electronic Document Information System (EDIS): <http://edis.usitc.gov>

¹ Electronic Document Information System (EDIS): <http://edis.usitc.gov>

² United States International Trade Commission (USITC): <http://edis.usitc.gov>

³ Electronic Document Information System (EDIS): <http://edis.usitc.gov>

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1046 (Second Review)]

Tetrahydrofurfuryl Alcohol 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 section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on tetrahydrofurfuryl alcohol from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. 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 through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective:* February 6, 2015.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202) 205-1888, 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 Friday, February 6, 2015, the Commission determined that the domestic interested party group response to its notice of institution (79 FR 65241, November 3, 2014) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly,

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be

the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on Tuesday, February 24, 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,² 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 Friday, February 27, 2015 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 Friday, February 27, 2015. 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.

available from the Office of the Secretary and at the Commission's Web site.

² The Commission has found the response submitted by Penn A Kem to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

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.

Dated: February 20, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015-03863 Filed 2-24-15; 8:45 am]

BILLING CODE P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-15-007]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 6, 2015 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
 2. Minutes.
 3. Ratification List.
 4. Vote in Inv. Nos. 701-TA-528-529 and 731-TA-1264-1268 (Preliminary)(Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal). The Commission is currently scheduled to complete and file its determinations on March 9, 2015; views of the Commission are currently scheduled to be completed and filed on March 16, 2015.
 5. Outstanding action jackets: none.
- In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 23, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015-04039 Filed 2-23-15; 4:15 pm]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Family and Medical Leave Act of 1993, as Amended

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) revision titled, "Family and Medical Leave Act of 1993, As Amended," (FMLA) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 27, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201410-1235-004 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-WHD, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the FMLA information collection approval resulting from a Final Rule the Department is publishing elsewhere in today's issuance of the **Federal Register** and because of minor clarifications to certain disclosures the Department makes on certain forms to respondents. The notification requirements approved by this ICR will

implement the FMLA's statutory notice and certification provisions and assist employees and employers in meeting their FMLA notification obligations. The recordkeeping requirements covered by this ICR are necessary in order for the DOL to carry out its statutory obligation under FMLA section 106 (29 U.S.C. 2616) to investigate and ensure employer compliance.

Elsewhere in today's issuance of the **Federal Register**, the DOL has published a Final Rule that amends the FMLA definition of *spouse* in light of the United States Supreme Court's decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013) that found Defense of Marriage Act section 3 (1 U.S.C. 7) to be unconstitutional. This ICR revises the paperwork burden estimates to reflect the rule. In addition, the WHD has made minor clarifications to some of the information on the forms (e.g., adding information that certain records may need to be maintained in accordance with regulations issued to implement the Genetic Information Nondiscrimination Act). FMLA section 404 authorizes this information collection. See 29 U.S.C. 2654.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235-0003. The current approval is scheduled to expire on February 28, 2015; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

New information collection requirements would only take effect upon OMB approval or when the Final Rule takes effect, whichever is later. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 11, 2014 (78 FR 54299).

Interested parties are encouraged to send comments regarding the ICR to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help

ensure appropriate consideration, comments should mention OMB Control Number 1235-0003. The OMB 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; 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.

Agency: DOL-WHD.

Title of Collection: Family and Medical Leave Act of 1993, As Amended.

OMB Control Number: 1235-0003.

Affected Public: Individuals or Households; State, Local, and Tribal Governments; Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 7,182,916.

Total Estimated Number of Responses: 82,371,724.

Total Estimated Annual Time Burden: 9,313,502 hours.

Total Estimated Annual Other Costs Burden: \$184,932,912.

Dated: February 18, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015-03568 Filed 2-23-15; 11:15 am]

BILLING CODE 4510-27-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations, 30 CFR part 44, govern the

application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before March 27, 2015.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail:* zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202-693-9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (Email), or 202-693-9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Numbers: M-2015-001-C and M-2015-002-C.

Petitioner: Sunrise Coal LLC, 12661 North Agricare Road, Oaktown, Indiana 47561.

Mines: Oaktown Fuels No. 1 Mine, MSHA I.D. No. 12-02394, and Oaktown Fuels No. 2, MSHA I.D. No. 12-02418, both located in Knox County, Indiana.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance), 30 CFR 18.35(a)(5) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to increase the maximum length of trailing cables supplying power to permissible pumps in the mines. The petitioner states that:

(1) These petitions will apply only to trailing cables supplying three-phase, 480-volt power for permissible pumps.

(2) The maximum length of the trailing cables for a 480-volt permissible pump will be 4000 feet.

(3) The permissible pump will be no greater than 6.2 horsepower.

(4) The 480-volt power for permissible pump trailing cables exceeding 500 feet will not be smaller than No. 6 AWG.

(5) All circuit breakers used to protect No. 6 AWG trailing cables exceeding 500 feet in length will have an instantaneous trip unit calibrated to trip at 60 amperes. These circuit breakers will be in the cable coupler and the cable coupler will have permanent, legible labels. Each label will identify the cable coupler as being suitable for protecting No. 6 AWG cables. This label will be maintained legible.

(6) Replacement circuit breakers used to protect No. 6 AWG trailing cables exceeding 500 feet in length will be calibrated to trip at 60 amperes.

(7) All circuit breakers used to protect the No. 2 AWG trailing cables exceeding 500 feet in length will have instantaneous trip units calibrated to trip at 150 amperes. These circuit breakers will be in the cable coupler and the cable coupler will have permanent, legible labels. Each label will identify the cable coupler as being suitable for protecting No. 2 AWG cables. The labels will be maintained legible.

(8) Replacement circuit breakers used to protect No. 2 AWG trailing cables exceeding 500 feet in length will be calibrated to trip at 150 amperes.

(9) The petitioner's alternative method will not be implemented until all miners who have been designated to examine and verify the short-circuit settings and proper procedures for examining trailing cables for defects and damage have received training.

(10) Within 60 days after these petitions are granted, the petitioner will submit proposed revisions for their approved 30 CFR part 48 training plans to the District Manager for the area in which the mine is located. The training will include the following:

(a) Mining methods and operating procedures for protecting the trailing cables against damage.

(b) Proper procedures for examining the trailing cables to ensure safe operating condition.

(c) The hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables.

(d) How to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

The petitioner further states that procedures specified in 30 CFR 48.3 for proposed revisions to approved training plans will apply.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection for all miners than that of the existing standard.

Dated: February 19, 2015.

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2015-03835 Filed 2-24-15; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; 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 Cyberinfrastructure (25150).

Date and Time:

April 22, 2015; 09:00 a.m.–5:30 p.m.

April 23, 2015; 8:30 a.m.–1:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: OPEN.

Contact Person: Mark Suskin, CISE, Division of Advanced Cyberinfrastructure, National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230, Telephone: 703-292-8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities in the ACI community. To provide advice to the Director/NSF on issues related to long-range planning.

Agenda: Updates on NSF wide ACI activities.

Dated: February 19, 2015.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2015-03869 Filed 2-24-15; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271-LA-2; ASLBP No. 15-937-02-LA-BD01]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (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: Entergy Nuclear Vermont Yankee, LLC, And Entergy Nuclear Operations, Inc., (Vermont Yankee Nuclear Power Station).

This proceeding involves an application by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. for a license amendment for the Vermont Yankee Nuclear Power Station, which is located in Vernon, Vermont. In response to a notice filed in the **Federal Register**, *see* 79 FR 73,106 (Dec. 9, 2014), a hearing request was filed via the Electronic Information Exchange on February 9, 2015 by the State of Vermont through the Vermont Department of Public Service.

The Board is comprised of the following administrative judges:

Paul S. Ryerson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Dr. Richard E. Wardwell, 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 .FR 2.302.

Rockville, Maryland February 19, 2015.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2015-03903 Filed 2-24-15; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA-14-025-EA; ASLBP No. 14-932-02-EA-BD01]

James Chaisson; Notice of Atomic Safety and Licensing Board Reconstitution

Pursuant to 10 CFR 2.313(c) and 2.321(b), the Atomic Safety and Licensing Board in the above-captioned *James Chaisson* enforcement action proceeding is hereby reconstituted as follows: Administrative Judge G. Paul Bollwerk, III (who was serving as a Licensing Board member in this proceeding) is appointed to serve as Chairman; and Administrative Judge Michael M. Gibson (who was serving as Chairman in this proceeding) is appointed to serve as a Licensing Board member.

All correspondence, documents, and other materials shall continue to be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302 *et seq.*

Issued at Rockville, Maryland this 19th day of February 2015.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2015-03899 Filed 2-24-15; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2011-0022]

Concentration Averaging and Encapsulation Branch Technical Position

AGENCY: Nuclear Regulatory Commission.

ACTION: Branch technical position; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 of the Branch Technical Position on Concentration Averaging and Encapsulation (CA BTP). This guidance provides acceptable methods that can be used to perform concentration averaging of low-level radioactive waste (LLW) for the purpose of determining its waste class for disposal.

DATES: The Branch Technical Position referenced in this document is available on February 25, 2015.

ADDRESSES: Please refer to Docket ID NRC-2011-0022 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0022. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The revised Branch Technical Position on Concentration Averaging and Encapsulation consists of two volumes. Volume 1 (ADAMS Accession No. ML12254B065) contains the staff technical positions on averaging and certain other information. Volume 2 (ADAMS Accession No. ML12326A611) contains staff responses to stakeholder comments on the May 2012 draft (ADAMS Accession No. ML121170418) and the technical bases for the staff positions.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Maurice Heath, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3137; email: Maurice.Heath@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing Revision 1 of the CA BTP. This revision provides updated guidance on the interpretation of § 61.55(a)(8) of Title 10 of the *Code of Federal Regulations* (10 CFR), “Determination of concentrations in wastes,” as it applies to the classification (as Class A, B, or C waste) of a variety of different types and forms of LLW. Paragraph 61.55(a)(8) states that radionuclide concentrations can be averaged over the volume of the waste or its weight if the units are expressed as nanocuries per gram. The average radionuclide concentrations are compared with the waste classification tables in 10 CFR 61.55 to determine the class of the waste. The waste class determines the minimum safety measures to be applied in order to provide reasonable assurance of safe disposal of the waste.

The previous version of the CA BTP, published in 1995 (ADAMS Accession No. ML033630732), was issued before the NRC adopted its risk-informed and performance-based regulatory policy. The revised CA BTP has been informed by that policy. The revised CA BTP also contains new guidance related to blending of LLW, as directed by the Commission in its Staff Requirements Memorandum for SECY-10-0043, “Blending of Low-Level Radioactive Waste,” (ADAMS Accession No. ML102861764).

II. Background

To provide protection for individuals who inadvertently intrude into a waste disposal facility, radioactive waste proposed for near-surface disposal must be classified based on its hazard to the intruder. The NRC’s regulation, “Licensing Requirements for Land Disposal of Radioactive Waste,” 10 CFR part 61, establishes a waste classification system based on the concentration of specific radionuclides contained in the waste. This system is one of the key components in ensuring protection of an inadvertent intruder. In determining these concentrations, the regulation states, in 10 CFR 61.55(a)(8), that radionuclide concentrations can be averaged over the volume of the waste or its weight if the units are expressed as nanocuries per gram.

Although 10 CFR part 61 acknowledges that concentration averaging for the purposes of classifying waste for disposal is acceptable, it does not specify limitations on the implementation of concentration averaging. The staff published a technical position on radioactive waste classification, initially developed in

May 1983 (ADAMS Accession No. ML033630755), that provided guidance on concentration averaging. This 1983 technical position describes overall procedures acceptable to NRC staff which could be used by licensees to determine the presence and concentrations of the radionuclides listed in 10 CFR 61.55, and thereby classify waste for near-surface disposal. Section C.3 of the 1983 technical position provided guidance on averaging of radionuclide concentrations for the purpose of classifying the waste.

In 1995, the NRC staff updated a portion of the 1983 technical position, publishing as a separate document the “Branch Technical Position on Concentration Averaging and Encapsulation,” (60 FR 4451, January 23, 1995). The 1995 CA BTP significantly expanded and further defined Section C.3 of the 1983 technical position dealing with concentration averaging, specifying a number of constraints on concentration averaging.

The current update to the CA BTP is necessary due to the significant number of changes in the LLW program since the CA BTP was published in 1995. First, the Commission reviewed the 1995 CA BTP’s position on blending of LLW in 2010 and directed the staff to revise it to be more risk-informed and performance-based. The 1995 version constrained the concentration of certain waste types put into a mixture (e.g., ion exchange resins) to within a factor of 10 of the average concentration of the final mixture. The Commission directed the staff to replace this position and to implement a risk-informed, performance-based approach for LLW blending that made the hazard (i.e., the radioactivity concentration) of the final mixture the primary consideration for averaging constraints. Second, the NRC adopted a risk-informed, performance-based regulatory approach for its programs in the late 1990’s, after the 1995 CA BTP was published. The revised CA BTP more fully reflects that approach, not just for the blending position, but for other topics as well. One example is for concentration averaging of sealed radioactive sources. The 1995 CA BTP significantly constrained disposal of sealed sources. Many sources have no disposal path because of the constraints recommended in the 1995 BTP. Licensees must store sealed sources for potentially long periods of time if there is no disposal option, and the sources are subject to loss or abandonment. The staff has re-examined the 1995 assumptions underlying the radioactivity constraints

on their disposal. The CA BTP’s revised positions are based on different, but conservative assumptions and will allow for the safe disposal of more sealed sources than the 1995 CA BTP. The revised position will enhance national security by ensuring that the safest and most secure method for managing sealed sources (i.e., permanent disposal in a licensed facility) is available to licensees.

III. Overview of Public Comments

Revision 1 of the CA BTP has been developed after consideration of public comments on three drafts. The first draft (ADAMS Accession No. ML103430088) was noticed in the **Federal Register** on January 26, 2011 (76 FR 4739). The second draft (ADAMS Accession No. ML112061191) was made available to the public in September 2011, in advance of a public workshop held in Albuquerque, New Mexico, on October 20, 2011. The third draft (ADAMS Accession No. ML121170418) was noticed in the **Federal Register** for public comment on June 11, 2012, (77 FR 34411). Information about obtaining these documents is available in the **ADDRESSES** section of this document.

Fifteen organizations representing a variety of interests submitted comments on the drafts. They included Federal and State agencies and organizations, a nuclear power plant research organization, disposal and waste processing facility licensees, industry professional organizations, an advocacy group, and a waste services company. These comments have been considered by the NRC staff in developing this revision to the CA BTP. An overview of the changes to the 1995 CA BTP is presented below. Detailed responses to each of the public comments are available in Vol. 2 of the revised CA BTP and in the drafts referenced above.

IV. Overview of Revisions

The major changes to the 1995 CA BTP are summarized below. Appendix B of Volume 1 of the revised CA BTP has a more complete list of changes. The staff responses to individual public comments are contained in Section 3 of Volume 2 of the CA BTP. Finally, a summary of the changes to the May 2012 version published for public comment is available in ADAMS Accession No. ML14157A227.

Increase in cesium-137 sealed source activity limits. In the revised CA BTP, the staff has increased the limits for disposal of cesium-137 (Cs-137) sealed sources, using an improved technical basis and a reasonably foreseeable but conservative intruder scenario. Cesium-137 is used in sealed sources for

research, medical, and industrial purposes. The recommended constraint on the size of these sources for disposal has been increased from 1.1 TBq (30 Ci) to 4.8 TBq (130 Ci), based on new, more risk-informed analysis. The revised CA BTP also specifies a process that licensees should use to request review by Agreement State regulators of proposed disposals of larger activity sources.

Demonstration of adequate mixing in blended LLW. The revised CA BTP also addresses the Commission direction to “develop a clear standard for determining homogeneity” of blended waste. The 1995 CA BTP constrained the concentrations of inputs to a mixture of blended waste and therefore did not need to address the homogeneity of the final mixture. It included a “Factor of 10” concentration limit on waste blending which limited blending of waste streams with radionuclide concentrations to within a factor of 10 of the average concentrations in the blended product. The revised CA BTP specifies certain thresholds on radionuclide concentrations of waste streams that are blended together. Above these thresholds, licensees should demonstrate waste is adequately blended. Considerations for this demonstration are also discussed. The thresholds for demonstrating adequate blending and the guidance on demonstrating waste is adequately blended are based on a probabilistic dose assessment. This revision is risk-informed because of the method used to establish the threshold for the homogeneity demonstration. It is also performance-based because the position no longer constrains concentrations of *inputs* to a blending process but instead specifies criteria that the *output* (i.e., blended waste) must meet to protect an inadvertent intruder from potential hot spots in the waste.

Alternative Approaches. Another revision to the CA BTP is the addition of specific guidance for licensees to use in proposing site- or waste-specific averaging approaches, rather than the generic approaches specified in the body of the CA BTP. This revision is consistent with NRC’s performance-based regulatory policy because it facilitates the use of other averaging approaches to meet the 10 CFR part 61 performance objective of protecting an inadvertent intruder. The 1995 CA BTP stated that alternative approaches for averaging should be approved under NRC’s regulation in 10 CFR 61.58. By referencing a provision in the regulations that applies to alternatives to the *requirements* in 10 CFR part 61

(and not NRC staff guidance like the CA BTP), performance-based approaches to intruder protection were in effect discouraged. In addition, not all regulatory authorities in Agreement States that license disposal sites have this provision in their regulations, and so the regulatory mechanism for obtaining approval of alternatives was not available to all licensees. That is, some regulators could not authorize deviations from the 1995 CA BTP under that provision, even though site-specific features may have justified other averaging approaches. The revised CA BTP acknowledges that site-specific and other approaches may be used, and deviations from staff guidance in the CA BTP do not need the 10 CFR 61.58 approval that was previously specified. Instead, the regulatory authority may approve another approach in the same manner used for deviations from other NRC guidance.

Risk-informed treatment of cartridge filters. In the 1995 CA BTP, cartridge filters, a waste type generated during the operation of nuclear power plants, were defined as discrete objects subject to certain averaging constraints on each filter. Each filter had to be radiologically characterized and fit within the specified averaging constraints of the 1995 CA BTP. While that default position remains in place, the revised CA BTP also allows for the treatment of such filters as blendable waste, with a documented justification. Characterizing the overall blendable waste mixture and classifying the mixture based on its total radioactivity, rather than individual items, is permitted for many other waste types in the revised CA BTP. This more risk-informed position is justified because in practice many filters do not present a gamma hazard to an intruder, based on their actual radionuclide concentrations.

Risk-informed averaging of other discrete waste items. The 1995 CA BTP constrained the averaging of discrete items with its Factors of 1.5 (which applied to primary gamma emitters) and 10 (which applied to other radionuclides). The factors applied to the *average* radionuclide concentrations in a mixture of certain discrete items, such as activated metals, such that the radionuclide concentrations in all items in a mixture had to be within those factors for the average of the mixture. These factors ensure uniformity of radionuclide concentrations in mixtures of items, but such mixtures could be uniformly low in concentration and risk. Thus, there is no relationship between the 1995 CA BTP position and acceptable risk (or dose). The revised

CA BTP ties the averaging factors to the class limit for radionuclide concentrations (not the average of the mixture), which has a relationship to risk because the class limits are based on a dose of 5 mSv/yr (500 mrem/yr) exposure to an inadvertent intruder. The staff also revised the Factor of 1.5 to 2, since the uncertainty associated with intruder protection does not justify the precision implied by the first factor.

In developing the revised CA BTP, the staff identified one issue that may need further clarification. One of the categories of discrete wastes that are subject to special concentration averaging constraints is “contaminated materials.” The 1995 CA BTP defines contaminated materials as components or metals on which radioactivity resides on or near the surface in a fixed or removable condition. To demonstrate compliance with these averaging constraints, the radiological characteristics and volumes of individual items are typically determined. However, items with surface contamination may also be categorized as radioactive trash which is not subject to any special averaging constraints. Items in radioactive trash do not need to be individually characterized. Instead, a container of radioactive trash can be surveyed to determine its overall radioactivity and its classification determined by dividing the overall activity by the waste volume. Neither the 1995 CA BTP nor draft revisions published for public comment provided guidance for categorizing items as either contaminated materials or radioactive trash. In addition, the staff received no comments from stakeholders on this issue. The staff will consider whether additional guidance, such as a Regulatory Issue Summary (RIS), is warranted for distinguishing contaminated materials from radioactive trash. The staff may also formally clarify or supplement other positions in the CA BTP at a later time, as necessary.

V. Congressional Review Act

This CA BTP is a rule as defined in the Congressional Review Act (5 U.S.C. 801–9808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

VI. Implementation

The revised CA BTP describes and makes available to NRC and Agreement State licensees, Agreement States, and the public, methods that the NRC believes are acceptable for implementing specific parts of the Commission’s regulations. The positions in this document are not intended as a

substitute for regulations, and compliance with them is not required. Agreement States may use this information in establishing waste acceptance criteria for their licensees who are operating waste disposal sites. Applicants and licensees may use the information in the revised CA BTP when developing applications for initial licenses, amendments to licenses, or requests for NRC regulatory approval. Licensees may use the information in the revised CA BTP for actions (*i.e.*, in determining average radionuclide concentrations in waste) that do not require prior NRC review and approval. Licensees may also use the information in the revised CA BTP to assist in attempting to resolve regulatory or inspection issues. Agreement States and current licensees may continue to use the previous guidance for complying with the concentration averaging provision in 10 CFR 61.55(a)(8) (*i.e.*, the January 23, 1995, "Final Branch Technical Position on Concentration Averaging and Encapsulation"). Current licensees may also voluntarily use positions in this revised CA BTP.

In addition to the guidance in the revised CA BTP, licensees that ship waste for disposal in a 10 CFR part 61 or Agreement State equivalent facility should ensure that the waste meets the concentration averaging provisions in the land disposal facility license. Where there are conflicts with this guidance, the land disposal facility license conditions issued by the regulatory authority (*i.e.*, the Agreement State) must be met.

VII. Backfitting

The revised CA BTP revision describes a voluntary method that the NRC staff considers acceptable for complying with the regulation in 10 CFR 61.55(a)(8), regarding averaging of radionuclide concentrations for the purpose of determining waste classification. Compliance with the revised CA BTP is not an NRC requirement, and licensees and applicants may choose this or another method to achieve compliance with this provision in the 10 CFR part 61. In particular, current licensees may continue to use the averaging positions in the 1995 CA BTP. The revised CA BTP does not require a backfit analysis, as described in 10 CFR 50.109(c), because (1) it does not impose a new or amended provision in the NRC's rules, (2) does not present a regulatory staff position that interprets the NRC's rules in a manner that is either new or different from a previous staff position; and (3) does not require the modification of, or addition to, the

systems, structures, components, or design of a facility, or the procedures or organizations required to design, construct, or operate a facility.

Dated at Rockville, Maryland, this 30th day of January, 2015.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015-03913 Filed 2-24-15; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015-32 and CP2015-42; Order No. 2360]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an addition of Priority Mail Contract 112 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:* February 26, 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
- II. Notice of Commission Action
- III. Ordering Paragraphs

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 112 to the competitive product list.¹

The Postal Service contemporaneously filed a redacted

¹ Request of the United States Postal Service to Add Priority Mail Contract 112 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 18, 2015 (Request).

contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* 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. MC2015-32 and CP2015-42 to consider the Request pertaining to the proposed Priority Mail Contract 112 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 February 26, 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. MC2015-32 and CP2015-42 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 February 26, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015-03828 Filed 2-24-15; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015-33 and CP2015-43; Order No. 2361]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an addition of Priority Mail Contract 113 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:* February 26, 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
- II. Notice of Commission Action
- III. Ordering Paragraphs

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 113 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. *Id.* 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. MC2015-33 and CP2015-43 to consider the Request pertaining to the proposed Priority Mail Contract 113 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 February 26, 2015.

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. MC2015-33 and CP2015-43 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 February 26, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015-03829 Filed 2-24-15; 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:* February 25, 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 February 18, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 113 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2015-33, CP2015-43.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2015-03804 Filed 2-24-15; 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:* February 25, 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 February 18, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 113 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2015-32, CP2015-42.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2015-03802 Filed 2-24-15; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74323; File No. 4-631]

Joint Industry Plan; Order Approving the Eighth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

February 19, 2015.

I. Introduction

On December 24, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., NASDAQ OMX

¹ Request of the United States Postal Service to Add Priority Mail Contract 113 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, February 18, 2015 (Request).

BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively with FINRA, the “Participants”), filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder,² a proposal to amend the Plan to Address Extraordinary Market Volatility (“Plan”).³ The proposal represents the eighth amendment to the Plan (“Eighth Amendment”), and reflects proposed changes unanimously approved by the Participants. The Eighth Amendment was published for comment in the **Federal Register** on January 27, 2015.⁴ The Commission has received no comment letters regarding the Eighth Amendment. This order approves the Eighth Amendment to the Plan.

II. Description of the Proposal

A. Eighth Amendment to the Plan

The Eighth Amendment includes two proposed changes to the Plan. First, the Participants propose to amend the Plan to establish a requirement for the Participants to submit a Supplemental Joint Assessment to the Commission by May 29, 2015. Second, the Participants propose to extend the end date of the pilot period of the Plan from February 20, 2015 to October 23, 2015.

B. Background and Purpose of the Plan

The Plan, approved by the Commission in March 2012,⁵ establishes a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in “NMS Stocks,” as defined in Rule 600(b)(47) of Regulation NMS under the Act.⁶ The Plan sets forth limit up-limit down requirements designed to prevent trades from occurring outside specified Price Bands.⁷ These limit up-limit down requirements are coupled with Trading Pauses, as defined in the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). The limit up-limit down mechanism is

intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks, such as those experienced on May 6, 2010, thereby protecting investors and promoting a fair and orderly market. The initial date of Plan operations was April 8, 2013.⁸

III. Discussion and Commission Findings

After careful review, the Commission finds that the Eighth Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.⁹ Specifically, the Commission finds that the Eighth Amendment is consistent with Section 11A of the Act¹⁰ and Rule 608 thereunder¹¹ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and that it removes impediments to, and perfects the mechanism of, a national market system.

The Supplemental Joint Assessment will evaluate the impact of the Plan using the measures set forth in Appendix B of the Plan¹² and provide the Commission with an extensive cross-market data analysis using methodology agreed upon by the Participants.¹³ The Participants stated that they intend to engage a third-party consultant to assist in conducting the cross-market analysis and preparing the

Supplemental Joint Assessment.¹⁴ The Participants believe that the Supplemental Joint Assessment will facilitate the development of unified recommendations, if and where appropriate, regarding operation of the Plan.¹⁵ The Participants also state that they intend to make the Supplemental Joint Assessment publicly available.¹⁶

The Participants further believe that extending the end date of the pilot period will: (i) Provide the Participants with time to use the information collected during the operation of the Plan to perform further analysis and recommend further amendments to the Plan, as necessary; (ii) provide a reasonable period of time for the public to comment on the Supplemental Joint Assessment and recommendations; and (iii) allow the Commission and the public adequate time to review the Supplemental Joint Assessment and any recommendations provided by the Participants, and to determine if any modifications to the Plan are appropriate.¹⁷

The Commission believes that the Supplemental Joint Assessment and any resulting recommendations for modifications to the Plan from the Participants, along with any public comment in response thereto, will assist the Commission in assessing the operation of the Plan and in considering any future determinations regarding the Plan.

For the reasons noted above, the Commission finds that the Eighth Amendment to the Plan is consistent with Section 11A of the Act¹⁸ and Rule 608 thereunder.¹⁹ The Commission reiterates its expectation that the Participants will continue to monitor the scope and operation of the Plan and study the data produced, and will propose any modifications to the Plan that may be necessary or appropriate.²⁰

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act²¹ and Rule 608 thereunder,²² that the Eighth

¹⁴ See *id.* More recently, however, the Participants notified Commission staff that they have engaged a third-party consultant. Telephone conversation between Chris Grobbel, Attorney-Adviser, Commission, and Thushara Therrien, Director—Transparency Services, FINRA (February 3, 2015).

¹⁵ See Notice, *supra*, note 4 at 4323.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ 15 U.S.C. 78k-1.

¹⁹ 17 CFR 242.608.

²⁰ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

²¹ 15 U.S.C. 78k-1.

²² 17 CFR 242.608.

⁸ See Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013).

⁹ In approving the Eighth Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78k-1.

¹¹ 17 CFR 242.608.

¹² Appendix B of the Plan requires the Participants to: (a) Assess the statistical and economic impact on liquidity of approaching Price Bands; (b) assess the statistical and economic impact of the Price Bands on erroneous trades; (c) assess the statistical and economic impact of the appropriateness of the Percentage Parameters used for the Price Bands; (d) assess whether the Limit State is the appropriate length to allow for liquidity replenishment when a Limit State is reached because of a temporary liquidity gap; (e) evaluate concerns from the options markets regarding the statistical and economic impact of Limit States on liquidity and market quality in the options markets; (f) assess whether the process for entering a Limit State should be adjusted and whether Straddle States are problematic; (g) assess whether the process for exiting a Limit State should be adjusted; and (h) assess whether the Trading Pauses are too long or short and whether the reopening procedures should be adjusted.

These areas are intended to capture the key measures necessary to assess the impact of the Plan and, if and where appropriate, to support recommendations relating to the calibration of the Percentage Parameters to help ensure that the stated objectives of the Plan are achieved.

¹³ See Notice, *supra*, note 4 at 4323.

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ See Letter from Christopher B. Stone, Vice President, FINRA, to Brent Fields, Secretary, Commission, dated December 24, 2014 (“Transmittal Letter”).

⁴ See Securities Exchange Act Release No. 74110 (January 21, 2015), 80 FR 4321 (“Notice”).

⁵ See Securities Exchange Act Release No. 67091, 77 FR 33498 (Jun. 6, 2012) (File No. 4-631).

⁶ 17 CFR 242.600(b)(47). See also Section I(H) of the Plan.

⁷ See Section V of the Plan.

Amendment to the Plan (File No. 4-631) be, and it hereby is, approved.

Brent J. Fields,
Secretary.

[FR Doc. 2015-03875 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 26, 2015 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: February 20, 2015.

Brent J. Fields,
Secretary.

[FR Doc. 2015-03947 Filed 2-23-15; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74302; File No. SR-OCC-2014-23]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Change To Clarify That OCC Would Not Treat a Futures Transaction That Is an Exchange-for-Physical or Block Trade as a Non-Competitively Executed Trade if the Exchange on Which Such Trade Is Executed Has Provided OCC With Representations That it Has Policies or Procedures Requiring That Such Trades Be Executed at Reasonable Prices and That Such Price Is Validated by the Exchange

February 19, 2015.

On December 19, 2014, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change File No. SR-OCC-2014-23 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder. ² The proposed rule change was published for comment in the **Federal Register** on January 6, 2015. ³ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

I. Description

OCC is modifying its By-Laws to add an interpretation and policy to Section 7 of Article XII of its By-Laws to clarify that OCC will not treat a futures transaction that is an exchange-for-physical (“EFP”) ⁴ or block trade in futures (“Block Trade”) ⁵ as a non-competitively executed trade, and therefore subject to delayed novation, if the exchange on which the EFP or Block Trade is executed has provided OCC with representations that it has rules, policies or procedures requiring that such trades be executed at reasonable prices and that such prices are validated by the exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 73961 (December 30, 2014), 80 FR 568 (January 6, 2015) (SR-OCC-2014-23).

⁴ According to OCC, an EFP is a transaction between two parties in which a futures contract on a commodity or security is exchanged for the actual physical good.

⁵ According to OCC, a block trade is a trade involving a large number of shares being traded at an arranged price between parties, outside of the open markets, in order to lessen the impact of such a large trade being made public.

Background

According to OCC, under OCC’s By-Laws, the novation of confirmed trades (*i.e.*, transactions in options, futures, or other “cleared contracts” effected through an exchange and submitted to OCC for clearing) occurs at the “commencement time” for such transactions. ⁶ The “commencement time” for most confirmed trades is when daily position reports are made available to clearing members. ⁷ However, transactions in certain cleared products and certain types of transactions, including non-competitively executed EFPs and Block Trades, have delayed commencement times that are tailored to address risks specific to such products or transactions, ⁸ including, but not limited to, those risks presented by off-market transactions.

When OCC began clearing EFPs and Block Trades, it established that the commencement time for such transactions is expressly conditioned upon the receipt by OCC of variation payments due from purchasing and selling clearing members because EFPs and Block Trades could be executed away from the market and be executed at other than market prices. These factors were viewed as creating heightened exposure to OCC if a clearing member defaults on a trade executed at an off-market price and, as a result, Article XII, Section 7 of OCC’s By-Laws establishes that the commencement time for an EFP or Block Trade is the time of the first variation payment after the trade is reported to OCC (typically 9:00 a.m. Central Time the following business day). ⁹ OCC delays its novation of these non-competitively executed futures trades because OCC is bound to pay the first variation settlement amount to the counterparty once novation has occurred, and if the agreed-upon price at which the trade is entered differs from the competitive market price, there is an increased likelihood that OCC may

⁶ Cleared Contracts and Commencement Time are defined terms set forth in Article 1, Section 1 of OCC’s By-Laws.

⁷ See OCC’s By-Laws Article VI, Section 5. According to OCC, in a practical sense, however, most trades are novated upon proper submission to OCC for clearing since OCC’s By-Laws, with limited exception, do not permit OCC to reject any confirmed trade due to the failure of the purchasing clearing member to pay any amount due to OCC at or before the settlement time. See also Securities Exchange Act Release No. 65990 (December 16, 2011), 76 FR 79731 (December 22, 2011) (SR-OCC-2011-17).

⁸ *Id.*

⁹ See Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 (August 28, 2001) (SR-OCC-2001-07).

experience a loss if it is required to close out a defaulting purchaser's position. Accordingly, OCC does not novate, and thereby become a counterparty to, a non-competitively executed trade if OCC fails to receive the first variation payment when due.

EFP and Block Trades Subject to Price Checks

According to OCC, in the time since OCC adopted Article XII, Section 7 of its By-Laws, the Commodity Futures Trading Commission ("CFTC") has adopted Regulation 1.73, which requires clearing futures commission merchants ("FCMs") to establish certain risk controls, including risk based limits for bilaterally executed transactions and for Block Trades.¹⁰ In light of this requirement and other proposed regulatory developments that may affect EFPs and Block Trades,¹¹ certain futures exchanges requested that OCC review its By-Laws regarding delayed novation of these trades to reassess the impact of the recently implemented rules, supported by policies and procedures, which require the exchanges' market participants to execute s EFPs and Block Trades at reasonable prices that are verified by the exchange. These rules, policies and procedures leverage risk controls implemented by FCMs, as applicable. OCC undertook such a review of its practices with respect to delayed novation of EFPs and Block Trades, and determined that it is appropriate to novate these trades when daily position reports are made available, provided that the exchange that submitted such trades to OCC represents to OCC that the exchange has in place rules, policies and procedures to verify the reasonableness of the transaction price of EFPs and Block Trades it submits to OCC for clearance

¹⁰ See 17 CFR 1.73. According to OCC, Regulation 1.73 requires FCMs to: (1) Establish risk-based limits in the proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors; (2) screen orders for compliance with the risk-based limits; and (3) monitor for adherence to the risk based limits intra-day and overnight.

¹¹ According to OCC, the CFTC has proposed regulations requiring Designated Contract Markets (*i.e.*, futures exchanges) to determine whether or not the price of a block trade is fair and reasonable considering: (1) The size of the block trade, (2) the price and size of other block trades in any relevant markets at the applicable time, and (3) the circumstances of the market or the parties to the block trade. See proposed CFTC Regulation 38.503. 75 FR 80572, 80592. See also proposed Appendix B of part 38 of the CFTC's proposed regulations concerning Core Principle 9. 75 FR 80572, 80630. The CFTC has also proposed to adopt similar regulations concerning EFP trades. See proposed CFTC Regulation 38.505. 75 FR 80572, 80593.

and settlement, and that such price is validated by the exchange.

OCC has determined that EFPs and Block Trades that are subject to price reasonability checks do not present the same settlement risks discussed above in relation to non-competitively executed EFPs and Block Trades. Specifically, should a clearing member that executed a reasonably priced EFP or Block Trades fail to pay its first variation payment to OCC on the trade, OCC anticipates it will liquidate the futures positions at the prevailing market price and obtain sufficient funds, or OCC will already have sufficient funds in its clearing fund, to pay or reimburse itself for the first variation settlement to the counterparty to the trade. This is the same risk management methodology OCC currently uses for other competitively executed trades in cleared contracts that OCC accepts for clearance and settlement on a daily basis.

Accordingly, OCC is amending Article XII, Section 7, of its By-Laws by adding an interpretation and policy to exclude EFPs and Block Trades from the delayed novation and to provide for the treatment of these trades as competitively executed trades, provided that the s EFPs and Block Trades are reported by an exchange that represents to OCC that it performs a price reasonableness check on the trade, and that such price is validated by the exchange.

Verification of Exchange Rules, Policies and Procedures Related to Price Reasonableness

Before permitting an exchange to submit EFPs and Block Trades that will not be subject to delayed novation, OCC will require an exchange to provide OCC with a certification that the exchange has rules, policies or procedures as they relate to verifying the reasonableness of the price of the EFP and Block Trade. Specifically, OCC will require an exchange to certify that its rules, policies or procedures provide that the price at which a EFP or Block Trade is executed must be fair and reasonable in light of: (i) The size of the EFP or Block Trade; (ii) the prices and sizes of other transactions in the same contract at the relevant time; and (iii) the prices and sizes of transactions in other relevant markets, including, without limitation, the underlying cash market or related futures markets, at the relevant time.¹² An exchange will also

¹² For example, according to OCC, OneChicago LLC ("OCX") Rule 417 governs EFP and Block Trades executed on OCX and provides that such trades be executed on a designated trading platform

have to certify that its rules, policies or procedures require one or both parties to an EFP or Block Trade to report the trade details of the trade to the exchange within a reasonable period of time (*i.e.*, within 10 minutes of the time of execution or, if the EFP or Block Trade is executed outside of regular trading hours, within 15 minutes of the commencement of trading on the next business day). OCC believes that it is appropriate to rely on price reasonableness checks performed by exchanges trading futures because they are self-regulatory organizations subject to regulatory oversight, including routine examinations. Moreover, OCC will presume that all EFPs and Block Trades submitted by an exchange that represents that it has price reasonableness rules, policies or procedures in place will submit to OCC EFPs and Block Trades that have undergone a price reasonableness check.

In addition to exchanges implementing rules, policies or procedures regarding the price reasonableness checks for EFPs and Block Trades, exchanges may continue to use their existing authority to notify OCC pursuant to Article VI, Section 7(c) of OCC's By-Laws, to disregard any EFP or Block Trade submitted to OCC that was executed at an unreasonable price. The notification will be delivered to OCC along with other trades "busted" by an exchange, in accordance with an operational process that currently occurs every day before daily position reports are distributed. Such trades could not be properly cleared under amended Article XII, Section 7, but instead would fall within the non-competitively executed category and therefore be subject to delayed novation. Taken together, OCC believes that these measures appropriately protect OCC in the event OCC receives a EFP or Block Trade at an unreasonable price. Moreover, OCC and the exchanges will continue to maintain an ongoing dialogue about operational matters, which OCC will use to confirm the continued application of price reasonableness controls.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act¹³ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the

that will automatically verify that EFPs and Block Trades were executed at competitive prices by price verification software for price reasonableness.

¹³ 15 U.S.C. 78s(b)(2)(C).

rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁴ which requires the rules of a clearing agency to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. OCC is amending Article XII, Section 7, to include a new policy and interpretation setting forth the specific criteria a futures exchange must meet in order for EFPs and Block Trades to not be subject to the delayed novation times set forth in Article XII of OCC's By-Laws. Specifically the exchange must provide OCC with a certification that the exchange has rules, policies or procedures as they relate to verifying the reasonableness of the price of the EFP and Block Trade. OCC's proposal, as approved, does not affect the novation time for any securities transactions.

OCC has determined that EFPs and Block Trades that are subject to price reasonability checks do not present the same settlement risks as those executed on exchanges without price reasonability checks, and as such has determined that OCC's requirement that exchanges certify price reasonableness policies and procedures are sufficiently appropriate to mitigate the risks associated with non-competitively executed trades. In addition, in the event a clearing member fails to its first variation payment to OCC on an EFP or Block Trade that was executed on an exchange with price reasonability checks, OCC will employ the same risk management methodology used for all other competitively executed trades accept for clearing at OCC, which should in turn reduce settlement risks that could expose OCC to loss if it is required to close out a defaulting purchaser's EFP or Block Trade position. Combining OCC's price reasonableness requirements for exchanges and OCC's ability to liquidate futures positions or use its clearing fund to management risks associated with non-payment of premiums for those trades accepted for clearance and settlement, OCC should have sufficient risk management controls in place in to assure the safeguarding of securities and funds which are in the custody of control of OCC or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is

consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹⁵ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change File No. SR-OCC-2014-23 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Brent J. Fields,

Secretary.

[FR Doc. 2015-03811 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74301; File No. SR-MIAX-2015-10]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404

February 19, 2015.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on February 9, 2015, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 404.

The text of the proposed rule change is available on the Exchange's Web site at http://www.miaxoptions.com/filter/wotitle/rule_filing, at MIAX's principal office, and at the Commission's Public Reference Room.

¹⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 404, Interpretations and Policies .02, to extend current \$0.50 strike price intervals in non-index options to short term options with strike prices less than \$100. This is a competitive filing that is based on proposals recently submitted by the International Securities Exchange, LLC ("ISE") and BOX Options Exchange LLC ("BOX").³

The Exchange proposes to amend its rules governing the Short Term Option Series Program to introduce finer strike price intervals for certain Short Term Option Series. In particular, the Exchange proposes to amend Rule 404, Interpretations and Policies .02(e), to extend \$0.50 strike price intervals in non-index options to Short Term Options Series with strike prices less than \$100 instead of the current \$75. This proposed change is intended to eliminate gapped strikes between \$75 and \$100 that result from conflicting strike price parameters under the Short Term Option Series and \$2.50 Strike Price Programs as described in more detail below.

Under the Exchange's rules, the Exchange may list Short Term Option Series in up to fifty option classes in addition to option classes that are selected by other securities exchanges that employ a similar program under their respective rules.⁴ On any Thursday or Friday that is a business day, the Exchange may list Short Term Option Series in designated option classes that expire at the close of business on each

³ See Securities Exchange Act Release Nos. 73999 (January 6, 2015), 80 FR 1559 (January 12, 2015) (SR-ISE-2014-52); 74016 (January 8, 2015), 80 FR 1976 (January 14, 2015) (SR-BOX-2015-01).

⁴ See Exchange Rule 404, Interpretations and Policies .02(a).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

of the next five Fridays that are business days and are not Fridays in which monthly or quarterly options expire.⁵ These Short Term Option Series trade in \$0.50, \$1, or \$2.50 strike price intervals depending on the strike price and whether the option trades in dollar increments in the related monthly expiration.⁶ Specifically, short term options in non-index option classes admitted to the Short Term Options Series Program currently trade in: (1) \$0.50 or greater strike price intervals where the strike price is less than \$75, and \$1 or greater where the strike price is between \$75 and \$150 for all classes that participate in the Short Term Option Series Program; (ii) \$0.50 strike price intervals for classes that trade in one dollar increments in non-Short Term Options and that participate in the Short Term Option Series Program; or (iii) \$2.50 or higher strike price intervals where the strike price is above \$150.

The Exchange also operates a \$2.50 Strike Price Program that permits the Exchange to select up to sixty options classes on individual stocks to trade in \$2.50 strike price intervals, in addition to option classes selected by other securities exchanges that employ a similar program under their respective rules.⁷ Monthly expiration options in classes admitted to the \$2.50 Strike Price Program trade in \$2.50 intervals where the strike price is (1) greater than \$25 but less than \$50; or (2) between \$50 and \$100 if the strikes are no more than \$10 from the closing price of the underlying stock in its primary market on the preceding day.⁸ These strike price parameters conflict with strike prices allowed for short term options because dollar strikes between \$75 and \$100 that are otherwise allowed under the Short Term Option Series Program may be within \$0.50 of strikes listed pursuant to the \$2.50 Strike Price Program. In order to remedy this conflict, the Exchange proposes to extend the \$0.50 or greater strike price intervals currently allowed for Short Term Options Series with strike prices less than \$75 to Short Term Options Series with strike prices less than \$100. With this proposed change, Short Term Options Series in non-index option classes will trade in: (1) \$0.50 or greater intervals for strike prices less than \$100, or for option classes that trade in one dollar increments in the related monthly

expiration option; (2) \$1 intervals for strike prices that are between \$100 and \$150; and (3) \$2.50 or greater intervals for strike prices above \$150.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

During the month prior to expiration, the Exchange is permitted to list related monthly option contracts in the narrower strike price intervals available for Short Term Options Series.¹¹ After transitioning to short term strike price intervals, however, monthly options that trade in \$2.50 intervals between \$50 and \$100 under the \$2.50 Strike Price Program, trade with dollar strikes between \$75 and \$150. Due to the overlap of \$1 and \$2.50 intervals, the Exchange cannot list certain dollar strikes between \$75 and \$100 that conflict with the prior \$2.50 strikes. For example, if the Exchange initially listed monthly options on ABC with \$75, \$77.50, and \$80 strikes, the Exchange could list the \$76 and \$79 strikes when these transition to short term intervals. The Exchange would not be permitted to list the \$77 and \$78 strikes, however, as these are \$0.50 away from the \$77.50 strike already listed on the Exchange. This creates gapped strikes between \$75 and \$100, where investors are not able to trade otherwise allowable dollar strikes on the Exchange. Similarly, these conflicting strike price parameters create issues for investors who want to roll their positions from monthly to weekly expirations. In the example above, for instance, an investor that purchased a monthly ABC option with a \$77.50 strike price would not be able to roll that position into a later short term expiration with the same strike price as that strike is unavailable under current Short Term Option Series Program rules. Permitting \$0.50 intervals for Short Term Options Series up to \$100 would remedy both of these

issues as strikes allowed under the \$2.50 Strike Price Program would not conflict with the finer \$0.50 strike price interval.

The Short Term Option Series Program has been well-received by market participants and the Exchange believes that introducing finer strike price intervals for Short Term Options Series with strike prices between \$75 and \$100, and thereby eliminating the gapped strikes described above, will benefit these market participants by giving them more flexibility to closely tailor their investment and hedging decisions.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity.

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 Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to filings submitted by ISE and BOX.¹² To the contrary, the Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Additionally, the Exchange believes that the proposed rule change is necessary to permit fair competition among the options exchanges with respect to Short Term Option Series Programs.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

⁵ See Exchange Rule 404, Interpretations and Policies .02.

⁶ See Exchange Rule 404, Interpretations and Policies .02(e).

⁷ See Exchange Rule 404(f).

⁸ *Id.* The term “primary market” means the principal market in which an underlying security is traded. See Exchange Rule 100.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Exchange Rule 404, Interpretations and Policies .02(e).

¹² *Id.* [sic].

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to compete with other exchanges with similar provisions without putting the Exchange at a competitive disadvantage. For this reason, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest; and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2015-10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2015-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2015-10 and should be submitted on or before March 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Brent J. Fields,

Secretary.

[FR Doc. 2015-03810 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74311; File No. SR-ISEGemini-2015-05]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Limit Up-Limit Down Obvious Error Pilot

February 19, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 19, 2015, ISE Gemini, LLC (the "Exchange" or "ISE Gemini") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

ISE Gemini proposes to extend a pilot program under Rule 703A(d) that suspends Rule 720 regarding obvious errors during Limit and Straddle States in securities that underlie options traded on the Exchange. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 703A(d), which was adopted as part of the Exchange's Form 1 application for registration as a national securities exchange,³ is designed to address certain issues related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or the "Plan").⁴ Specifically, pursuant to a pilot program adopted under Rule 703A(d), the Exchange excludes transactions executed during a Limit State⁵ or Straddle State⁶ from the obvious error provisions of Rule 720. The purpose of this filing is to extend the effectiveness of the pilot program to coincide with the proposed extension of the Limit Up-Limit Down Plan to October 23, 2015.⁷

The Exchange believes the benefits to market participants from this provision should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the obvious error provisions of Rule 720 would likely apply in many instances during Limit and Straddle States. The Exchange believes that continuing the pilot will protect against any unanticipated

³ The Securities and Exchange Commission granted the Exchange's application for registration as a national securities exchange on July 26, 2013. See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (Aug. 1, 2013).

⁴ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

⁵ The term "Limit State" means the condition when the national best bid or national best offer for an underlying security equals an applicable price band, as determined by the primary listing exchange for the underlying security. See Rule 703A.

⁶ The term "Straddle State" means the condition when the national best bid or national best offer for an underlying security is non-executable, as determined by the primary listing exchange for the underlying security, but the security is not in a Limit State. See Rule 703A.

⁷ See Exchange Act Release No. 74110 (January 21, 2015), 80 FR 4321 (January 27, 2015) (Eighth Amendment to the Limit-Up Limit-Down Plan). The Exchange notes that the current text of Rule 703A mistakenly states a pilot period end date of April 8, 2014, which was the prior end date selected by the options exchanges for this industry wide initiative. The Exchange has maintained compliance with Rule 703A, including by submitting applicable pilot reports subsequent to this date.

consequences in the options markets during a Limit or Straddle State. Thus, the Exchange believes that the protections of current rule should continue while the industry gains further experience operating the Plan.

In connection with this proposed extension, each month the Exchange shall provide to the Commission, and the public, a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange. For each trade on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Straddle and Limit States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, the Exchange will provide to the Commission, and the public, no later than May 29, 2015, assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States including: (1) An evaluation of the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁸ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁹ because

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit or Straddle State from certain aspects of Rule 720. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit and Straddle States, and that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. Extension of this pilot would ensure that limit orders that are filled during a Limit or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan.

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 Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The

¹⁰ *Id.*

Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISEGemini-2015-05 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-ISEGemini-2015-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISEGemini-2015-05, and should be submitted on or before March 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Brent J. Fields,
Secretary.

[FR Doc. 2015-03822 Filed 2-24-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74306; File No. SR-BOX-2015-13]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Program That Suspends Certain Obvious Error Provisions During Limit Up-Limit Down States in Securities That Underlie Options Traded on the Exchange

February 19, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 18, 2015, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretive Material 1 to Rule 7080 to extend, through October 23, 2015, the pilot program that suspends certain obvious error provisions during limit up-limit down states in securities that underlie options traded on the Exchange. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend through October 23, 2015 the pilot that permits the Exchange to suspend certain provisions in BOX Rule 7170 (Obvious and Catastrophic Errors) during limit up-limit down states in securities that underlie options traded on the Exchange ("Pilot"). The Pilot is currently scheduled to expire on February 20, 2015.

The Pilot allows the Exchange to exclude transactions executed during a Limit State or Straddle State from provisions in BOX Rule 7170. This does not include Rule 7170(e) and (f), which specify when a trade resulting from an erroneous print or quote in the underlying security may be adjusted or busted.

The remaining provisions in BOX Rule 7170 provide a process by which a transaction may be busted or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Under these provisions, the theoretical price is the national best bid price for the option with respect to a sell order and the national best offer for the option with respect to a buy order. During a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the limit state. Consequently, the Exchange believed that these provisions would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and could produce undesirable effects.

The Exchange proposes to extend the operation of this Pilot to analyze the impact of the Limit and Straddle States. The Exchange will also continue to evaluate whether adopting a provision for reviewing trades on its own motion during Limit and Straddle States is necessary and appropriate.

Additionally, the Exchange represents that it will conduct its own analysis concerning the elimination of the obvious error rule during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of the Pilot. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from members and their customers concerning executions during Limit and

Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above.

Specifically, the Exchange agrees to provide the following data to the Commission and the public to help evaluate the impact of the Pilot. By May 29, 2015 the Exchange shall provide an assessment relating to the impact of the Plan and calibration of the Percentage Parameters. On a monthly basis, the Exchange shall provide both the Commission and public a dataset containing the data for each Straddle and Limit State in optionable stocks.³

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁴ in general, and Section 6(b)(5) of the Act,⁵ in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed extension will allow the Pilot to remain in effect until the end of the pilot period of the Plan to Address Extraordinary Market Volatility ("Plan").⁶ The Exchange believes that it

³ The dataset will include the options for each underlying security that reaches a limit or straddle state and has at least one (1) trade on the Exchange during the straddle or limit state. For each of those options affected the data record will contain the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state. For activity on the Exchange the data record will contain the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle or limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's straddle or limit state compared to the last available option price as reported by OPRA before the start of the straddle or limit state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving straddle or limit state (or halt if applicable) is 30% away from the price before the start of the straddle or limit state.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ See Securities Exchange Act Release No. 74110 (January 21, 2015), 80 FR 4321 (January 27, 2015) (Joint Industry Plan; Notice of Filing of the Eighth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from the provision of BOX Rule 7170. Specifically the Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.*, busted trades or adjusted prices) may not be appropriate given market conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change does not impose any new or additional burden on BOX Options Participants, and only extends the current Pilot, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)(iii) thereunder.⁸

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2015-13 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-BOX-2015-13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2015-13, and should be submitted on or before March 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74310; File No. SR-BX-2015-010]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify and Reorganize Chapter VI (Trading Systems), Section 8 (BX Opening and Halt Cross) of the Exchange's Options Rules

February 19, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 9, 2015, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify and reorganize Chapter VI (Trading

Systems), Section 8 (BX Opening and Halt Cross) of the Exchange's Options rules. The proposal would update or add Section 1 and Section 8 definitions in respect of the BX Opening and Halt Cross. The proposal would also make changes regarding: The criteria for opening of trading or resumption of trading after a halt; BX posting on its Web site any changes to the dissemination interval or prior Order Imbalance Indicator; the procedure if more than one price exists; the procedure if there are unexecuted contracts; and the ability of firms to elect that orders be returned in symbols that were not opened on BX before the conclusion of the Opening Order Cancel Timer.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify BX Chapter VI, Section 1 and Section 8 to update or add definitions, which include Current Reference Price, BX Opening Cross, Eligible Interest, Valid Width National Best Bid or Offer ("Valid Width NBBO"), Away Best Bid or Offer ("ABBO"), and On the Open Order ("OPG"). The purpose is to also make changes regarding: The criteria for opening of trading or resumption of trading after a halt; BX posting on its Web site any changes to the dissemination interval or prior Order Imbalance Indicator; the procedure if more than one price exists; the procedure if there are unexecuted contracts; and the ability of firms to elect that orders be returned in symbols

⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

that were not opened on BX before the conclusion of the Opening Order Cancel Timer.³

Section 8 of Chapter VI describes the BX opening and halt cross and opening imbalance process (“Opening Cross”). Section 8(a) currently contains definitions that are applicable to Section 8. Section 8(b) currently states that for the opening of trading of System Securities,⁴ the Opening Cross shall occur at or after 9:30 a.m. Eastern Time⁵ if any of the following “conditions” occur: (1) There is no Imbalance;⁶ (2) the dissemination of a regular market hours quote or trade (as determined by the Exchange on a class-by-class basis) by the Market for the Underlying Security⁷ has occurred (or, in the case of index options, the Exchange has received the opening price of the underlying index); or (3) in the case of a trading halt, when trading resumes pursuant to Chapter V, Section 4, and a certain number (as the Exchange may determine from time to time) of other options exchanges have disseminated a firm quote on the Options Price Reporting Authority (“OPRA”).⁸ Market hours trading on BX Options in specific options commences, or in the case of specific halted options resumes, when the BX Opening Cross concludes. Section 8(c) currently describes the procedure if firm quotes are not disseminated for an option by the predetermined number of options exchanges by a specific time during the day that is determined by the

Exchange;⁹ provided that dissemination of a regular market hours quote or trade by the Market for the Underlying Security has occurred (or, in the case of index options, the Exchange has received the opening price of the underlying index). This filing proposes several changes to enhance the usability and effectiveness of Section 8 regarding the opening and halt cross and imbalance process.

First, the Exchange proposes to update or add new Section 8 definitions.

The Exchange proposes a change to the definition of “Current Reference Price”. Current Section 8(a)(2)(A) defines the “Current Reference Price” to mean: (i) The single price at which the maximum number of contracts of Eligible Interest can be paired at or within the NBBO; (ii) If more than one price exists under subparagraph (i), the Current reference Price shall mean the entered price at which contracts will remain unexecuted in the cross; (iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the price that is closest to the midpoint of the (1) National Best Bid or the last offer on BX against which contracts will be traded whichever is higher, and (2) National Best Offer or the last bid on BX against which contracts will be traded whichever is lower. Proposed Section 8(a)(2)(A) seeks to simplify the definition of the “Current Reference Price” to state that “Current Reference Price” shall mean an indication of what the Opening Cross price would be at a particular point in time. The “Current Reference Price” determination will be substantively similar to what is currently described in Section 8(a)(2)(A), with the criteria for the Opening Cross price, as discussed below, set forth elsewhere in Section 8,¹⁰ according to various parameters (e.g. existence of opening interest, existence of Valid Width NBBO, whether the issue is open elsewhere).¹¹ The Exchange believes that this construction makes the rule easier to follow. In addition, this construction also makes the language contained in current Section 8(a)(2)(E) no longer necessary as it is replaced with the new

definition proposed for “Current Reference Price” in Section 8(a)(2)(A) and proposed criteria for the Opening Cross price set forth in Section 8(b). Thus, the Exchange proposes to delete current Section 8(a)(2)(E).

The Exchange proposes a change to the definition of “BX Opening Cross”. Specifically, in proposed Section 8(a)(3) the Exchange introduces a clarifying change that references opening or resuming trading, and states that “BX Opening Cross” shall mean the process for opening or resuming trading pursuant to this rule and shall include the process for determining the price at which Eligible Interest, as discussed below, shall be executed at the open of trading for the day, or the open of trading for a halted option, and the process for executing that Eligible Interest.

The Exchange proposes to define a new order type in Section 1(e)(11), “On the Open Order”, which is an order with a designated time-in-force of OPG.¹² An On the Open Order will be executable only during the Opening Cross. If such order is not executed in its entirety during the Opening Cross, the order, or any unexecuted portion of such order, will be cancelled back to the entering participant.

The Exchange proposes a change to the definition of “Eligible Interest” contained in current Section 8(a)(4). Specifically, in Section 8(a)(4) the Exchange proposes a change to reflect the addition of a new order type, On the Open Order, with a time-in force of OPG, so that “Eligible Interest” shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of IOC (immediate-or-cancel), DAY (day order), GTC (good-till-cancelled), and OPG. The Exchange also proposes new language to indicate how certain time-in-force orders will be handled, to state that orders received via FIX protocol prior to the BX Opening Cross designated with a time-in-force of IOC will be rejected and shall not be considered Eligible Interest. Orders received via SQF prior to the BX Opening Cross designated with a time-in-force of IOC will remain in-force through the opening and shall be cancelled immediately after the opening. The Exchange notes that FIX protocol users generally prefer a cancel if an order is not executed immediately in order that these users have an opportunity to access other markets. SQF users are liquidity providers who

³ The Exchange will explain the proposed change to its participants via an Options Trader Alert.

⁴ “System Securities” means all options that are currently trading on BX Options pursuant to Chapter IV. All other options are “Non System Securities.” Chapter VI, Section 1(b).

⁵ In this proposal, all time is Eastern Time unless otherwise noted.

⁶ “Imbalance” means the number of contracts of Eligible Interest that may not be equal. Chapter VI, Section 8(a)(1). “Eligible Interest” means any quotation or any order that may be entered into the system and designated with a time-in-force of IOC, DAY, GTC. Chapter VI, Section 8(a)(4). The Exchange is deleting the reference to Imbalance from Section 8(b) because, as discussed, the occurrence of the Opening Cross depends on the parameters proposed in Section 8(b) rather than on whether there is an imbalance.

⁷ “Market for the Underlying Security” means either the primary listing market, the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), or the first market to open the underlying security, as determined by the Exchange on an issue-by-issue basis and announced to the membership on the Exchange’s Web site. Chapter VI, Section 8(a)(5).

⁸ For better readability, this part of Section 8(b) is proposed to be broken into two sentences and the phrase “the Opening Cross shall occur” inserted. Reference to firm quote on OPRA is proposed to be deleted from this part of Section 8(b) and is, as discussed, put into proposed Section 8(b)(2)(B).

⁹ The specific time of day, currently 9:45 a.m., is disseminated at https://www.nasdaqtrader.com/Content/TechnicalSupport/BXOptions_SystemSettings.pdf.

¹⁰ See proposed Section 8(b).

¹¹ Simultaneously, the price parameters are deleted from current Section 8(a)(2)(A). In a similar vein, current Section 8(a)(2)(E) indicative prices are deleted. The Exchange is re-organizing Section 8 and thereby deleting the noted price parameters and indicative prices in order to offer an integrated description of the opening process in proposed Section 8(b).

¹² The term “On the Open Order” (OPG) is also proposed to be added as a Time in Force to Chapter VI, Sec 1(g), and is added as an Order Type to Chapter VI, Sec. 8(a)(4).

prefer that the order lives throughout the entire opening process, until it is clear their liquidity was not utilized in the opening. The Exchange believes that these changes help to clarify how eligible quotations and orders are handled in the opening process.

The Exchange proposes to add the concept of a Valid Width NBBO and ABBO with respect to away and on-Exchange interest. Specifically, in proposed Section 8(a)(6) the Exchange defines “Valid Width NBBO” as the combination of all away market quotes and any combination of BX Options-registered Market Maker (“Market Maker”) orders and quotes received over the SQF Protocol within a specified bid/ask differential as established and published by the Exchange. The Valid Width NBBO will be configurable by underlying, and a table with valid width differentials will be posted by BX on its Web site. Away markets that are crossed (e.g. AMEX crosses AMEX, AMEX crosses CBOE) will void all Valid Width NBBO calculations. If any Market Maker orders or quotes on BX Options are crossed internally, then all such orders and quotes will be excluded from the Valid Width NBBO calculation. In addition, in proposed Section 8(a)(7), the Exchange defines “ABBO” as the displayed National Best Bid or Offer not including the Exchange’s Best Bid or Offer.

The Exchange is making these proposals to ensure that all away market quotes and any combination of Market Maker orders and quotes,¹³ whether they include the Exchange’s Best Bid or Offer or not, are represented. The Exchange believes that including (or adding) the proposed Valid Width NBBO and ABBO within the opening rule should be beneficial to market participants by offering a more robust Opening Cross process. The proposed change will significantly enhance the price discovery mechanism in the opening process to include not only Market Maker orders and quotes but also away market interest.¹⁴

¹³ In respect of the Valid Width NBBO, the orders and quotes on the Exchange would be received over the SQF Protocol.

¹⁴ Current Section 8(b)(2)(B) and (b)(2)(C) discuss the Opening Cross procedure if more than one price exists. As noted below, the Exchange proposes to add language to current Section 8(b)(2)(C) regarding unexecuted contracts. Proposed Section 8(b)(5) and (b)(6) (renumbered from current Section 8(b)(3) and (b)(4), respectively) discuss how Eligible Interest would be handled vis a vis the Opening Cross; proposed (b)(5) states that if the BX Opening Cross price is selected and not all Eligible Interest available in BX Options is executed, then all Eligible Interest shall be executed at the BX Opening Cross price in accordance with the execution algorithm assigned to the associated underlying option. No changes are proposed to

Following are examples to illustrate, among other things, the calculation of the Valid Width NBBO as proposed in Section 8(a)(6) and the definition of the ABBO as proposed in Section 8(a)(7).

Example 1 (normal market conditions). Assume that the Valid Width NBBO bid/ask differential is set by the Exchange at .10. MM1 is quoting on the Exchange .90–1.15 and MM2 is quoting on the Exchange .80–.95, thus making the BX BBO .90–.95. Assume the ABBO is .85–1.00. The Exchange considers all bid and all offers to determine the bid/ask differential; in this example, the best bid/ask is .90–.95 which satisfies the required .10 bid/ask differential and is considered a Valid Width NBBO. Pursuant to the rule proposed in Section 8(b)(2)(A), BX Options will open with no trade and BBO disseminated as .90–.95.

Example 2 (away markets are crossed). Assume the Valid Width NBBO bid/ask differential is set by the Exchange at .10. MM1 is quoting on the Exchange 1.05–1.15 and MM2 is quoting on the Exchange 1.00–1.10, thus making the BX BBO 1.05–1.10. Assume Exchange 2 is quoting .90–1.10 and Exchange 3 is quoting .70–.85. Since the ABBO is crossed (.90–.85), Valid Width NBBO calculations are not taken into account until the away markets are no longer crossed. Once the away markets are no longer crossed, the Exchange will determine if a Valid Width NBBO can be calculated. Assume the ABBO uncrosses because Exchange 3 updates their quote to .90–1.15, the BX BBO of 1.05–1.10 is considered a Valid Width NBBO. Pursuant to the rule proposed in Section 8(b)(2)(A), BX Options will open with no trade and BBO disseminated as 1.05–1.10.

Example 3 (BX Options orders/quotes are crossed, ABBO is Valid Width NBBO). Assume that the Valid Width NBBO bid/ask differential is set by the Exchange at .10. MM1 is quoting on the Exchange 1.05–1.15 (10x10 contracts) and MM2 is quoting on the Exchange .90–.95 (10x10 contracts), thus making the BX BBO crossed, 1.05–.95, while another MM3 is quoting on the Exchange at .90–1.15 (10x10 contracts). Since the BX BBO is crossed, the

Sections 8(b)(6) and 8(b)(7) other than re-numbering. Section 8 (b)(6) (renumbered from current Section 8(b)(4)) states that all Eligible Interest executed in the BX Opening Cross shall be executed at the BX Opening Cross price. Proposed Section 8(b)(7) (renumbered from current Section 8(b)(5)) discusses the procedure of disseminating one additional Order Imbalance Indicator, if the conditions specified in proposed Section 8(b) have occurred, but there is an imbalance containing marketable routable interest; any remaining Imbalance will be canceled, posted, or routed as per the directions on the customer’s order.

crossing quotes are excluded from the Valid Width NBBO calculation. However, assume Exchange 2 is quoting .95–1.10 and Exchange 3 is quoting .95–1.05, resulting in an uncrossed ABBO of .95–1.05. The ABBO of .95–1.05 meets the required .10 bid/ask differential and is considered a Valid Width NBBO. The Opening Cross will follow the rules set forth in proposed Section 8(b)(4)(B) because MM1 and MM2 have 10 contracts each which cross and there is more than one price at which those contracts could execute. Thus, the Opening Cross will occur with 10 contracts executing at 1.00, which is the mid-point of the National Best Bid and the National Best Offer. At the end of the opening process, only the quote from MM3 remains so the BX Options disseminated quote at the end of opening process will be .90–1.15 (10x10 contracts).

Second, in current Section 8(b) the Exchange proposes to remove language that “there is no Imbalance” and language regarding “on a class-by-class basis”, and proposes to add additional clarifying language pertaining to an Opening Cross after a trading halt. The Imbalance language is being removed from the introductory sentence of current Section 8(b) to make the language of the Processing of the Opening Cross apply more generally. The details surrounding the Opening Cross as it relates specifically to an Imbalance is currently provided for in Section 8(b)(5) and is being added in new proposed Section 8(b)(4)(C). The Exchange proposes to remove the “on a class-by-class basis” language because the Exchange will use a regular market hours quote or trade (as determined by the Exchange) for all classes on the Exchange for the Opening Cross, without distinguishing among different classes. Additionally, the Exchange proposes to add language to current Section 8(b) to make it clear that an Opening Cross shall occur after a trading halt when trading resumes pursuant to Chapter V, Section 4.¹⁵

Third, the Exchange proposes to add certain criteria to current Section 8(b), in order to describe how the opening process will differ depending on whether a trade is possible or not on BX Options. Provided that the ABBO is not crossed these criteria necessitate, per

¹⁵ Chapter V, Section 4 states that trading in an option that has been the subject of a halt under Section 3 of Chapter V shall be resumed upon the determination by BX Regulation, that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading. Trading shall resume according to the process set forth in proposed Chapter VI, Section 8 of the rules.

proposed new Section 8(b)(1), that a Valid Width NBBO will always be required to open a series when there is tradable interest on BX Options; and require, per proposed new Section 8(b)(2), that in cases where there is no tradable interest, any one of three conditions could trigger a series on BX Options to open. Those conditions are listed in proposed new (b)(2) as: (A) A Valid Width NBBO is present, (B) a certain number of other options exchanges (as determined by the Exchange) have disseminated a firm quote on OPRA, or (C) a certain period of time (as determined by the Exchange) has elapsed.¹⁶ The Exchange believes that listing these criteria will, similarly to other proposed changes, organize and clarify the opening process and make it more robust and protective for market participants. The requirement of a Valid Width NBBO being present will help to ensure that opening execution prices are rational based on what is present in the broader marketplace during the opening process.

Fourth, the Exchange proposes changes to provide additional information during the opening process. Current Section 8(b)(1) indicates that BX shall disseminate an Order Imbalance Indicator every 5 seconds and does not allow for a shorter dissemination interval. New proposed Section 8(b)(3) indicates that BX shall disseminate by electronic means an Order Imbalance Indicator¹⁷ every 5 seconds beginning between 9:20 a.m. and 9:28 a.m., or a shorter dissemination interval as established by BX Options, with the default being set at 9:25 a.m. The start of dissemination, dissemination interval, and changes to prior Order Imbalance Indicators, if any, shall be posted on the Exchange Web site. To further enhance price discovery and disclosure regarding the Opening Cross process, the Exchange proposes to add the ability for it to disseminate imbalances more frequently, which the rule currently does not allow for. The Exchange will indicate start of dissemination and the dissemination interval on its Web site. The Exchange

¹⁶ In the case of a crossed ABBO, the conditions set forth in new proposed Section 8(b)(1) and (b)(2) will become operative when the ABBO becomes uncrossed.

¹⁷ "Order Imbalance Indicator" means a message disseminated by electronic means containing information about Eligible Interest and the price in penny increments at which such interest would execute at the time of dissemination. For the information disseminated by the Order Imbalance Indicator (e.g. Current Reference Price, number of paired contracts, size and buy/sell direction of Imbalance, indicative prices), see Chapter VI, Section 8(a)(2). The term "order" means a firm commitment to buy or sell options contracts. Chapter 1, Section 1(a)(5).

believes that, like the other proposed changes, this proposed enhancement regarding additional information disclosure should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross process.

Fifth, the Exchange proposes to add language regarding how the Opening Cross will occur in relation to the Valid Width NBBO, and further what would happen if more than one price exists under certain circumstances. With this proposal, current Section 8(b)(2)(B) will be deleted and the determination of the Opening Cross price will be more fully described under proposed new Section 8(b)(4)(A)–(C). The new language added to current subparagraph (A) stipulates that the Opening Cross shall occur at the price that maximizes the number of contracts of Eligible Interest in BX Options to be executed at or within the ABBO and within a defined range, as established and published by the Exchange, of the Valid Width NBBO. Current subparagraph (A) simply states the Opening Cross shall occur at the price that maximizes the number of contracts of Eligible Interest in BX Options to be executed at or within the NBBO. The new proposed language being added to (A) will require that the Opening Cross price not only be at a price at or within the ABBO but also be within a defined range of the Valid Width NBBO. This addition will ensure that the Exchange does not open at a price too far away from the best interest available in the marketplace as a whole.

The new proposed Section 8(b)(4)(B) and (C) describe in detail at what price the Opening Cross will occur if there exists more than one price under Section 8(b)(4)(A) at which the maximum number of contracts could be executed at or within the ABBO and equal to or within a defined range of the Valid Width NBBO. Current Section 8(b)(2)(C) (renumbered as proposed to (b)(4)(B)) states that if more than one price exists under subparagraph (B),¹⁸ the BX Opening Cross shall occur at the price that is closest to the midpoint price of (1) the National Best Bid or the last offer on BX Options against which contracts will be traded whichever is higher, and (2) the National Best Offer or the last bid on BX Options against

¹⁸ Current Section 8(b)(2)(B) currently states that if more than one price exists under subparagraph (A), the BX Opening Cross shall occur at the entered price at which contracts will remain unexecuted in the cross. Subparagraph (A) states that the BX Opening Cross shall occur at the price that maximizes the number of contracts of Eligible Interest in BX Options to be executed at or within the National Best Bid and Offer.

which contracts will be traded whichever is lower. In an effort to make the rule language more precise and to signify that to the extent possible the Opening Cross will occur at the midpoint price, the Exchange proposes to delete the language "the price that is closest to". New subparagraph (B), as proposed, will read that if more than one price exists under subparagraph (A)¹⁹ and there are no contracts that would remain unexecuted in the cross, the BX Opening Cross shall occur at the midpoint price, rounded to the penny closest to the price of the last execution in that series and in the absence of a previous execution price, the price will round up, if necessary.²⁰ The price is determined using the midpoint of (1) the National Best Bid or the last offer on BX Options against which contracts will be traded whichever is higher, and (2) National Best Offer or the last bid on BX Options against which contracts will be traded whichever is lower.²¹ The Exchange believes the proposed language more fully describes how rounding is applied to determine the opening execution price in place of a general statement of "the price that is closest to the midpoint price". In addition, the Exchange proposes new subparagraph (C) to describe the price at which the Opening Cross will occur when more than one price exists under subparagraph (A) and there are contracts which would remain unexecuted in the cross which was previously described in Section 8(b)(2)(B) with less granularity and without consideration of the new Valid Width NBBO. New proposed subparagraph (C) will state if more than one price exists under subparagraph (A), and contracts would remain unexecuted in the cross, then the opening price will be the highest/lowest price, in the case of a buy/sell imbalance, at which the maximum number of contracts can trade which is equal to or within a defined range as established and published by the Exchange,²² of the Valid Width

¹⁹ The Exchange proposes to change the subparagraph reference from (B) to (A) as current subparagraph (B) is being deleted and expanded upon with new subparagraphs (B) and (C).

²⁰ The Exchange notes that rounding will be applied, if needed, in the following manner: If the previous closing price is less than the midpoint, then the opening price rounds down; and if the previous closing price is greater than the midpoint, or if there is no closing price, then the opening price rounds up. For example, if there is a midpoint of 1.045, the opening price would be rounded to 1.04 if the previous closing price was 1.00, and would be rounded to 1.05 if the previous closing price was 1.10.

²¹ A reference to BX OPTIONS is being corrected to read BX Options. No change in meaning is intended.

²² The Exchange notes that the system will also calculate a defined range to limit the range of prices

NBBO on the contra side of the imbalance that would not trade through the ABBO. Where there is more than one price and there is an imbalance, in Section 8(b)(4)(C) the Exchange is proposing that the Opening Cross price also be within a defined range of the Valid Width NBBO on the contra side of the imbalance, to help ensure that the opening price does not stray too far from the best prices available and that the opening price is rational. In addition, the Opening Cross price will be the highest price, in the case of a buy imbalance, where the maximum number of contracts can trade which is equal to or within the defined range of the Valid Width NBBO. Similarly, in the case of a sell imbalance, the Opening Cross price will be the lowest price at which the maximum number of contracts can trade which is equal to or within the defined range of the Valid Width NBBO. This serves to provide opening execution price protections as well as an Opening Cross price which will not have residual unexecuted interest reflected in the marketplace, after the Opening Cross execution, at a price which crosses the Opening Cross execution price.

The following examples illustrate, among other things, the determination of the Opening Cross price.

Example 4 (no imbalance and one possible price). Assume a Valid Width NBBO bid/ask differential allowance of .10 and a defined range of .10. Also, assume that the ABBO is 1.00–1.10 (10x10 contracts) and the BX BBO is .99–1.15 (10x10 contracts) which represents a quote from MM1. Assume that a Customer Order 1 comes in to Buy 10 contracts for 1.05 and a Customer Order 2 comes in to Sell 10 contracts at 1.05. Once regular markets hours have begun and the underlying security has opened, the system determines if there is a Valid Width Quote present. While the BX BBO of .99–1.15 is wider than the allowed bid/ask differential to qualify as a Valid Width NBBO on its own, the ABBO market of 1.00–1.10 does qualify as a Valid Width NBBO. In this scenario, there is not an opening imbalance since there are 10 contracts on both the buy and sell side which could possibly trade. Thus, the Opening Cross will follow the rules set forth in proposed Section 8(b)(4)(A). Under this rule, the Opening Cross will occur at the price which maximizes the number of contracts of Eligible Interest at or within the ABBO and within a defined range of the Valid Width NBBO. In this scenario, the Opening Cross price will be 1.05

at which an order will be allowed to execute. Chapter VI, Section 10 (7).

with 10 contracts executing and BX BBO disseminated as .99–1.15.

Example 5 (no imbalance and more than one possible price). Assume a Valid Width NBBO bid/ask differential allowance of .10 and a defined range of .10. Assume the ABBO is 1.00–1.10 (10x10 contracts) and the BX BBO is .99–1.11 (10x10 contracts) which represents a quote from MM1. Assume that a Customer Order 1 comes in to Buy 10 contracts for 1.08, and a Customer Order 2 comes in to Sell 10 contracts at 1.00. Once regular markets hours have begun and the underlying security has opened, the system determines if there is a Valid Width Quote present. While the BX BBO of .99–1.11 is wider than the allowed bid/ask differential to qualify as a Valid Width NBBO on its own, the ABBO market of 1.00–1.10 does qualify as a Valid Width NBBO. In this scenario, there is not an imbalance as there are 10 contracts to buy and 10 contracts to sell, however, there exist multiple price points at which those 10 contracts could execute within the ABBO and within a .10 range of the Valid Width NBBO. Thus, the Opening Cross will follow the rules set forth in proposed Section 8(b)(4)(B) and the Opening Cross will occur with 10 contracts executing at 1.04. 1.04 represents the midpoint of 1.00 (the last offer on BX Options against which contracts will be traded or the National Best Bid since the two are equal) and 1.08 (the last bid on BX Options against which contracts will be traded). If the example is changed slightly such that Order 1 is a market order to Buy 10 contracts, the Opening Cross will occur with 10 contracts executing at 1.05 which represents the midpoint of 1.00 (the last offer on BX Options against which contracts will be traded or the National Best Bid since the two are equal) and 1.10 (the National Best Offer against which contracts will be traded). The market order is considered to be a price higher than the National Best Offer and outside of the NBBO therefore, the National Best Offer is used in determining the Opening Cross price. The BX BBO disseminated after the opening in either case will be .99–1.11.

Example 6 (imbalance and more than one possible price). Assume that the ABBO is 1.05–1.50 (10x10 contracts) and MM1 is quoting on BX Options 1.15–1.20 (10x10 contracts) as well as MM2 is quoting on BX Options 1.05–1.50 (10x10 contracts). Also assume that the Valid Width NBBO bid/ask differential allowance and defined range are each .10. Also assume a Customer Order 1 is entered to Buy 30 contracts for 1.45. In this example, the Valid Width NBBO is comprised solely of the

BX Options 1.15–1.20 quote. There is more than one price at which the Exchange can maximize the number of contracts executed, 10 contracts, during the Opening Cross and there exist multiple prices at which 20 contracts will remain unexecuted in the Opening Cross. Thus, the Opening Cross price will be determined under proposed Section 8(b)(4)(C). In this example, the Valid Width NBBO is 1.15–1.20 which is the best bid and best offer of the MM1 quote and the ABBO and is tighter than the allowed differential of .10. With a defined range of .10 of the Valid Width NBBO on the contra side of the imbalance (1.20 +.10), and a buy imbalance, the Opening Cross price will be 1.30 with Order 1 buying 10 contracts from MM1. The Opening Cross price of 1.30 represents the highest price at which the maximum number of contracts, 10 contracts, can trade which is equal to or within the defined range of the Valid Width NBBO on the contra side of the imbalance that would not trade through the ABBO. The remaining unexecuted contracts will be posted on the book and reflected in the BX Options quote as a 1.30 bid with BX BBO disseminated as 1.30–150 [sic] with offer as non-firm, as proposed in Section 8(b)(4)(C)(iii). If this example were changed slightly such that the ABBO was 1.05–1.25, the opening price would be 1.25 since the Opening Cross cannot occur at a price outside of the ABBO.

Because new proposed subsections (b)(1) and (b)(2) are added, current subsections (b)(1) through (b)(5) are re-numbered to (b)(3) through (b)(7), and the reference to (b)(2) in current (b)(7) is re-numbered to (b)(4).

Sixth, the Exchange is proposing new language to indicate the price at which remaining unexecuted contracts will be posted. Specifically, in proposed Section 8(b)(4)(C), formerly covered in (b)(2), the Exchange proposes to state that if more than one price exists under subparagraph (A), and contracts would remain unexecuted in the cross, then the opening price will be the price at which the maximum number of contracts can trade that are equal to or within the defined range of the Valid Width NBBO on the contra side of the imbalance that would not trade through the ABBO. New proposed subsections (i)–(iv) to Section 8(b)(4)(C) indicate the price at which unexecuted contracts will be posted on the book following the Opening Cross and the subsequent handling of the residual unexecuted contracts, as follows: (i) If unexecuted contracts remain with a limit price that is equal to the opening price, then the remaining unexecuted contracts will be

posted at the opening price, displayed one minimum price variation (MPV) away if displaying at the opening price would lock or cross the ABBO, with the contra-side BX BBO reflected as firm; (ii) if unexecuted contracts remain with a limit price that is through the opening price, and there is a contra side ABBO at the opening price, then the remaining unexecuted contracts will be posted at the opening price, displayed one minimum price variation (MPV) away from the ABBO, with the contra side BX BBO reflected as firm and order handling of any remaining interest will be done in accordance with the routing and time-in-force instructions of such interest and shall follow the Acceptable Trade Range mechanism set forth in Chapter VI, Section 10; (iii) if unexecuted contracts remain with a limit price that is through the opening price, and there is no contra side ABBO at the opening price, then the remaining contracts will be posted at the opening price, with the contra-side BX BBO reflected as non-firm; and (iv) order handling of any residual unexecuted contracts will be done in accordance with the reference price set forth in Chapter VI, Section 10, with the opening price representing the reference price. This proposed behavior ensures that residual unexecuted contracts from the Opening Cross, regardless of their limit prices, are posted on the book at the opening price before subsequently being routed pursuant to Chapter VI, Section 11 or walked to the next potential execution price(s) under the Acceptable Trade Range set forth in Chapter VI, Section 10(7), with the opening price representing the "reference price" of that rule. This enhancement to the BX Opening Cross ensures that aggressively priced interest does not immediately post at prices which may be considered to be egregious if the interest were to post and execute immediately following the Opening Cross. The 'firm' versus 'non-firm' tagging of contra-side interest when residual Opening Cross interest is posted follows the construct currently in place on the Exchange when aggressive interest is received and triggers an Acceptable Trade Range (ATR) process. Contra-side BX BBO interest is reflected as non-firm when the Exchange has interest with a limit price (or market order) that is more aggressive than the Opening Cross price. The purpose behind this is to ensure that aggressively priced residual interest maintains priority should other aggressively priced interest be entered before the residual interest is permitted

to access the next allowable range of prices.

Following are examples illustrating the proposed rule text regarding the handling of unexecuted contracts.

Example 7 (proposed Section 8(b)(4)(C)(i)). Assume the ABBO is 1.00–1.10 (10x10 contracts), and the BX BBO is .99–1.11 (10x10 contracts). Assume there is a Customer order to Buy 10 contracts at the market and a Customer order to Sell 50 contracts at 1.00. Further assume the Valid Width NBBO is defined as .10 and the defined range is also .10. The Valid Width NBBO in this example is comprised solely of the ABBO which has a bid/ask differential equal to the allowance of .10. Since there is (1) an imbalance, (2) multiple prices at which the maximum number of contracts (10) can execute equal to or within the ABBO and, (3) multiple prices at which the maximum number of contracts can execute equal to or within a defined range of the Valid Width NBBO on the contra side of the imbalance that would not trade through the ABBO, the Opening Cross will occur at a price determined under Section 8(b)(4)(C). The Opening Cross will result in 10 contracts being executed at 1.00. The 40 remaining unexecuted contracts will be posted as a 40 contract offer at 1.00 and displayed at 1.01 (one MPV away from the away market bid of 1.00) in order to not display at a price which locks the ABBO under proposed Section 8(b)(4)(C)(i). The resulting displayed BX BBO would be .99–1.01, reflected as firm on both sides of the market, and the remaining interest would be handled in accordance with the routing and time in-force instructions of the residual interest.²³ Since the residual interest is posted at its limit and therefore would not be permitted to execute at more aggressive prices, the contra-side BX BBO is reflected as firm.

Example 8 (proposed Section 8(b)(4)(C)(ii)). Assume the ABBO is 1.00–1.10 (10x10 contracts), and the BX BBO is .99–1.11 (10x10 contracts). Assume there is a Customer order to Buy 10 contracts at the market and a Customer order to Sell 50 contracts at .85. Further assume the Valid Width NBBO is defined as .10 and the defined range is also .10. The Valid Width NBBO in this example is comprised solely of the ABBO which has a bid/ask differential equal to the allowance of .10. Since there is an imbalance and multiple prices exist at which the

maximum number of contracts (10) can execute equal to or within the ABBO and within a defined range of the Valid Width NBBO without trading through the ABBO, the Opening Cross will occur at a price determined under Section 8(b)(4)(C). The Opening Cross would result in 10 contracts being executed at 1.00. The 40 remaining unexecuted contracts will be posted as a 1.00 offer and be displayed at 1.01 so as not to lock the away market bid under proposed Section 8(b)(4)(C)(ii). Since the residual interest is posted at a price which internally locks the ABBO and therefore would not be permitted to execute at more aggressive prices until the ABBO moves, the contra-side BX BBO is reflected as firm. The resulting displayed BX BBO would be .99–1.01, reflected as firm on both sides of the market, and the remaining interest would be handled in accordance with the routing and time-in-force instructions of the residual interest and in accordance with Chapter VI, Section 10 of the BX Options rules, and the contra-side BBO will be marked as firm or non-firm in accordance with the same Section 10 rule.

Example 9 (proposed Section 8(b)(4)(C)(iii)). Assume the ABBO is .00–5.00 (0x10 contracts). Also assume the Valid Width NBBO bid/ask differential is defined as 0.10 and the defined range as described in proposed Section 8(b)(4)(C) is .10. Further, assume BX Options has received a quote of .99–1.09 (10x10), a Customer order to Buy 10 contracts at the market, a Customer order to Buy 10 contracts for .70, and a Customer order to Sell 50 contracts at .85. There is a Valid Width NBBO present with the BX Options quote of .99–1.09, which is equal to the defined bid/ask differential of .10. The Opening Cross has an imbalance on the sell side. Since there is more than one price at which contracts would remain unexecuted in the cross, the Opening Cross price is determined using the logic included in proposed Section 8(b)(4)(C). This will result in an execution of 20 contracts at .89, since the Valid Width NBBO on the bid side (contra to the imbalance side) is .99 less the defined range of .10, with the residual contracts of the .85 Sell Order posted on the book at .89. The resulting BX BBO would be reflected as .70–.89, reflected as non-firm on the bid, firm on the offer, and the remaining unexecuted interest would be handled in accordance with the routing and time-in-force instructions of the residual interest. The .70 bid is reflected as non-firm to ensure that incoming interest will not be permitted to immediately

²³ As set forth in proposed Section 8(b)(4)(C)(iv), order handling of any residual interest in the Opening Cross will also be done in accordance with the reference price set forth in Chapter VI, Section 10, with the opening price representing the reference price.

execute ahead of the more aggressively priced Opening Cross residual interest. The residual interest from the Opening Cross will be handled in accordance with Chapter VI, Section 10 of the BX Options rules, and the contra-side BBO will be marked as firm or non-firm in accordance with the same Section 10 rule.

Seventh, the Exchange is proposing new language to indicate the use of execution algorithms assigned to the underlying options. Specifically, in proposed Section 8(b)(5) (formerly (b)(3)), the Exchange proposes to delete price/time priority and add the use of execution algorithms by stating that if the BX Opening Cross price is selected and fewer than all contracts of Eligible Interest that are available in BX Options would be executed, all Eligible Interest shall be executed at the BX Opening Cross price in accordance with the execution algorithm assigned to the associated underlying option. By substituting language indicating use of execution algorithms rather than price/time priority, the Exchange recognizes that there are now multiple execution allocation models,²⁴ and these are factored into the Opening Cross.

Lastly, the Exchange proposes to add a provision regarding the return of orders in un-opened symbols in the absence of an Opening Cross. Proposed new Section 8(c) is substituted for current Section 8(c) and provides the procedure if an Opening Cross in a symbol is not initiated before the conclusion of the Opening Order Cancel Timer. Specifically, proposed new Section 8(c) states that if an Opening Cross is not initiated under such circumstances, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Order Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by BX on its Web site. Proposed Section 8(c) will provide participants the ability to have their orders returned to them if BX Options is unable to initiate an Opening Cross within a reasonable time of the opening of the underlying market. In addition, proposed Section 8(c) deletes language which is present in current Section 8(c) regarding how the Opening Cross operates in relation to the presence or absence of a regular market hour quote or trade by the Market for the Underlying and the process of the Opening Cross in relation to opening quotes or orders which lock or cross

each other. The deleted provisions are now being more thoroughly described in proposed Section 8(b).

The Exchange believes that the proposed changes significantly improve the quality of execution of BX Options' opening. The proposed changes give participants more choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this should attract new order flow. The proposed changes should prove to be very helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross. Absent these proposed enhancements, BX Options' opening quality will remain less robust than on other exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁶ in particular, in that the proposal is 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.

The proposal is consistent with the goals of the Act because it will enhance and clarify the Opening Cross process, minimize or negate unnecessary complexity, and encourage liquidity at the crucial time of market open. The proposed change will also enhance the price discovery mechanism in the opening process to include not only Market Maker orders and quotes but also away market interest as represented by quotes. The Exchange believes this change will make the transition from the Opening Cross period to regular market trading more efficient and thus promote just and equitable principles of trade and serve to protect investors and the public interest.

The proposal is designed to promote just and equitable principles of trade by updating and clarifying the rules regarding the BX Opening and Halt Cross. In particular, the proposal would update or add Chapter VI, Section 8 definitions regarding BX Opening Cross, Eligible Interest, NBBO, and ABBO in respect of the Opening Cross and resuming options trading after a halt. The Exchange would add to Chapter VI, Section 1 the definition of "On the Opening Order" (OPG) as used in Section 8 in respect of the Opening

Cross. The proposal would also, as discussed, make changes in Section 8 regarding: The criteria for opening of trading or resumption of trading after a halt; BX posting on its Web site any changes to the dissemination interval or prior Order Imbalance Indicator; the procedure if more than one price exists; the procedure if there are unexecuted contracts; and the ability of firms to elect that orders be returned in symbols that were not opened on BX Options before the conclusion of the Opening Order Cancel Timer.

The proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the Exchange proposes in Chapter VI, Section 8(b) to remove the class-by-class quote or trade characteristic because for the Opening Cross the Exchange will use a regular market hours quote or trade (as determined by the Exchange) for all underlyings [sic] on the Exchange, without distinguishing among underlying symbols, or, in the case of a trading halt the Opening Cross shall occur when trading resumes pursuant to Chapter V, Section 4. The Exchange proposes to set forth in Section 8(b) clear language describing under what circumstances an Opening Cross will occur, and how the Opening Cross will occur if more than one price exists under certain circumstances. Thus, for example, proposed Section 8(b)(4) specifies that if more than one price exists under subparagraph (A), and contracts would remain unexecuted in the cross, then the opening price will be the highest/lowest price, in the case of a buy/sell imbalance, at which the maximum number of contracts can trade which is equal to or within a defined range, as established and published by the Exchange, of the Valid Width NBBO on the contra side of the imbalance that would not trade through the ABBO. The Exchange proposes, in Section 8(b)(4)(C), three alternatives for how remaining unexecuted contracts will be handled. These include: If unexecuted contracts remain with a limit price that is equal to the opening price, if unexecuted contracts remain with a limit price that is through the opening price and there is a contra side ABBO at the opening price, and if unexecuted contracts remain with a limit price that is through the opening price and there is no contra side ABBO at the opening price. The Exchange also proposes to clarify what happens if an Opening Cross in a symbol is not initiated before the conclusion of the Opening Order Cancel Timer. In that case, proposed

²⁴ See, e.g., Chapter VI, Section 10(1).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

Section 8(c)(2) [sic] indicates that a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Order Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by the Exchange on its Web site.

The proposal is designed in general to protect investors and the public interest. The Exchange proposes to add certain criteria to current Section 8(b), in order to describe how the opening process will differ depending on whether a trade is possible or not on BX Options.

Assuming that ABBO is not crossed, proposed new Chapter VI, Section 8(b)(1) states that if there is a possible trade on BX, a Valid Width NBBO must be present. Assuming that ABBO is not crossed, proposed Section 8(b)(2) states that if no trade is possible on BX, then BX will open dependent upon one of the following: A Valid Width NBBO is present; a certain number of other options exchanges (as determined by the Exchange) have disseminated a firm quote on OPRA; or a certain period of time (as determined by the Exchange) has elapsed. The Exchange proposes to further enhance price discovery and disclosure regarding the Opening Cross process, by proposing in current Section (b)(1) (renumbered to be (b)(3)) that BX may choose to establish a dissemination interval that is shorter than every 5 seconds; and that the Exchange will indicate the interval on its Web site in conjunction to other information regarding the Opening Process.

Moreover, the Exchange proposes to add language in current Section 8(c)(2) regarding the return of orders in unopened symbols in the absence of an Opening Cross. Thus, if an Opening Cross in a symbol is not initiated before the conclusion of the Opening Order Cancel Timer, a firm may elect to have orders returned by providing written notification to the Exchange. These orders include all non GTC orders received over the FIX protocol. The Opening Order Cancel Timer represents a period of time since the underlying market has opened, and shall be established and disseminated by BX on its Web site.

For the above reasons, BX believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act. The Exchange believes that the proposed changes significantly improve the quality of execution of BX Options' opening. The proposed changes give participants more choice about where, and when, they can send orders for the opening that would afford them the best

experience. The Exchange believes that this should attract new order flow. The proposed changes should prove to be more robust and helpful to market participants, particularly those that are involved in adding liquidity during the Opening Cross.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While the Exchange does not believe that the proposal should have any direct impact on competition, it believes the proposal should help to further clarify the Opening Cross process and make it more efficient, reduce order entry complexity, enhance market liquidity, and be beneficial to market participants. Moreover, the Exchange believes that the proposed changes significantly improve the quality of execution of the BX Options opening. The proposed changes give participants more choice about where, and when, they can send orders for the opening that would afford them the best experience. The Exchange believes that this should attract new order flow. Absent these proposed enhancements, BX Options' opening quality will remain less robust than on other exchanges, and the Exchange will remain at a competitive disadvantage.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁸

²⁷ 15 U.S.C. 78s(b)(3)(a).

²⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2015-010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2015-010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2015-010, and should be submitted on or before March 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Brent J. Fields,
Secretary.

[FR Doc. 2015-03819 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74308; File No. SR-NYSEArca-2015-07]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to Rule 6.65A(c), Obvious and Catastrophic Errors, Until October 23, 2015

February 19, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 18, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to Rule 6.65A(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until October 23, 2015. The pilot period is currently set to expire on February 20, 2015. 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.

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot period applicable to Rule 6.65A(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until October 23, 2015. The pilot period is currently set to expire on February 20, 2015.

In April 2013, in connection with the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "Plan"),³ the Exchange adopted Rule 6.65A(c) to provide that options executions would not be adjusted or nullified if the execution occurs during periods of extreme market volatility.⁴ Specifically, Rule 6.65A(c) provides that, during the pilot period, electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State (as defined by the Plan) are not subject to review under Rule 6.87(a) for Obvious Errors or Rule 6.87(d) for Catastrophic Errors. Nothing in Rule 6.65A(c) prevents electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State from being reviewed on Exchange motion pursuant to 6.87(b)(3).

The Plan has been amended several times since inception and was not implemented until February 24, 2014. The Participants to the Plan recently filed to extend the Plan's pilot period until October 23, 2015 (the "Eighth

³ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Order Approving, on a Pilot Basis, the Plan). The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands, which are described in more detail in the Plan.

⁴ See Securities and Exchange Act Release No. 69340 (April 8, 2013), 78 FR 22004 (April 12, 2013) (SR-NYSEArca-2013-10) ("Approval Order").

Amendment").⁵ The purpose of this proposed extension is to provide time for the Participants to prepare a supplemental assessment and recommendation regarding the Plan and for the public to comment on such assessment for the purpose of determining whether there should be any modifications to the Plan.

In order to align the pilot period for Rule 6.65A(c) with the proposed pilot period for the Plan, the Exchange similarly proposes to extend the pilot period until October 23, 2015. The Exchange believes the benefits afforded to market participants under Rule 6.65A(c) should continue on a pilot basis during the same period as the Plan pilot. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States would encourage market participants to continue to provide liquidity to the Exchange, and thus, promote a fair and orderly market during those periods. Thus, the Exchange believes that the protections of current Rule 6.65A(c) should continue while the industry gains further experience operating the Plan. In addition, the Exchange believes that extending the pilot period for Rule 6.65A(c) would allow the Exchange to continue to collect and evaluate data, as well as to conduct further data analyses, related to this provision.

Specifically, in connection with the adoption of Rule 6.65A(c), the Exchange committed to review the operation of this provision and to analyze the impact of Limit and Straddle States accordingly.⁶ The Exchange agreed to and has been providing to the Commission and the public data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in April 2013, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State.⁷ For each of those option classes affected, each data record contains the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit

⁵ See Securities Exchange Act Release No. 74110 (January 21, 2015), 80 FR 4321 (January 27, 2015) (File No. 4-631) (notice of proposed Eighth Amendment to the Plan).

⁶ Specifically, the Exchange committed to: "(1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States." See Approval Order, 78 FR at 22008.

⁷ See Securities Exchange Act Release No. 71869 (April 4, 2014), 79 FR 19689 (April 9, 2014) (SR-NYSEArca-2014-36).

State, an indicator for whether it is a Straddle or Limit State.

- For activity on the Exchange:
 - executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
 - high execution price, low execution price;
 - number of trades for which a request for review for error was received during Straddle and Limit States;
 - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise).

Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

In addition, the Exchange has committed to provide to the Commission by May 29, 2015 assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The Exchange notes that, to date, there have not been any requests for review of Obvious Error of options trades that occur during a Limit or Straddle State in the underlying security.

The Exchange believes that the extension of the pilot period of Rule 6.65A(c) would allow the Exchange to continue to observe the operation of the pilot and conduct its assessments relating to the impact of the operation of the Rule during Limit and Straddle States, which information will continue to be shared with the Commission and the public as set forth above.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of, a free and open market and a national market

system and, in general, to protect investors and the public interest.

Specifically, the proposal to extend the pilot program of Rule 6.65A(c) until October 23, 2015 would align that pilot program with the Pilot Period for the Plan, as proposed in the Eighth Amendment to the Plan. The Exchange believes that aligning the pilot periods would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes that the extension of Rule 6.65A(c) would help encourage market participants to continue to provide liquidity during extraordinary market volatility.

Moreover, the Exchange believes that extending the pilot period for Rule 6.65A(c) would remove impediments to, and perfect the mechanisms of, a free and open market because it would enable the Exchange to continue to conduct its assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as set forth above, which, in turn, provides the Exchange with more information from which to assess the impact of Rule 6.65A(c).

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 Act. The proposed changes will not impose any burden on competition and will instead provide certainty regarding the treatment and execution of options orders, specifically the treatment of Obvious and Catastrophic Errors during periods of extraordinary volatility in the underlying NMS Stock, and will facilitate appropriate liquidity during a Limit State or Straddle State.

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

Because the proposed rule change does not (i) significantly affect the

protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2015–07 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–07, and should be submitted on or before March 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Brent J. Fields,

Secretary.

[FR Doc. 2015–03816 Filed 2–24–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74303; File No. SR–NASDAQ–2014–127]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Shares of the Tuttle Tactical Management U.S. Core ETF of ETFis Series Trust I

February 19, 2015.

I. Introduction

On December 19, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade the shares (“Shares”) of the Tuttle Tactical Management U.S. Core ETF (“Fund”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on January 6, 2015.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by ETFis Series Trust I (“Trust”), which is registered with the Commission as an investment company.⁴ The Fund is a series of the Trust.

Etfs Capital LLC will be the investment adviser (“Adviser”), and Tuttle Tactical Management, LLC will be the investment sub-adviser (“Sub-Adviser”), to the Fund. ETF Distributors LLC will be the principal underwriter and distributor of the Fund's Shares, and Bank of New York Mellon will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 73960 (Dec. 30, 2014), 80 FR 540 (“Notice”).

⁴ According to the Exchange, the Trust has filed a registration statement on Form N–1A (“Registration Statement”) with the Commission. See Registration Statement on Form N–1A for the Trust filed on July 24, 2014 (File Nos. 333–187668 and 811–22819). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30607 (July 23, 2013) (“Exemptive Order”).

The Exchange represents that the Adviser and Sub-Adviser are not registered as broker-dealers, and the Sub-Adviser is not affiliated with a broker-dealer; however, the Exchange represents that the Adviser is affiliated with a broker-dealer. The Exchange states that the Adviser has implemented a fire wall with respect to its broker dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.⁵ The Exchange also represents that the Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares, and that for initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.⁶

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including, among other things, portfolio holdings and investment restrictions.

A. Principal Investments of the Fund

According to the Exchange, the Fund's investment objective will be to provide long-term capital appreciation, while maintaining a secondary emphasis on capital preservation, primarily through investments in the U.S. equity market. The Sub-Adviser will employ four tactical models in seeking to achieve the Fund's investment objective: “S&P 500 Absolute Momentum,” “Relative Strength Equity,” “Beta Opportunities,” and “Short-Term S&P 500 Counter Trend.” While the Sub-Adviser will generally seek to maintain an equal weighting among these four tactical models, market movements may result in the Fund being overweight or underweight one or more of the tactical models. The Fund will be an actively managed exchange-traded fund (“ETF”) that seeks to achieve its investment objective by utilizing a long-only, multi-strategy, tactically-managed exposure to the U.S. equity market. To obtain such exposure, the Sub-Adviser will invest, under normal circumstances, not less

⁵ See Nasdaq Rule 5735(g). The Exchange states that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser, the Sub-Adviser, or any new adviser or sub-adviser, as the case may be, will implement a fire wall with respect to its relevant personnel and its broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

⁶ See 17 CFR 240.10A–3.

¹³ 17 CFR 200.30–3(a)(12).

than 80% of the Fund's assets in: (1) Other ETFs;⁷ (2) exchange-traded notes ("ETNs");⁸ (3) exchange-traded trusts that hold commodities ("ETTs," and together with ETFs and ETNs, collectively, "ETPs"); (4) individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that it is more efficient or otherwise advantageous to do so); (5) money market funds; (6) U.S. treasuries; or (7) money market instruments.⁹ To the extent that the Fund invests in ETFs or money market funds to gain domestic exposure, the Fund is considered, in part, a "fund of funds."

B. Other Investments of the Fund

In order to seek its investment objective, the Fund will not employ other strategies outside of the above-described "Principal Investments." However, the Fund may, from time to time, take temporary defensive positions that are inconsistent with the Fund's principal investment strategies in an attempt to respond to adverse market, economic, political, or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash or other short-term, highly liquid investments, such as money market instruments, U.S. government obligations, commercial paper, repurchase agreements, or other cash equivalents. When the Fund takes a temporary defensive position, the Fund may not be able to achieve its investment objective.

⁷ The Exchange states that ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in leveraged ETFs (e.g., 2X or 3X), the Fund will not invest in inverse or inverse leveraged ETFs. The shares of ETFs in which a Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG"), which includes all U.S. national securities exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

⁸ The Exchange represents that ETNs will be limited to those described in Nasdaq Rule 5710.

⁹ According to the Exchange, money market instruments will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities that have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the "full faith and credit" of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

C. Investment Restrictions of the Fund

As stated above, the Fund will invest not less than 80% of its total assets in shares of ETPs, individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that it is more efficient or otherwise advantageous to do so), money market funds, U.S. treasuries, or money market instruments. The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act. In addition, the Fund will not use derivative instruments, including options, swaps, forwards, and futures contracts, either listed or over-the-counter. Under normal circumstances, the Fund will not invest more than 25% of its total assets in leveraged ETPs. The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a "leveraged ETF," i.e., it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities and other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets, as determined in accordance with Commission staff guidance.

Additional information regarding the Trust, Fund, and Shares, including investment strategies and restrictions, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, calculation of net asset value per share ("NAV"), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice, Registration Statement, and Exemptive Order, as applicable.¹⁰

¹⁰ See Notice, *supra* note 3; see also Registration Statement and Exemptive Order, *supra* note 4.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹¹ and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,¹³ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁴ which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying ETPs.¹⁵ In addition, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3)), which will be based upon the current value of the components of the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)), will be available on the NASDAQ OMX Information LLC proprietary index data service¹⁶ and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session.¹⁷ On each business day, before

¹¹ 15 U.S.C. 78(f).

¹² In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁵ See Notice, *supra* note 3, 80 FR at 544.

¹⁶ According to the Exchange, the NASDAQ OMX Global Index Data Service offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. See *id.*, 80 FR at 543.

¹⁷ See *id.*

commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, which will form the basis for the Fund's calculation of NAV at the end of the business day.¹⁸ The NAV of the Fund will be determined once each business day, normally as of the close of trading on the New York Stock Exchange (normally 4:00 p.m. Eastern time or "E.T.").¹⁹ Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.²⁰ Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.²¹ Price information regarding the ETPs, equity securities, U.S. treasuries, money market instruments, and money market funds held by the Fund will be available through the U.S. exchanges trading such assets, in the case of exchange-traded securities, as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.²² Intra-day price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and

¹⁸ On a daily basis, the Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund's Web site: (1) ticker symbol (if applicable); (2) name of security and financial instrument; (3) number of shares (if applicable); (4) dollar value of securities and financial instruments held in the Fund; and (5) percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge. *See id.*

¹⁹ *See id.*, 80 FR at 542. The Exchange notes that, for purposes of calculating NAV, the Fund's investments will be valued at market value (*i.e.*, the price at which a security is trading and could presumably be purchased or sold) or, in the absence of market value with respect to any investment, at fair value in accordance with valuation procedures adopted by the Board and in accordance with the 1940 Act. Common stocks and equity securities (including shares of ETPs) will be valued at the last sales price on that exchange. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or, if so disseminated by an exchange, the official closing price, as applicable, at the close of the exchange representing the principal exchange or market for such securities on the business day as of which such value is being determined. U.S. Treasuries are valued using quoted market prices, and money market funds are valued at the net asset value reported by the funds. For all security types in which the Fund may invest, the Fund's primary pricing source is IDC; its secondary source is Reuters; and its tertiary source is Bloomberg.

²⁰ *See id.*, 80 FR at 544.

²¹ *See id.*

²² *See id.*, 80 FR at 543.

other investors.²³ In addition, BNY Mellon, through the National Securities Clearing Corporation, will also make available on each business day, prior to the opening of business of the Exchange (currently 9:30 a.m., E.T.), the list of the names and the quantity of each security to be included (based on information at the end of the previous business day), subject to any adjustments as described below, in order to effect redemptions of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Fund Securities is made available.²⁴ The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.²⁵

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.²⁶ Further, trading in the Shares will be subject to Nasdaq 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted.²⁷ The Exchange also may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁸ Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of

²³ *See id.*

²⁴ *See id.*, 80 FR at 542.

²⁵ *See id.*, 80 FR at 543.

²⁶ *See id.* at 544.

²⁷ *See id.*

²⁸ *See id.* *See also* Nasdaq Rule 5735(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. *See Notice, supra* note 3, 80 FR at 544.

material, non-public information regarding the actual components of the portfolio.²⁹ The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.³⁰ The Exchange also states that the Adviser is affiliated with a broker-dealer, and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.³¹ The Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund with other markets and other entities that are ISG members, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³²

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject

²⁹ *See* Nasdaq Rule 5735(d)(2)(B)(ii).

³⁰ *See* Notice, *supra* note 3, 80 FR at 544.

³¹ *See supra* note 5 and accompanying text. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with applicable federal securities laws as defined in Rule 204A-1(e)(4). Accordingly, procedures designed to prevent the communication and misuse of nonpublic information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

³² For a list of the current members of ISG, *see* www.isgportal.org.

to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has also made the following representations:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA,³³ on behalf of the Exchange. The trading surveillance procedures are designed to detect violations of Exchange rules and applicable federal securities laws. These procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.³⁴

(6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(7) The Fund will invest at least 80% of its assets under normal market conditions in shares of ETPs, individually selected U.S. exchange-

traded common stocks (when the Sub-Adviser determines that it is more efficient or otherwise advantageous to do so), money market funds, U.S. treasuries, or money market instruments. In order to seek its investment objective, the Fund will not employ other strategies outside of the above-described "Principal Investments."

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) and will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained. The Fund will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(9) While the Fund may invest in leveraged ETFs (e.g., 2X or 3X), the Fund will not invest in inverse or inverse leveraged ETFs. Under normal circumstances, the Fund will not invest more than 25% of its total assets in leveraged ETPs. The Fund will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index.

(10) The Fund will not use derivative instruments, including options, swaps, forwards, and futures contracts.

(11) The Fund's investments will be consistent with the Fund's investment objective.

The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be initially and continuously listed and traded on the Exchange. This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁵ that the proposed rule change (SR-NASDAQ-2014-127), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Brent J. Fields,

Secretary.

[FR Doc. 2015-03812 Filed 2-24-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74312; File No. SR-CBOE-2015-18]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Rule 6.25

February 19, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on February 19, 2015, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program related to Rule 6.25 (Nullification and Adjustment of Options Transactions). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

³³ According to the Exchange, FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. See Notice, *supra* note 3, 80 FR at 544.

³⁴ 17 CFR 240.10A-3.

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to obvious errors. Interpretation and Policy .06 to Rule 6.25, explained in further detail below, is currently operating on a pilot program set to expire on February 20, 2015. The Exchange proposes to extend the pilot program to October 23, 2015.

On April 5, 2013, the Commission approved, on a pilot basis, amendments to Exchange Rule 6.25 that stated that options executions will not be adjusted or nullified if the execution occurs while the underlying security is in a limit or straddle state as defined by the Plan. Under the terms of this current pilot program, though options executions will generally not be adjusted or nullified while the underlying security is in a limit or straddle state, such executions may be reviewed by the Exchange should the Exchange decide to do so under its own motion.

Pursuant to a comment letter filed in connection with the order approving the establishment of the pilot, the Exchange committed to submit monthly data regarding the program. In addition, the Exchange agreed to submit an overall analysis of the pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission. Pursuant to a rule filing, approved on April 3, 2014, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange. The Exchange will continue to provide the Commission with this data on a monthly basis from February 2015 through the end of the pilot. For each trade on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared

to the last available option price as reported by OPRA before the start of the limit or straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the limit or straddle state (or halt if applicable) is 30% away from the price before the start of the limit or straddle state.

In addition, the Exchange will provide to the Commission and the public, no later than May 29, 2015, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic.

The Exchange is now proposing to extend the pilot period until October 23, 2015. The Exchange believes the benefits to market participants from this provision should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in limit or straddle states will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the provisions of Rule 6.25 would likely apply in many instances during limit and straddle states. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a limit or straddle state. Thus, the Exchange believes that the protections of current Rule should continue while the industry gains further experience operating the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a limit or straddle state from certain aspects of the Exchange Rule 6.25. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. Extension of this pilot would ensure that limit orders that are filled during a limit or straddle state would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6)(iii) thereunder.⁷

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan to Address Extraordinary Market Volatility, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2015-18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2015-18, and should be submitted on or before March 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Brent J. Fields,

Secretary.

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BILLING CODE 8011-01-P

⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74304; File Nos. SR-MIAX-2014-30 and SR-MIAX-2014-39]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Disapproving Proposed Rule Changes To List and Trade Options on Shares of the iShares ETFs and Market Vectors ETFs

February 19, 2015.

I. Introduction

On June 17, 2014, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade options on shares of the iShares MSCI Brazil Capped ETF, iShares MSCI Chile Capped ETF, iShares MSCI Peru Capped ETF, and iShares MSCI Spain Capped ETF (collectively "iShares ETFs"). The proposed rule change was published for comment in the **Federal Register** on July 3, 2014.³ On August 13, 2014, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to October 1, 2014.⁴ On September 25, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁵ The Commission received a letter from MIAX on the proposal.⁶ On December 17, 2014, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.⁷

In addition, on July 28, 2014, the Exchange filed with the Commission a proposed rule change to list and trade options on shares of the Market Vectors

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72492 (June 27, 2014), 79 FR 38099 (SR-MIAX-2014-30) ("iShares ETFs Proposal").

⁴ See Securities Exchange Act Release No. 72835, 79 FR 49140 (August 19, 2014).

⁵ See Securities Exchange Act Release No. 73211, 79 FR 59338 (October 1, 2014).

⁶ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Brian O'Neill, Vice President and Senior Counsel, MIAX, dated October 22, 2014 (providing comment on SR-MIAX-2014-30 and SR-MIAX-2014-39) ("MIAX Letter").

⁷ See Securities Exchange Act Release No. 73856, 79 FR 77075 (December 23, 2014).

Brazil Small-Cap ETF, Market Vectors Indonesia Index ETF, Market Vectors Poland ETF, and Market Vectors Russia ETF (collectively “Market Vectors ETFs”). The proposed rule change was published for comment in the **Federal Register** on August 12, 2014.⁸ On September 25, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁹ The Commission received a letter from MIAx on the proposal.¹⁰ On January 27, 2015, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.¹¹ This order disapproves the iShares ETFs Proposal and the Market Vectors ETFs Proposal.

II. Description of the Proposal

The Exchange proposes to list for trading on the Exchange options on shares of the iShares and Market Vectors ETFs. According to the Exchange, the iShares ETFs are registered pursuant to the Investment Company Act of 1940 as management investment companies designed to hold a portfolio of securities that track the MSCI Brazil 25/50 Index (“Brazil Index”), which consists of stocks traded primarily on BM&FBOVESPA; MSCI Chile Investable Market Index (IMI) 25/50 (“Chile Index”), which consists of stocks traded primarily on the Santiago Stock Exchange; MSCI All Peru Capped Index (“Peru Index”), which consists of stocks traded primarily on Bolsa de Valores de Lima; and MSCI Spain 25/50 Index (“Spain Index”), which consists of stocks traded primarily on Bolsa de Madrid.¹²

Similarly, according to the Exchange, the Market Vectors ETFs are registered pursuant to the Investment Company Act of 1940 as management investment companies designed to hold a portfolio of securities that track the Market Vectors Brazil Small-Cap Index (“Brazil Small-Cap Index”), which consists of stocks traded primarily on BM&FBOVESPA; the Market Vectors Indonesia Index (“Indonesia Index”), which consists of stocks traded primarily on the Indonesia Stock

Exchange; the Market Vectors Poland Index (“Poland Index”), which consists of stocks traded primarily on the Warsaw Stock Exchange; and the Market Vectors Russia Index (“Russia Index”), which consists of stocks traded primarily on the Moscow Exchange.¹³

MIAx Rule 402 establishes the Exchange’s initial listing standards for equity options (the “Listing Standards”) pursuant to which the Exchange can list and trade options on the shares of open-end investment companies, such as the iShares ETFs and Market Vectors ETFs.¹⁴ According to the Exchange, options on the iShares ETFs and Market Vectors ETFs do not meet the Listing Standards. In particular, options on the iShares ETFs and Market Vectors ETFs do not meet the requirement that the component securities of an index or portfolio of securities on which the Exchange Traded Fund Shares are based, for which the primary market is in any one country that is not subject to a comprehensive surveillance sharing agreement (“CSSA”), not represent 20% or more of the weight of the index.¹⁵ Accordingly, the Exchange may not list and trade options on the iShares ETFs or Market Vectors ETFs without a separate proposed rule change filed with and approved by the Commission.¹⁶

According to the Exchange, it has attempted, but not entered into, CSSAs with the applicable foreign markets. In its proposals, the Exchange requested that the Commission allow it to rely on agreements between the Commission and the applicable foreign regulators, in place of the requirement to have a CSSA, with respect to the listing and trading of options on shares of the iShares ETFs and Market Vectors ETFs. Specifically, the Exchange cited to the agreements between the Commission and the Comissao de Valores

Mobiliarios (“CVM”),¹⁷ which has responsibility for the Brazilian exchanges and over-the-counter markets; the Superintendencia de Valores y Seguros de Chile (“SVS”),¹⁸ which has the responsibility for the Chilean securities markets; the Comision Nacional del Mercado de Valores (“CNMV”),¹⁹ which has the responsibility for the Spanish stock exchanges; and the Federal Commission on Securities and the Capital Market of the Government of the Russian Federation (“FCSCM”), a forerunner of the Federal Commission on Securities Market of Russia, which has responsibility for the Russian stock exchanges.²⁰ In addition, the Exchange noted that the Indonesia Financial Services Authority, which has responsibility for the Indonesian stock exchanges; the Polish Financial Supervision Authority, which has responsibility for the Polish stock exchanges; the Superintendencia del Mercado de Valores, which has responsibility for the Peruvian stock exchanges, and the Commission are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding.²¹

In its letter, MIAx stated its belief that the proposals were consistent with the requirements of the Act and that the Commission should approve the filings. In addition, MIAx believes that its proposals are consistent with the approach previously allowed by the Commission. Specifically, MIAx noted that the Commission has, in the past, allowed exchanges to rely on agreements between the Commission and foreign regulators in lieu of a CSSA between an exchange and the applicable foreign market.²² The Exchange believes

¹⁷ See iShares ETFs Proposal, *supra* note 3, and Market Vectors ETFs Proposal, *supra* note 8 (citing to Memorandum of Understanding with the CVM dated as of July 24, 2012).

¹⁸ See iShares ETFs Proposal, *supra* note 3 (citing to Memorandum of Understanding with the SVS dated as of June 3, 1993).

¹⁹ See iShares ETFs Proposal, *supra* note 3 (citing to Memorandum of Understanding with the CNMV dated as of July 22, 2013).

²⁰ See Market Vectors ETFs Proposal, *supra* note 8 (citing to the Memorandum of Understanding with the FCSCM dated December 6, 1995).

²¹ See iShares ETFs Proposal, *supra* note 3, and Market Vectors ETFs Proposal, *supra* note 8.

²² The following agreements were at issue in the orders cited by MIAx: Memorandum of Understanding with the CVM, *see* Securities Exchange Act Release No. 40298 (August 3, 1998), 63 FR 43435 (August 13, 1998) (SR-Amex-98-28; SR-CBOE-98-32; and SR-Phlx-98-33) (citing a separate agreement with the CVM than the agreement relied upon by MIAx in the iShares ETFs and Market Vectors ETFs Proposals); and Memorandum of Understanding with the Mexican

⁸ See Securities Exchange Act Release No. 72777 (August 6, 2014), 79 FR 47165 (SR-MIAx-2014-39) (“Market Vectors ETFs Proposal”).

⁹ See Securities Exchange Act Release No. 73212, 79 FR 59332 (October 1, 2014).

¹⁰ See MIAx Letter, *supra* note 6.

¹¹ See Securities Exchange Act Release No. 74150, 80 FR 5597 (February 2, 2015).

¹² See iShares ETFs Proposal, *supra* note 3. Morgan Stanley Capital International Inc. (“MSCI”) created and maintains the Brazil Index, Chile Index, Peru Index, and Spain Index.

¹³ See Market Vectors ETFs Proposal, *supra* note 8. Market Vectors Index Solutions created and maintains the Brazil Small-Cap Index, Indonesia Index, Poland Index, and Russia Index.

¹⁴ MIAx Rule 402(i) provides the listing standards for options on shares or other securities (“Exchange-Traded Fund Shares”) that are traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS. If an option on Exchange-Traded Fund Shares meets these listing standards, it can be listed without the filing of a proposed rule change with the Commission, but the Exchange must comply with the requirements of Rule 19b-4(e). See 17 CFR 240.19b-4(e).

¹⁵ See MIAx Rule 402(i)(5)(ii)(B). The Exchange represents that each of the iShares ETFs and Market Vectors ETFs are comprised of component securities for which the primary market is a single foreign market, and that, for each ETF, MIAx does not have a CSSA with its foreign counterpart in the applicable foreign market.

¹⁶ See *supra* note 14.

the proposed rule changes are consistent with Section 6 of the Act “by avoiding the regulatory compliance issue of improperly listing the ETFs without CSSAs, or without Commission approval, while providing a clear mechanism to acquire surveillance and trading information when necessary from a foreign regulator via the Commission.”²³

III. Discussion

Under section 19(b)(2)(C) of the Act, the Commission shall approve a proposed rule change of a self-regulatory organization (“SRO”) if it finds that such proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to such organization.²⁴ The Commission shall disapprove a proposed rule change if it does not make such a finding.²⁵

After careful consideration, the Commission does not find that the proposed rule changes are consistent

National Commission for Banking and Securities dated as of October 18, 1990, *see* Securities Exchange Act Release Nos. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (SR-Amex-2006-43), 56324 (August 27, 2007), 72 FR 50426 (August 31, 2007) (SR-ISE-2007-72), 56778 (November 9, 2007), 72 FR 65113 (November 19, 2007) (SR-Amex-2007-100), 57013 (December 20, 2007), 72 FR 73923 (December 28, 2007) (SR-CBOE-2007-140), and 57014 (December 20, 2007), 72 FR 73934 (December 28, 2007) (SR-ISE-2007-111). *See* MIAX Letter, *supra* note 6, at 3 nn.7-9 and accompanying text. The Commission notes that these agreements are not at issue in the present proposed rule changes. MIAX also noted that it had previously filed another proposed rule change that was immediately effective using a similar approach to list options on shares of the iShares MSCI Mexico Index Fund. *See* Securities Exchange Act Release No. 72213 (May 21, 2014), 79 FR 30669 (May 28, 2014) (SR-MIAX-2014-19). In that instance, the Exchange relied on an agreement between The National Commission for Banking and Securities and the Commission dated as of October 18, 1990. The Commission notes that the Commission had previously determined that this agreement could be used for surveillance purposes. *See* Securities Exchange Act Release No. 36415 (October 25, 1995), 60 FR 55620 (November 1, 1995) (SR-CBOE-95-45).

²³ *See* MIAX Letter, *supra* note 6 at 4.

²⁴ *See* 15 U.S.C. 78s(b)(2)(C)(i).

²⁵ *See* 15 U.S.C. 78s(b)(2)(C)(ii); *see also* 17 CFR 201.700(b)(3) (“The burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change. . . . A mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.”). The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. *See* 17 CFR 201.700(b)(3). Any failure of a SRO to provide the information elicited by Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the SRO. *Id.*

with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁶ In particular, the Commission does not find that the proposed rule changes are consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, “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.”²⁷

As noted by MIAX, the Commission has permitted an SRO to rely on an agreement between the Commission and the applicable foreign regulator in the absence of a CSSA *only if* the SRO receives an assurance from the Commission that such an agreement can be relied on for surveillance purposes and provides, at a minimum, for the exchange of transaction, clearing and customer information necessary to conduct an investigation.²⁸ This assurance is necessary, because the Commission may enter into a variety of agreements with foreign regulators some of which may be unrelated to the sharing of surveillance information. After carefully and thoroughly reviewing the agreements cited by the Exchange in its proposals, the Commission is unable to provide the necessary assurance that such agreements can be relied on for surveillance purposes.²⁹ Accordingly, the Commission cannot approve MIAX’s request to allow the listing and trading of options on iShares ETFs and Market Vectors ETFs, upon reliance on agreements entered into between the Commission and the applicable foreign regulators in place of a CSSA, in satisfaction of the Exchange’s Listing Standards.³⁰ According to MIAX, such approval would be necessary to make

²⁶ In disapproving the proposed rule changes, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952, 70959 n.101 (December 22, 1998).

²⁹ The Commission also notes that the particular agreements referenced in MIAX’s letter, which the Commission has previously allowed exchanges to rely on in lieu of a CSSA between an exchange and the applicable foreign market, are not at issue in the present proposed rule changes. *See supra* note 22.

³⁰ *See* iShares ETFs Proposal, *supra* note 3, and Market Vectors ETFs Proposal, *supra* note 8.

the ETFs compliant with all of the applicable Listing Standards.³¹

The Commission notes that Rule 700(b)(3) of its Rules of Practice reiterates that “[t]he burden to demonstrate that a proposed rule change is consistent with the Exchange Act . . . is on the self-regulatory organization that proposed the rule change.”³² For the reasons articulated above, the Commission does not believe that MIAX has met that burden in this case.

IV. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (SR-MIAX-2014-30 and SR-MIAX-2014-39) be, and hereby are, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Brent J. Fields,
Secretary.

[FR Doc. 2015-03813 Filed 2-24-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74307; File No. SR-MIAX-2015-11]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period Applicable to Rule 530 Relating To Limit Up/Limit Down

February 19, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 18, 2015, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

³¹ *Id.*

³² 17 CFR 201.700(b)(3).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 530 to extend the pilot period for the treatment of erroneous transactions during a Limit or Straddle State.

The text of the proposed rule change is available on the Exchange's Web site at http://www.miaxoptions.com/filter/wotitle/rule_filing, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 530 (Limit Up-Limit Down) in order to extend the pilot period for the treatment of erroneous transactions that occur in a Limit or Straddle State until October 23, 2015.

Exchange Rule 530(j) provides for the treatment of erroneous transactions occurring during Limit and Straddle States. Specifically, once an NMS Stock has entered a Limit or Straddle State, the Exchange will nullify a transaction in an option overlying such an NMS Stock as provided in the Rule 530(j). This provision was adopted for a one year pilot period beginning on the date of the implementation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, April 8, 2013.³ The Exchange previously extended the pilot period for

Rule 530(j) until February 20, 2015.⁴ The Exchange now proposes to extend the pilot period for Rule 530(j) until October 23, 2015 in order to allow the Exchange and the Commission additional time to collect and analyze data regarding the impact of Rule 530(j) on liquidity and market quality in the options markets.

To assist the Commission in its analysis, the Exchange will provide the Commission and the public with data and analysis during the duration of the pilot in order to evaluate the impact of Limit and Straddle States on liquidity and market quality in the options markets. Specifically, by May 29, 2015, the Exchange represents that it shall provide the Commission and the public assessments relating to the impact of the obvious error Rules during Limit and Straddle States that (i) evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (ii) assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic. Additionally, each month during the pilot period the Exchange shall provide to the Commission and the public a dataset containing the data for each Straddle and Limit State in optionable stocks. For each stock that reaches a Straddle or Limit State, the number of options included in the dataset can be reduced by selecting options in which at least one (1) trade occurred on the Exchange during the Straddle or Limit State. For each of those options affected, each data record should contain the following information: (i) Stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state; and (ii) for activity on the exchange—(A) executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, (B) high execution price, low execution price, (C) number of trades for which a request for review for error was received during Straddle and Limit States, (D) an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise) and another indicator variable for whether the option price within five minutes of

the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stock options as a result of extraordinary market volatility. In addition, the Exchange believes that the extension of the pilot will help ensure that market participants continue to benefit from the protections of the Limit Up-Limit Down Rules which will protect investors and the public interest while allowing the Exchange and the Commission additional time to collect and analyze data regarding the impact of Rules on liquidity and market quality in the options markets.

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 Act. The proposed changes are being made to extend the pilot program that provides for how the Exchange shall treat orders and quotes in options overlying NMS stocks when the Limit Up-Limit Down Plan is in effect and will not impose any burden on competition while providing certainty of treatment and execution of options orders during periods of extraordinary volatility in the underlying NMS stock, and facilitating appropriate liquidity during a Limit State or Straddle State.

³ See Exchange Rule 503(j). See also Securities Exchange Act Release Nos. 69210 (March 22, 2013), 78 FR 18637 (March 27, 2013) (SR-MIAX-2013-12); 69342 (April 8, 2013), 78 FR 22017 (April 12, 2013) (SR-MIAX-2013-12); 69234 (March 25, 2013), 78 FR 19344 (March 29, 2013) (SR-MIAX-2013-15); 69354 (April 9, 2013), 78 FR 22357 (April 15, 2013) (SR-MIAX-2013-15).

⁴ See Securities Exchange Act Release No. 71881 (April 4, 2014), 79 FR 19956 (April 10, 2014) (SR-MIAX-2014-14).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)(iii) thereunder.⁸

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan to Address Extraordinary Market Volatility, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-MIAX-2015-11 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-MIAX-2015-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2015-11, and should be submitted on or before March 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Brent J. Fields,

Secretary.

[FR Doc. 2015-03815 Filed 2-24-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74309; File No. SR-NYSEMKT-2015-10]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to Rule 953.1NY(c), Obvious and Catastrophic Errors, Until October 23, 2015

February 19, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 18, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to Rule 953.1NY(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until October 23, 2015. The pilot period is currently set to expire on February 20, 2015. 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

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot period applicable to Rule 953.1NY(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until October 23, 2015. The pilot period is currently set to expire on February 20, 2015.

In April 2013, in connection with the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "Plan"),³ the Exchange adopted Rule 953.1NY(c) to provide that options executions would not be adjusted or nullified if the execution occurs during periods of extreme market volatility.⁴ Specifically, Rule 953.1NY(c) provides that, during the pilot period, electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State (as defined by the Plan) are not subject to review under Rule 975NY(a) for Obvious Errors or Rule 975NY(d) for Catastrophic Errors. Nothing in Rule 953.1NY(c) prevents electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State from being reviewed on Exchange motion pursuant to 975NY(b)(3).

The Plan has been amended several times since inception and was not implemented until February 24, 2014. The Participants to the Plan recently filed to extend the Plan's pilot period until October 23, 2015 (the "Eighth Amendment").⁵ The purpose of this proposed extension is to provide time for the Participants to prepare a supplemental assessment and recommendation regarding the Plan and for the public to comment on such

assessment for the purpose of determining whether there should be any modifications to the Plan.

In order to align the pilot period for Rule 953.1NY(c) with the proposed pilot period for the Plan, the Exchange similarly proposes to extend the pilot period until October 23, 2015. The Exchange believes the benefits afforded to market participants under Rule 953.1NY(c) should continue on a pilot basis during the same period as the Plan pilot. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States would encourage market participants to continue to provide liquidity to the Exchange, and thus, promote a fair and orderly market during those periods. Thus, the Exchange believes that the protections of current Rule 953.1NY(c) should continue while the industry gains further experience operating the Plan. In addition, the Exchange believes that extending the pilot period for Rule 953.1NY(c) would allow the Exchange to continue to collect and evaluate data, as well as to conduct further data analyses, related to this provision.

Specifically, in connection with the adoption of Rule 953.1NY(c), the Exchange committed to review the operation of this provision and to analyze the impact of Limit and Straddle States accordingly.⁶ The Exchange agreed to and has been providing to the Commission and the public data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in April 2013, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State.⁷ For each of those option classes affected, each data record contains the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
 - executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;

⁶ Specifically, the Exchange committed to: "(1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States." See Approval Order, 78 FR at 22015.

⁷ See Securities Exchange Act Release No. 71870 (April 4, 2014), 79 FR 19692 (April 9, 2014) (SR-NYSEMKT-2014-31).

- high execution price, low execution price;
 - number of trades for which a request for review for error was received during Straddle and Limit States;
 - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise).
- Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

In addition, the Exchange has committed to provide to the Commission by May 29, 2015 assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The Exchange notes that, to date, there have not been any requests for review of Obvious Error of options trades that occur during a Limit or Straddle State in the underlying security.

The Exchange believes that the extension of the pilot period of Rule 953.1NY(c) would allow the Exchange to continue to observe the operation of the pilot and conduct its assessments relating to the impact of the operation of the Rule during Limit and Straddle States, which information will continue to be shared with the Commission and the public as set forth above.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposal to extend the pilot program of Rule 953.1NY(c) until October 23, 2015 would align that pilot program with the Pilot Period for the Plan, as proposed in the Eighth Amendment to the Plan. The Exchange

³ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Order Approving, on a Pilot Basis, the Plan). The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands, which are described in more detail in the Plan.

⁴ See Securities and Exchange Act Release No. 69339 (April 8, 2013), 78 FR 22011 (April 12, 2013) (SR-NYSEMKT-2013-10) ("Approval Order").

⁵ See Securities Exchange Act Release No. 74110 (January 21, 2015), 80 FR 4321 (January 27, 2015) (File No. 4-631) (notice of proposed Eighth Amendment to the Plan).

⁸ 15 U.S.C. 78f (b).

⁹ 15 U.S.C. 78f(b)(5).

believes that aligning the pilot periods would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes that the extension of Rule 953.1NY(c) would help encourage market participants to continue to provide liquidity during extraordinary market volatility.

Moreover, the Exchange believes that extending the pilot period for Rule 953.1NY(c) would remove impediments to, and perfect the mechanisms of, a free and open market because it would enable the Exchange to continue to conduct its assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as set forth above, which, in turn, provides the Exchange with more information from which to assess the impact of Rule 953.1NY(c).

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 Act. The proposed changes will not impose any burden on competition and will instead provide certainty regarding the treatment and execution of options orders, specifically the treatment of Obvious and Catastrophic Errors during periods of extraordinary volatility in the underlying NMS Stock, and will facilitate appropriate liquidity during a Limit State or Straddle State.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2015-10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2015-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2015-10, and should be submitted on or before March 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Brent J. Fields,

Secretary.

[FR Doc. 2015-03817 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Calypte Biomedical Corporation, EC Development, Inc., and Information Architects Corporation (n/k/a Dakota Creative Group Corporation); Order of Suspension of Trading

February 20, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Calypte

¹³ 17 CFR 200.30-3(a)(12).

Biomedical Corporation because it has not filed any periodic reports since the period ended December 31, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EC Development, Inc. because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Information Architects Corporation (n/k/a Dakota Creative Group Corporation) because it has not filed any periodic reports since the period ended September 30, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 20, 2015, through 11:59 p.m. EST on March 5, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015-03871 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Akesis Pharmaceuticals, Inc., Stellar Resources, Ltd., and Thwapr, Inc.; Order of Suspension of Trading

February 20, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Akesis Pharmaceuticals, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Stellar Resources, Ltd. because it has not filed any periodic reports since the period ended January 31, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Thwapr, Inc. because it has not filed any periodic reports since the period ended June 30, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 20, 2015, through 11:59 p.m. EST on March 5, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015-03874 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Innovative Software Technologies, Inc., National Health Partners, Inc., The Laguna Group, Inc. (a/k/a Eco Energy Pumps, Inc.), and TYIN Group Holdings Limited; Order of Suspension of Trading

February 20, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Innovative Software Technologies, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of National Health Partners, Inc. because it has not filed any periodic reports since the period ended September 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of The Laguna Group, Inc. (a/k/a Eco Energy Pumps, Inc.) because it has not filed any periodic reports since the period ended April 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TYIN Group Holdings Limited because it has not filed any periodic reports since the period ended December 31, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-

listed companies is suspended for the period from 9:30 a.m. EST on February 20, 2015, through 11:59 p.m. EST on March 5, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015-03872 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Revonergy Inc., Siberian Energy Group Inc., Tao Minerals Ltd., (n/k/a Canam Gold Corp.), and Today's Alternative Energy Corp.; Order of Suspension of Trading

February 20, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Revonergy Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Siberian Energy Group Inc. because it has not filed any periodic reports since the period ended June 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tao Minerals Ltd. (n/k/a Canam Gold Corp.) because it has not filed any periodic reports since the period ended October 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Today's Alternative Energy Corp. because it has not filed any periodic reports since the period ended July 31, 2012.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 20, 2015, through 11:59 p.m. EST on March 5, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015-03873 Filed 2-24-15; 8:45 am]

BILLING CODE 8011-01-P

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 March 27, 2015.

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:

Applicants for SBA-guaranteed commitment must complete these forms as part of the application process. SBA uses the information to make informed and proper credit decisions and to establish the SBIC's eligibility for leverage and need for funds.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: 25-Model Corp. Resol. Or GP Certif., 33-Model Letter to Selling Agent, 34-Bank ID, 1065-App'l. Lic. Assure. of

Compliance, SBA Forms 25PCGP, SBA Form 25 PIGP, SBA Form 33, SBA Form 34, SBA Form 1065.

Description of Respondents: Eligible SBIC's.

Form Numbers: SBA Forms 25, PC, PCGP, PIGP, 33, 34, 1065.

Estimated Annual Respondents: 48.

Estimated Annual Responses: 48.

Estimated Annual Hour Burden: 47.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015-03808 Filed 2-24-15; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**Data Collection Available for Public Comments**

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before April 27, 2015.

ADDRESSES: Send all comments to Louis Cupp, New Markets Policy Analyst, Office of Investment, Small Business Administration, 409 3rd Street, 7th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, Office of Investment, 202-619-0511, or Curtis B. Rich, Management Analyst, 202-205-7030, curtis.rich@sba.gov;

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) Forms 856 and 856A are used by SBA examiners as part of their examination of licensed small business investment companies (SBICs). This information collection obtains representations from an SBIC's management regarding certain obligations, transactions and relationships of the SBIC and helps SBA to evaluate the SBIC's financial condition and compliance with applicable laws and regulations.

Solicitation of Public Comments

SBA is requesting comments on (a) whether the collection of information is

necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Disclosures Statement Leveraged Licensees; Disclosure Statement Non-leveraged Licensees.
Description of Respondents: SBA Examiners.

Form Numbers: SBA Forms 856 and 856A.

Total Estimated Annual Responses: 600.

Total Estimated Annual Hour Burden: 276.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015-03818 Filed 2-24-15; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION**Data Collection Available for Public Comments**

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before April 27, 2015.

ADDRESSES: Send all comments to Gina Beyer, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gina Beyer, Program Analyst, Disaster Assistance, gina.beyer@sba.gov 202-205-6458, or Curtis B. Rich, Management Analyst, 202-205-7030, curtis.rich@sba.gov;

SUPPLEMENTARY INFORMATION: Small Business Administration Form 700 provides a record of interviews conducted by SBA personnel with small business owners, homeowners and

renters (disaster victims) who seek financial assistance to help in the recovery from physical or economic disasters. The basic information collected helps the Agency to make preliminary eligibility assessment.

Solicitation of Public Comments

SBA is requesting comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

Title: Disaster Home/Business Loan Inquiry Record.

Description of Respondents: Disaster Recovery Victims.

Form Number: SBA Form 700.

Total Estimated Annual Responses: 2,988.

Total Estimated Annual Hour Burden: 747.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015-03823 Filed 2-24-15; 8:45 am]

BILLING CODE 8025-01-P

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. Ch. 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 March 27, 2015.

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: This information collection is provided by SBA lenders and borrowers to provide basic loan information and certifications regarding the disbursement of loan proceeds. SBA relies on this information during the guaranty purchase review process as a component in determining whether to honor a loan guaranty.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: Settlement Sheet.

Description of Respondents: SBA Lenders and Borrowers.

Form Number: SBA Form 1050.

Estimated Annual Respondents: 15,000.

Estimated Annual Responses: 15,000.

Estimated Annual Hour Burden: 3,800.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2015-03827 Filed 2-24-15; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Regulatory Fairness Hearing; Region VIII—Salida, Colorado

AGENCY: U.S. Small Business Administration, SBA.

ACTION: Notice of open Hearing of Region VIII Small Business Owners in Salida, CO.

SUMMARY: The SBA, Office of the National Ombudsman is issuing this notice to announce the location, date and time of the Salida, CO Regulatory Fairness Hearing. This hearing is open to the public.

DATES: The hearing will be held on Wednesday, March 18, 2015, from 2:30 p.m. to 4:30 p.m. (MDT).

ADDRESSES: The hearing will be at the Administrative Offices for Chaffee County Colorado, 104 Crestone Avenue, 2nd Floor, Salida, CO 81201.

SUPPLEMENTARY INFORMATION: Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104-121), Sec. 222, SBA announces the hearing for Small Business Owners, Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

FOR FURTHER INFORMATION CONTACT: The hearing is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation at the Salida, CO hearing must contact Dr. Alison Brown by March 11, 2015 in writing, by phone, or email in order to be placed on the agenda. For further information, please contact Dr. Alison Brown at NAVSYS Corporation, 14960 Woodcarver Road, Colorado Springs, CO 80921, by phone at (719) 481-4877, ext. 124, or email at Abrown@navsys.com. Additionally, if you need accommodations because of a disability, translation services, or require additional information, please contact José Méndez, Case Management Specialist at (202) 205-6178.

For more information on the Office of the National Ombudsman, see our Web site at www.sba.gov/ombudsman.

Dated: February 11, 2015.

Diana Doukas,

SBA Committee Management Officer.

[FR Doc. 2015-03809 Filed 2-24-15; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Airport Noise Compatibility Planning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The *Federal Register* Notice

with a 60-day comment period soliciting comments on the following collection of information was published on December 4, 2014. The respondents are those airport operators voluntarily submitting noise exposure maps and noise compatibility programs to the FAA for review and approval.

DATES: Written comments should be submitted by March 27, 2015.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP-110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954-9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0517
Title: Airport Noise Compatibility Planning

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Extension without change of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 4, 2014 (79 FR 72055). The voluntarily submitted information from the current CFR part 150 collection, *e.g.*, airport noise exposure maps and airport noise compatibility programs, or their revisions, is used by the FAA to conduct reviews of the submissions to determine if an airport sponsor's noise compatibility program is eligible for Federal grant funds. If airport operators did not voluntarily submit noise exposure maps and noise compatibility programs for FAA review and approval, the airport operator would not be eligible for the set aside of discretionary grant funds.

Respondents: Approximately 15 airport operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3882.6 hours.

Estimated Total Annual Burden: 56,160 hours.

Issued in Washington, DC on February 19, 2015.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP-110.

[FR Doc. 2015-03927 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2015-0006]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated December 30, 2014, CSX Transportation (CSX) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA-2015-0006.

Applicant: CSX Transportation, Mr. David B. Olson, Chief Engineer Communications and Signals, 500 Water Street, Speed Code J-350, Jacksonville, FL 32202.

CSX seeks approval of the proposed discontinuance of a traffic control system (TCS) between Control Point (CP) SW Cabin, Milepost (MP) CLS 67.1, and CP Man, MP CLS 78.6, on the Logan Subdivision, Huntington East Division, at Man, WV.

The reason given for the proposed discontinuance is that TCS is no longer needed due to traffic level reductions. The TCS will be discontinued and replaced with track warrant control D-505 rules.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a

hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 13, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on February 19, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-03786 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2014-0126]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document

provides the public notice that by a document dated November 24, 2014, the Union Pacific Railroad (UP) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA-2014-0126.

Applicants: Union Pacific Railroad Company, Mr. Neal Hathaway, AVP Engineering—Signal, 1400 Douglas Street, MS 0910, Omaha, NE 68179.

UP seeks approval of the discontinuance of the automatic cab signal (ACS) system between Milepost (MP) 81.7 and MP 84.1 on the Portland Subdivision, near The Dalles, OR. The purpose of the discontinuance is to establish a consistent limit for the ACS system. The affected trackage will be converted to traffic control system operation.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 13, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on February 19, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-03767 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2015-0004]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated December 30, 2014, CSX Transportation (CSX) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA-2015-0004.

Applicant: CSX Transportation: Mr. David B. Olson, Chief Engineer Communications and Signals, 500 Water Street, Speed Code J-350, Jacksonville, FL 32202.

CSX seeks approval of the proposed discontinuance of an automatic block signal (ABS) system between Control Point (CP) Mitchell, Milepost (MP) OOO 256.0 and CP NE Vernia, MP OOO 314.6, on the Hoosier Subdivision, Louisville Division, at Mitchell, IN.

The reason given for the proposed discontinuance is that ABS is no longer needed due to traffic level reductions. The subdivision is being used for storage only. The ABS will be discontinued and replaced with track warrant control D-505 rules.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
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- Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 13, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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Issued in Washington, DC, on February 19, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-03783 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2015-0012]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 18, 2014, the Alaska Railroad (ARR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances. FRA assigned the petition Docket Number FRA-2015-0012.

This request is for relief from the requirements of 49 CFR 236.51, *Track Circuit Requirements*. ARR is seeking to discontinue the existing electronic track circuit through the Whittier Tunnel and replace it with a vital axle counter.

The location of the proposed track circuit replacement is from Whittier, Milepost (MP) F2.5 to Bear Valley, MP F5.2, on the Kenai Subdivision, Whittier Division, at Whittier, AK. The Whittier Division is a single track line with a traffic control system (TCS) with a dedicated TCS block used to protect Whittier Tunnel.

The tunnel is 2.6 miles long and is a mixed use facility allocating exclusive train and automobile occupancy at any given time.

The track circuit installed within the tunnel experiences false occupancy failures that contribute to a backup of train and auto travel through the tunnel. The embedded track and the consistently wet road combined with fouling soil and a failing pump system create an extremely low ballast resistance which inhibits the safe, reliable operation of the track circuit.

Axle counters function by detecting the presence and traveling direction of wheels at entrance and exit points of defined blocks of track. The wheels are counted into and out of the block. If the same amount of axles are detected departing the block as were detected entering it, the block is considered vacant. Axle counters provide no broken

rail detection, as required in 49 CFR 236.51.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

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- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 13, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#/privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on February 19, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-03787 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2015-0011]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by a document dated January 29, 2015, the Northeast Illinois Regional Commuter Railroad (METRA) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from several provisions of the Federal railroad safety regulations. Specifically, METRA requests relief from certain provisions of 49 CFR part 240, Qualification and Certification of Locomotive Engineers, and Part 242, Qualification and Certification of Conductors. The request was assigned Docket Number FRA-2015-0011. The relief is contingent on METRA's implementation of and participation in the Confidential Close Call Reporting System (C³RS) pilot project.

METRA seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in 49 240.117(e)(1)-(4); 240.305(a)(1)-(4) and (a)(6); 240.307; and 242.403(b), (c), (e)(1)-(4), (e)(6)-(11), (f)(1)-(2). The C³RS pilot project encourages certified operating crew members to report close calls and protect the employees and the railroad from discipline or sanctions arising from the incidents reported per the C³RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires

an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within April 13, 2015 of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on February 19, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-03762 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2014-0129]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by a document dated December 14, 2014, Michigan Southern Railroad Company

(MSO) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Caboose. FRA assigned the petition Docket Number FRA-2014-0129.

MSO, located in Peoria, IL, has petitioned FRA for a waiver of compliance for one caboose, specifically Caboose MSO 500006. MSO is a shortline railroad that operates trains at 10 mph or less. MSO 500006 would be used as a shoving platform during reverse moves that extend up to 5 miles in distance within the area of Sturgis, SD. Sturgis is an urban community that had a population of 10,884 in 2012. The shove move originates in the southern portion of the town that is an industrial/rural area and ends at the wye in Sturgis. The shove move spans approximately 12 grade crossings, and the train lengths range from 2 to 5 cars, including the locomotive and caboose. The waiver is sought because the caboose is not used as historically or traditionally intended, and the cost to upgrade the equipment is significant for a shortline railroad. In addition, using the caboose would enhance employee safety.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200

New Jersey Avenue SE., W12-140, Washington, DC 20590.

- Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received by April 13, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on February 19, 2015.

Ron Hynes,

Director of Technical Oversight.

[FR Doc. 2015-03782 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2014-0127]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 17, 2014, Keolis Commuter Services (KRSM), a contracted commuter railroad operator for the Massachusetts Bay Transportation Authority, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from several provisions of the Federal railroad safety regulations. Specifically, KRSM requests relief from certain provisions of 49 CFR part 240, Qualification and Certification of Locomotive Engineers, and Part 242, Qualification and Certification of

Conductors. The request was assigned Docket Number FRA–2014–0127. The relief is contingent on KRSM’s implementation of and participation in the Confidential Close Call Reporting System (C³RS) pilot project.

KRSM seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in 49 CFR 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; and 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2). The C³RS pilot project encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C³RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation’s (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within April 13, 2015 of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written

communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#/privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on February 19, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015–03768 Filed 2–24–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Numbers FRA–2014–0124 and FRA–2013–0128]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 18, 2014, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained in 49 CFR, governing the operation of passenger trains on the Northeast Corridor (NEC). Relief was also requested from speed limitations imposed by the Order of Particular Applicability for the Advanced Civil Speed Enforcement System (ACSES) Order. [FRA Docket No. 87–2, Notice No. 7; 63 FR 39343; July 28, 1998]. FRA assigned the petition Docket Number FRA–2014–0124.

Amtrak’s petition incorporated by reference a prior request for relief in Docket Number FRA–2013–0128 (*see* 79 FR 8238; Feb. 11, 2014). Accordingly, additional comments may be submitted regarding the petition in Docket Number FRA–2013–0128 as well as on the new petition in FRA–2014–0124.

The Amtrak petitions address two distinct requests. First, both petitions request permission to operate existing Acela trainsets, built in compliance with the specific requirements for Tier

II equipment under 49 CFR part 238 subpart E, at speeds up to 160 miles per hour (mph) in three speed zones where track conditions can support higher speeds than currently operated. As discussed above, Amtrak’s earlier petition in Docket Number FRA–2013–0128 proposed the same speed increase for a segment of track in Rhode Island, milepost (MP) AB 154.3 to MP AB 171.7.

The new petition in Docket Number FRA–2014–0124 adds a request for a 160 mph speed zone in Massachusetts (MP AB 194 to MP AB 204) and—subject to completion of certain infrastructure improvements—a 160 mph speed zone in New Jersey (MP AN 33 to MP AB 55.5).

In summary, Amtrak seeks a waiver of provisions in the ACSES Order and the 150 mph limitation for Tier II equipment in the Passenger Equipment Safety Standards to permit operation up to 160 mph in each of these discrete zones. Amtrak does not seek to use the existing Acela trainsets at speeds higher than presently authorized elsewhere on the NEC. Amtrak notes that increasing speeds in the subject zones would be subject to special approvals qualifying the existing Acela Tier II trainsets at the higher speed under 49 CFR part 213, Track Safety Standards, and regulations governing Positive Train Control, such as 49 CFR part 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances. With FRA oversight, Amtrak has been conducting tests that, although not yet concluded, are intended by Amtrak to support qualification of the existing trainsets and train control system for 160 mph operation. Successful completion of these processes would be necessary for Amtrak to use any relief related to the Acela service that might be granted in this proceeding.

Secondly, in Docket Number FRA–2014–0124, Amtrak requests approval to operate, on the “spine” of the NEC between Washington, DC and Boston, new trainsets that would be built to “Tier III” standards proposed by the second Engineering Task Force (ETF) of the Passenger Safety Working Group of the Railroad Safety Advisory Committee (RSAC). Those standards were accepted by the full RSAC on June 14, 2013, (*see* “ETF_001–02—Proposed Ruletext for NPRM 1.docx,” available on the RSAC Web site at <https://rsac.fra.dot.gov/meetings/20130614.php>). Minutes of the June 14, 2013, RSAC meeting are available at <https://rsac.fra.dot.gov/meetings/20131031.php>.

Amtrak proposes to use Tier III equipment on the NEC at speeds up to 160 mph (rather than the 220 mph maximum contemplated for Tier III equipment operating on dedicated right-of-way). In support of this request, Amtrak has submitted a review of NEC operating experience that Amtrak represents as demonstrating a high level of safety, supported by compliance with FRA safety regulations and existing risk mitigations undertaken as voluntary measures. Amtrak notes that Tier III trainsets would be operated at greater than Tier I speeds (*i.e.*, above 125 mph) only on the fully grade-separated portions of the NEC in designated high-speed zones.

In further support of its Tier III request, Amtrak has submitted the report of a semi-quantitative risk assessment and a description of specific safety mitigations designed to compensate for the differences in crashworthiness between equipment built to Tier II and Tier III standards. Amtrak asserts that, with the existing and proposed mitigations, Tier III equipment can be operated at a level of safety equivalent to, or better than, operations with Tier II equipment. Amtrak's petition and exhibits are available for reference in Docket Number FRA-2014-0124.

Amtrak asserts that all of the relief requested is consistent with safety and in the public interest.

Copies of the petitions, as well as any written communications concerning the petitions, are available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 202-493-2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200

New Jersey Avenue SE., W12-140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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Issued in Washington, DC, on February 19, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015-03763 Filed 2-24-15; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Call for Nominations for Treasury Secretary Appointments to Tribal Advisory Committee

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department ("Treasury") seeks nominations for appointments by the Secretary of the Treasury ("Secretary") to the Treasury Tribal Advisory Committee (TTAC), established pursuant to the Tribal General Welfare Exclusion Act of 2014 (Pub. L. 113-168, or TGWEA). The TTAC will advise the Secretary on matters related to the taxation of Indians, training and education for Internal Revenue Service ("Service") field agents who administer and enforce internal revenue laws with respect to Indian tribes; and training and technical assistance for tribal financial officers. Nominations should describe the candidate's qualifications for TTAC membership. Submittal of an application and resume is required.

This request for nominations, particularly from tribal leaders, is in furtherance of the objectives of Executive Order 13175 under which Treasury consults with tribal officials in the development of federal policies that have tribal implications, to reinforce the United States government-to-government relationships with Indian tribes and to reduce the imposition of unfunded mandates upon Indian tribes.

DATES: Please submit the names and qualifications of individuals you would recommend for appointment to the TTAC by the Secretary, applications for appointment by the Secretary to the TTAC or comments on this matter, before April 28, 2015.

ADDRESSES: Please send recommendations and applications to tribal.consult@treasury.gov, with a subject line "Treasury Tribal Advisory Committee member recommendation or application." We will accept applications for Secretarial appointments until April 28, 2015. Self-nominations are welcome.

FOR FURTHER INFORMATION CONTACT: Elaine Buckberg, Deputy Assistant Secretary for Policy Coordination and Point of Contact for Tribal Consultation, Department of the Treasury, at tribal.consult@treasury.gov or 202-622-2200. Please use the subject line "Treasury Tribal Advisory Committee" in email correspondence.

SUPPLEMENTARY INFORMATION:

Introduction and Background

I. Description and Mandate of the TTAC

The TGWEA, signed into law by President Obama on September 26, 2014, requires that Treasury establish the TTAC. Committee members will advise the Secretary on matters related to the taxation of Indians, the training of Service field agents who administer and enforce internal revenue laws with respect to Indian tribes, and the provision of training and technical assistance to Native American financial officers. The Secretary will appoint three Committee members; the Chairs and Ranking Members of the Senate Finance Committee and House of Representative Ways and Means Committee will each appoint one member. The TTAC Charter has been filed; a copy of the Charter is posted at <http://www.treasury.gov/resource-center/economic-policy/tribal-policy/Documents/TTAC%20Charter%202012-10-15.pdf>.

Recommendations for the four Congressional appointments to the TTAC should be directed to the offices of the four Members of Congress

specified in the law, whose roles are identified above. This notice requests nominations for the three Secretarial appointments.

The TWGEA builds on prior guidance that Treasury and the Service issued in direct response to requests from a number of tribal leaders, including representatives of the National Congress of American Indians (NCAI), Native American Finance Officers' Association (NAFOA) and United Southern and Eastern Tribes (USET). Beginning in 2011, Treasury and the Service met extensively with tribal leaders, developed draft legal guidance, and requested comments. In IRS Notice 2012-75, draft guidance was issued "with reliance" to provide immediate certainty on conditions under which tribal government benefits are not subject to the Federal personal income tax. Final IRS guidance, issued last June as Rev. Proc. 2014-35, clarified these matters further. Building on this guidance, we anticipate that members of the TTAC will advise the Secretary on related tax issues, and on the training and education of Service field agents and tribal financial officers, as indicated in the TGWEA.

II. Application for TTAC Appointment

Treasury seeks applications from individuals with experience and qualifications in the subject areas identified by the TWGEA: Indian taxation, Service field agent training, and Native American financial officer training and technical assistance. Initial TTAC members appointed by the Secretary will serve as volunteers for terms of two years. TTAC member travel expenses will be reimbursed within government guidelines. No person who is a federally-registered lobbyist may serve on the TTAC. All potential candidates must pass a Service (IRS) tax compliance check and a Federal Bureau of Investigation (FBI) background investigation.

To apply, an applicant must submit an appropriately detailed resume and a cover letter that includes a description of the applicant's reason for applying. An applicant must state in the application materials that he or she agrees to submit to a pre-appointment tax and criminal background investigation in accordance with Treasury Directive 21-03.

Elaine Buckberg,

Deputy Assistant Secretary for Policy Planning, Economic Policy.

[FR Doc. 2015-03986 Filed 2-23-15; 4:15 pm]

BILLING CODE 4810-35-P

DEPARTMENT OF THE TREASURY

United States Mint

Public Meeting: Citizens Coinage Advisory Committee

ACTION: Notification of Citizens Coinage Advisory Committee March 5, 2015, Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for March 5, 2015. A public forum will occur the following day on March 6, 2015.

Date: March 5, 2015.

Time: 9:30 a.m.–6:45 p.m.

Location: Oregon Convention Center, 777 NE Martin Luther King Jr. Blvd., Room 151, Portland, OR 97232.

Subject: Review and consideration of candidate designs for the 2016 Mark Twain Commemorative Coin Program, the Monuments Men Recognition Act Congressional Gold Medal Program, the Code Talkers Recognition Congressional Gold Medal Program for the Rosebud Tribe, and the Ronald Reagan Presidential \$1 Coin. In addition, the CCAC will review and advise on design concepts for the 2017 America the

Beautiful Quarters Program Coins, the Nancy Reagan First Spouse Gold Coin and Bronze Medal, and the 2017 Lions Clubs International Century of Service Commemorative Coin Program.

Public Forum: The CCAC will host a public forum on Friday, March 6, 2015, at 9 a.m. in Room 149 to receive input from collectors and other members of the public.

Interested persons should call the CCAC HOTLINE at (202) 354-7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.

Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202-354-7200.

Any member of the public interested in submitting matters for the CCAC's consideration or addressing the CCAC at the Public Forum is invited to submit them by fax to the following number: 202-756-6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: February 19, 2015.

Richard A. Peterson,

Deputy Director for Manufacturing and Quality, United States Mint.

[FR Doc. 2015-03799 Filed 2-24-15; 8:45 am]

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Portable Air
Conditioners; Proposed Rule

DEPARTMENT OF ENERGY**10 CFR Parts 429 and 430****[Docket No. EERE-2014-BT-TP-0014]****RIN 1904-AD22****Energy Conservation Program: Test Procedures for Portable Air Conditioners****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish test procedures for portable air conditioners (ACs) in accordance with the guidance and requirements set forth by the Energy Policy and Conservation Act to establish technologically feasible, economically justified energy conservation standards for products identified by specific criteria to provide national energy savings through improved energy efficiency. The proposed test procedures are based upon industry methods to determine energy consumption in active modes, off-cycle mode, standby modes, and off mode, with certain modifications to ensure the test procedures are repeatable and representative. The proposed test procedure would create a new appendix CC, which would be used to determine capacities and energy efficiency metrics that could be the basis for any future energy conservation standards for portable ACs. DOE also proposes adding a sampling plan and rounding requirements for portable ACs, necessary when certifying capacity and efficiency of a basic model.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than May 11, 2015. See section V, "Public Participation," for details.

DOE will hold a public meeting on Wednesday, March 18, 2015, from 9 a.m. to 12 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, "Public Participation," for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586-2945. See section V Public Participation for additional meeting information.

Any comments submitted must identify the NOPR for Test Procedures for Portable Air Conditioners, and provide docket number EERE-2014-BT-TP-0014 and/or regulatory information number (RIN) number 1904-AD22. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.

2. *Email:* PortableAC2014TP0014@ee.doe.gov. Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586-2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: <http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-TP-0014>. This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section VII for information on how to submit comments through regulations.gov.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586-2945 or by email: Brenda.Edwards@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of

Energy, Office of Building Technology Programs, Appliance Standards Division, 950 L'Enfant Plaza SW. Room 603, Washington, DC 20585-0121. Telephone: 202-586-0371. Email: Bryan.Berringer@ee.doe.gov.

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, Mailstop GC-33, 1000 Independence Ave. SW., Washington, DC 20585-0121. Telephone: 202-586-1777; Email: Sarah.Butler@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE intends to incorporate by reference the following industry standards into 10 CFR part 430: Portable Air Conditioners AHAM PAC-1-2014, 2014.

Copies of AHAM PAC-1-2014 can be obtained from the Association of Home Appliance Manufacturers, 1111 19th Street NW., Suite 402, Washington, DC 20036, 202-872-5955, or by going to <http://www.aham.org/ht/d/ProductDetails/sku/PAC12009/from/714/pid/>.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act (EPCA), as amended (42 U.S.C. 6291, *et seq.*; “EPCA” or, “the Act”) sets forth various provisions designed to improve energy efficiency. Part A of title III of EPCA (42 U.S.C. 6291–6309) establishes the “Energy Conservation Program for Consumer Products Other Than Automobiles,” which covers consumer products and certain commercial products (hereinafter referred to as “covered products”).¹ EPCA authorizes DOE to establish technologically feasible, economically justified energy conservation standards for covered products or equipment that would be likely to result in significant national energy savings. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) In addition to specifying a list of covered consumer and industrial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) For a given product to be classified as a covered product, the Secretary must determine that:

- (1) Classifying the product as a covered product is necessary for the purposes of EPCA; and
 - (2) The average annual per-household energy use by products of each type is likely to exceed 100 kilowatt-hours (kWh) per year. (42 U.S.C. 6292(b)(1))
- To prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) for covered products added pursuant to 42 U.S.C. 6292(b)(1), the Secretary must also determine that:
- (1) The average household energy use of the products has exceeded 150 kWh per household for a 12-month period;
 - (2) The aggregate 12-month energy use of the products has exceeded 4.2 terawatt-hours (TWh);
 - (3) Substantial improvement in energy efficiency is technologically feasible; and

¹ For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

(4) Application of a labeling rule under 42 U.S.C. 6294 is unlikely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

A. General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure should be prescribed or amended, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2))

B. Test Procedure for Portable Air Conditioners

There are currently no DOE test procedures or energy conservation standards for portable ACs. On July 5, 2013, DOE issued a notice of proposed determination (NOPD) of coverage (hereinafter referred to as the “July 2013 NOPD”), in which DOE announced that it tentatively determined that portable ACs meet the criteria under 42 U.S.C. 6292(b)(1) to be classified as a covered product. 78 FR 40403. DOE estimated that 973.7 thousand portable AC units were shipped in North America in 2012, with a projected growth to 1743.7

thousand units by 2018, representing nearly 80-percent growth in 6 years.² *Id.* at 40404. In addition, DOE estimated the average per-household electricity consumption by portable ACs to be approximately 650 kWh per year. *Id.*

In response to the July 2013 NOPD, DOE received comments from interested parties on several topics regarding appropriate test procedures for portable ACs that DOE should consider if it issues a final determination classifying portable ACs as a covered product.

On May 9, 2014, DOE published in the **Federal Register** a notice of data availability (NODA) (hereinafter referred to as the “May 2014 NODA”), in which it agreed that a DOE test procedure for portable ACs would provide consistency and clarity for representations of energy use of these products. DOE evaluated available industry test procedures to determine whether such methodologies would be suitable for incorporation in a future DOE test procedure, should DOE determine to classify portable ACs as a covered product. DOE conducted testing on a range of portable ACs to determine typical cooling capacities and cooling energy efficiencies based on the existing industry test methods and other modified approaches for portable ACs. 79 FR 26639, 26640 (May 9, 2014).

As discussed above, DOE also recently initiated a separate rulemaking to consider establishing energy conservation standards for portable ACs. Any new standards would be based on the same efficiency metrics derived from the test procedure that DOE would adopt in a final rule in this rulemaking.

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to establish in Title 10 of the Code of Federal Regulations (CFR), section 430.2, the definition of portable AC that was initially proposed in the July 2013 NOPD, modified to distinguish from room ACs and dehumidifiers.

DOE also proposes to establish in 10 CFR part 430, subpart B, a test procedure for single-duct and dual-duct portable ACs that would provide an accurate representation of performance in active modes, standby modes, and off mode. Because spot cooler portable ACs do not provide net cooling to a conditioned space, DOE is not proposing test procedures for these products in this NOPR. The proposed active mode testing methodology would utilize the Association of Home

² Transparency Media Research, “Air Conditioning Systems Market—Global Scenario, Trends, Industry Analysis, Size, Share and Forecast, 2012–2018,” January 2013.

Appliance Manufacturers (AHAM) portable AC test procedure (AHAM PAC-1) to measure cooling capacity and cooling energy efficiency ratio (EER_{cm}), with additional provisions to account for heat transferred to the indoor conditioned space from the case, ducts, and any infiltration air from unconditioned spaces. DOE also proposes to clarify for such active mode testing (1) test duct configuration; (2) instructions for condensate collection; (3) control settings for operating mode, fan speed, temperature set point, and louver oscillation; and (4) unit placement within the test chamber. DOE proposes to define this operating mode as “cooling mode” to distinguish it from other active modes, such as “heating mode.”

For those single-duct and dual-duct portable ACs that incorporate a heating function, DOE proposes additional testing methodology for measuring energy use in heating mode similar to the methodology proposed for the measurement of cooling capacity and EER_{cm}, except that testing conditions would be specified that are representative of ambient conditions when portable ACs would be used for heating purposes. The proposed test procedure includes a measure of heating capacity and heating energy efficiency ratio (EER_{hm}).

The proposed single-duct and dual-duct portable AC test procedure also includes a measure of energy use in off-cycle mode, which occurs when the ambient dry-bulb temperature reaches the setpoint. This may include operation of the fan either continuously or cyclically without activating the refrigeration (or heating) system, or periods in standby mode when the fan is not operating.

In this NOPR, DOE identifies and discusses all relevant low-power modes, including bucket-full mode, delay-start mode, inactive mode, and off mode. DOE also proposes definitions for inactive mode and off mode, and proposes test procedures to determine energy consumption representative of each of these low-power modes based on the procedures outlined in the standard published by the International Electrotechnical Commission (IEC), titled “Household electrical appliances—Measurement of standby power,” Publication 62301, Edition 2.0 (2011–01) (hereinafter referred to as “IEC Standard 62301”).

In addition, DOE proposes a combined energy efficiency ratio (CEER) metric to be used in reporting the overall energy efficiency of a single-duct and dual-duct portable AC. The CEER metric would represent energy use in all

available operating modes. DOE also proposes to define a separate CEER metric for cooling mode that would also apply to units that include heating mode and would be a common metric used for comparison among portable ACs. DOE also proposes an EER metric to represent performance in cooling and heating modes that could be used to compare cooling and heating performance with other similar products.

Finally, DOE proposes adding a sampling plan and rounding requirements for portable ACs to a new section 10 CFR 429.62. These instructions are necessary when certifying capacity and efficiency of a basic model.

III. Discussion

A. Products Covered by the Proposed Test Procedure

A portable AC is a self-contained, refrigeration-based product that, similar to a room AC, removes latent and sensible heat from the ambient air in a single space such as a room. Similar to room ACs, portable ACs are standalone appliances designed to operate independently of any other air treatment devices, though they may also be used in conjunction with other pre-existing air treatment devices. However, unlike room ACs, portable ACs are not designed as a unit to be mounted in a window or through the wall. Portable ACs are placed in the conditioned space and may have flexible ducting, typically connected to a window to remove condenser outlet air from the conditioned space.

DOE is generally aware of 3 categories of portable ACs including single-duct models, dual-duct models, and spot coolers. Single-duct portable ACs utilize a single condenser exhaust duct to vent heated air to the unconditioned space. Other configurations include dual-duct, which intakes some or all condenser air from and exhausts to unconditioned space, and spot coolers, which have no ducting on the condenser side and may utilize small directional ducts on the evaporator exhaust. Spot coolers are often used in applications that require cooling in one localized zone and can tolerate exhaust heat outside of this zone.

In the July 2013 NOPD, DOE proposed to define “portable air conditioner” as:

A consumer product, other than a “packaged terminal air conditioner” which is powered by a single-phase electric current and which is an encased assembly designed as a portable unit that may rest on the floor or other elevated surface for the purpose of

providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include means for ventilating and heating. 78 FR 40403, 40404 (July 5, 2013).

DOE maintained this proposed definition in the May 2014 NODA. In the July 2013 NOPD, DOE also stated that portable ACs are moveable units typically designed to provide 8,000 to 14,000 British thermal units per hour (Btu/h) of cooling capacity for a single room. *Id.*

In response to the proposed definition, Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (hereinafter referred to as the “California Investor-Owned Utilities (IOUs)”) and Edison Electric Institute (EEI) stated that the requirement in the definition to be powered by a single-phase electric current may exclude some equipment designed for commercial applications. The California IOUs encouraged DOE to consider a large range of portable ACs, both residential and commercial, to ensure that all potential savings are examined and analyzed. In particular, the California IOUs recommended that DOE consider covering portable ACs with capacities above 14,000 Btu/h because there are units currently on the market with cooling capacities up to and above 65,000 Btu/h. (California IOUs, NOPD No. 5 at pp. 1–2;³ EEI, NOPD No. 3 at p. 5) EEI also commented that DOE should consider revising the definition of “portable air conditioner” to ensure that three-phase electrical current units are covered, and to better reflect products that currently are on the market with and without heating capability. (EEI, NOPD No. 3 at p. 5)

Oceanaire Inc. (Oceanaire) commented that according to the EPCA definition, commercial spot coolers (portable ACs that do not have ducting attached to the condenser) are not covered products. According to Oceanaire, commercial spot coolers are mainly used in the rental market where emergencies create a need for immediate and focused cooling systems, with example applications including food and cosmetics processing plants,

³ A notation in the form “California IOUs, NOPD No. 5 at pp. 1–2” identifies a written comment: (1) Made by Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison (“the California IOUs”); (2) recorded in document number 5 that is filed in the docket of the rulemaking for determination of coverage of portable air conditioners as a covered consumer product (Docket No. EERE-2013–BT–STD–0033) and available for review at www.regulations.gov; and (3) which appears on pages 1–2 of document number 5.

outdoor entertainment venues, and steel processing factories. Oceanaire noted that the cooling capacity of these rental units range between 1 and 5 tons (12,000 to 60,000 Btu/h), where actual performance is determined by a wide range of operating environments, which may include high and low temperatures, high humidity, and corrosive conditions that are not experienced in household applications. Further, Oceanaire noted that its commercial product construction is robust, comprising mainly 18 gauge and thicker steel cabinetry and support structures. (Oceanaire, No. 2 at pp. 1–2⁴)

Portable ACs, most commonly in single-duct or dual-duct configuration, typically range in cooling capacity from 5,000 to 14,000 Btu/h when measured according to existing industry test methods. According to sizing charts provided by vendors, these portable ACs are intended to cool rooms of up to approximately 525 square feet in area,⁵ are often heavier than 50 pounds, and so are designed with wheels to provide mobility from room to room. Spot coolers, a category of portable ACs under DOE's proposed definition, are typically intended for larger spaces and harsher applications. Most have cooling capacities greater than 14,000 Btu/h, when measured according to existing industry test methods, and are typically larger than single-duct and dual-duct portable ACs, often weighing more than 100 pounds. Because they are frequently moved from site to site, spot coolers are more rugged in construction, although they also have wheels to maintain portability. During interviews, manufacturers indicated that spot cooler shipments represent no more than approximately 1.5 percent of the total portable AC market in the United States, and that only about half of those shipments are for spot coolers with single-phase, 120-volt, and 60-Hertz power supply requirements (the power supply appropriate for consumer products). Additionally, manufacturers noted that the spot coolers typically incorporate more powerful and louder blowers, condensate collection without auto-evaporation, and larger case sizes than typical single-duct and dual-duct portable ACs. Manufacturer interviews confirmed that spot coolers are often

⁴ A notation in the form "Oceanaire, No. 2 at pp. 1–2" identifies a written comment: (1) Made by Oceanaire, Inc. (Oceanaire); (2) recorded in document number 2 that is filed in the docket of the portable air conditioner test procedure rulemaking (Docket No. EERE–2014–BT–TP–0014) and available for review at www.regulations.gov; and (3) which appears on pages 1–2 of document number 2.

⁵ For example: www.air-n-water.com/portable-ac-size.htm.

rented on a seasonal or emergency basis, unlike other portable ACs, which are generally purchased for regular use on a seasonal or occasional basis. Based on these considerations, DOE is not considering a test procedure for spot coolers at this time even though DOE believes spot coolers would meet the proposed definition of portable AC if DOE finalizes the coverage determination as proposed.

DOE recognizes that certain portable ACs also include options for operating as a dehumidifier and/or heater, with heating means provided by either an electric resistance heater or by modifying internal refrigerant flow to operate the unit as a heat pump. The dehumidification function may be achieved in some units by decreasing fan speeds, removing the condenser duct(s), and for some units, disabling the self-evaporative feature by draining the condensate before it reaches the condenser coils or deactivating the condensate slinger fan when the controls are set to dehumidification mode. In all of these cases, the air flow pattern and psychrometrics differ fundamentally from those of a dehumidifier, resulting in different energy efficiencies during dehumidification operation, even though both products may use a refrigeration system to remove moisture from the air.

DOE also recognizes that although room ACs and portable ACs share many of the same components that operate similarly to provide cooled air to a conditioned space, a portable AC, unlike a room AC, may be entirely located within the conditioned space so that some or all of the condenser air may be drawn from that space, and some heat from the refrigeration system and ducting is transferred to the conditioned space as well. These differences would lead to differing cooling mode energy efficiencies between room ACs and portable ACs, even if the products were to incorporate the same components. In addition, operation of the portable AC without activation of the refrigeration system may be more accurately characterized as "air circulation" rather than "ventilation" because the portable AC may be operated without drawing air from outside the conditioned space. Thus, DOE proposes to clarify in the definition of "portable air conditioner" that the primary function of the product is to provide cooled, conditioned air to the space in addition to other functions such as air circulation or heating, and that it is a product other than a room AC or dehumidifier. DOE also proposes to restructure the portable AC definition to

align with both the room AC and dehumidifier definitions. In sum, DOE proposes to add to 10 CFR 430.2 the following definition for "portable air conditioner."

An encased assembly, other than a "packaged terminal air conditioner," "room air conditioner," or "dehumidifier," designed as a portable unit for delivering cooled, conditioned air to an enclosed space, that is powered by single-phase electric current, which may rest on the floor or other elevated surface. It includes a source of refrigeration and may include additional means for air circulation and heating.

Although this proposed definition differs from the definition presented in the July 2013 NOPD, DOE maintains its tentative determination that portable ACs qualify as a covered product under Part A of Title III of EPCA, as amended. A product may be added as a covered product, pursuant to 42 U.S.C. 6292(b)(1), if (1) classifying products of such type as covered products is necessary and appropriate to carry out the purposes of EPCA; and (2) the average per-household energy use by products of such type is likely to exceed 100 kWh (or its Btu equivalent) per year. As discussed in the July 2013 NOPD, DOE determined that portable ACs meet the first requirement because: Shipments are projected to increase 80 percent over a 6-year period from 2012 to 2017, coverage of portable ACs would allow for conservation of energy through labeling programs and the regulation of portable AC energy efficiency, and there is significant variation in the annual energy consumption of different portable AC models currently available on the market. 78 FR 40403, 40404 (July 5, 2013). For the second requirement, DOE determined that a typical portable AC uses approximately 650 kWh/year, well above the 100 kWh/year threshold. 78 FR 40403, 40404–40405 (July 5, 2013). The updated portable AC definition proposed in this NOPR only includes additional clarification to differentiate portable ACs from dehumidifiers and room ACs, it does not alter the intended scope of the definition. Accordingly, the determinations from the July 2013 NOPD remain valid for the revised proposed portable AC definition.

DOE also proposes to include in the new test procedure at appendix CC the following definitions for different portable AC configurations to clarify the testing provisions to be used to obtain representative results for cooling capacity, heating capacity (where applicable), and CEER:

"Single-duct portable air conditioner" means a portable air conditioner that

draws all of the condenser inlet air from the conditioned space without the means of a duct, and discharges the condenser outlet air outside the conditioned space through a single duct.

“Dual-duct portable air conditioner” means a portable air conditioner that draws some or all of the condenser inlet air from outside the conditioned space through a duct, and may draw additional condenser inlet air from the conditioned space. The condenser outlet air is discharged outside the conditioned space by means of a separate duct.

DOE is also proposing a definition for “spot cooler” as a portable air conditioner that draws condenser inlet air from and discharges condenser outlet air to the conditioned space, and draws evaporator inlet air from and discharges evaporator outlet air to a localized zone within the conditioned space. DOE is proposing such a definition in this NOPR to clarify that testing these products would not be required at this time, as discussed previously in this section.

DOE requests comment on these proposed definitions for portable ACs and their specific configurations, including the proposal that spot coolers not be addressed in this rulemaking.

B. Determination, Classification, and Testing Provisions for Operational Modes

1. Active Modes

Portable ACs are typically purchased by consumers to provide cooled air to a conditioned space, although certain models provide additional functions such as heating, dehumidification, and air circulation. Because room ACs and dehumidifiers share many of the same internal components and incorporate some of the same operating modes as portable ACs, DOE considered the mode definitions for these products to develop applicable mode definitions for portable ACs.

Appendix F of title 10, part 430, subpart B of the CFR defines “active mode” for room ACs as a mode in which the room AC is connected to a mains power source, has been activated and is performing the main function of cooling or heating the conditioned space, or circulating air through activation of its fan or blower, with or without energizing active air-cleaning components or devices such as ultraviolet (UV) radiation, electrostatic filters, ozone generators, or other air-cleaning devices. Appendix X within that same subpart of the CFR defines “active mode” for dehumidifiers as a mode in which a dehumidifier is

connected to a mains power source, has been activated, and is performing the main functions of removing moisture from air by drawing moist air over a refrigerated coil using a fan, or circulating air through activation of the fan without activation of the refrigeration system.

Portable ACs provide the same main functions as room ACs: (1) Cooling with activation of the refrigeration system and blower or fan; (2) for certain models, heating by means of activation of a blower or fan and either the refrigeration system and a reverse-cycle solenoid valve or a resistance heater; or (3) air circulation by activating only the blower or fan. As with dehumidifiers, a portable AC evaporator may also experience frosting and may need to perform a defrost operation. DOE, therefore, proposes the following definition for portable AC active mode:

“Active mode” means a mode in which the portable air conditioner is connected to a mains power source, has been activated, and is performing the main functions of cooling or heating the conditioned space, circulating air through activation of its fan or blower without activation of the refrigeration system, or defrosting the refrigerant coil.

DOE proposes to designate active mode functions performed when the temperature setpoint is not yet reached as either “cooling mode” or “heating mode,” depending upon the user-selected function.

Portable ACs may also operate in “off-cycle mode,” during which the fan or blower may operate without activation of the refrigeration system after the temperature setpoint has been reached. Under these conditions, the fan may be operated to ensure that air is drawn over the thermostat to monitor ambient conditions, or for air circulation in the conditioned space. It is also possible that immediately following a period of cooling or heating, fan operation may be initiated to remove any remaining frost or moisture from the evaporator. Although the periods of fan operation would classify those periods of off-cycle mode as an active mode, DOE notes that the portable AC may also enter one or more periods of a standby mode during off-cycle mode, in which the fan or blower does not operate. Therefore, DOE proposes to define off-cycle mode to include all periods of fan operation and standby mode that occur when the temperature set point has been reached, and further proposes to measure the energy consumption during off-cycle mode according to methodology discussed in section III.B.2 of this NOPR.

Portable ACs may also operate in a consumer-selected mode during which the blower is operated with all other cooling or heating components disabled. The blower may operate cyclically or continuously to circulate air in the conditioned space. DOE refers to this consumer-selected, active mode as “air-circulation mode.” DOE does not currently have information on the usage of this consumer-initiated air circulation feature and, therefore is not proposing to measure energy usage during “air-circulation mode.” However, DOE seeks information on annual hours associated with this mode.

Some portable ACs also include a dehumidification or “dry” function. DOE learned through manufacturer interviews that portable AC operation in this mode is adjusted to maximize latent rather than sensible heat removal, typically by decreasing the evaporator fan or blower speed. Though not always specified in the user manual, when operating in dry mode, the installation may be modified to direct condenser exhaust into the conditioned space. In this case, a drain setup is necessary to remove condensate before it passes over the condenser to be re-evaporated into the condenser exhaust. Though the evaporator and condenser outlet air streams are not fully mixed, the net effect is minimal heating or cooling within the conditioned space and a reduction in relative humidity. DOE considered addressing dehumidification performance as part of this test procedure proposal, and determined that it is not technically feasible to combine dehumidification performance, in units of liters per kWh, with a cooling or heating performance, in units of Btu/Wh. Because dehumidification is not the primary mode of operation for portable ACs, DOE does not believe that the annual operating hours in dehumidification mode would be significant and would therefore not substantially impact a metric that considers the combined annual energy consumption of each operating mode. DOE’s tentative conclusion is supported by a recent field study conducted by Burke, *et al.*, (hereinafter referred to as the Burke Portable AC Study), in which portable ACs were monitored over multiple summer months in 19 locations in New York and Pennsylvania.⁶ No users in this study reported operating their portable AC in dehumidification mode. DOE also notes

⁶ T. Burke, *et al.*, Using Field-Metered Data to Quantify Annual Energy Use of Portable Air Conditioners, Lawrence Berkeley National Laboratory, Report No. LBNL-6868E (December 2014). Available at: www.osti.gov/scitech/servlets/purl/1166989.

that including dehumidification mode in a portable AC test procedure would significantly and disproportionately increase test burden. Therefore, DOE does not propose to include dehumidification mode as an operating mode to be addressed in a portable AC test procedure.

In summary, DOE proposes to include the following definitions in new appendix CC to clarify the types of portable AC operation within active mode:

“Cooling mode” means an active mode in which a portable air conditioner has activated the main cooling function according to the thermostat or temperature sensor signal, including activating the refrigeration system, or the fan or blower without activation of the refrigeration system.

“Heating mode” means an active mode in which a portable air conditioner has activated the main heating function according to the thermostat or temperature sensor signal, including activating a resistance heater, the refrigeration system with a reverse refrigerant flow valve, or the fan or blower without activation of the resistance heater or refrigeration system.

Further discussion of off-cycle mode, including a proposed definition, is included in section III.2 of this NOPR.

a. Cooling Mode

As discussed in the May 2014 NODA, DOE identified three industry test procedures that measure portable AC performance in cooling mode and that are applicable to products sold in North America:

(1) AHAM PAC-1-2009 “Portable Air Conditioners” (AHAM PAC-1-2009) specifies cooling mode testing conducted in accordance with American National Standards Institute (ANSI)/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 37-2005 “Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment” (ANSI/ASHRAE Standard 37-2005).⁷ The metrics incorporated in AHAM PAC-1-2009 include capacity and energy efficiency ratio (EER) for the following configurations: Single-Duct, Dual-Duct, Spot Cooling, and Water Cooled Condenser.

(2) Canadian Standards Association (CSA) C370-2013 “Cooling Performance of Portable Air Conditioners” (CSA C370-2013) is harmonized with AHAM PAC-1-2009, and thus also incorporates testing provisions from ANSI/ASHRAE Standard 37-2009.

(3) ANSI/ASHRAE Standard 128-2011 “Method of Rating Unitary Spot Air Conditioners” (ANSI/ASHRAE Standard 128-2011) is adapted from the previous 2009 version of CSA C370. It too references ANSI/ASHRAE Standard 37-2009. The previous version of ANSI/ASHRAE Standard 128, published in 2001, is required by California regulations to be used to certify spot cooler performance for such products sold in that State. A key difference between ANSI/ASHRAE Standard 128-2011 and ANSI/ASHRAE Standard 128-2001 is that the older version specifies a higher indoor ambient testing temperature, which increases measured cooling capacity and EER. 79 FR 26639, 26640-26641 (May 9, 2014).

DOE found no significant differences that would produce varying results among the three test procedures. The aforementioned versions of the AHAM, CSA, and ASHRAE test procedures each measure cooling capacity and EER based on an air enthalpy approach that measures the airflow rate, dry-bulb temperature, and water vapor content of air at the inlet and outlet of the indoor (evaporator) side. In addition, for air-cooled portable ACs with cooling capacity less than 135,000 Btu/h, which include the products that are the subject of this NOPR, the indoor air enthalpy results must be validated by measuring cooling capacity by either an outdoor air enthalpy method or a compressor calibration method. As explained in the May 2014 NODA, DOE selected the outdoor air enthalpy method for its investigative testing to minimize test burden because it only requires additional metering components, similar to those used for the indoor air enthalpy method. DOE conducted initial testing according to AHAM PAC-1-2009 to establish baseline capacities and efficiencies of a preliminary sample of test units according to the existing industry test procedures. 79 FR 26639, 26641 (May 9, 2014).

To investigate the contribution of operational factors on the apparent reduction in cooling capacity observed for units in the field, DOE compared the results of AHAM PAC-1-2009 testing with the results of additional testing with a test room calorimeter approach based on ANSI/ASHRAE Standard 16-1983 (RA 99), “Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners” (ANSI/ASHRAE Standard 16-1983), with certain modifications to allow testing of portable ACs. The room calorimeter approach allowed DOE to determine the cooling capacity of a portable AC that accounts for any air infiltration effects and heat transfer to the conditioned space through gaps in the product case and seams in the duct connections, along with an associated

EER. Values of these performance metrics measured accordingly may more accurately reflect real-world portable AC operation. In that test series, DOE also investigated cooling capacity and EER as a function of the infiltration air temperature for single-duct and dual-duct units, and the effect of condenser exhaust air entrainment at the intake for dual-duct portable ACs. DOE presented the results of this preliminary testing in the May 2014 NODA. 79 FR 26639, 26643-26648 (May 9, 2014).

Although AHAM PAC-1-2009, CSA C370-2013, and ANSI/ASHRAE Standard 128-2011, all reference the test setup and methodology from ANSI/ASHRAE Standard 37, AHAM PAC-1-2009 did not specify the particular sections in ANSI/ASHRAE Standard 37 that are to be used. However, AHAM recently published an updated version of its portable AC test procedure, AHAM PAC-1-2014, that references specific sections in ANSI/ASHRAE Standard 37 for equipment setup, cooling capacity determination, power input determination, data recording, and results reporting, consistent with the approach in CSA C370-2013 and ANSI/ASHRAE Standard 128-2011. These clarifications will likely improve testing reproducibility by eliminating different possible interpretations of the provisions to reference from ANSI/ASHRAE Standard 37. AHAM also slightly revised the evaporator inlet and condenser inlet temperatures for its standard rating conditions in AHAM PAC-1-2014, in order to harmonize with the temperatures specified in CSA C370-2013 and ANSI/ASHRAE Standard 128-2011. Conditions that had been specified as 80 degrees Fahrenheit (°F) dry-bulb temperature and 67 °F wet-bulb temperature were adjusted to 80.6 °F/66.2 °F, and conditions that had been specified as 95 °F/75 °F were adjusted to 95 °F/75.2 °F. DOE did not identify other substantive changes between the 2009 and 2014 versions of AHAM PAC-1 that would affect testing results.

For the May 2014 NODA, DOE conducted an initial round of performance testing on a preliminary sample of test units representative of products available at that time on the U.S. market. The test sample included a total of eight portable ACs (four single-duct, two dual-duct, and two spot coolers), covering a range of rated cooling capacities (8,000-13,500 Btu/h) and EERs (7.0-11.2 Btu per watt-hour (Btu/Wh)). Following publication of the May 2014 NODA, DOE performed additional testing on a larger set of test units. This second test sample included a total of eighteen portable ACs; thirteen

⁷ ANSI/ASHRAE Standard 37 was updated in 2009. DOE reviewed the 2005 and 2009 versions and concluded there would be no measurable difference in portable air conditioner results obtained from each. Therefore, DOE utilized ANSI/ASHRAE Standard 37-2009 when testing according to AHAM PAC-1-2009.

single-duct and 5 dual-duct⁸ units, expanding the range of rated cooling capacities (5,000–14,000 Btu/h) and the maximum rated EER to 12.1 Btu/Wh. DOE did not include any spot coolers in the second test sample because it is not proposing testing provisions for them at this time for reasons discussed in section III.A of this NOPR.

Because DOE does not currently regulate portable ACs, manufacturers may advertise or market their products using any available test procedure. For those models that are included in the California Energy Commission (CEC) product database and that are sold in

California, however, manufacturers must report cooling capacity and EER according to ANSI/ASHRAE Standard 128–2001. DOE notes that the cooling capacities and EERs obtained from using ANSI/ASHRAE Standard 128–2001 are higher than those obtained using the current ANSI/ASHRAE Standard 128–2011, primarily due to higher temperature evaporator inlet air in the 2001 version of the test procedure.⁹

Due to the consistent method of reporting performance required by the CEC, DOE selected units for its test sample largely from cooling capacities and EERs listed in the CEC product

database. However, due to the difference in testing temperature, DOE expected that these values would differ from the cooling capacities and EERs that would be obtained using any of the three current industry test methods. For additional products not listed in the CEC product database, DOE utilized information from manufacturer literature to inform its selection.

The 24 test units¹⁰ (comprising the samples from the May 2014 NODA testing and testing for this proposal) and their key features are presented in Table III.1, with cooling capacity expressed in Btu/h and EER expressed in Btu/Wh.

TABLE III.1—PORTABLE AC TEST SAMPLE

Test unit	Duct type	Rated cooling capacity (Btu/h)	Rated EER (Btu/Wh)
SD1 ¹	Single	8,000	7.0
SD2 ¹	Single	9,500	9.6
SD3 ¹	Single	12,000	8.7
SD4 ¹	Single	13,000	9.7
SD5	Single	8,000	10.2
SD6	Single	14,000	8.9
SD7	Single	12,000	8.1
SD8	Single	9,000	9.2
SD9	Single	9,000	10.3
SD10	Single	10,000	9.5
SD11	Single	12,000	12.6
SD12	Single	10,000	8.8
SD13	Single	12,500	³ N/A
SD14	Single	12,000	10.0
SD15	Single	5,000	8.6
SD16	Single	11,000	9.2
SD17	Single	12,000	³ N/A
DD1 ¹	Dual	9,500	9.4
DD2 ¹	Dual	13,000	8.9
DD3	Dual	11,600	8.8
DD4 ²	Dual	14,000	³ N/A
DD5	Dual	9,000	9.2
DD6	Dual	14,000	9.5
DD7	Dual	13,500	9.5

¹ These units were tested and discussed in the May 2014 NODA. This table does not include the two spot coolers that were tested in support of the May 2014 NODA.

² This test unit shipped with the capabilities of operating in both single-duct and dual-duct configuration. Therefore, it was tested according to both configurations.

³ No rated value was published in the CEC database or in manufacturer documentation.

Baseline Testing

DOE first performed testing in accordance with AHAM PAC–1–2009¹¹ to determine baseline performance according to industry standards. This baseline performance was then compared to performance measured

according to modified or alternate test approaches to determine an optimal approach.

AHAM PAC–1–2009 requires two-chamber air enthalpy testing for single-duct and dual-duct units, and a single-chamber setup for spot coolers. For each

ducted configuration, the portable AC and any associated ducting is located entirely within a chamber held at “indoor” standard rating conditions at the evaporator inlet of 80 °F dry-bulb temperature and 67 °F wet-bulb temperature, which correspond to 51-

⁸ One of the dual-duct units was shipped with a conversion kit to enable testing in single-duct configuration. DOE performed all tests on this “convertible” unit in both single-duct and dual-duct configurations.

⁹ ANSI/ASHRAE Standard 128–2011 specifies 80.6 degrees °F dry-bulb temperature and 66.2 °F wet-bulb temperature for the standard rating conditions for the evaporator inlet of dual-duct portable ACs and both the evaporator and condenser inlets of single-duct units. It also specifies standard rating conditions of 95 °F dry-

bulb temperature and 75.2 °F wet-bulb temperature for the condenser inlet side of dual-duct portable ACs and both the evaporator and condenser inlets of spot coolers. ANSI/ASHRAE Standard 128–2001 specifies 95 °F dry-bulb temperature and 83 °F wet-bulb temperature for the standard rating conditions for both the evaporator and condenser inlets of all portable ACs, including spot coolers.

¹⁰ DOE also tested two spot coolers for the May 2014 NODA. However, because DOE is not proposing testing provisions for these units at this

time, the results for those units are not considered further in this analysis.

¹¹ DOE’s testing and analysis was completed prior to the publication of AHAM PAC–1–2014. Because, as discussed earlier, DOE concludes that the differences between the 2009 and 2014 versions of the test standard would not affect testing results substantively, DOE proposes a test procedure in this rule that would reference certain provisions of the current versions of the standard (AHAM PAC–1–2014).

percent relative humidity. For the condenser-side exhaust on single-duct and dual-duct units, the manufacturer-supplied or manufacturer-specified flexible ducting connects the unit under test to a separate test chamber maintained at “outdoor” standard rating conditions. The outdoor conditions specify 95 °F dry-bulb temperature and 75 °F wet-bulb temperature (40-percent relative humidity) at the condenser inlet for dual-duct units. The outdoor conditions for single-duct units, however, are not explicitly specified. AHAM PAC–1–2009 only requires that the condenser inlet conditions, which would be set by air intake from the indoor side chamber, be maintained at 80 °F dry-bulb temperature and 67 °F wet-bulb temperature. Because the single-duct condenser air is discharged to the outdoor side with no intake air from that location, DOE does not believe that the results obtained using AHAM PAC–1–2009 would be measurably affected by the conditions in the outdoor side chamber. Nonetheless, for consistency with the testing of dual-duct units, DOE chose to maintain the outdoor side conditions, measured near to the condenser exhaust but not close enough to be affected by that airflow, at 95 °F dry-bulb temperature and 75 °F wet-bulb temperature.

Section 6.1 of AHAM PAC–1–2009, “Method of Test,” instructs that the details of testing are as specified in ANSI/ASHRAE Standard 37–2005, but does not identify particular provisions to be used other than noting that references in Section 8.5.1 of ANSI/ASHRAE Standard 37–2005 refer to the indoor side (the cooling, or evaporator side) and the outdoor side (the heat rejection, or condenser, side) of the portable AC under test. DOE determined that additional relevant sections to incorporate would include those referring to test setup, test conduct, cooling capacity and power input determination, data recording, and test result reporting. The following paragraphs describe the equivalent clauses from ANSI/ASHRAE Standard 37–2009 that DOE decided were appropriate for conducting its baseline tests for both the May 2014 NODA and this proposal.

The test apparatus (*i.e.*, ducts, air flow-measurement nozzle, and additional instrumentation) were adjusted according to Section 8.6, “Additional Requirements for the Outdoor Air Enthalpy Method,” of ANSI/ASHRAE Standard 37–2009, which ensures that air flow rate and static pressure in the condenser exhaust air stream, and condenser inlet air stream for dual-duct units, are representative of actual installations. The test room conditioning apparatus and the units under test were then operated until steady-state performance was achieved according to the specified test tolerances in Section 8.7, “Test Procedure for Cooling Capacity Tests,” of ANSI/ASHRAE Standard 37–2009. Airflow rate, dry-bulb temperature, and water vapor content were recorded to evaluate cooling capacity at equal intervals that spanned 5 minutes or less until readings over one-half hour were within the same tolerances, as required by that section.

These collected data were then used to calculate total, sensible, and latent indoor cooling capacity based on the equations in Section 7.3.3, “Cooling Calculations,” of ANSI/ASHRAE Standard 37–2009. This section provides calculations to determine indoor cooling capacity based on both the indoor and outdoor air enthalpy methods. As described in Section 7.3.3.3 of ANSI/ASHRAE Standard 37–2009, the indoor air enthalpy cooling capacity calculation was adjusted for heat transferred from the surface of the duct(s) to the conditioned space. DOE estimated a convective heat transfer coefficient of 4 Btu/h per square foot per °F, based on a midpoint of values for forced convection and free convection as recommended by the test laboratory for this specific test and setup. Four thermocouples were placed in a grid on the surface of the condenser duct(s). The heat transfer was determined by multiplying the estimated heat transfer coefficient by the surface area of each component and by the average temperature difference between the duct surface and test chamber air.

Although AHAM PAC–1–2009 specifies in Section 5.1 that the evaporator circulating fan heat shall be included in the total cooling capacity by

means of fan power measurement, DOE selected an alternate calculation that it concluded would provide a more accurate measure of overall heat transfer to the conditioned space. DOE estimated this heat transferred to the conditioned space by monitoring the temperature differential between the case surfaces and the indoor room, with measurements and calculations similar to those used for the ducts. This estimate was made by placing four thermocouples on each surface of the case and measuring the surface area to determine the total heat transfer through the case. This approach directly estimates the heating contribution of all internal components within the case to the cooling capacity, while making no assumption regarding whether the heat from individual components is transferred to the cooling or heat rejection side.

Based on the provisions discussed above, DOE used the following equation when calculating the cooling capacity and EER for portable ACs according to AHAM PAC–1–2009:

$$\text{Cooling Capacity} = Q_{\text{indoor}} - Q_{\text{duct}} - Q_{\text{case}}$$

Where:

Q_{indoor} is the evaporator air enthalpy cooling capacity, in Btu/h, as calculated according to Section 7.3.3.1 of ANSI/ASHRAE 37–2009.

Q_{duct} is the heat transferred from the condenser exhaust duct (and condenser inlet duct for dual-duct units) to the conditioned space, in Btu/h, as calculated according to Section 7.3.3.3 of ANSI/ASHRAE 37–2009.

Q_{case} is the heat transferred from the portable AC case to the conditioned space, in Btu/h, also calculated using the methodology in 7.3.3.3 of ANSI/ASHRAE 37–2009, but using temperature measurements located on the case surfaces rather than the ducts.

From the calculated evaporator air enthalpy cooling capacity, DOE determined the associated EER consistent with the definitions in Sections 3.8 and 3.9 and ratings requirements in Sections 5.3 and 5.4 of AHAM PAC–1–2009. Table III.2 shows the results of the baseline testing for all test units according to AHAM PAC–1–2009, including results from testing for the May 2014 NODA and this proposal.

TABLE III.2—BASELINE TEST RESULTS

Test unit	Duct type	Cooling capacity (Btu/h)	EER (Btu/Wh)
SD1	Single	5,850	6.8
SD2	Single	6,600	7.4
SD3	Single	10,950	7.5
SD4	Single	9,500	6.6
SD5	Single	5,600	8.3

TABLE III.2—BASELINE TEST RESULTS—Continued

Test unit	Duct type	Cooling capacity (Btu/h)	EER (Btu/Wh)
SD6	Single	10,250	8.0
SD7	Single	8,550	6.4
SD8	Single	6,750	5.9
SD9	Single	6,700	6.9
SD10	Single	8,100	8.1
SD11	Single	5,700	5.7
SD12	Single	8,050	7.3
SD13	Single	10,350	8.6
SD14	Single	9,250	8.1
SD15	Single	4,250	8.2
SD16	Single	8,200	7.3
SD17	Single	5,800	6.8
SD18 ¹	Single	7,200	5.4
DD1	Dual	8,600	7.4
DD2	Dual	7,200	5.5
DD3	Dual	5,950	4.8
DD4 ¹	Dual	5,900	4.1
DD5	Dual	5,250	5.3
DD6	Dual	7,450	6.0
DD7	Dual	7,300	5.7

¹ This test unit shipped with the capabilities of operating in both single-duct and dual-duct configuration. Therefore, it was tested according to both configurations.

Calorimeter Method Testing

For the May 2014 NODA and this proposal, DOE further investigated heat transfer effects not currently captured in available portable AC test procedures, through additional testing according to the room calorimeter approach described in the May 2014 NODA. 79 FR 26639, 26644 (May 9, 2014). This approach, adapted from ANSI/ASHRAE Standard 16–1983, used two test chambers, one maintained at the indoor conditions and the other adjusted to maintain the outdoor conditions as specified below. The portable AC under test was located within the indoor test room with the condenser duct(s) interfacing with the outdoor test room by means of the manufacturer-supplied or manufacturer-recommended mounting fixture, unless otherwise noted. Infiltration air from the outdoor chamber at 95 °F dry-bulb and 75 °F wet-bulb (40-percent relative humidity)

was introduced by means of a pressure-equalizing device to the indoor chamber, which was maintained at 80 °F dry-bulb and 67 °F wet-bulb (51-percent relative humidity). The pressure-equalizing device maintained a static pressure differential of less than 0.005 inches of water between the chambers, as specified in Section 4.2.3 of ANSI/ASHRAE Standard 16–1983.

DOE measured all energy consumed by the indoor chamber components to maintain the required ambient conditions while the portable AC under test operated continuously at its maximum fan speed during a 1-hour stable period following a period of no less than 1 hour with stabilized conditions. All heating and cooling contributions to the indoor chamber were summed, including: Chamber cooling, heat transferred through the chamber wall, air-circulation fans, dehumidifiers, humidifiers, and scales. The net indoor chamber cooling was

recorded as the portable AC’s cooling capacity. This approach encompasses all cooling and heating effects generated by the portable AC, including air infiltration effects that are not captured or estimated by the air enthalpy approach.

The test units were installed with the manufacturer-provided ducting, duct attachment collar, and mounting fixture. This test approach included the impacts of heat transfer from the ducts and air leaks in the duct connections and mounting fixture, in addition to heat leakage through the case and infiltration air. Table III.3 shows the measured net cooling capacities and EER values for all units tested according to the calorimeter approach when the infiltration air dry-bulb temperature was 95 °F. Also included are the results for the rated and baseline values. Figure III.1 also presents the comparison of baseline and calorimeter testing results.

TABLE III.3—RATED, BASELINE, AND CALORIMETER RESULTS

Test unit	Cooling capacity (Btu/h)			EER (Btu/Wh)		
	Rated	Baseline	Calorimeter	Rated	Baseline	Calorimeter
SD1	8,000	5,850	-450	7.0	6.8	-0.5
SD2	9,500	6,600	-650	9.6	7.4	-0.7
SD3	12,000	10,950	3,500	8.7	7.5	2.3
SD4	13,000	9,500	1,850	9.7	6.6	1.3
SD5	8,000	5,600	150	10.2	8.3	0.2
SD6	14,000	10,250	3,000	8.9	8.0	2.3
SD7	12,000	8,550	2,850	8.1	6.4	2.1
SD8	9,000	6,750	900	9.2	5.9	0.8
SD9	9,000	6,700	1,050	10.3	6.9	1.1
SD10	10,000	8,100	1,900	9.5	8.1	1.9
SD11	12,000	5,700	1,100	12.6	5.7	1.1
SD12	10,000	8,050	1,600	8.8	7.3	1.5

TABLE III.3—RATED, BASELINE, AND CALORIMETER RESULTS—Continued

Test unit	Cooling capacity (Btu/h)			EER (Btu/Wh)		
	Rated	Baseline	Calorimeter	Rated	Baseline	Calorimeter
SD13	12,500	10,350	3,900	¹ N/A	8.6	3.2
SD14	12,000	9,250	2,300	10.0	8.1	2.0
SD15	5,000	4,250	-2,450	8.6	8.2	-4.7
SD16	11,000	8,200	1,700	9.2	7.3	1.5
SD17	12,000	5,800	-650	¹ N/A	6.8	-0.7
SD18 ²	14,000	7,200	850	¹ N/A	5.4	0.6
DD1	9,500	8,600	3,400	9.4	7.4	2.9
DD2	13,000	7,200	3,450	8.9	5.5	2.6
DD3	11,600	5,950	3,100	8.8	4.8	2.5
DD4 ²	14,000	5,900	2,400	¹ N/A	4.1	1.7
DD5	9,000	5,250	2,700	9.2	5.3	2.8
DD6	14,000	7,450	2,800	9.5	6.0	2.2
DD7	13,500	7,300	4,000	9.5	5.7	3.0

¹ No rated value was published in the CEC database or on manufacturer documentation.

² This test unit shipped with the capabilities of operating in both single-duct and dual-duct configuration. Therefore, it was tested according to both configurations.

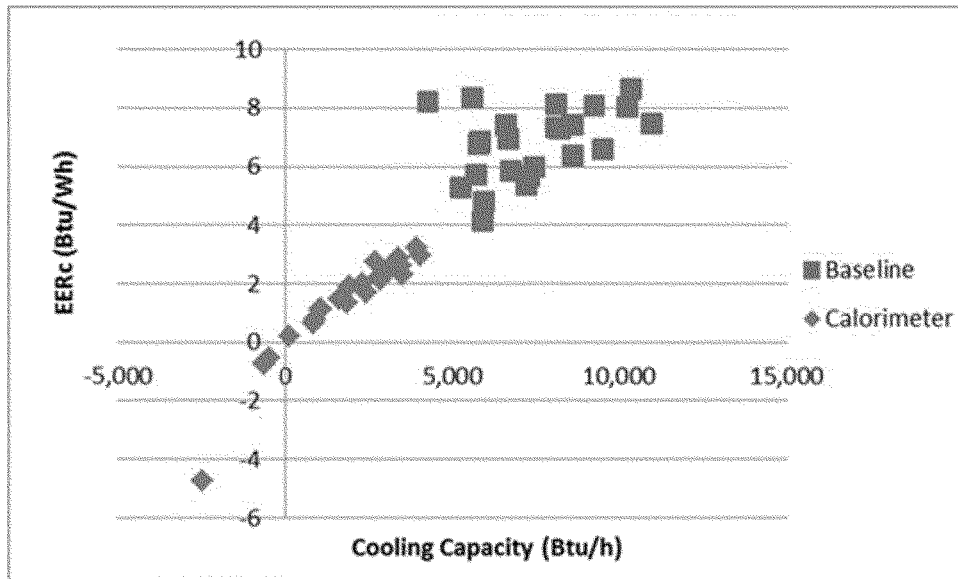


Figure III.1 Baseline and Calorimeter Results

Figure III.1 demonstrates that there is little correlation between EER and cooling capacity for the baseline results when the effects of air infiltration and heat losses are not accounted for. When such effects are included, the values of both EER and cooling capacity are reduced for a given test unit, but the data evidence a clear relationship between EER and cooling capacity. Figure III.1 also demonstrates that the net cooling of portable ACs may be significantly lower than an air enthalpy measurement would suggest, due to the effects of infiltration air. Thus, DOE determined that the existing representations of capacity and EER, which are based on air enthalpy methods, are likely to be inconsistent and may not represent true portable AC performance. Further, the varying

differences between the calorimeter and baseline results indicate that varying infiltration air flow rates and heat losses would preclude a fixed translation factor that could be applied to the results of an air enthalpy measurement to account for the impact of these effects. For these reasons, DOE determined that a DOE test procedure for portable ACs that includes a measure of infiltration air effects and heat losses would provide consistency and clarity for representation of capacity and energy use for these products. Specific proposals for such a test procedure are discussed in the following sections.

i. General Test Approach

As discussed in the previous section, the results from baseline testing according to AHAM PAC-1-2009 and investigative testing according to the

calorimeter approach suggest that the calorimeter approach most accurately represents portable AC performance by accounting for the effects of air infiltration and heat losses.

DOE considered comments received in response to the initial baseline and calorimeter approach results presented in the May 2014 NODA. Appliance Standards Awareness Project, Alliance to Save Energy, American Council for an Energy-Efficient Economy, Consumers Union, Natural Resources Defense Council, and Northwest Energy Efficiency Alliance (hereinafter referred to as the “Joint Commenters”) and the California IOUs observed that the current industry test procedures do not capture the effects of infiltration air and duct heat loss and leakage, which would lead to an overestimation of portable AC

performance in real-world settings. In addition, according to the Joint Commenters, the current industry test procedures do not provide an accurate relative ranking of portable AC units, such that single-duct units appear to be more efficient than dual-duct units. Therefore, the Joint Commenters and the California IOUs urged DOE to adopt a test procedure for portable ACs based on the calorimeter approach, which would align with the current test procedures for room ACs and would better reflect real-world cooling capacities and EERs of both single-duct and dual-duct configurations. The California IOUs commented that because portable ACs can be used as a substitute for room ACs, they support the adoption of a test procedure for portable ACs that would allow consumers to make realistic comparisons of capacity and efficiency between comparable product types. (California IOUs, No. 5 at pp. 2–3; Joint Commenters, No. 6 at pp. 1–2)

AHAM supports the incorporation by reference of AHAM PAC–1–2014, which is harmonized with CSA C370–2013, in a DOE test procedure for portable ACs. AHAM indicated that AHAM PAC–1–2014 best measures representative performance for each portable AC configuration, in comparison to other approaches. AHAM commented that, unlike other air conditioning products, portable ACs are intended to be easily relocated from one room to another and therefore the compressor and condenser are both inside the conditioned room, as opposed to a room AC, where the compressor and condenser are outside the room. Because a portable AC does not operate in between the conditioned and unconditioned space as room ACs do, and instead is located solely in the conditioned space, AHAM believes that the calorimeter approach, intended for room ACs, may not be as representative as the enthalpy approach for portable ACs. AHAM also commented that ANSI/ASHRAE 128–2011 instructs that it is not to be used for portable ACs with cooling capacities less than 65,000 Btu/h, and ANSI/AHAM 128–2001 does not address all portable AC configurations. AHAM noted that Canada may promulgate portable AC standards using CSA C370–2013, and stated that North American harmonization will provide consistency and clarity for regulated parties and consumers in both countries. (AHAM, No. 4 at p. 2) AHAM acknowledged the differences between rated values and baseline test results obtained using AHAM PAC–1–2009, and stated that a conversion factor between rated values and results obtained using its recommended test

procedure, AHAM PAC–1–2014, is not feasible due to the wide range of differences between these values. (AHAM, No. 4 at p. 3)

De' Longhi Appliances s.r.l. (De' Longhi) indicated that the air enthalpy method and a calorimeter method with no air infiltration would ensure levels of reproducibility and repeatability required for regulated products. Further, De' Longhi stated that AHAM PAC–1–2009 and CSA C370–2013 are more suitable for representing performance of all the categories of portable ACs. (De' Longhi, No. 3 at p. 5)

AHAM and De' Longhi also stated that the calorimeter approach is much more burdensome than the air enthalpy approach, requiring more expensive test equipment and longer test times. AHAM believes that adoption of the calorimeter method for testing portable ACs would also require many laboratories to build new test facilities because portable ACs are not currently tested using a calorimeter approach, representing a significant burden. AHAM is also concerned that there are few third-party test laboratories that have the capability to test using a calorimeter approach, which would impact choice and availability for testing. Therefore, AHAM urged DOE to adopt the test approach of AHAM PAC–1–2014 to produce representative test results that are not unduly burdensome to conduct. (AHAM, No. 4 at p. 4) De' Longhi stated that the test burden associated with a test method should be proportionate to the amount of energy consumed by a certain product category. According to De' Longhi, because portable ACs are a small fraction of the air conditioning market with a unique usage pattern, being operated generally for short period of time, the test burden should be minimized. De' Longhi commented that the calorimeter method would result in an unreasonably large burden for this product category, and therefore, the air enthalpy method is preferable due to the higher availability of testing apparatus and lower cost of testing. (De' Longhi, No. 3 at p. 3)

The results presented in Table III.3 and displayed in Figure III.1 demonstrate that the calorimeter method provides a measure of net portable AC cooling capacity and EER across different product configurations and varying air infiltration rates that is comparable to the performance trends obtained according to AHAM PAC–1–2009. However, DOE found in its testing that, although equipment setup is simpler for the calorimeter approach as based on ANSI/ASHRAE Standard 16 requirements, maintaining the conditions in a calorimeter chamber can

be difficult, particularly at higher test unit cooling capacities. In those cases, additional climate control components may be necessary, all of which must be monitored to measure the heat transfer to and from the indoor side test room. These additional components may include air circulating fans to ensure conditions are uniform throughout the test room, humidifiers and dehumidifiers to maintain the necessary relative humidity, and scales to measure the evaporated or condensed moisture during testing. Incorporating the heating and cooling effects from each of these components proved to be complex, with potential uncertainties in the net cooling capacity accumulating with each additional component. After considering the burdens and complexity of the calorimeter approach, DOE determined the air enthalpy approach provided in AHAM PAC–1–2009 and AHAM PAC–1–2014 to be a less burdensome approach. Although AHAM PAC–1–2014 requires comprehensive instrumentation to monitor air stream enthalpies and specific measures to ensure that this instrumentation has no impact on performance, it also provides a straight-forward calculation for determining indoor-side cooling based on a well-defined set of variables. Many of the instruments required for the air enthalpy approach, as specified in ANSI/ASHRAE Standard 37, are used in testing central ACs and heat pumps, and ANSI/ASHRAE Standard 37 is also referenced in the DOE test procedure to determine energy consumption of furnace fans. Thus, DOE believes that many commercial laboratories have the capability to perform the air enthalpy test, while few laboratories in the United States have the test chamber and instrumentation required to test according to the calorimeter approach. In addition, the air enthalpy approach, as specified in ANSI/ASHRAE Standard 37 with additional guidance in AHAM PAC–1–2014, is specifically applicable for testing portable ACs, while the calorimeter approach requires modifications from the room AC test procedure specified in ANSI/ASHRAE 16 to accommodate portable ACs.

Therefore, if DOE determines that portable ACs are covered products and establishes a test procedure for them, DOE proposes that AHAM PAC–1–2014 be the basis of the DOE test procedure to ensure that multiple labs are capable of performing the test, to minimize added test burden, and to align with current industry practices. However, as described in the remaining subsections of section III.1.a, DOE believes that additional provisions and clarifications

would be necessary to incorporate AHAM PAC-1-2014 into a DOE portable AC test procedure.

ii. Infiltration Air Effects and Cooling Capacity

Infiltration from outside the conditioned space in which the portable AC is located occurs due to the negative pressure induced as condenser air is exhausted to the outdoor space. Although this effect is most pronounced for single-duct units, which draw all of their condenser air from within the

conditioned space, dual-duct units also draw a portion of their condenser air from the conditioned space. In its testing, DOE estimated the infiltration air flow rate as equal to the condenser exhaust flow rate to the outdoor chamber minus any condenser intake flow rate from the outdoor chamber because it had determined that air leakage from the outdoor chamber to locations other than the indoor chamber was negligible.

For a single-duct unit, the air balance equation results in the infiltration air

flow rate being equal to the condenser exhaust air flow rate. For dual-duct units, the condenser exhaust duct flow rate may be higher than the inlet duct flow rate. This is due to some intake air being drawn from the indoor chamber via louvers or leakage through the case, duct connections, or between the evaporator and condenser sections. Table III.4 presents the estimated infiltration air flow rates for the full test sample.

TABLE III.4—INFILTRATION AIR FLOW RATE

Test unit	Condenser outlet air flow rate (CFM)	Condenser inlet air flow rate (CFM) *	Net infiltration air flow rate (CFM)
SD1	268.03		268.03
SD2	262.59		262.59
SD3	285.45		285.45
SD4	254.30		254.30
SD5	217.77		217.77
SD6	228.43		228.43
SD7	221.83		221.83
SD8	224.61		224.61
SD9	229.09		229.09
SD10	220.80		220.80
SD11	175.07		175.07
SD12	237.37		237.37
SD13	247.39		247.39
SD14	262.52		262.52
SD15	278.89		278.89
SD16	250.69		250.69
SD17	249.37		249.37
SD18	246.48		246.48
Average of Single-Duct			242.26
DD1	271.85	170.79	101.06
DD2	214.83	128.05	86.78
DD3	234.87	146.29	88.58
DD4	251.67	126.60	125.07
DD5	207.85	113.15	94.71
DD6	272.43	76.61	195.82
DD7	244.47	107.49	136.99
Average of Dual-Duct			118.43

* Condenser inlet air flow rate is only applicable for dual-duct units.

As discussed in the May 2014 NODA, DOE investigated various infiltration air temperatures. In its initial calorimeter tests, DOE maintained the outdoor test chamber conditions at 95 °F dry-bulb temperature and 75 °F wet-bulb temperature, which would be representative of outdoor air being drawn directly into the conditioned space to replace any condenser inlet air from that same conditioned space. However, it is possible that some or all of the replacement air is drawn from a location other than the outdoors directly, such as a basement, attic, garage, or a space that is conditioned by other equipment. Because varying

infiltration air temperature would have a significant impact on cooling capacity and EER, DOE performed additional testing over a range of dry-bulb temperatures for the infiltration air that spanned 78 °F to 95 °F, all at the 40-percent relative humidity specified at the 95 °F condition. 79 FR 26639, 26646 (May 9, 2014).

In response to the May 2014 NODA, the Joint Commenters and California IOUs stated that the current industry standard outdoor air conditions (95 °F dry-bulb temperature and 75 °F wet-bulb temperature) are appropriate for infiltration air. (Joint Commenters, No. 6 at p. 3; California IOUs, No. 5 at p. 3)

The Joint Commenters added that although some or all of the infiltration air may be drawn from a location other than the outdoors directly, such as a basement, attic, garage, or a space that is conditioned by other equipment, all infiltration air is ultimately coming from the outdoors and adding heat to the home where the portable AC is installed. (Joint Commenters, No. 6 at p. 3)

AHAM stated that in the field, there is a mixture of indoor and outdoor air, and infiltration air will be at different temperature and humidity levels in every home, due to varying home designs. Therefore, AHAM does not

believe there is an “average” condition that DOE could select to replicate in a test procedure condition and would not support an approach that utilizes existing test procedures with numerical adjustments for infiltration air. (AHAM, No. 4 at p. 5) De’ Longhi concurred, stating that the effect of air infiltration would be complex to standardize. De’ Longhi commented that air infiltration flow pathways are determined by the path of minimum air flow resistance, and therefore it is not possible to determine the amount of infiltration air that originates from adjacent indoor rooms versus from outdoors. De’ Longhi believes that in most situations, unconditioned outdoor air is just a small portion of the total infiltration air. Accordingly, De’ Longhi stated that the standard outdoor air conditions of 95 °F dry-bulb temperature and 75 °F wet-bulb temperature are not representative of the infiltration air temperatures. De’ Longhi suggested that if DOE determines to include portable ACs as a covered product, the heat transfer effects of infiltration air should not be taken into account in a DOE test procedure. (De’ Longhi, No. 3 at p. 4) DOE agrees that, as for all covered products, real-world installations

experience varying ambient conditions. The test procedure must thus consider the most representative operation in selecting appropriate specifications for those conditions. Recognizing that in some cases the infiltration air enters the conditioned space directly from outdoors, and that any air infiltrating from other conditioned spaces likely also originated from outdoors before being conditioned by other cooling equipment, DOE concludes that 95 °F dry-bulb temperature and 75 °F wet-bulb temperature is most representative for infiltration air conditions, in accordance with the outdoor conditions specified in AHAM PAC–1–2014, and proposes to specify these conditions in the portable AC test procedure. Such conditions would also produce comparable results for single-duct and dual-duct configurations.

DOE also developed methodology for the May 2014 NODA that would adjust the results obtained from an air enthalpy method to account for the total heat added to the room by the infiltration air. The infiltration air mass flow rate of dry air would be calculated as:

$$\dot{m}_{sd} = \frac{V_{co} \times \rho_{co}}{(1 + \omega_{co})}$$

$$\dot{m}_{dd} = \left[\frac{V_{co} \times \rho_{co}}{(1 + \omega_{co})} \right] - \left[\frac{V_{ci} \times \rho_{ci}}{(1 + \omega_{ci})} \right]$$

Where:

\dot{m}_{sd} is the dry air mass flow rate of infiltration air for a single-duct unit, in pounds per minute (lb/m).

\dot{m}_{dd} is the dry air mass flow rate of infiltration air for a dual-duct unit, in lb/m.

V_{co} is the volumetric flow rate of the condenser outlet air, in cubic feet per minute (cfm).

V_{ci} is the volumetric flow rate of the condenser inlet air, in cfm.

ρ_{co} is the density of the condenser inlet air, in pounds mass per cubic feet (lb_m/ft³).

ρ_{ci} is the density of the condenser inlet air, in lb_m/ft³.

ω_{co} is the humidity ratio of condenser outlet air, in pounds mass of water vapor per pounds mass of dry air (lb_w/lb_{da}).

ω_{ci} is the humidity ratio of condenser inlet air, in lb_w/lb_{da}.

The sensible heat contribution of the infiltration air would be calculated as follows:

$$Q_s = \frac{\dot{m} \times \left[\left(c_{p_da} \times (T_{ia} - T_{ei}) \right) + c_{p_wv} \times (\omega_{ia} \times T_{ia} - \omega_{ei} \times T_{ei}) \right]}{60}$$

Where:

Q_s is the sensible heat added to the room by infiltration air, in Btu/h;

\dot{m} is the dry air mass flow rate of infiltration air for a single-duct or dual-duct unit, in lb/m;

c_{p_da} is the specific heat of dry air, 0.24 Btu/lb_m °F.

c_{p_wv} is the specific heat of water vapor, 0.444 Btu/lb_m °F.

ω_{ia} is the humidity ratio of the infiltration air, 0.0141 lb_w/lb_{da}.

ω_{ei} is the humidity ratio of the evaporator inlet air, in lb_w/lb_{da}.

60 is the conversion factor from minutes to hours.

T_{ei} is the indoor chamber dry-bulb temperature measured at the evaporator inlet, in °F.

T_{ia} is the infiltration air dry-bulb temperature, 95 °F.

DOE used the following equation for the latent heat contribution of the infiltration air:

$$Q_l = \frac{\dot{m} \times H_{fg} \times (\omega_{ia} - \omega_{ei})}{60}$$

Where:

Q_l is the latent heat added to the room by infiltration air, in Btu/h.

\dot{m} is the mass flow rate of infiltration air for a single-duct or dual-duct unit, in lb/m.

ω_{ia} is the humidity ratio of the infiltration air, 0.0141 lb_w/lb_{da}.

ω_{ei} is the humidity ratio of the evaporator inlet air, in lb_w/lb_{da}.

H_{fg} is the latent heat of vaporization for water vapor, 1061 Btu/lb_m.

60 is the conversion factor from minutes to hours.

The total heat contribution of the infiltration air is the sum of the sensible and latent heat.

$$Q_{infiltration} = Q_s + Q_l$$

Where:

$Q_{infiltration}$ is the total infiltration air heat, in Btu/h.

Q_s is the sensible heat added to the room by infiltration air, in Btu/h.

Q_l is the latent heat added to the room by infiltration air, in Btu/h.

Table III.5 displays the cooling capacity as determined by the baseline air enthalpy testing approach of AHAM PAC–1–2009, and the modified air enthalpy approach that subtracts the estimated infiltration air heat input from the cooling capacity measurement.

TABLE III.5—MODIFIED AIR ENTHALPY PERFORMANCE

Test unit	Cooling capacity (Btu/h)		EER _{cm} (Btu/Wh)	
	Baseline	Modified AHAM	Baseline	Modified AHAM
SD1	5,850	–900	6.8	–1.0
SD2	6,600	200	7.4	0.2
SD3	10,950	4,050	7.5	2.8

TABLE III.5—MODIFIED AIR ENTHALPY PERFORMANCE—Continued

Test unit	Cooling capacity (Btu/h)		EER _{cm} (Btu/Wh)	
	Baseline	Modified AHAM	Baseline	Modified AHAM
SD4	9,500	4,000	6.6	2.8
SD5	5,600	400	8.3	0.6
SD6	10,250	4,750	8.0	3.7
SD7	8,550	3,500	6.4	2.6
SD8	6,750	1,500	5.9	1.3
SD9	6,700	1,150	6.9	1.2
SD10	8,100	2,750	8.1	2.7
SD11	5,700	1,350	5.7	1.4
SD12	8,050	2,250	7.3	2.0
SD13	10,350	4,450	8.6	3.7
SD14	9,250	2,800	8.1	2.4
SD15	4,250	-2,900	8.2	-5.6
SD16	8,200	2,200	7.3	2.0
SD17	5,800	-850	6.8	-1.0
SD18	7,200	1,300	5.4	1.0
DD1	8,600	6,550	7.4	5.6
DD2	7,200	5,500	5.5	4.2
DD3	5,950	4,150	4.8	3.4
DD4	5,900	3,100	4.1	2.2
DD5	5,250	3,200	5.3	3.2
DD6	7,450	2,800	6.0	2.2
DD7	7,300	4,200	5.7	3.3

The data above show the significant reduction in cooling capacity and EER_{cm} caused by infiltration air heat input, which is greater for single-duct units than for dual-duct units. For three of the single-duct units, the impacts of infiltration air were so great that they produced net heating in the conditioned space, as indicated by the negative cooling capacity values.

In response to this approach, which was presented in the May 2014 NODA, the Joint Commenters stated that this modified air enthalpy testing approach is not a suitable alternative to the proposed calorimeter approach. According to the Joint Commenters, the alternate testing approach would provide a significant improvement over the current industry test procedures by addressing the impact of infiltration air with a numerical adjustment, but the alternate testing approach fails to capture additional impacts on portable AC performance such as leakage through gaps in the ducts and duct connections and heat transfer through the ducts. The Joint Commenters expressed concern that DOE found no consistent difference between the calorimeter approach and the alternate test approach, and therefore believe the alternate test approach would not necessarily provide a good indication of real-world portable AC performance. Although the alternate testing approach may represent a lower testing burden compared to the calorimeter approach, the Joint Commenters reminded DOE that the current room AC test procedure

is based on a calorimeter approach, and stated that the calorimeter approach is also appropriate for portable ACs. (Joint Commenters, No. 6 at p. 3)

DOE recognizes that the modified air enthalpy approach and calorimeter approach both greatly reduce the cooling capacity and EER_{cm} when compared with the results from AHAM PAC-1-2014 and other current industry-accepted test procedures that do not address infiltration air. Based on the data presented above and comments received from interested parties and manufacturer interviews, DOE believes that any portable AC test procedure must include the heat transfer effects of infiltration air, in addition to the effects of duct and case heat transfer, discussed later in this NOPR. DOE also recognizes that the results produced by the calorimeter and modified air enthalpy approaches do not align. However, as discussed earlier in this section, DOE found it difficult to maintain the test chamber conditions for the calorimeter approach, particularly for higher-capacity portable ACs. Due to significant infiltration of air at conditions substantially different than the required indoor-side test chamber conditions, additional air conditioning equipment is required to maintain the indoor-side test chamber conditions, all of which must be accounted for in determining the net heating or cooling effect in the test chamber. DOE believes the cumulative uncertainty related to incorporating the heating and cooling effects from each of these components

may have been significant enough to have resulted in the inconsistency between the calorimeter and modified air enthalpy approaches. The modified air enthalpy approach accounts for the major heating and cooling effects of the portable AC with direct measurements of the product air streams and temperature measurements of the case and ducts. Therefore, DOE is confident in the accuracy of the results from this test approach.

Based on the significant heat input from infiltration air seen from testing, DOE determined that applying such a numerical adjustment for infiltration air to the results of testing with AHAM PAC-1-2014 would accurately reflect portable AC performance. Therefore, DOE proposes the adjusted cooling capacity be determined as follows:

$$\text{Adjusted Cooling Capacity} = \text{Capacity}_{cm} - Q_{infiltration} - Q_{misc}$$

Where:

Capacity_{cm} is the cooling capacity as determined in accordance with AHAM PAC-1-2014.

Q_{infiltration} is the sum of sensible (Q_s) and latent (Q_l) heat transfer from infiltration air, as calculated above.

Q_{misc} is the impact of other heat transfer effects, discussed in the following sections.

iii. Test Conditions

AHAM PAC-1-2014 requires two-chamber air enthalpy testing in which the “indoor” standard rating conditions are maintained at the evaporator inlet of 80.6 °F dry-bulb temperature and 66.2

°F wet-bulb temperature, which correspond to approximately 46-percent relative humidity. For single-duct units, the condenser inlet conditions are the same as the evaporator inlet. For dual-duct units, the outdoor conditions, as monitored at the interface between the condenser inlet duct and outdoor test room, must be maintained at 95 °F dry-bulb temperature and 75.2 °F wet-bulb temperature (40-percent relative humidity). Because these conditions are close to those required by the DOE room

air conditioner test procedure (80 °F dry-bulb temperature and 67 °F wet-bulb temperature on the indoor side, and 95 °F dry-bulb temperature and 75 °F wet-bulb temperature on the outdoor side), test results obtained for portable ACs under the proposed test procedure would be comparable to those for room ACs, which would allow consumers to directly compare these product types. Therefore, DOE proposes to utilize the following ambient conditions presented in

Table III.6 below, based on those test conditions specified in Table 3, “Standard Rating Conditions,” of AHAM PAC–1–2014. The test configurations in

Table III.6 refer to the test configurations referenced in Table 2 of AHAM PAC–1–2014, with Test Configuration 3 applicable to dual-duct portable ACs and Test Configuration 5 applicable to single-duct portable ACs.

TABLE III.6—STANDARD RATING CONDITIONS—COOLING MODE

Test configuration	Evaporator inlet air, °F (°C)		Condenser inlet air, °F (°C)	
	Dry bulb	Wet bulb	Dry bulb	Wet bulb
3	80.6 (27)	66.2 (19)	95.0 (35)	75.2 (24)
5	80.6 (27)	66.2 (19)	80.6 (27)	66.2 (19)

For single-duct units, AHAM PAC–1–2014 specifies identical evaporator and condenser inlet conditions, with the same allowable tolerances on the dry-bulb and wet-bulb temperatures. Depending upon the airflow and unit configuration, the evaporator and condenser inlet may be directly adjacent to one another or on opposite faces of the test unit case. Thus, although both evaporator and condenser inlets intake air from the same conditioned space, it is possible that the two inlet air conditions may not simultaneously meet the requirements in AHAM PAC–1–2014 due to slight non-homogeneity in the test chamber, even if one or the other inlet is within tolerance.

Table 2b in Section 8.7 of ANSI/ASHRAE Standard 37–2009, referenced by AHAM PAC–1–2014, specifies that both condenser inlet and evaporator inlet dry-bulb temperatures must be maintained within a range of 2.0 °F and an average within 0.5 °F of the nominal values. However, test chambers may experience varying levels of homogeneity in test conditions and test laboratories may differently prioritize maintaining conditions at either the condenser inlet or evaporator inlet. Therefore, to ensure repeatability and reproducibility, DOE proposes in this NOPR to specify a more stringent tolerance for the evaporator inlet dry-bulb that is consistent with the evaporator inlet wet-bulb temperature tolerance, within a range of 1.0 °F with an average difference of 0.3 °F. The condenser inlet dry-bulb temperature would be maintained within the test tolerance as specified in Table 2b of ANSI/ASHRAE Standard 37–2009. This tolerance modification will ensure that all test laboratories employ the same

approach in testing, to first maintain the evaporator inlet test conditions and then ensure that condenser inlet conditions satisfy the tolerance requirements.

As discussed in the May 2014 NODA, portable AC manufacturers typically provide a single mounting fixture for dual-duct units that houses both the condenser inlet and exhaust ducts to minimize installation time and optimize the use of window space. However, this approach typically positions the condenser inlet and exhaust directly adjacent to one another. During operation when installed in the field, short-circuiting may occur between some of the condenser exhaust air and the outdoor ambient air. DOE investigated the effects of potential condenser inlet and exhaust mixing and results indicated that there was minimal mixing between the condenser exhaust and inlet air flows. 79 FR 26639, 26648 (May 9, 2014).

In response to the May 2014 NODA, De’ Longhi commented that the condenser inlet and exhaust mixing only has a minimal influence as reported by DOE results. (De’ Longhi, No. 3 at p. 4) AHAM agreed with DOE’s conclusion that condenser exhaust air and inlet air mixing in dual-duct units need not be addressed or measured in a portable AC test procedure. (AHAM, No. 4 at p. 5)

iv. Duct Heat Transfer and Leakage

In response to the May 2014 NODA, the California IOUs commented that it is unclear if there is a standard test set-up in regards to length of ducting and distance from the portable AC to the outdoor chamber. They suggested that DOE should address alignment of the portable AC and the associated ducting,

in relation to the outdoor chamber, including distance, duct length, duct insulation, and duct configuration (e.g., inclusion of bends). (California IOUs, No. 5 at p. 3) Section 7.3.7 and Figure 2 of AHAM PAC–1–2014 address the required ducting arrangement and specifies the duct height, duct length, and spacing of the test unit in relation to the chamber walls. Additionally, duct insulation and unit placement are further discussed in this section and section III.B.1.a.viii of this NOPR.

DOE also received comments from AHAM and De’ Longhi expressing concern about including in a portable AC test procedure the effects of heat loss through minimally insulated ducts. They commented that there is no standardized method to account for such heat loss and that incorporating duct heat loss and leakage would impact test reproducibility and repeatability. AHAM stated that the approach DOE used in its investigative testing for estimating duct heat transfer is overly complicated and unnecessary. Accordingly, AHAM and De’ Longhi suggested that the DOE test procedure should not address these factors. (AHAM, No. 4 at pp. 3–4; De’ Longhi, No. 3 at p. 3)

As discussed in the May 2014 NODA, DOE investigated cooling performance impacts of uninsulated ducts and any air leakage at the duct connections or mounting fixtures. To quantify the heat transfer to the conditioned space through the minimally insulated condenser duct(s) and from any leaks at the duct connections or mounting fixture, DOE repeated the calorimeter testing with insulation surrounding the condenser ducts to benchmark results without this heat transfer for the initial

four single-duct and two dual-duct test units. DOE used insulation having a nominal R value of 6 (in units of hours-°F-square feet per Btu), with seams around the duct, adapter, and mounting bracket sealed with tape to minimize air leakage. To determine duct losses and air leakage effects, DOE compared results from these tests to the results from the initial calorimeter approach tests with no insulation. DOE found that uninsulated ducts and leaks in duct connections contribute anywhere from 460 to 1,300 Btu/h, which correlate to percentages of uninsulated cooling capacity that range from 18 to 199 percent. 79 FR 26639, 26645 (May 9, 2014). Therefore, DOE determined that duct heat losses and air leakage are non-negligible effects, and that duct configurations during the DOE test must be representative of actual usage. In addition, DOE notes that Section 7.3.3 of AHAM PAC-1-2014 states that “the portable AC shall be tested with clean filters in place as supplied by the manufacturer. Other equipment recommended as part of the air conditioner shall be in place, as well.” DOE proposes, therefore, that all ducting components (e.g., duct, duct connections, and mounting bracket) as supplied by the manufacturer would be used for determining performance and would be installed in accordance with the manufacturer instructions. No additional sealing or insulation would be applied.

Section 7.3.3.3 of ANSI/ASHRAE Standard 37, as referenced by AHAM PAC-1-2014, specifies that the indoor cooling capacity shall be adjusted for heat transferred from the surface of ducts to the conditioned space. DOE recognizes that additional guidance may be necessary to determine such an adjustment, and for this reason proposes to account for heat transferred from the duct surface to the conditioned space in a portable AC test procedure methodology.

DOE proposes that four equally spaced thermocouples be adhered to the side of the entire length of the condenser exhaust duct for single-duct units and to each of the condenser inlet and exhaust ducts for dual-duct units. To ensure accurate heat transfer estimates, DOE proposes that temperature measurements would be required to have an accuracy to within ±0.5 °F. DOE proposes to average the four surface temperatures measurements to obtain T_{duct} for each duct. DOE further proposes that a convection heat transfer coefficient of 4 Btu/h per square foot per °F be used, based on an average of values for forced convection and free convection. The surface area of each duct would be calculated as follows:

$$A_{\text{duct}_j} = \pi \times d_j \times L_j$$

Where:

- d_j is the outer duct diameter of duct “j”.
- L_j is the extended length of duct “j” while under test.
- j represents the condenser exhaust duct and, for dual-duct units, condenser inlet duct.

Heat transferred from the surface of the duct(s) to the indoor conditioned space while operating in cooling mode shall be calculated as follows:

$$Q_{\text{duct_cm}} = \sum_j \{h \times A_{\text{duct}_j} \times (T_{\text{duct}_j} - T_{ei})\}$$

Where:

- Q_{duct_cm} is the total heat transferred from the duct(s) to the indoor conditioned space in cooling mode.
- h is the convection coefficient, 4 Btu/h per square foot per °F.
- A_{duct_j} is the surface area of duct “j”, in square feet.
- T_{duct_j} is the average surface temperature for duct “j”, in °F.
- j represents the condenser exhaust duct and, for dual-duct units, condenser inlet duct.
- T_{ei} is the average evaporator inlet dry-bulb temperature, in °F.

v. Case Heat Transfer

As discussed previously in section III.B.1.a, DOE baseline testing incorporated a case heat transfer calculation, similar to that required to determine the heat transfer from the duct to the conditioned space in ANSI/AHAM Standard 37-2009, in lieu of the evaporator circulating fan heat measurement specified in AHAM PAC-1-2014. To determine case heat transfer, DOE placed four thermocouples on each face of the case to calculate average surface temperatures throughout the cooling mode test period. Table III.7 shows the average surface temperatures during the baseline testing for all single-duct and dual-duct test units.

TABLE III.7—COOLING MODE CASE SURFACE TEMPERATURES

Test unit	Average surface temperature during AHAM test (°F)						Average
	Top	Front	Right	Back	Left	Bottom	
SD1	79.4	81.6	81.5	81.3	81.9	84.2	81.7
SD2	79.6	79.0	80.9	89.2	91.5	88.5	84.8
SD3	76.6	82.3	80.0	82.3	84.9	83.0	81.5
SD4	73.0	85.3	92.2	82.9	82.7	84.8	83.5
SD5	77.9	81.3	82.3	83.6	82.4	89.8	82.9
SD6	72.8	80.5	78.5	81.7	81.9	86.0	80.2
SD7	73.2	82.8	82.7	81.4	78.2	87.7	81.0
SD8	88.6	79.7	84.2	91.2	87.8	77.3	84.8
SD9	78.2	85.0	77.8	86.0	80.5	93.3	83.5
SD10	76.8	91.4	84.3	84.5	85.0	97.4	86.6
SD11	79.8	87.7	85.4	84.5	87.6	90.6	85.9
SD12	72.7	82.2	80.8	81.8	80.3	81.2	79.8
SD13	72.8	79.7	81.1	81.8	82.2	83.7	80.2
SD14	75.6	78.9	79.2	84.1	81.5	81.8	80.2
SD15	79.9	83.7	81.1	81.4	85.9	80.6	82.1
SD16	75.5	88.1	88.1	80.3	81.7	84.5	83.0
SD17	80.3	80.0	83.4	94.9	91.0	95.1	87.4
SD18	76.4	78.8	79.1	81.4	78.9	87.2	80.3
DD1	75.1	78.0	80.2	82.7	80.5	81.4	79.7
DD2	80.8	75.9	80.6	86.7	81.0	87.7	82.1
DD3	76.7	80.2	80.7	86.4	81.8	81.4	81.2
DD4	78.2	79.8	80.3	85.2	79.9	89.2	82.1
DD5	75.7	77.0	82.2	84.6	83.2	85.1	81.3
DD6	76.7	78.3	81.0	85.1	79.0	78.1	79.7
DD7	74.4	83.3	79.6	88.0	76.9	80.3	80.4

TABLE III.7—COOLING MODE CASE SURFACE TEMPERATURES—Continued

Test unit	Average surface temperature during AHAM test (°F)						Average
	Top	Front	Right	Back	Left	Bottom	
Average	77.1	81.6	81.9	84.5	82.7	85.6	.....

As shown in Table III.7, surface temperature varies significantly among different case surfaces of a given test unit during cooling mode, and that variation is a function of the particular test unit. For example, temperatures on test unit SD1 ranged from a top surface temperature of 79.4 °F to a bottom side temperature of 84.2 °F, a range of 4.8 °F, while test unit SD10 had a top surface temperature of 76.8 °F and a bottom side temperature of 97.4 °F, a range of 20.7 °F. Because each surface on a given test unit has a unique surface area and average surface temperature, DOE proposes that the heat transfer from the case to the ambient indoor space be calculated individually for each surface.

In response to the same methodology proposed in the May 2014 NODA, AHAM commented that this approach for estimating case heat transfer is overly complicated and unnecessary. AHAM believes that the approach in AHAM PAC–1–2014, which directly measures the evaporator circulating fan heat, is easier and simpler. AHAM also stated that DOE’s method would introduce unnecessary variation in test results. (AHAM, No. 4 at p. 3)

DOE acknowledges that the proposed case heat transfer approach would require additional instrumentation. However, DOE believes that the testing burden imposed by the use of multiple thermocouples to measure surface temperatures is likely outweighed by the benefit of addressing the heat transfer effects of all internal heating components. In contrast, AHAM PAC–1–2014 only considers the evaporator fan heat, which is just one of the components that generates heat internally. Further, the proposed surface temperature approach would provide a direct measure of the overall heat transfer of heat-contributing components within the case to the room, without assuming the proportion of heat transferred to either the cooling or heat rejection side.

Therefore, DOE proposes in this NOPR that cooling mode testing include case surface heat transfer measured by means of four evenly spaced thermocouples placed on each case surface. The thermocouples would be positioned such that the case surface, when divided into quadrants, contains at least one thermocouple in each

quadrant. If even spacing would result in a thermocouple being placed on an air inlet or exhaust grille, the thermocouple would be placed adjacent to the inlet or exhaust grille, maintaining the even spacing as closely as possible. To ensure accurate heat transfer estimates, DOE proposes to specify that temperature measurements be accurate to within ±0.5 °F. DOE further proposes to average the four surface temperatures measurements on each side to obtain T_{case} for that side.

The surface area of each case side, $A_{case,k}$, would be calculated as the product of the two primary surface dimensions, as follows:

$$A_{case,k} = D_{1,k} \times D_{2,k}$$

Where:

D_1 and D_2 are the two primary dimensions of the case side “k” exposed to ambient air. k represents the case sides including, front, back, right, left, top, and bottom.

Heat transferred from all case sides to the indoor conditioned space would be calculated according to the following:

$$Q_{case,cm} = \sum_k \{ h \times A_{case,k} \times (T_{case,k} - T_{ei}) \}$$

Where:

$Q_{case,cm}$ is the total heat transferred from all case sides to the indoor conditioned space in cooling mode.

h is the convection coefficient, 4 Btu/h per square foot per °F.

k represents the case sides including: front, back, right, left, top, and bottom.

$A_{case,k}$ is the surface area of case side “k”, in square feet.

$T_{case,k}$ is the average surface temperature of case side “k”, in °F.

T_{ei} is the average evaporator inlet air dry-bulb temperature, in °F.

vi. Condensate Collection

Many portable ACs include a feature to re-evaporate the condensate and remove it from the indoor space through the condenser exhaust air stream. This feature is performed by slinging or directing condensate that collects and drips off of the evaporator on to one or multiple condenser coil surfaces. All units in DOE’s test sample included this feature. In the event that the condensate collection rate exceeds the removal rate of the auto-evaporation feature and the internal condensate collection bucket fills, all of the units provide a drain option to remove the collected condensate. Portable ACs typically ship

with this drain sealed with a temporary plug, although a consumer-supplied drain line may also be installed. Manufacturer setup instructions typically do not specify that a drain line be installed during normal operation, relying primarily instead on the auto-evaporative condensate removal feature.

In response to the May 2014 NODA, the California IOUs confirmed DOE’s research and indicated that there are different methods of handling condensate. Units may include an internal reservoir with a fill sensor to interrupt operation until the reservoir is emptied, a heater to re-evaporate the water into the exhaust air stream, or slingers that pass the condensate over the condenser to re-evaporate condensate and improve heat transfer. The California IOUs recommended that DOE address the different means of condensate handling. (California IOUs, No. 5 at p. 4) DOE agrees that a portable AC test procedure should recognize various methods of condensate removal to ensure comparable results among units with different condensate removal approaches.

DOE’s investigative testing was conducted with a drain line attached to simplify condensate draining if necessary, but the line was elevated to simulate testing with the drain plug in place. Nonetheless, DOE observed that the auto-evaporation feature was effective for all test units under testing conditions so that no unit cycled off due to a full condensate bucket. Therefore, DOE proposes that the portable AC under test be set up in accordance with manufacturer instructions. If an auto-evaporative feature is provided along with a condensate drain, and the drain setup is unspecified, the drain plug would remain in place as shipped and no means of condensate removal would be installed for the duration of cooling mode testing. If the internal bucket fills during testing, the test would be invalid and halted, the drain plug would be removed, means would be provided to drain the condensate from the unit, and the test would be started from the beginning.

Section 7.1.2 of AHAM PAC–1–2014 contains provisions for portable ACs that incorporate condensate pumps that cycle to dispose condensate collected by the unit. DOE found through market

research and by investigating units in its test sample that units that include a condensate pump typically include an auto-evaporative feature. However, the activation of the condensate pump may differ in different operating modes. For example, one unit in DOE's sample activated the condensate pump only in heating mode, with condensate removed solely via auto-evaporation in cooling mode. DOE did not observe any units in its test sample that depended upon only a condensate pump for removing condensate during cooling mode.

Section 6.3.3 of AHAM PAC-1-2014 states that ". . . equipment recommended as part of the air conditioner shall be in place." Therefore, DOE proposes that portable AC cooling mode testing would be performed in accordance with manufacturer installation and setup instructions, unless otherwise specified in the DOE test procedure. In addition, where available and as instructed by the manufacturer, DOE proposes that the auto-evaporation feature would be utilized for condensate removal during cooling mode testing. If no auto-evaporative feature is available, the gravity drain would be used. If no auto-evaporative feature or gravity drain is available, or if the manufacturer specifies the use of an included condensate pump during cooling mode operation, then DOE proposes that the portable AC would be tested with the condensate pump enabled. For these units, DOE also proposes to require the use of Section 7.1.2 of AHAM PAC-1-2014 if the pump cycles on and off.

vii. Control Settings

Portable ACs typically incorporate electronic controls that allow selection of the fan speed during cooling or heating mode. The highest fan speed will produce the most rapid rate of cooling or heating, while the lower fan speeds may be provided to reduce noise. Section 7.3.1 of AHAM PAC-1-2014 states that all adjustable settings, including fan speed, shall be set to achieve maximum capacity. Although the fan speed setting is clearly specified, it is not clear what setting should be selected for the cooling or heating setpoint. Many portable ACs have controls that allow consumers to select a target temperature, for example by setting the desired temperature or by adjusting a dial to a more or less cool setting. When the cooling setpoint temperature is lower than the ambient temperature, or higher than the ambient temperature in heating mode, the portable AC will operate continuously. AHAM PAC-1-2014 requires that the test chamber be maintained at 80.6 °F

throughout the cooling mode test period, during which the unit must operate continuously, but does not specify a particular cooling setpoint temperature. To ensure that the test unit does not enter off-cycle mode, the test operator must select a control setting that corresponds to a temperature lower than 80.6 °F, particularly because no portable ACs in DOE's test sample included a "continuous on" setting. Because DOE acknowledges the potential for a unit to operate differently when cooling controls are set to different target temperatures below 80.6 °F, DOE proposes during cooling mode testing that the fan be set at the maximum speed if the fan speed is user adjustable and the temperature controls be set to the lowest available value. Similarly, as discussed in section III.B.1.b.i, DOE proposes during heating mode testing that the fan be set at the maximum speed if the fan speed is user adjustable and the temperature controls be set to the highest available value. These settings would likely best represent the settings that a consumer would select to achieve the primary function of the portable AC, which is to cool or heat the desired space as quickly as possible and then to maintain these conditions.

A number of test units in DOE's test sample included the option to oscillate the evaporator exhaust louvers to help circulate air throughout the conditioned space. Although AHAM PAC-1-2014 does not directly address louver oscillation, Section 7.3.1 of AHAM PAC-1-2014 states that all adjustable setting such as louvers, fan speed, and special functions must be set for maximum capacity. Accordingly, if there is a setting that automatically opens and closes the louvers, this feature would be disabled for the entirety of the rating test period, and the louvers would be opened to allow maximum capacity. If there is a manual setting to control louver direction and opening size, in accordance with section 7.3.1 of AHAM PAC-1-2014, the louvers shall be fully open to provide maximum airflow and capacity, and be positioned parallel to the air flow. However, this provision does not address an oscillating louver function that maintains constant and maximum louver exhaust area while redirecting the evaporator exhaust air flow. DOE does note, though, that AHAM PAC-1-2014 requires a constant external static pressure that is consistent with typical operation. The static pressure is initially affected by the test instrumentation that is placed over the evaporator exhaust grille to capture and measure the air

flow rate, temperature, and humidity, such that a variable speed fan is required to adjust the external static pressure to ensure it is representative of normal operation. If the louvers were oscillating during the test period, the external static pressure measured at the evaporator exhaust would vary cyclically and thus the test would no longer be compliant with the required conditions. Also, oscillating louvers may interfere with the temperature and humidity instrumentation and possibly dislodge them, which could impact the measured performance and the integrity of the test procedure. In addition, DOE lacks information on the percentage of time that this feature is selected among those units equipped with oscillating louvers. Therefore, to provide comparable testing results in cooling mode for products with and without a louver oscillation feature, DOE proposes that portable AC cooling mode testing be conducted with any louver oscillation feature disabled. If the feature is included but there is no option to disable it, testing shall proceed with the louver oscillation enabled, without altering the unit construction or programming. DOE requests feedback on the proposal to disable louver oscillation where available and to maximize louver opening, either manually or by disabling an automatic feature.

viii. Test Unit Placement

Section 8.1.3 of ANSI/ASHRAE Standard 37 states that the outdoor condition test room must be of sufficient volume and circulate air in a manner that does not change the normal air-circulation patterns of the unit under test. Specifically, the dimensions of the room must be sufficient to ensure that the distance from any room surface to any equipment surface where air is discharged is not less than 6 feet and the distance to all other equipment surfaces must be no less than 3 feet. However, no comparable requirements are specified for the indoor test room. When tested according to AHAM PAC-1-2014 and ANSI/ASHRAE Standard 37, a portable AC is set up entirely within the indoor condition test room with the evaporator exhaust connected to instrumentation and ducted away from the test unit, and the condenser exhaust ducted with instrumentation to the outdoor test room. In that case, the requirements in Section 8.1.3 of ANSI/ASHRAE Standard 37 are not applicable, as no part of the case is within the outdoor condition test room. Instead, the portable AC is placed in the indoor condition test room, where walls and other obstructions may impede air flow

for the evaporator inlet for all configurations, and the condenser inlet for single-duct units. Therefore, to ensure performance is as repeatable and representative as possible, DOE concludes that the same distance requirements included in Section 8.1.3 of ANSI/ASHRAE Standard 37 would be applicable to the indoor condition test room when testing portable ACs. DOE proposes that for all portable AC configurations, there must be no less than 6 feet from the evaporator inlet to any chamber wall surfaces, and for single-duct units, there must be no less than 6 feet from the condenser inlet surface to any other wall surface. Additionally, there must be no less than 3 feet between the other surfaces of the portable AC with no air inlet or exhaust (other than the bottom of the unit) and any wall surfaces.

ix. Electrical Supply

Section 7.3.2 of AHAM PAC-1-2014 does not require a specific test voltage, but rather states that the nameplate voltage shall be used. DOE notes that its dehumidifier test procedure requires a test voltage of either 115 or 230 volts (V), and these voltages would be comparable to those required for portable ACs, which are similar consumer products. To maintain repeatability and reproducibility for portable AC testing, DOE proposes that for active mode testing, the input standard voltage would be maintained at 115 V \pm 1 percent. DOE also proposes that the electrical supply be set to the nameplate listed rated frequency, maintained within \pm 1 percent.

b. Heating Mode

In response to the May 2014 NODA, DOE received a comment from the California IOUs suggesting that any future DOE test procedure for portable ACs include a measure of heating mode energy consumption. They stated that about 25 percent of models for sale at a major home improvement retailer include a heating function, and all of these models were marketed as a portable AC. The California IOUs suggested that DOE should ensure that the scope of a proposed test procedure that covers any products marketed as a portable AC also include testing the product's heating performance. (California IOUs, No. 5 at pp. 3-4)

DOE is aware that certain portable ACs, including some of the units in

DOE's test sample, incorporate a heating function in addition to cooling and air-circulation modes. During teardowns, DOE found that there are two primary approaches to implement a heating function for portable ACs. The first, and most common, is a reverse-cycle heat pump, which requires a four-way reversing solenoid valve in the refrigerant loop that reroutes the refrigerant flow and converts the cooling air conditioning system to a heat pump. The second type of heating that DOE observed during teardowns was a resistance heater installed adjacent to the evaporator and in line with the evaporator exhaust air stream.

In consideration of the comment received and DOE's market and teardown observations, DOE conducted additional research to determine whether it could incorporate appropriate test methodology to measure heating mode energy consumption in a DOE portable AC test procedure.

i. General Test Approach

ANSI/ASHRAE Standard 37, the basis for DOE's proposed air enthalpy cooling mode test procedure, is intended for heat pump equipment in addition to air conditioning equipment. Section 1.1 of ANSI/ASHRAE Standard 37 states that the purpose of the standard is, in addition to determining cooling capacity of air conditioning equipment, providing methods to determine cooling and heating capacities of heat pump equipment. DOE reviewed ANSI/ASHRAE Standard 37 and determined that the same test chamber and instrumentation requirements and capacity calculations would apply to portable AC heating mode testing as for the proposed cooling mode testing. Further, as with the cooling mode test, the unit configurations included in AHAM PAC-1-2014 would be applicable to a heating mode test. Therefore, DOE proposes that the test unit be set up for a heating mode energy consumption test in accordance with the unit and duct setup requirements of AHAM PAC-1-2014, including those in Table 2 and Figure 1 of that standard. DOE also proposes to specify the same test requirements as for cooling mode, including infiltration air, duct heat transfer, case heat transfer, control settings, and test unit placement, discussed in the subsections of section III.B.1.a of this NOPR. However, DOE

proposes that the temperature setpoint for heating mode be at the highest available temperature setting to ensure continuous operation.

ii. Ambient Test Conditions

ANSI/ASHRAE Standard 37 specifies the test setup, instrumentation, and test conduct, but does not specify the ambient test conditions for testing. For cooling mode, AHAM PAC-1-2014 provides the ambient test conditions for testing. To determine appropriate test conditions for a heating mode test, DOE reviewed ANSI/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) 210/240-2008, "Performance Rating of Unitary Air-Conditioning and Air-Source Heat Pump Equipment" (ANSI/AHRI 210/240), which provides test conditions for determining performance of ACs and heat pumps. Table 4 of Section 6.1.4.2 of ANSI/AHRI 210/240 provides three test conditions in heating mode for a heat pump with a single-speed compressor and a fixed-speed indoor fan. The indoor air temperatures are the same for all three tests, 70 °F dry-bulb and 60 °F wet-bulb. For the outdoor air inlet temperatures, the high-temperature test, "H1," requires 47 °F dry-bulb and 43 °F wet-bulb, while the frost accumulation test, "H2," requires 35 °F dry-bulb and 33 °F wet-bulb, and the low-temperature test, "H3," specifies 17 °F dry-bulb and 15 °F wet-bulb.

DOE believes that the test conditions for H1 are the most representative of typical heating mode use for portable ACs, which are likely used as supplemental or low-capacity heaters when a central heating system is not necessary or operating. Therefore, DOE proposes the following ambient air test conditions as shown in Table III.8 below, with the test configurations referring to the test configurations referenced in Table 2 of AHAM PAC-1-2014. Test Configuration 3 is applicable to dual-duct portable ACs, and Test Configuration 5 is applicable to single-duct portable ACs. DOE notes that the terms "Evaporator" and "Condenser" refer to the heat exchanger configuration in cooling mode, not the reverse-cycle heating mode. This terminology maintains consistency with the cooling mode test conditions specification and would still be applicable for portable ACs that incorporate a resistance heater.

TABLE III.8—STANDARD RATING CONDITIONS—HEATING MODE

Test configuration	Evaporator inlet air, °F (°C)		Condenser inlet air, °F (°C)	
	Dry LBulb	Wet LBulb	Dry bulb	Wet bulb
3	70.0 (21.1)	60.0 (15.6)	47.0 (8.33)	43.0 (6.11)
5	70.0 (21.1)	60.0 (15.6)	70.0 (21.1)	60.0 (15.6)

iii. Adjusted Heating Capacity Calculation

Under the proposed heating mode testing conditions, DOE expects that the calculations provided by AHAM PAC-1-2014 would result in negative cooling (*i.e.*, heating) capacity values because the outdoor side temperature is lower than the indoor side temperature. Therefore, DOE proposes to multiply the resulting capacity by -1 to produce a positive value that would represent the amount of heating produced rather than cooling. Further, because heat transfer from the ducts and the case to the room would decrease the net heating in the conditioned space, these negative heating values must be added to the heating capacity in the adjusted capacity calculation. For the infiltration air heat transfer, the lower temperature of the infiltration air compared to the evaporator inlet temperature results in a negative temperature differential in the heat transfer calculation, which would result in a negative value for the heat contribution to the conditioned space. Thus, the infiltration air provides net cooling, and the resulting negative value would also be added to the heating capacity to obtain the adjusted heating capacity (AHC) in the heating mode, expressed in Btu/h, according to the following:

$$AHC = Capacity_{hm} + Q_{duct_hm} + Q_{case_hm} + Q_{infiltration_hm}$$

Where:

Capacity_{hm} is the heating capacity measured in section 4.1.2 of this appendix.

Q_{duct_hm} is the duct heat transfer while operating in heating mode, measured in section 4.1.2 of this appendix.

Q_{case_hm} is the case heat transfer while operating in heating mode, measured in section 4.1.2 of this appendix.

Q_{infiltration_hm} is the infiltration air heat transfer while operating in heating mode, measured in section 4.1.2 of this appendix.

2. Off-Cycle Mode

Certain portable ACs maintain blower operation without activation of the compressor after the temperature setpoint has been reached, rather than entering standby mode or off mode, or may operate with a combination of

periods of blower operation and standby mode after reaching the setpoint. The fan-only operation may be intended to draw air over the internal thermostat to monitor ambient conditions, or may occur immediately following a period of cooling mode to defrost and dry the evaporator coil (or the condenser coil when operating in reverse-cycle heating mode). The blower may operate continuously, or may cycle on and off intermittently. In addition, some units allow the consumer to select operation of the blower continuously for air circulation purposes, without activation of the refrigeration system.

The existing industry portable AC test procedures do not presently contain provisions to measure energy use during this fan-only operation. However, DOE recently proposed a method for determining fan-only mode energy use in DOE's test procedure for dehumidifiers based on existing methodologies for measuring power consumption in standby mode and off mode (hereinafter referred to as the "dehumidifier test procedure NOPR"). 79 FR 29272 (May 21, 2014). In the dehumidifier test procedure NOPR, DOE proposed measuring fan-only mode average power by adjusting the setpoint to a relative humidity that is higher than the ambient relative humidity to ensure that the refrigeration system does not cycle on. To minimize testing burden, DOE proposed that the testing may be conducted immediately after the conclusion of dehumidification mode testing while maintaining the same ambient conditions, or may be conducted separately under the test conditions specified for standby mode and off mode testing. *Id.* at 29291.

In the dehumidifier test procedure NOPR, DOE observed that the period of cyclic fan operation was approximately 10 minutes for dehumidifiers with cyclical fan-operation in fan-only mode. In addition, DOE's research indicated that some units may cycle on for a period of a few minutes per hour. In order to obtain a representative average measure of fan-only mode power consumption, DOE proposed that the fan power be measured and averaged over a period of 1 hour for fan-only

mode in which the fan operates continuously. For fan-only mode in which the fan operates cyclically, the average fan-only mode power would be measured over a period of 3 or more full cycles for no less than 1 hour. DOE also clarified that units with adjustable fan speed settings would be set to the maximum fan speed during fan-only mode testing, because the maximum speed is typically recommended to consumers as the setting that produces the maximum moisture removal rate. *Id.*

DOE subsequently published a supplemental notice of proposed rulemaking (SNOPR) on February 4, 2015, that modified the proposal in the dehumidifier test procedure NOPR based on feedback from interested parties and further research (hereinafter referred to as the "dehumidifier test procedure SNOPR"). 80 FR 5994. DOE withdrew the fan-only mode definition proposed in the dehumidifier test procedure NOPR and instead modified the proposed "off-cycle mode" definition to encompass all operation when dehumidification mode has cycled off after the humidity setpoint has been reached. DOE proposed to define off-cycle mode as a mode in which the dehumidifier:

(1) Has cycled off its main moisture removal function by humidistat, humidity sensor, or control setting;

(2) May or may not operate its fan or blower; and

(3) May reactivate the main moisture removal function according to the humidistat or humidity sensor signal.

(*Id.*)

During investigative testing for this rulemaking, DOE found that all portable ACs in its test sample operate the fan in off-cycle mode, similar to dehumidifiers, once cooling mode operation reduces the ambient temperature below the set point. DOE investigated the approach for measuring this fan operation as a part of off-cycle mode, as was proposed in the dehumidifier test procedure SNOPR, and found that it was applicable to portable ACs. Table III.9 shows the results from this portable AC off-cycle mode investigative testing.

TABLE III.9—POWER IN OFF-CYCLE MODE *

Single-duct		Dual-duct	
Unit	Unit power (W)	Unit	Unit power (W)
SD1	175.0	DD1	69.3
SD3	60.4	DD2	76.9
SD4	85.1	DD4	224.9
SD5	109.6	DD5	47.6
SD6	80.14	DD6	76.3
SD7	77.0	DD7	74.8
SD8	211.0		
SD9	91.2		
SD10	108.3		
SD11	87.9		
SD12	49.7		
SD13	50.0		
SD14	55.4		
SD15	38.9		
SD16	95.1		

* Data for units SD2 and DD3 were not available

Due to the similarity between dehumidifiers and portable ACs, and to maintain harmonization among similar test procedures, DOE proposes in this NOPR that off-cycle mode for portable ACs be defined as proposed in the dehumidifier test procedure SNOPR, modified for portable AC operation in either cooling or heating mode. Specifically, DOE proposes to define off-cycle mode as a mode in which the portable air conditioner:

- (1) Has cycled off its main heating or cooling function by thermostat or temperature sensor;
- (2) May or may not operate its fan or blower; and
- (3) Will reactivate the main cooling or heating function according to the thermostat or temperature sensor signal.

In the dehumidifier test procedure SNOPR, DOE proposed that off-cycle mode measurement begin immediately following compressor operation for the dehumidification mode test to ensure sufficient condensation on the evaporator to initiate fan operation for those units that dry the evaporator coil. DOE asserted that conducting the off-cycle mode test subsequent to the dehumidification mode test would capture all energy use of the dehumidifier under conditions that meet the newly proposed off-cycle mode definition, including fan operation intended to dry the evaporator coil, sample the air, or circulate the air. 80 FR 5994.

In this NOPR, DOE proposes that portable AC off-cycle mode energy use be measured five minutes after the termination of compressor operation in cooling mode. Because the evaporator is still cool at the end of compressor operation in cooling mode, additional room cooling is possible through

continued fan operation at relatively low energy consumption. Therefore, DOE proposes the 5-minute delay before the start of off-cycle mode testing to prevent penalizing manufacturers for utilizing the cooling potential of the evaporator following the compressor cycle. Continued fan operation once that cooling potential is no longer available would be included as off-cycle mode energy consumption and factored into the CEER measurement.

In the dehumidifier test procedure SNOPR, DOE determined, based on data from its testing, that 2 hours is a typical off-cycle duration and would therefore be a representative test duration for off-cycle mode. 80 FR 5994. In lieu of field data for portable AC operation in off-cycle mode, and due to the similarity between typical portable dehumidifiers and portable ACs, DOE believes that the analysis conducted for dehumidifiers is representative for portable ACs. Therefore, DOE proposes that the off-cycle mode test begin 5 minutes after the completion of the cooling mode test and end after a period of 2 hours. DOE further proposes that the electrical supply be the same as specified for cooling mode, as discussion section III.B.1.a.ix, and that this measurement be made using the same power meter specified for standby mode and off mode, as discussed in section III.3.

DOE further proposes to require that, for units with adjustable fan speed settings, the fan be set at the maximum speed during fan-only mode testing, because the maximum speed is typically recommended to consumers as the setting that produces the maximum rate of cooling or heating.

DOE estimates that off-cycle mode energy consumption is similar for

periods following both heating mode and cooling mode because the fan speed setting is selected by the same controls and all other significantly energy consumptive components are disabled. Therefore, to minimize testing burden, DOE proposes that off-cycle mode testing be conducted only after cooling mode. Annual hours for off-cycle mode would be allocated for the total hours in this mode following either cooling mode or heating mode.

3. Standby Mode and Off Mode

Section 310 of the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, amended EPCA to require DOE to amend the test procedures for covered products to address standby mode and off mode energy consumption. Specifically, the amendments require DOE to integrate standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already fully account for such consumption or integration of such test procedure is technically infeasible. If integration is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of IEC Standard 62301, “Household electrical appliances—Measurement of standby power,” and IEC Standard 62087, “Methods of measurement for the power consumption of audio, video, and related equipment.” *Id.*

In addition, these amendments direct DOE to incorporate standby mode and

off mode energy use into any final rule establishing or revising an energy conservation standard for a covered product adopted after July 1, 2010. If it is not feasible to incorporate standby mode and off mode into a single amended or new standard, then the statute requires DOE to prescribe a separate standard to address standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(3))

a. Mode Definitions

Should DOE determine to classify portable ACs as a covered product, DOE would be required to promulgate energy conservation standards that incorporate energy use in active mode, standby mode, and off mode into a single metric, if feasible, in accordance with EISA 2007. (42 U.S.C. 6295 (gg)(3)) In addition, a DOE test procedure for portable ACs would be required to measure and, if feasible, integrate standby mode and off mode energy consumption into the overall energy descriptor. (42 U.S.C. 6295 (gg)(2)) Therefore, DOE is proposing the following definitions and methods to measure standby mode and off mode energy consumption for portable ACs. Based on the similar components and primary function to room ACs and dehumidifiers, DOE proposes standby mode and off mode definitions for portable ACs that are similar to those included in the room AC and dehumidifier test procedures found in appendix F and appendix X, respectively, codified at 10 CFR part 430, subpart B.

“Standby mode” would mean any mode where a portable air conditioner is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; or

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (e.g., switching) and that operates on a continuous basis.

DOE is aware of two relevant modes that would meet the proposed definition of standby mode for portable ACs: (1) Inactive mode and (2) bucket-full mode.

Portable ACs often include a digital control board with switches or a remote control device to modify settings and initiate or disable cooling, heating, or air

circulation. When the unit is plugged in and awaiting a signal to initiate one of the active modes, it would be considered to be in “inactive mode.” That is, inactive mode would be defined as a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Unlike room ACs, portable ACs are installed and operated entirely within the conditioned space, and thus do not have a means to discharge any liquid condensate directly outdoors. Although many portable ACs incorporate a feature to re-evaporate the condensate and exhaust it in the condenser outlet air stream, under certain ambient conditions this moisture removal rate may not be high enough to exhaust all of the condensate. Thus, portable ACs may enter a “bucket-full mode” when the condensate level in the internal collection container reaches a manufacturer-specified threshold or the collection container is removed; any cooling, heating, or air-circulation functions are disabled; and an indication is provided to the consumer that the container is full. The portable AC will reactivate the main cooling, heating, or air-circulation function once the collection container is drained or emptied and is in place in the unit.

DOE is also aware of an additional low-power mode for portable ACs with power consumption levels comparable to inactive mode and bucket-full modes. “Delay-start mode” facilitates activation of an active mode by a timer. Due the similarity in power consumption levels between delay-start mode and inactive mode, DOE proposes to consider the power consumption in inactive mode as representative of delay-start mode and to include the operating hours for delay-start mode in the estimate for inactive mode operating hours for the purposes of calculating a combined metric. In other words, DOE is not proposing to measure delay-start mode. DOE believes that this approach will minimize test burden and simplify testing and determination of overall performance.

Although all units in DOE’s test sample had electronic controls and therefore default to inactive mode when connected to a power source, DOE recognizes that some portable ACs may instead utilize electromechanical controls, and therefore may employ an “off mode,” in which a portable AC is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is

included within the classification of an off mode.

b. Determination of Standby Mode and Off Mode Power Consumption

In accordance with the requirements of EISA 2007, DOE is proposing to specify testing equipment and conditions for measuring standby mode and off mode power consumption in the portable AC test procedure based on the provisions from IEC Standard 62301. (42 U.S.C. 6295 (gg)(1)(B)) The measured wattages would then be used in calculations to determine standby mode and off mode energy consumption. DOE has reviewed IEC Standard 62301, and tentatively concluded that it is generally applicable to portable ACs, with certain clarifications, and notes that a similar determination has already been made for the DOE test procedures for closely-related covered products, such as dehumidifiers and room air conditioners. AHAM PAC–1–2014 also references IEC Standard 62301 for portable AC standby power measurements.

In examining portable AC operation, DOE recognizes that there is a certain commonality between inactive mode and bucket-full mode, in that there are no major energy-consuming components energized and there is typically only a display to the consumer that provides information as to product status. Therefore, DOE expects that the power consumption these two modes is comparable.

In the interest of reducing testing burden, DOE proposes not to require the power consumption in both of these modes be measured individually. Rather, DOE proposes that the power consumption in just inactive mode would be measured, and the annual hours assigned to that power measurement would be the sum of annual hours for inactive mode and bucket-full mode. DOE requests comment on this proposed simplification of testing, including whether the resulting calculation would adequately represent product energy use and whether it would instead be appropriate to measure each mode separately.

DOE proposes that the test room ambient air temperatures for standby mode and off mode testing would be specified in accordance with Section 4, Paragraph 4.2 of IEC Standard 62301. The IEC standard specifies a temperature range of 73.4 ± 9 °F, while the proposed DOE test procedure for portable ACs would specify an indoor-side test room ambient temperature of 80.6 ± 0.5 °F dry-bulb temperature for the cooling mode test and 70.0 ± 0.5 °F

dry-bulb temperature for the heating mode test. This proposed test procedure would allow manufacturers of portable ACs to conduct active mode efficiency testing and standby mode and off mode power consumption testing simultaneously in the same room on multiple portable ACs, as long as the temperature and setup requirements (e.g., duct setup, instrumentation, unit placement) for both tests are met. Alternatively, the proposed temperature specifications taken from IEC Standard 62301 would allow a manufacturer that opts to conduct standby mode and off mode testing separately from active mode testing to use the ambient temperature requirements of 73.4 ± 9 °F. DOE requests comment on the appropriateness of this proposed test room ambient temperature range. DOE further proposes that the portable AC would be installed in accordance with the unit installation and preparation instructions in Section 5.2 of IEC 62301, while disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. DOE is not aware of any portable ACs that incorporate batteries other than in remote controls.

For the duration of standby-mode and off-mode testing, DOE proposes that the electrical supply voltage shall be maintained at 115 V \pm 1 percent and supply frequency would be maintained at the rated frequency within \pm 1 percent. DOE notes that these requirements are consistent with those proposed for cooling mode, and the tolerances are in accordance with Section 4, Paragraph 4.3.1 of IEC Standard 62301. The supply voltage waveform and wattmeter would comply with the requirements in Section 4, Paragraphs 4.3.2 and 4.4 of IEC Standard 62301, respectively.

DOE is aware that some portable ACs may reduce power consumption after a period of user inactivity after entering standby mode or off mode. For products whose power consumption in standby mode or off mode varies in this manner during testing, DOE proposes that the test for inactive mode and off mode be conducted after the power level has dropped to its lowest level, as discussed in Note 1 in Section 5.1 of IEC Standard 62301. DOE further proposes that the test procedure in Section 5, Paragraph 5.3.2 of IEC Standard 62301 then be followed for inactive mode, off-cycle mode, and off mode, as available on the test unit.

4. Combined Energy Efficiency Ratio

In accordance with the requirements of EISA 2007, DOE is required for covered products to establish a single energy conservation standard metric that incorporates standby mode and off mode energy use, if feasible, for standards adopted after July 1, 2010. (42 U.S.C. 6295(gg)(3)(A)) For certain products, including dehumidifiers and room ACs, DOE has combined the energy use for active modes, off-cycle mode, standby modes, and off mode into a single efficiency metric using a weighted average based on annual operating hours in each mode. DOE proposes a similar approach for portable ACs based on operating hours per mode which may be available on the unit, including cooling mode, heating mode, off-cycle mode (with and without fan operation), inactive mode (including bucket-full mode), and off mode. As discussed previously in section III.B.1 of this NOPR, DOE is not addressing dehumidification mode for portable ACs in this proposal because the annual operating hours are likely small and it is not technically feasible to integrate the efficiency descriptor with an EER metric.

a. CEER Calculations

DOE proposes the following approach to combine energy use in each of the considered modes into a single integrated efficiency metric, CEER. Average power in each mode would be measured according to the proposals in section III.B.1.a through section III.B.1.2 and section III.B.3 of this NOPR, and then individually multiplied by the annual operating hours for each respective mode, discussed in section III.4.b of this NOPR.

$$AEC_m = P_m \times t_m \times k$$

Where:

AEC_m is the annual energy consumption in each mode, in kWh/year.

P_m is the average power in each mode, in watts (W).

t_m is the number of annual operating hours in each mode.

m designates the operating mode (“cm” cooling, “hm” heating, “oc” off-cycle, and “im” inactive or “om” off mode).

k is 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

Total annual energy consumption in all modes except cooling and heating would be calculated as follows.

$$AEC_T = \sum_m AEC_m$$

Where:

AEC_T is the total annual energy consumption attributed to all modes except cooling and heating, in kWh/year.

AEC_m is the annual energy consumption in each mode, in kWh/year.
 m represents the operating modes included in AEC_T (“oc” off-cycle, and “im” inactive or “om” off mode).

In this NOPR, DOE proposes in 10 CFR 430.23 that the annual energy consumption in cooling mode, AEC_{cm} and the total annual energy consumption in all modes except cooling and heating, AEC_T , would be utilized in calculating the estimated annual operating cost. The sum of the two annual energy consumption metrics would then be multiplied by a representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary to obtain the estimated annual operating cost.

For units with only cooling mode, a combined cooling mode EER ($CEER_{cm}$) can be calculated. For purposes of comparison, DOE proposes calculating a $CEER_{cm}$ for units that also include heating mode. In this case, the metric would be calculated assuming heating mode is not used and therefore, the operating hours that would have been attributed to heating mode and other associated operating modes during the heating season would be apportioned as for portable ACs without a heating mode. DOE believes that the resulting $CEER_{cm}$ is a meaningful metric for portable ACs without a heating function, a basis for comparing cooling mode efficiency for units that include heating function, as well as a metric that could be compared to other cooling products, such as room ACs.

$$CEER_{cm} = \frac{ACC}{\left(\frac{AEC_{cm} + AEC_T}{k \times t} \right)}$$

Where:

$CEER_{cm}$ is the combined energy efficiency ratio in cooling mode, in Btu/Wh.

ACC is the adjusted cooling capacity, in Btu/h.

AEC_{cm} is the annual energy consumption in cooling mode, in kWh/year.

AEC_T is the total annual energy consumption attributed to all modes except cooling and heating, in kWh/year.

t is the number of hours per year, 8,760.

k is 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

For portable ACs without a heating function, the overall energy efficiency metric, or CEER, would be equal to the $CEER_{cm}$. However, for units with both cooling and heating mode, the overall CEER, a weighted average of the cooling and heating mode capacities and energy consumption in all applicable modes, would be calculated as follows.

$$CEER = \frac{ACC \times \left(\frac{h_{cm}}{h_{cm} + h_{hm}} \right) + AHC \times \left(\frac{h_{hm}}{h_{cm} + h_{hm}} \right)}{\left(\frac{AEC_{cm} + AEC_{hm} + AEC_T}{k \times t} \right)}$$

Where:

CEER is the combined energy efficiency ratio, in Btu/Wh.

ACC is the adjusted cooling capacity, in Btu/h.

AHC is the adjusted heating capacity, in Btu/h.

h_{cm} and h_{hm} are the cooling and heating mode operating hours, respectively.

AEC_{cm} is the annual energy consumption in cooling mode, in kWh/year.

AEC_{hm} is the annual energy consumption in heating mode, in kWh/year.

AEC_T is the total annual energy consumption attributed to all modes except cooling and heating, in kWh/year.

t is the number of hours per year, 8,760.

k is 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

b. Mode Annual Operating Hours

DOE developed several estimates of portable AC annual operating mode hours for cooling, heating, off-cycle, and inactive or off modes. DOE proposes the CEER calculations and proposes one of the estimates of annual mode hours that would be used to obtain an integrated measure of energy use in all operating modes. DOE requests comment on the proposed CEER calculation and estimates.

Because the primary function of portable ACs and room ACs is similar, DOE considered the room AC annual operating hours presented in the room AC test procedure NOPR (hereinafter referred to as “the room AC test procedure NOPR”)¹² as a proxy for portable AC usage in this analysis. In the room AC test procedure NOPR, DOE estimated that half of all room ACs are unplugged for half of the year. 73 FR 74639, 74648. Averaging this estimated unplugged time over all units resulted in a total 2,190 unplugged hours per unit in which no energy is consumed, leaving 6,570 hours in which the unit is plugged in. DOE further estimated that the primary cooling season is 90 days per year, or 2,160 hours. *Id.* Portable ACs, however, are likely to be unplugged for a greater number of hours per year during the cooling season because, portable ACs are readily moveable products that are simpler to install and uninstall than room ACs. Additionally, because a portable AC and associated ducting extend into the room, consumers would be more likely to unplug and store a portable AC than a

room AC, which does not extend far into the room. Therefore, DOE estimated that three quarters of all portable ACs are unplugged for all annual hours outside of the cooling season (6,600 hours per unit), and that the remaining one quarter of portable ACs are unplugged for half of the annual hours outside the cooling season (3,300 hours per unit). Based on the weighted average presented above, portable ACs would spend 5,775 unplugged hours and 825 plugged-in hours outside of the cooling season.

However, DOE notes that these calculations consider use of portable ACs only during the cooling season. As discussed above in section III.1.b, certain portable ACs may provide a heating function and therefore may be operated during the heating season. Although DOE believes that the room AC cooling season length is relevant and representative of the portable AC cooling season due to the similar function provided to the consumer, DOE does not believe that the 2,160 hours estimated for cooling season would be representative of the heating season length. Therefore, DOE researched portable AC heating season length. As a starting point, DOE looked to the furnace test procedure located at appendix N of 10 CFR part 430, which identifies the heating season length as 4,160 hours.

To refine this estimate for portable ACs, DOE performed a climate analysis using 2012 hourly ambient temperature data from the National Climatic Data Center (NCDC) of the National Oceanic and Atmospheric Administration (NOAA), collected at weather stations in 44 representative states. DOE first calculated the number of annual hours per state associated with each temperature (in 1 °F intervals) from the NCDC data. DOE then reviewed data from the 2009 *Residential Energy Consumption Survey (RECS)*¹³ to identify room AC use in the different geographic regions. Because no portable AC-specific usage data were available through *RECS*, DOE assumed this data would be representative of portable AC use. DOE found that of the 25.9 million homes that reported using room ACs, the majority were in the Northeast region (9.6 million homes), though

significant usage was recorded in the remaining regions: Midwest (5.8 million), South (6.5 million), and West (4 million). DOE observed that all sub-regions in the survey showed room AC use; therefore, all sub-regions were included in DOE’s analysis, along with data for individual states or combinations of small numbers of states within these sub-regions where provided in *RECS*.

Based on the *RECS* ownership data, DOE used a weighted-average approach to combine the individual states’ total number hours per year at or below a certain temperature to determine the average number of hours at or below any given temperature for each sub-region represented by the *RECS* data. DOE used a similar weighted average to combine the sub-region data for each region and subsequently combine the regional data into a single representative number of hours per year at or below any given temperature. DOE found, on average, 4,388 hours per year with ambient temperatures at or below 55 °F. DOE selected 55 °F as a threshold for determining heating season based on a New York City regulation that requires buildings to be heated when the outdoor temperature drops below that level.¹⁴ However, DOE notes that portable ACs are typically not used as the primary heating appliance in a home, and therefore may be utilized to supplement the home’s heating system. Because this supplemental heating is likely only necessary at low outdoor temperatures, DOE determined, as a third estimate, the number of hours in 2012 that average national ambient temperatures were at or below 45 °F—2,903 hours. DOE then calculated the number of plugged in and unplugged hours outside of heating and cooling season for each of the three estimates presented above for portable ACs with heating mode. Table III.10 shows the operating season hourly breakdowns for four cases: Cooling Only Estimate, Cooling/Heating Estimate 1 (the furnace fan heating season length), Cooling/Heating Estimate 2 (heating season based on hours at or below 55 °F), and Cooling/Heating Estimate 3 (heating season based on hours at or below 45 °F).

¹² See 73 FR 74639 (Dec.9, 2008).

¹³ *RECS* data are available at: <http://www.eia.gov/consumption/residential/data/2009/> “www.eia.gov/consumption/residential/data/2009/”

¹⁴ More information can be found at: www.nyc.gov/html/hpd/html/tenants/heat-and-hot-water.shtml.

TABLE III.10—SEASONAL AND REMAINING UNPLUGGED/PLUGGED-IN HOURS

	Cooling only	Cooling/heat- ing estimate 1	Cooling/heat- ing estimate 2	Cooling/heat- ing estimate 3
Annual Hours	8,760	8,760	8,760	8,760
Cooling Season	2,160	2,160	2,160	2,160
Heating Season	0	4,160	4,388	2,903
Remaining Annual Unplugged Hours	5,775	2,135	1,936	3,235
Remaining Annual Plugged-In Hours	825	305	277	462

DOE further estimated the hours associated with each operating mode within the cooling and heating seasons. Because the primary cooling function is similar between portable ACs and room ACs, DOE believes that the mode hours in cooling season would be apportioned similarly for both products. In its room AC analysis, DOE determined that, for units capable of all operating modes, 750 operating hours would be in cooling mode, 440 hours would be in off-cycle mode, 440 hours would be in fan-only mode, 90 hours would be in delay-start mode, and 440 hours would be in inactive mode and/or off mode during the cooling season. 73 FR 74639, 74648–

74649 (December 9, 2008). In the room AC analysis, fan-only mode was defined as “an active mode in which the compressor shuts down when operating in constant-fan mode or user selection of fan-only operation.” As discussed above, fan operation when the compressor has cycled off is considered as off-cycle mode for the purposes of this NOPR. Also, because DOE is not proposing to measure or allocate hours to air circulation mode, any hours associated with that mode would be attributed to off-cycle mode. For portable ACs, DOE also proposes to allocate any bucket-full and other low-power mode hours to inactive/off mode

hours. For portable ACs with a heating function, DOE estimated that the same ratio of mode hours to season length for the cooling season would be applicable for the available modes during heating season. The operating hours in off mode and inactive mode include operation during heating and cooling season as well as the plugged-in hours during the remainder of the year. Applying all of these apportionments, DOE developed estimates for the hourly operation in each mode, shown in Table III.11, based on the three approaches described above for estimating heating season length.

TABLE III.11—PROPOSED ANNUAL OPERATING HOURS BY MODE

Modes	Cooling only	Cooling/heat- ing estimate 1	Cooling/heat- ing estimate 2	Cooling/heat- ing estimate 3
Cooling Mode	750	750	750	750
Heating Mode	0	1,444	1,524	1,008
Off-Cycle Mode	880	2,575	2,668	2,063
Off/Inactive Mode	1,355	1,856	1,883	1,704

DOE proposes that the annual operating mode hours in the “Cooling Only” scenario presented in Table III.11 be used when calculating CEER_{cm} for all portable ACs. For the reasons discussed above regarding use of portables ACs for heating, DOE also proposes assigning the annual operating mode hours in the “Cooling/Heating Estimate 3” scenario in the CEER calculation for units with both cooling and heating modes. For portable ACs with no heating mode, CEER would equal CEER_{cm}.

DOE requests feedback on these proposed annual operating mode hours to be used in the CEER_{cm} and CEER calculations, and on any alternate season durations and operating hour estimates.

To provide further insight on these annual operating mode hours and explore possible alternate scenarios for operating mode allocations during the cooling season, DOE considered the analysis presented in the Burke Portable AC Study. In that study, metered data for 19 portable ACs were analyzed to develop models that estimate the percent of time spent in cooling, fan-

only, and standby modes as a function of the outdoor temperature. DOE notes that these modes as defined in the Burke Portable AC Study are not entirely consistent with the mode definitions proposed in this NOPR; however, DOE expects that they would align reasonably well with cooling mode, off-cycle mode, and inactive or off mode, respectively. The models in the Burke Portable AC Study were developed for two applications for portable ACs: (1) Residential use, which DOE expects to represent daily consumer interaction with the portable AC (e.g., turning the unit off and on when leaving or entering the house, respectively, or turning the unit on only while sleeping); and (2) commercial use (i.e., a portable AC unit used in an office or similar environment), which DOE expects to represent units that are installed and turned on at a given temperature setpoint with minimal additional consumer interaction. Because the first application represents intermittent use and the second application represents continuous use of a portable AC, DOE

expects that the model results for these two applications provide a minimum and maximum estimate for time spent in cooling mode for a typical portable AC, from which the corresponding variations in the annual operating hours for other modes could be calculated. DOE presents this sensitivity analysis in addition to its proposed annual mode hour allocation listed in Table III.11 because the variation in results for the different applications can be significant. For example, the model suggests that the percent of time spent in cooling mode for each application differs by 50 percentage points when the outdoor temperature is 80 °F.

Because these two models present mode operation in cooling season as a function of outdoor temperature, DOE conducted further analysis based on consumer and climate data to determine the most representative average cooling season outdoor temperature for portable AC usage. To do so, DOE used the same analytical approach as it used to determine heating season length, based on the 2009 RECS and 2012 NCDC data. From the NCDC data, DOE calculated

the average monthly outdoor temperature for each of the 44 states from June through September. DOE selected these months as those with primary portable AC usage based on New York City Season Guidelines that identify the cooling season as running from the end of May through September 24.¹⁵ DOE also notes, for example, that utilities may define the cooling season as June through September.¹⁶ DOE welcomes input from interested parties on whether these are the most representative months for the portable AC cooling season.

DOE combined the individual states' average outdoor temperatures from June through September using a weighted-average approach based on the RECS ownership data to determine an average cooling season ambient temperature for each sub-region represented by the RECS data. DOE used a similar weighted average to combine the sub-region data for each region and subsequently combine the regional data into a single representative average cooling season temperature of 70 °F for the United States as a whole.

DOE used this outdoor temperature with the models developed in the Burke Portable AC Study to calculate the estimated percent of time spent in cooling, off-cycle, and off or inactive modes during the cooling season. The operating mode time as a percentage of cooling season hours for both residential applications (low-use Scenario 1) and commercial applications (high-use Scenario 2) are shown in Table III.12. DOE also presents a third scenario that is an average of the low-use and high-use scenarios to estimate overall typical portable AC usage patterns.

TABLE III.12—ANNUAL OPERATING MODE HOUR SENSITIVITY ANALYSIS—PERCENTAGE OF TIME IN EACH MODE DURING THE COOLING SEASON

Modes	Scenario 1—residential application (low-use) (percent)	Scenario 2—commercial application (high-use) (percent)	Scenario 3—Average-use (percent)
Cooling Mode	5.9	41.1	23.5
Off-Cycle Mode	2.2	21.7	12.0
Off/Inactive Mode	91.9	37.9	64.9

For comparison with DOE's proposed cooling mode annual hour estimate of 750 hours, DOE applied these percentages to the estimated cooling season length of 2,160 hours. This results in cooling mode operating hours of 126, 887, and 507, for the usage patterns modeled in Scenario 1, Scenario 2, and Scenario 3, respectively. Note that if DOE were to use one of these model scenarios as the basis for all operating mode hours in cooling season, the proposed total annual off-cycle mode and total off/inactive mode hours would also be adjusted to account for the cooling season percentages in Table III.12. DOE notes that the cooling season mode operating hour percentages in these scenarios differ from the proposed approach that utilizes the room AC cooling season mode operating hour estimates.

DOE requests feedback on the alternative scenarios presented in this NOPR or other data that may inform the allocation of annual operating hours in each mode.

C. Sampling Plan and Rounding Requirements

DOE is proposing the following sampling plan and rounding requirements for portable ACs to enable manufacturers to make representations of energy consumption or efficiency

metrics. The sampling requirements would be included in the proposed 10 CFR 429.62. Specifically, DOE is proposing that the general sampling requirements of 10 CFR 429.11 for selecting units to be tested be applicable to portable ACs. In addition, DOE is proposing that for each portable AC basic model, a sufficient sample size must be randomly selected to ensure that a representative value of energy consumption for a basic model is greater than or equal to the higher of the mean of the sample or upper 95 percent confidence limit (UCL) of the true mean divided by 1.10. For EER_{cm}, EER_{hm}, CEER, or other measure of energy consumption where a higher value is preferable to the consumer, the representative value shall be less than or equal to the lower of the mean of the sample or the lower 95 percent confidence limit (LCL) of the true mean divided by 0.90. The mean, UCL, and LCL are calculated as follows:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

$$UCL = \bar{x} + t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

$$LCL = \bar{x} - t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

Where:
 \bar{x} is the sample mean;
 x_i is the i^{th} sample;
 s is the sample standard deviation;
 n is the number of units in the test sample;
 and
 $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with $n - 1$ degrees of freedom.

This proposed sampling plan for portable ACs is consistent with sampling plans already established for dehumidifiers and other similar products. DOE notes that certification requirements for portable ACs, which would also be located at 10 CFR part 429, would be proposed in the concurrent energy conservation standards rulemaking.

DOE also proposes that all calculations be performed with the unrounded measured values, and that the reported cooling or heating capacity

¹⁵New York City Season Guidelines are available online at: http://www.nyc.gov/html/dem/downloads/pdf/NYC_Cooling_Season_Guidelines_2014.pdf.

¹⁶For example, see: <https://www.dom.com/residential/dominion-virginia-power/ways-to-save/energy-conservation-programs/smart-cooling-rewards/smart-cooling-rewards-terms-conditions>.

be rounded in accordance with Table 1 of PAC-1-2014, "Multiples for reporting Dual Duct Cooling Capacity, Single Duct Cooling Capacity, Spot Cooling Capacity, Water Cooled Condenser Capacity and Power Input Ratings." DOE further proposes that EER_{cm}, EER_{hm}, CEER_{cm}, CEER, or other energy efficiency metrics would be rounded to the nearest 0.1 Btu/Wh, in accordance with section 6.2.2 of AHAM PAC-1-2014 and consistent with the rounding instructions provided for room ACs at 10 CFR 430.23(f)(2). DOE notes that these rounding instructions would be included in the proposed sampling plan for portable ACs. The rounding instruction proposal would be updated to reference the certification and reporting requirements, which would be proposed as part of the energy conservation standards rulemaking for portable ACs.

D. Compliance With Other Energy Policy and Conservation Act Requirements

1. Test Burden

EPCA requires that any test procedures prescribed or amended shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) For the reasons that follow, DOE has tentatively concluded that establishing a DOE test procedure to measure the energy consumption of portable ACs in active mode, standby mode, and off mode would produce the required test results and would not result in any undue burdens.

As discussed in section IV.B of this NOPR, the proposed test procedure would require testing equipment and facilities that are not substantially different than those that manufacturers are currently using for testing in order to report portable AC ratings to the CEC and likely already using for certifying to DOE the performance of packaged terminal ACs (PTACs), which many of the portable AC manufacturers also produce. Thus, these manufacturers are likely already equipped to test portable ACs, or are testing their products in third-party laboratories that are similarly equipped. Therefore, the proposed test procedure would not require these manufacturers to make a significant investment in test facilities and new equipment.

In addition, DOE carefully considered testing burden in proposing a modified air enthalpy method for measuring energy use in cooling mode and heating

mode that is significantly less burdensome than the calorimeter method. DOE is also proposing an approach for measuring low-power mode energy use that would preclude testing of each possible mode individually and instead would require only testing modes in which the portable AC may consume significant amounts of energy, thereby reducing burden further.

Therefore, DOE determined that the proposed portable AC test procedure would produce test results that measure energy consumption during representative use, and that the test procedure would not be unduly burdensome to conduct.

2. Potential Incorporation of International Electrotechnical Commission Standard 62087

Under 42 U.S.C. 6295(gg)(2)(A), EPCA directs DOE to consider IEC Standard 62087 when amending test procedures for covered products to include standby mode and off mode power measurements. DOE reviewed IEC Standard 62087, "Methods of measurement for the power consumption of audio, video, and related equipment" (Edition 3.0 2011-04), and has tentatively determined that it would not be applicable to measuring power consumption of electrical appliances such as portable ACs. Therefore, DOE determined that referencing IEC Standards 62087 is not necessary for the proposed test procedure that is the subject of this rulemaking.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As

required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: <http://energy.gov/gc/office-general-counsel>.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule prescribes the test procedure to measure the energy consumption of portable ACs in active modes, standby modes, and off mode. DOE tentatively concludes that this proposed rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing," which includes manufacturers of portable ACs, is 750 employees.

DOE surveyed the AHAM member directory to identify manufacturers of residential portable ACs. DOE then consulted publicly available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if the number of manufacturers with manufacturing facilities located within the United States that meet the SBA's definition of a "small business manufacturing facility." Based on this analysis, DOE estimates that there is one small business that manufactures portable ACs.

This proposed rule would establish a DOE test procedure for portable ACs, which would require testing units according to an industry standard, AHAM PAC-1-2014, with additional calculations. Although there are no current DOE energy conservation standards for portable ACs, many manufacturers have reported cooling capacity and EER of these products to the CEC, which requires testing

according to ANSI/ASHRAE Standard 128–2001. The testing equipment and methodology for ANSI/ASHRAE Standard 128–2001 are similar to those required by AHAM PAC–1–2014, although the temperature conditions are different.

The small business mentioned above does not list any portable AC models in the CEC product database, so DOE is uncertain whether it is currently testing portable ACs according to ANSI/ASHRAE Standard 128–2001. However, DOE notes that the small business also manufactures and markets PTACs that must be certified to DOE according to ANSI/AHRI Standard 310/380–2004, “Standard for Packaged Terminal Air-Conditioners and Heat Pumps” (ANSI/AHRI 310/380–2004). (10 CFR 430.96) Section 4.2.1 of ANSI/AHRI 310/380–2004 specifies that standard cooling ratings shall be verified by tests conducted in accordance with either ANSI/ASHRAE Standard 16–1999 or ANSI/ASHRAE Standard 37–1998. Due to the complexity of testing facilities required to implement the calorimeter method specified in ANSI/ASHRAE 16–1999, DOE believes that it is likely that the small business currently conducts compliance testing using the air enthalpy methods in ANSI/ASHRAE Standard 37–1998, which require comparable testing facilities and equipment as the methods proposed in this NOPR. In addition, the small business provides performance data in the literature for its portable AC model which indicates that testing was conducted at 80 °F and 50-percent relative humidity. This testing would likely have required air enthalpy measurements equivalent to those specified in AHAM PAC–1–2014 at 80 °F and 49-percent relative humidity, and the same air enthalpy measurements would be made when testing at 70 °F and 57-percent relative humidity according to the proposed method for portable AC heating mode. Therefore, DOE believes that no small businesses would require purchasing new equipment or modifying existing equipment in order to conduct the proposed test methods for measuring energy use in portable AC cooling mode and heating mode.

The proposed rule would also require the measurement of power input during standby mode, off mode, and off-cycle mode. These tests could be conducted either in the same facilities used for the cooling mode and heating mode testing of these products, or in facilities that meet the requirements for testing conditions specified in IEC Standard 62301, which could consist of any space with temperature control typically

found in an office or living space. Therefore, DOE does not expect that the small business would incur additional facilities costs required by the proposed rule. In addition, in the event that the manufacturer would be required to purchase a wattmeter for measuring power input in standby mode, off mode, and off-cycle mode, the investment required would likely be relatively modest. An Internet search of equipment that specifically meets the proposed requirements reveals a cost of approximately \$2,000.

The costs described above are small compared to the overall financial investment needed to undertake the business enterprise of developing and testing consumer products, which involves facilities, qualified staff, and specialized equipment. Based on its review of industry data,¹⁷ DOE estimates that the small portable AC business has annual revenues of approximately \$20 million.

For these reasons, DOE concludes and certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

All collections of information from the public by a Federal agency must receive prior approval from OMB. DOE has established regulations for the certification and recordkeeping requirements for covered consumer products and industrial equipment. 10 CFR part 429, subpart B. DOE published a notice of proposed determination regarding portable air conditioners on July 5, 2013. 78 FR 40403. In an application to renew the OMB information collection approval for DOE’s certification and recordkeeping requirements, DOE included an estimated burden for manufacturers of portable air conditioners in case DOE ultimately issues a coverage determination and sets energy conservation standards for these products. OMB has approved the revised information collection for DOE’s certification and recordkeeping requirements. 80 FR 5099 (January 30, 2015). DOE estimated that it will take each respondent approximately 30

hours total per company per year to comply with the certification and recordkeeping requirements based on 20 hours of technician/technical work and 10 hours clerical work to actually submit the Compliance and Certification Management System (CCMS) templates. This rulemaking would include recordkeeping requirements on manufacturers that are associated with executing and maintaining the test data for these products. DOE notes that the certification requirements would be established in a final rule establishing energy conservation standards for portable ACs. DOE recognizes that recordkeeping burden may vary substantially based on company preferences and practices. DOE requests comment on this burden estimate.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for portable ACs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE’s implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that

¹⁷ Annual revenue estimates are based on financial reports obtained from Hoover’s, Inc., available online at: www.hoovers.com.

have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at energy.gov/gc/office-general-counsel. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988) that this proposed rule

would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to establish the test procedure for measuring the energy efficiency of portable ACs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

As discussed in this NOPR, the proposed rule incorporates testing methods contained in the following commercial standards: AHAM PAC–1–2014, Portable Air Conditions; and IEC 62301, Household Electrical Appliances—Measurement of Standby Power. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.*, that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairwoman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standard published by AHAM, titled “Portable Air Conditioners,” AHAM PAC–1–2014. AHAM PAC–1–2014 is an industry accepted test procedure that measures portable AC performance in cooling mode and is applicable to products sold in North America. AHAM PAC–1–2014 specifies testing conducted in accordance with other industry accepted test procedures (already incorporated by reference) and determines energy efficiency metrics for various portable AC configurations. The test procedure proposed in this NOPR references various sections of AHAM PAC–1–2014 that address test setup, instrumentation, test conduct, calculations, and rounding. AHAM PAC–1–2014 is readily available on AHAM’s Web site at <http://www.aham.org/ht/d/ProductDetails/sku/PAC12009/from/714/pid/>.

org/ht/d/ProductDetails/sku/PAC12009/from/714/pid/.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or Brenda.Edwards@ee.doe.gov.

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: Regina.Washington@ee.doe.gov so that the necessary procedures can be completed.

DOE requires visitors with laptop computers and other devices, such as tablets, to be checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor’s desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver’s licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver’s licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver’s License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver’s License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the

capabilities available to webinar participants will be published on DOE’s Web site http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/79. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this N. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and

comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via www.regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade

secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he

or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. The description and definition for residential and commercial portable ACs, different configurations, and the clarification that commercial portable ACs are not considered a covered product. (See section III.A.)
2. The definitions for active mode, cooling mode, and heating mode. DOE also seeks information on annual hours associated with the consumer initiated air-circulation mode. (See section III.B.1.)
3. The proposal that AHAM PAC-1-2014 be used as the basis for the test procedure proposed in this NOPR (See section III.B.1.a.i.)
4. The proposal to modify the cooling capacity equation as included in AHAM PAC-1-2014 to address the effects of infiltration air. In addition, DOE welcomes input on the proposed infiltration air conditions of 95 °F dry-bulb temperature and

75.2 °F wet-bulb temperature. (See section III.B.1.a.ii.)

5. The proposal to specify a more stringent evaporator inlet air stream dry-bulb temperature tolerance for single-duct units and to not consider the effects of condenser exhaust air and inlet air mixing for dual-duct units. (See section III.B.1.a.iii.)

6. The proposal to use the manufacturer-supplied ducting components during performance testing and the approach to characterize and determine the condenser duct(s) heat transfer to the conditioned space. (See section III.B.1.a.iv.)

7. The proposal and approach to include case heat transfer effects instead of the evaporator fan heat, based on the average case surface temperature and temperature. (See section III.B.1.a.v.)

8. The test setup for portable ACs with and without means for auto-evaporation to remove the collected condensate, including the use of any internal pump only if it is specified by the manufacturer for use during typical cooling operation. (See section III.B.1.a.vi.)

9. The proposed control settings for cooling mode and heating mode testing, which would require selecting the highest fan speed, for units with user-adjustable fan speed, and the lowest and highest available temperature settings for cooling mode and heating mode, respectively. Also, the proposed clarification that all portable AC performance testing be conducted with the maximum louver opening and, where applicable, with the louver oscillation feature disabled throughout testing. (See section III.B.1.a.vii.)

10. The proposed minimum clearance between the test unit and chamber wall surfaces. (See section III.B.1.a.viii.)

11. The proposed test setup, standard rating conditions, and conduct for determining heating mode performance for portable ACs. (See section III.B.1.b.)

12. The provisions for measuring energy consumption in off-cycle mode, including the use of the maximum speed setting for those units with adjustable fan speed settings, the measurement period specifications. DOE seeks comment on whether off-cycle mode energy consumption is independent of ambient conditions. (See section III.B.2.)

13. The proposed definitions and provisions for measuring energy consumption in various standby modes and off mode. (See section III.B.3.)

14. The proposed equation for calculating individual cooling combined energy efficiency ratio (CEER_{cm}) and an overall CEER that incorporates performance in both cooling and heating modes, in addition to other low power modes. DOE also seeks comment on the proposed annual operating hours and their implementation for calculating the CEER_{cm} and CEER. (See section III.B.4.)

15. The proposed reporting requirements including the sampling plan and rounding instructions. (See section III.C.)

16. The testing burden, including DOE's determination that the test would not be unduly burdensome to conduct. (See section III.D.1.)

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Buildings and facilities, Business and industry, Energy conservation, Grant programs-energy, Housing, Reporting and recordkeeping requirements, Technical assistance.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on February 12, 2015.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Add § 429.62 to read as follows:

§ 429.62 Portable Air Conditioners.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to portable air conditioners; and

(2) For each basic model of portable air conditioner, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

Where:

\bar{x} is the sample mean;

x_i is the i^{th} sample; and
 n is the number of units in the test sample.

Or,
(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10:

$$UCL = \bar{x} + t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

Where:

\bar{x} is the sample mean;

s is the sample standard deviation;

n is the number of units in the test sample; and

$t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with $n - 1$ degrees of freedom.

And,

(ii) Any represented value of the cooling or heating energy efficiency ratio, combined energy efficiency ratio, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

Where:

\bar{x} is the sample mean;

x_i is the i^{th} sample; and

n is the number of units in the test sample.

Or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90:

$$LCL = \bar{x} - t_{0.95} \left(\frac{s}{\sqrt{n}} \right)$$

Where:

\bar{x} is the sample mean;

s is the sample standard deviation;

n is the number of units in the test sample; and

$t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with $n - 1$ degrees of freedom.

And,

(3) The value of cooling or heating mode capacity of a basic model shall be the mean of the capacities for each tested unit of the basic model. Round the mean capacity value to the nearest 50, 100, 200, or 500 Btu/h, depending on the value being rounded, in accordance with Table 1 of PAC–1–2014, “Multiples for reporting Dual Duct Cooling Capacity, Single Duct Cooling Capacity, Spot Cooling Capacity, Water Cooled Condenser Capacity and Power Input Ratings.”

(4) The value of energy efficiency ratio or combined energy efficiency ratio of a basic model shall be the mean of the efficiency metric for each tested unit of

the basic model. Round energy efficiency ratio or combined energy efficiency ratio to the, to the nearest 0.1 Btu/Wh.

(b) [Reserved]

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by adding the definition of “portable air conditioner” in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

Portable air conditioner means an encased assembly, other than a “packaged terminal air conditioner,” “room air conditioner,” or “dehumidifier,” designed as a portable unit for delivering cooled, conditioned air to an enclosed space, that is powered by single-phase electric current, which may rest on the floor or other elevated surface. It includes a source of refrigeration and may include additional means for air circulation and heating.

* * * * *

■ 5. Section 430.3 is amended by adding paragraph (h)(8) and revising paragraph (o)(4) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(h) * * *

(8) AHAM PAC–1–2014, Portable Air Conditioners, 2014, IBR approved for appendix CC to subpart B.

* * * * *

(o) * * *

(4) IEC 62301 (“IEC 62301”), Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01), IBR approved for appendices C1, D1, D2, G, H, I, J2, N, O, P, X, and CC to subpart B.

* * * * *

■ 6. Section 430.23 is amended by adding paragraph (dd) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(dd) *Portable air conditioners*. (1) The adjusted cooling capacity, expressed in British thermal units per hour (Btu/h), the combined energy efficiency ratio in cooling mode, expressed in British thermal units per Watts per hour (Btu/W-h), and, for units equipped with a

heating function, the adjusted heating capacity, expressed in Btu/h, and the total combined energy efficiency ratio, expressed in Btu/W-h, for portable air conditioners, shall be measured in accordance with section 5 of appendix CC of this subpart.

(2) The estimated annual operating cost for portable air conditioners in cooling mode, expressed in dollars per year, shall be determined by multiplying the following two factors:

(i) The sum of the AEC_{cm} and AEC_T as measured using the “Cooling Only” operating hours in accordance with section 5.4 of appendix CC of this subpart, and

(ii) A representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

■ 7. Add appendix CC to read as follows:

Appendix CC to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners

1. Scope

This appendix covers the test requirements used to measure the energy performance of single-duct and dual-duct portable air conditioners. It does not contain testing provisions for measuring the energy performance of spot coolers at this time.

2. Definitions

2.1 *Active mode* means a mode in which a portable air conditioner is connected to a mains power source, has been activated, and is performing the main functions of cooling or heating the conditioned space, circulating air through activation of its fan or blower without activation of the refrigeration system, or defrosting the refrigerant coil.

2.2 *AHAM PAC–1* means the test standard published by the Association of Home Appliance Manufacturers, titled “Portable Air Conditioners,” AHAM PAC–1–2014 (*incorporated by reference; see § 430.3*).

2.3 *Cooling mode* means an active mode in which a portable air conditioner has activated the main cooling function according to the thermostat or temperature sensor signal, including activating the refrigeration system or the fan or blower without activation of the refrigeration system.

2.4 *Dual-duct portable air conditioner* means a portable air conditioner that draws some or all of the condenser inlet air from outside the conditioned space through a duct, and

may draw additional condenser inlet air from the conditioned space. The condenser outlet air is discharged outside the conditioned space by means of a separate duct.

2.5 *Energy efficiency ratio for portable air conditioners* means a measure of energy efficiency of a portable air conditioner calculated by dividing the cooling mode or heating mode capacity by the power consumption in that mode, measured in Btu per watt-hours (Btu/Wh).

2.6 *Heating mode* means an active mode in which a portable air conditioner has activated the main heating function according to the thermostat or temperature sensor signal, including activating a resistance heater, the refrigeration system with a reverse refrigerant flow valve, or the fan or blower without activation of the resistance heater or refrigeration system.

2.7 *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled “Household electrical appliances—Measurement of standby power,” Publication 62301 (Edition 2.0 2011–01) (*incorporated by reference; see § 430.3*).

2.8 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

2.9 *Off-cycle mode* means a mode in which a portable air conditioner:

(1) Has cycled off its main heating or cooling function by thermostat or temperature sensor signal;

(2) May or may not operate its fan or blower; and

(3) Will reactivate the main cooling or heating function according to the thermostat or temperature sensor signal.

2.10 *Off mode* means a mode in which a portable air conditioner is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the portable air conditioner is in the off position is included within the classification of an off mode.

2.11 *Product capacity for portable air conditioners* means a measure of either the cooling or heating, measured in Btu/h, provided to the indoor conditioned space, measured under the specified ambient conditions for each active mode. Separate product capacities are calculated for cooling and heating modes.

2.12 *Single-duct portable air conditioner* means a portable air conditioner that draws all of the condenser inlet air from the conditioned

space without the means of a duct, and discharges the condenser outlet air outside the conditioned space through a single duct.

2.13 *Spot cooler* means a portable air conditioner that draws condenser inlet air from and discharges condenser outlet air to the conditioned space, and draws evaporator inlet air from and discharges evaporator outlet air to a localized zone within the conditioned space.

2.14 *Standby mode* means any mode where a portable air conditioner is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; or

(2) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.*, switching) and that operates on a continuous basis.

3. Test Apparatus and General Instructions

3.1 Active mode.

3.1.1 *Test conduct.* The test apparatus and instructions for testing portable air conditioners in cooling mode and heating mode shall conform to the requirements specified in Section 4, "Definitions" and Section 7, "Tests," of AHAM PAC-1-2014 (*incorporated by reference; see § 430.3*), except as otherwise specified in this appendix. Measure duct heat transfer, case heat transfer, and infiltration air heat transfer according to section 4.1.1.1, section 4.1.1.2, and section 4.1.1.3 of this appendix, respectively.

3.1.1.1 *Duct setup.* Use ducting components provided by the manufacturer during active mode testing, including, where provided by the manufacturer, ducts, connectors for attaching the duct(s) to the test unit, and window mounting fixtures. Do not apply additional sealing or insulation.

3.1.1.2 *Single-duct evaporator inlet test conditions.* When testing single-duct units, maintain the evaporator inlet (or condenser inlet for heating mode) dry-bulb temperature within a range of 1.0 °F with an average difference of 0.3 °F.

3.1.1.3 *Condensate Removal—Cooling Mode.* Setup the test unit in accordance with manufacturer instructions. If the unit has an auto-evaporative feature, keep any provided

drain plug installed as shipped and do not provide other means of condensate removal. If the internal condensate collection bucket fills during the test, halt the test, remove the drain plug, install a gravity drain line, and start the test from the beginning. If no auto-evaporative feature is available, remove the drain plug and install a gravity drain line. If no auto-evaporative feature or gravity drain is available and a condensate pump is included, or if the manufacturer specifies the use of an included condensate pump during cooling mode operation, then test the portable air conditioner with the condensate pump enabled. For units that shall be tested with a condensate pump, apply the provisions in Section 7.1.2 of AHAM PAC-1-2014 (*incorporated by reference; see § 430.3*) if the pump cycles on and off.

3.1.1.4 *Unit Placement.* The evaporator inlet (condenser inlet in heating mode) must be no less than 6 feet from any test chamber wall surface. For single-duct units, the condenser inlet (evaporator inlet in heating mode) must be no less than 6 feet from any other wall surface. Additionally, there must be no less than 3 feet between any wall surfaces and the other surfaces of the portable air conditioner with no air inlet or exhaust.

3.1.1.5 *Electrical supply.* For active mode testing, maintain the input standard voltage at 115 V ±1 percent. Test at the rated frequency, maintained within ±1 percent.

3.1.2 *Control settings.* Set the controls to the lowest available temperature setpoint for cooling mode and the highest available temperature setpoint for heating mode. If the portable air conditioner has a user-adjustable fan speed, select the maximum fan speed setting. If the portable air conditioner has an automatic louver oscillation feature, disable that feature throughout testing. If the louver oscillation feature is included but there is no option to disable it, testing shall proceed with the louver oscillation enabled. If the portable air conditioner has adjustable louvers, position the louvers parallel with the airflow to maximize air flow and minimize static pressure loss.

3.1.3 *Measurement resolution and rounding.* Record measurements at the resolution of the test instrumentation. Round the final cooling and heating capacity values in accordance with Table 1 of AHAM PAC-1-2014 (*incorporated by reference; see § 430.3*). Round EER_{cm} , EER_{hm} , $CEER_{cm}$, and $CEER$, as calculated in section 5 of this appendix, to the nearest 0.1 Btu/Wh.

3.2 Standby mode and off mode.

3.2.1 *Installation requirements.* For the standby mode and off mode testing, install the portable air conditioner in accordance with Section 5, Paragraph 5.2 of IEC 62301 (*incorporated by reference; see § 430.3*), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

3.2.2 Electrical energy supply.

3.2.2.1 *Electrical supply.* For the standby mode and off mode testing, maintain the input standard voltage at 115 V ±1 percent. Maintain the electrical supply at the rated frequency ±1 percent.

3.2.2.2 Supply voltage waveform.

For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (*incorporated by reference; see § 430.3*).

3.2.3 *Standby mode and off mode wattmeter.* The wattmeter used to measure standby mode and off mode power consumption must meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (*incorporated by reference; see § 430.3*).

3.2.4 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (*incorporated by reference; see § 430.3*).

3.2.5 *Duct temperature measurements.* Measure the surface temperatures of each duct using four equally spaced thermocouples per duct, adhered to the outer surface of the entire length of the duct. Temperature measurements must be accurate to within ±0.5 °F.

3.2.6 *Case temperature measurements.* Measure case surface temperatures using four equally spaced thermocouples adhered to each of the six case surfaces: front, right, left, back, top, and bottom. Place the thermocouples in a configuration that ensures that the case surface, when divided into quadrants, contains at least one thermocouple in each quadrant. If an evenly spaced case surface temperature thermocouple would otherwise be placed on an air inlet or exhaust grille, place the thermocouple adjacent to the inlet or exhaust grille, as close as possible to even spacing with the other thermocouples on that surface. Temperature measurements must be accurate to within ±0.5 °F.

4. Test Measurement

4.1 Active mode.

4.1.1 *Cooling mode.* Measure the indoor room cooling capacity, $Capacity_{cm}$, in accordance with Section

7.1.b of AHAM PAC-1-2014 (incorporated by reference; see § 430.3). Measure the overall power input in cooling mode, P_{cm} , in Watts, in accordance with Section 7.1.c of AHAM PAC-1-2014 (incorporated by reference; see § 430.3).

4.1.1.1 *Duct Heat Transfer*. Measure the surface temperature of the condenser exhaust duct and condenser inlet duct, where applicable, calculating the average temperature on each duct (T_{duct_j}) from the average of the four temperature measurements taken on that duct. Calculate the surface area (A_{duct_j}) of each duct according to the following:

$$A_{duct_j} = \pi \times d_j \times L_j$$

Where:

d_j is the outer diameter of duct "j".

L_j is the extended length of duct "j" while under test.

j represents the condenser exhaust duct and, for dual-duct units, condenser inlet duct.

Calculate the total heat transferred from the surface of the duct(s) to the indoor conditioned space while operating in cooling mode as follows.

$$Q_{duct_cm} = \sum j \{ h \times A_{duct_j} \times (T_{duct_j} - T_{ei}) \}$$

Where:

Q_{duct_cm} is the total heat transferred from the duct(s) to the indoor conditioned space in cooling mode.

h is the convection coefficient, 4 Btu/h per square foot per °F.

A_{duct_j} is the surface area of duct "j", in square feet.

T_{duct_j} is the average surface temperature for duct "j", in °F.

j represents the condenser exhaust duct and, for dual-duct units, condenser inlet duct.

T_{ei} is the average evaporator inlet air dry-bulb temperature, in °F.

4.1.1.2 Case Heat Transfer.

Determine the average surface temperature, T_{case_k} , for each side of the test unit case by averaging the four temperature measurements on that side.

Calculate the surface area of each case side as the product of the two primary surface dimensions. Calculate the surface area of the case side according to the following:

$$A_{case_k} = D_{1_k} \times D_{2_k}$$

Where:

D_{1_k} and D_{2_k} are the two primary dimensions of the case side "k" exposed to ambient air.

Calculate the heat transferred from all case sides to the indoor conditioned space according to the following:

$$Q_{case_cm} = \sum k \{ h \times A_{case_k} \times (T_{case_k} - T_{ei}) \}$$

Where:

Q_{case_cm} is the total heat transferred from all case sides to the indoor conditioned space in cooling mode.

h is the convection coefficient, 4 Btu/h per square foot per °F.

k represents the case sides, including front, back, right, left, top, and bottom.

A_{case_k} is the surface area of case side "k", in square feet.

T_{case_k} is the average surface temperature of case side "k", in °F.

T_{ei} is the average evaporator inlet air dry-bulb temperature, in °F.

4.1.1.3 *Infiltration Air Heat Transfer*. Measure the heat contribution from infiltration air for single-duct units and dual-duct units that draw at least part of the condenser air from the conditioned space. The dry air mass flow rate of infiltration air shall be calculated according to the following.

$$\dot{m}_{sd} = \frac{V_{co} \times \rho_{co}}{(1 + \omega_{co})}$$

$$\dot{m}_{dd} = \left[\frac{V_{co} \times \rho_{co}}{(1 + \omega_{co})} \right] - \left[\frac{V_{ci} \times \rho_{ci}}{(1 + \omega_{ci})} \right]$$

Where:

\dot{m}_{sd} is the dry air mass flow rate of infiltration air for a single-duct unit, in pounds per minute (lb/m).

\dot{m}_{dd} is the dry air mass flow rate of infiltration air for a dual-duct unit, in lb/m.

V_{co} is the volumetric flow rate of the condenser outlet air, in cubic feet per minute (cfm).

V_{ci} is the volumetric flow rate of the condenser inlet air, in cfm.

ρ_{co} is the density of the condenser outlet air, in pounds mass per cubic foot (lb_m/ft³).

ρ_{ci} is the density of the condenser inlet air, in lb_m/ft³.

ω_{co} is the humidity ratio of condenser outlet air, in pounds mass of water vapor per pounds mass of dry air (lb_w/lb_{da}).

ω_{ci} is the humidity ratio of condenser inlet air, in lb_w/lb_{da}.

Calculate the sensible component of infiltration air heat contribution according to the following:

$$Q_s = \frac{\dot{m} \times \left[\left(c_{p_da} \times (T_{ia} - T_{ei}) \right) + c_{p_wv} \times (\omega_{ia} \times T_{ia} - \omega_{ei} \times T_{ei}) \right]}{60}$$

Where:

Q_s is the sensible heat added to the room by infiltration air, in Btu/h.

\dot{m} is the dry air mass flow rate of infiltration air,

\dot{m}_{SD} or \dot{m}_{DD} , in lb/m.

c_{p_da} is the specific heat of dry air, 0.24 Btu/lb_m-°F.

c_{p_wv} is the specific heat of water vapor, 0.444 Btu/lb_m-°F.

ω_{ia} is the humidity ratio of the infiltration air, 0.0141 lb_w/lb_{da}.

ω_{ei} is the humidity ratio of the evaporator inlet air, in lb_w/lb_{da}.

60 is the conversion factor from minutes to hours.

T_{ei} is the indoor chamber dry-bulb temperature measured at the evaporator inlet, in °F.

T_{ia} is the infiltration air dry-bulb temperature, 95 °F.

Calculate the latent heat contribution of the infiltration air according to the following:

$$Q_l = \frac{\dot{m} \times H_{fg} \times (\omega_{ia} - \omega_{ei})}{60}$$

Where:

Q_l is the latent heat added to the room by infiltration air, in Btu/h.

\dot{m} is the mass flow rate of infiltration air, \dot{m}_{SD} or \dot{m}_{DD} , in lb/m.

ω_{ia} is the humidity ratio of the infiltration air, 0.0141 lb_w/lb_{da}.

ω_{ei} is the humidity ratio of the evaporator inlet air, in lb_w/lb_{da}.

H_{fg} is the latent heat of vaporization for water vapor, 1061 Btu/lb_m.

60 is the conversion factor from minutes to hours.

The total heat contribution of the infiltration air is the sum of the sensible and latent heat:

$$Q_{infiltration_cm} = Q_s + Q_l$$

Where:

$Q_{infiltration_cm}$ is the total infiltration air heat in cooling mode, in Btu/h.

Q_s is the sensible heat added to the room by infiltration air, in Btu/h.

Q_l is the latent heat added to the room by infiltration air, in Btu/h.

4.1.2 *Heating Mode*. Measure the indoor room heating capacity, $Capacity_{hm}$, overall power input in heating mode, P_{hm} , duct heat transfer, Q_{duct_hm} , case heat transfer, Q_{case_hm} , and infiltration air heat transfer, $Q_{infiltration_hm}$, as for cooling in section 4.1.1 of this appendix, except that: (1) The terms "Evaporator" and "Condenser" shall refer to the heat exchanger configuration in cooling mode, not the reverse cycle heating mode; (2) the resulting $Capacity_{hm}$ shall be multiplied by -1 to convert from cooling capacity to heating

capacity; and (3) the temperatures provided in the table below shall be

used in place of the standard rating conditions found in Table 2 of AHAM

PAC-1-2014 (*incorporated by reference; see § 430.3*).

Test Configuration from table 2 in AHAM PAC-1-2014	Evaporator inlet air, °F (°C)		Condenser inlet air, °F (°C)	
	Dry-bulb	Wet-bulb	Dry-bulb	Wet-bulb
3	70.0 (21.1)	60.0 (15.6)	47.0 (8.33)	43.0 (6.11)
5	70.0 (21.1)	60.0 (15.6)	70.0 (21.1)	60.0 (15.6)

4.2 *Off-cycle mode.* Establish the test conditions specified in section 3.1.1 of this appendix, except that the wattmeter specified in section 3.2.3 of this appendix shall be used. Begin the off-cycle mode test period 5 minutes following the cooling mode test period. Adjust the setpoint higher than the ambient temperature to ensure the product will not enter cooling mode and begin the test 5 minutes after the compressor cycles off due to the change in setpoint. The off-cycle mode test period shall be 2 hours in duration, during which the power consumption is recorded at the same intervals as recorded for cooling mode testing. Measure and record the average off-cycle mode power of the portable air conditioner, P_{oc} , in watts.

4.3 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this appendix, ensuring that the portable air conditioner does not enter any active modes during the test. For portable air conditioners that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301, (*incorporated by reference; see § 430.3*), allow sufficient time for the portable air conditioner to reach the lowest power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3.2 of IEC 62301 (*incorporated by reference; see § 430.3*) for testing in each possible mode as described in sections 4.2.1 and 4.2.2 of this appendix.

4.3.1 If the portable air conditioner has an inactive mode, as defined in section 2.8 of this appendix, but not an off mode, as defined in section 2.10 of this appendix, measure and record the average inactive mode power of the portable air conditioner, P_{ia} , in watts.

4.3.2 If the portable air conditioner has an off mode, as defined in section 2.10 of this appendix, measure and record the average off mode power of the portable air conditioner, P_{om} , in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Adjusted Cooling Capacity.* Calculate the adjusted cooling capacity

for portable air conditioners, ACC, expressed in Btu/h, according to the following:

$$ACC = Capacity_{cm} - Q_{duct_cm} - Q_{case_cm} - Q_{infiltration_cm}$$

Where:

Capacity_{cm} is the cooling capacity measured in section 4.1.1 of this appendix.

Q_{duct_cm} is the duct heat transfer while operating in cooling mode, measured in section 4.1.1.1 of this appendix.

Q_{case_cm} is the case heat transfer while operating in cooling mode, measured in section 4.1.1.2 of this appendix.

$Q_{infiltration_cm}$ is the infiltration air heat transfer while operating in cooling mode, measured in section 4.1.1.3 of this appendix.

5.2 *Adjusted Heating Capacity.*

Calculate the adjusted heating capacity for portable air conditioners, AHC, expressed in Btu/h, according to the following:

$$AHC = Capacity_{hm} + Q_{duct_hm} + Q_{case_hm} + Q_{infiltration_hm}$$

Where:

Capacity_{hm} is the heating capacity measured in section 4.1.2 of this appendix.

Q_{duct_hm} is the duct heat transfer while operating in heating mode, measured in section 4.1.2 of this appendix.

Q_{case_hm} is the case heat transfer while operating in heating mode, measured in section 4.1.2 of this appendix.

$Q_{infiltration_hm}$ is the infiltration air heat transfer while operating in heating mode, measured in section 4.1.2 of this appendix.

5.3 *Energy Efficiency Ratio.*

Calculate the cooling energy efficiency ratio, EER_{cm}, and heating energy efficiency ratio, EER_{hm}, both expressed in Btu/Wh, according to the following:

$$EER_{cm} = \frac{ACC}{P_{cm}}$$

$$EER_{hm} = \frac{AHC}{P_{hm}}$$

Where:

ACC is the adjusted cooling capacity, in Btu/h, calculated in section 5.1 of this appendix.

AHC is the adjusted heating capacity, in Btu/h, calculated in section 5.2 of this appendix.

P_{cm} is the overall power input in cooling mode, in watts, measured in section 4.1.1 of this appendix.

P_{hm} is the overall power input in heating mode, in watts, measured in section 4.1.2 of this appendix.

5.4 *Annual Energy Consumption.*

Calculate the annual energy consumption in each operating mode, AEC_m, expressed in kilowatt-hours per year (kWh/year). The annual hours of operation in each mode are estimated as follows:

Operating mode	Annual operating hours for calculating:	
	Cooling only	Cooling and heating
Cooling	750	750
Heating	0	1,008
Off-Cycle	880	2,063
Inactive or Off ...	1,355	1,704

$$AEC_m = P_m \times t_m \times k$$

Where:

AEC_m is the annual energy consumption in each mode, in kWh/year.

P_m is the average power in each mode, in watts.

t is the number of annual operating time in each mode, in hours.

m represents the operating mode (“cm” cooling, “hm” heating, “oc” off-cycle, and “ia” inactive or “om” off mode).

k is 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours.

Total annual energy consumption in all modes except cooling and heating, is calculated according to the following:

$$AEC_T = \sum_m AEC_m$$

Where:

AEC_T is the total annual energy consumption attributed to all modes except cooling and heating, in kWh/year;

AEC_m is the total annual energy consumption in each mode, in kWh/year.

m represents the operating modes included in AEC_T (“oc” off-cycle, and “im” inactive or “om” off mode).

5.5 *Combined Energy Efficiency Ratio in Cooling Mode.*

Using the annual operating hours for cooling only, as outlined in section 5.4 of this appendix, calculate the cooling mode combined energy efficiency ratio, CEER_{cm}, expressed in Btu/Wh, according to the following:

$$CEER_{cm} = \frac{ACC}{\left(\frac{AEC_{cm} + AEC_T}{k \times t}\right)}$$

Where:

$CEER_{cm}$ is the combined energy efficiency ratio in cooling mode, in Btu/Wh.

ACC is the adjusted cooling capacity, in Btu/h, calculated in section 5.1 of this appendix.

AEC_{cm} is the annual energy consumption in cooling mode, in kWh/year, calculated in section 5.4 of this appendix.

AEC_T is the total annual energy consumption attributed to all modes except cooling and heating, in kWh/year, calculated in section 5.4 of this appendix.

t is the number of hours per year, 8,760.

k is 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

5.6 Total Combined Energy Efficiency Ratio. For units with heating and cooling modes, use the annual operating hours for cooling and heating, as outlined in section 5.4 of this appendix to calculate the total combined energy efficiency ratio, CEER, expressed in Btu/Wh. For units with no heating mode, CEER shall be equal to $CEER_{cm}$, calculated as described in section 5.5 of this appendix.

$$CEER = \frac{ACC \times \left(\frac{h_{cm}}{h_{cm} + h_{hm}}\right) + AHC \times \left(\frac{h_{hm}}{h_{cm} + h_{hm}}\right)}{\left(\frac{AEC_{cm} + AEC_{hm} + AEC_T}{k \times t}\right)}$$

Where:

ACC is the adjusted cooling capacity, in Btu/h, calculated in section 5.1 of this appendix.

AHC is the adjusted heating capacity, in Btu/h, calculated in section 5.2 of this appendix.

h_{cm} and h_{hm} are the cooling and heating mode operating hours, respectively.

AEC_{cm} is the annual energy consumption in cooling mode, in kWh/year, calculated in section 5.4 of this appendix.

AEC_{hm} is the annual energy consumption in heating mode, in kWh/year, calculated in section 5.4 of this appendix.

AEC_T is the total annual energy consumption attributed to all modes except cooling

and heating, in kWh/year, calculated in section 5.4 of this appendix.

t is the number of hours per year, 8,760.

k is 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2015 and 2016 Harvest Specifications for Groundfish; Final Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 140918791-4999-02]

RIN 0648-XD516

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2015 and 2016 Harvest Specifications for Groundfish

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

ACTION: Final rule; harvest specifications and closures.

SUMMARY: NMFS announces final 2015 and 2016 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2015 and 2016 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the GOA. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Harvest specifications and closures are effective at 1200 hrs, Alaska local time (A.l.t.), February 25, 2015, through 2400 hrs, A.l.t., December 31, 2016.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), and the Supplementary Information Report (SIR) to the EIS prepared for this action are available from <http://alaskafisheries.noaa.gov>. The final 2014 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2014, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510-2252, phone 907-271-2809, or from the Council's Web site at <http://www.npfmc.org>.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone of the GOA under the Fishery Management Plan for Groundfish of the Gulf of

Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. Upon consideration of public comment received under § 679.20(c)(1), NMFS must publish notice of final harvest specifications for up to two fishing years as annual target TAC, per § 679.20(c)(3)(ii). The final harvest specifications set forth in Tables 1 through 36 of this document reflect the outcome of this process, as required at § 679.20(c).

The proposed 2015 and 2016 harvest specifications for groundfish of the GOA and Pacific halibut PSC limits were published in the **Federal Register** on December 8, 2014 (79 FR 72593). Comments were invited and accepted through January 7, 2015. NMFS did not receive any comments on the proposed harvest specifications. In December 2014, NMFS consulted with the Council regarding the 2015 and 2016 harvest specifications. After considering public testimony, as well as biological and economic data that were available at the Council's December 2014 meeting, NMFS is implementing the final 2015 and 2016 harvest specifications, as recommended by the Council. For 2015, the sum of the TAC amounts is 536,158 mt. For 2016, the sum of the TAC amounts is 590,161 mt.

Other Actions Affecting the 2015 and 2016 Harvest Specifications

Amendment 97 to the FMP: Chinook Salmon Prohibited Species Catch Limits in the Non-Pollock Trawl Groundfish Fisheries

In June 2013, the Council took final action to implement measures to control Chinook salmon PSC in all non-pollock trawl groundfish fisheries in the Western and Central GOA. This action, Amendment 97 to the FMP, would set an initial annual PSC limit of 7,500 Chinook salmon apportioned among the

sectors of trawl catcher/processors, trawl catcher vessels participating in the Central GOA Rockfish Program, and trawl catcher vessels not participating in the Central GOA Rockfish Program fishing for groundfish species other than pollock. The pollock directed fishery is not included in the Council's recommended action, as that fishery is already subject to Chinook salmon PSC limits (§ 679.21(h)).

NMFS published a notice of availability for Amendment 97 on June 5, 2014 (79 FR 32525). On September 3, 2014, the Secretary of Commerce (Secretary) approved Amendment 97. The proposed rule that would implement Amendment 97 published on June 25, 2014 (79 FR 35971), with public comments accepted through July 25, 2014. The proposed rule contains a description of the affected management areas and groundfish fisheries, the non-pollock trawl groundfish fisheries and associated sectors, the history and goals of Amendment 97, and the provisions of the proposed action. Those provisions include proposed Chinook salmon PSC limits by sector, seasonal allocations, and other aspects associated with the implementation of Chinook salmon PSC limits for the non-pollock trawl groundfish fisheries in the Western and Central GOA. One provision that could affect the 2016 Chinook salmon PSC limits is the "incentive buffer." This mechanism provides for an increased annual Chinook salmon PSC limit if sectors catch less than their limit of Chinook salmon in the previous year. The final rule to implement Amendment 97 published on December 2, 2014 (79 FR 71350). The Chinook salmon PSC limits implemented by Amendment 97 were effective on January 1, 2015. Specific sector limits for the non-pollock groundfish fisheries are described later in this preamble. NMFS will monitor the Chinook salmon PSC in the non-pollock GOA groundfish fisheries and close an applicable sector if it reaches its 2015 Chinook salmon PSC limit.

Acceptable Biological Catch (ABC) and TAC Specifications

In December 2014, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed the most recent biological and harvest information about the condition of groundfish stocks in the GOA. This information was compiled by the Council's GOA Groundfish Plan Team and was presented in the draft 2014 SAFE report for the GOA groundfish fisheries, dated November 2014 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses

and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an overfishing level (OFL) and ABC for each species or species group. The 2014 report was made available for public review during the public comment period for the proposed harvest specifications.

In previous years, the largest changes from the proposed to the final harvest specifications have been based on recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used for producing stock assessments. At the November 2014 Plan Team meeting, NMFS scientists presented updated and new survey results, changes to stock assessment models, and accompanying stock assessment estimates for all groundfish species and species groups that are included in the final 2014 SAFE report. The SSC reviewed this information at the December 2014 Council meeting. Changes from the proposed to the final 2015 and 2016 harvest specifications are discussed below.

The final 2015 and 2016 OFLs, ABCs, and TACs are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used to compute OFLs and ABCs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with Tier 1 representing the highest level of information quality available and Tier 6 representing the lowest level of information quality available. The Plan Team used the FMP tier structure to calculate OFL and ABC amounts for each groundfish species. The SSC adopted the final 2015 and 2016 OFLs and ABCs recommended by the Plan Team for all groundfish species. The Council adopted the SSC's OFL and ABC recommendations and the AP's TAC recommendations. The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the required OY range of 116,000 to 800,000 mt.

The Council recommended 2015 and 2016 TACs that are equal to ABCs for sablefish, deep-water flatfish, rex sole, Pacific ocean perch, northern rockfish, shortraker rockfish, dusky rockfish, rougheye rockfish, demersal shelf rockfish, thornyhead rockfish, "other rockfish," big skates, longnose skates, other skates, sculpins, sharks, squids, and octopuses in the GOA. The Council recommended TACs for 2015 and 2016 that are less than the ABCs for pollock, Pacific cod, shallow-water flatfish in the Western GOA, arrowtooth flounder, flathead sole in the Western and Central GOA, "other rockfish" in the Southeast Outside district, and Atka mackerel. The Pacific cod TACs are set to accommodate the State's guideline harvest levels (GHLs) for Pacific cod so that the ABCs are not exceeded. The shallow-water flatfish, arrowtooth flounder, and flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other, more fully utilized fisheries. The "other rockfish" TAC in the Southeast Outside District (SEO) is set to reduce the amount of discards. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries.

The final 2015 and 2016 harvest specifications approved by the Secretary are unchanged from those recommended by the Council and are consistent with the preferred harvest strategy alternative in the EIS (see **ADDRESSES**). NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of the groundfish stocks as described in the final 2014 SAFE report. NMFS also finds that the Council's recommendations for OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the OY range. NMFS reviewed the Council's recommended TAC specifications and apportionments, and approves these harvest specifications under 50 CFR 679.20(c)(3)(ii). The apportionment of TAC amounts among gear types and sectors, processing sectors, and seasons is discussed below.

Tables 1 and 2 list the final 2015 and 2016 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The sums of the 2015 and 2016 ABCs are 685,597 mt and 731,049 mt, respectively, which are higher in 2015 and 2016 than the 2014 ABC sum of 640,675 mt (79 FR 12890, March 6, 2014).

Specification and Apportionment of TAC Amounts

NMFS' apportionment of groundfish species is based on the distribution of biomass among the regulatory areas over which NMFS manages the species. Additional regulations govern the apportionment of pollock, Pacific cod, and sablefish. Additional detail on the apportionment of pollock, Pacific cod, and sablefish are described below.

The ABC for the pollock stock in the combined Western, Central, and West Yakutat Regulatory Areas (W/C/WYK) includes the amount for the GHL established by the State for the Prince William Sound (PWS) pollock fishery. The Plan Team, SSC, AP, and Council recommended that the sum of all State and Federal water pollock removals from the GOA not exceed ABC recommendations. Based on genetic studies, fisheries scientists believe that the pollock in PWS is not a separate stock from the combined W/C/WYK population. Since 1996, the Plan Team has had a protocol of recommending that the GHL amount be deducted from the GOA-wide ABC. For 2015 and 2016, the SSC recommended and the Council approved the W/C/WYK pollock ABC including the amount to account for the State's PWS GHL. At the November 2014 Plan Team meeting, State fisheries managers recommended setting the PWS GHL at 2.5 percent of the annual W/C/WYK pollock ABC. For 2015, this yields a PWS pollock GHL of 4,783 mt, an increase of 620 mt from the 2014 PWS GHL of 4,163 mt. For 2016, the PWS pollock GHL is 6,271 mt, an increase of 2,108 mt from the 2014 PWS pollock GHL.

The Council also adopted the SSC's recommendation to revise the terminology used when apportioning pollock in the Western, Central, and West Yakutat Regulatory Areas. The SSC recommended describing apportionments of pollock to the Western, Central, and West Yakutat Regulatory Areas as "apportionments of annual catch limit (ACLs)" rather than "ABCs." The SSC annually recommends a combined pollock ABC for the Western, Central, and West Yakutat Regulatory Areas based on factors such as scientific uncertainty in the estimate of the area-wide OFL, data uncertainty, and recruitment variability. Section 3.2.3.3.2 of FMP specifies that the ACL is equal to the ABC. Historically, the SSC has recommended apportioning the combined Western, Central, and West Yakutat ABC between these three individual Regulatory Areas. However, the subarea ABCs have not been based on scientific uncertainty in the OFL,

data uncertainty, or other conservation or biological concerns, but rather on seasonal and spatial apportionment procedures established under the Steller sea lion protection measures for pollock TAC in the Western and Central Regulatory Areas. The SSC noted that describing subarea apportionments as “apportionments of the ACL” more accurately reflects that such apportionments address management, rather than biological or conservation, concerns. In addition, apportioning the ACL in this manner allow NMFS to balance any transfer of TAC from one area to another pursuant to regulations at § 679.20(a)(5)(iv)(B) to ensure that the area-wide ACL and ABC are not exceeded. The SSC noted that this terminology change is acceptable for pollock in the Western, Central, and West Yakutat Regulatory Areas only. There is one aggregate pollock OFL in these areas, and Steller sea lion protection measures provide a spatial and seasonal apportionment procedure for the pollock TAC in the Western and Central Regulatory Areas. This change is not applicable for pollock in the Southeast Outside GOA Regulatory Area, which is managed as a separate stock.

NMFS establishes pollock TACs in the Western, Central, West Yakutat Regulatory Areas, and the Southeast Outside District of the GOA (see Tables 1 and 2). NMFS also establishes seasonal apportionments of the annual pollock TAC in the Western and Central Regulatory Areas of the GOA among Statistical Areas 610, 620, and 630. These apportionments are divided equally among each of the following four seasons: The A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) (§ 679.23(d)(2)(i) through (iv), and § 679.20(a)(5)(iv)(A) and (B)). Additional detail is provided below; Tables 3 and 4 list these amounts.

The 2015 and 2016 Pacific cod TACs are set to accommodate the State’s GHl for Pacific cod in State waters in the Central and Western Regulatory Areas, as well as in PWS. The Plan Team, SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals from the GOA not exceed ABC recommendations. Accordingly, the Council set the 2015 and 2016 Pacific cod TACs in the Eastern, Central, and Western Regulatory Areas to account for State GHls. Therefore, the 2015 and 2016 Pacific cod TACs are less than the ABCs by the following amounts: (1) Eastern GOA, 707 mt; (2) Central GOA, 15,330

mt; and (3) Western GOA, 11,611 mt. These amounts reflect the sum of the State’s 2015 and 2016 GHls in these areas, which are 25 percent of the Eastern and Central ABCs, and 30 percent of the Western GOA ABC.

NMFS establishes seasonal apportionments of the annual Pacific cod TAC in the Central and Western Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot, and jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(12)). The Central and Western GOA Pacific cod TACs are allocated among various gear and operational sectors. The Pacific cod sector apportionments are discussed in detail in a subsequent section of this preamble.

The Council’s recommendation for sablefish area apportionments takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area and makes available 5 percent of the combined Eastern Regulatory Area ABCs to trawl gear for use as incidental catch in other groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Tables 7 and 8 list the final 2015 and 2016 allocations of sablefish TAC to hook-and-line and trawl gear in the GOA.

Changes From the Proposed 2015 and 2016 Harvest Specifications in the GOA

In October 2014, the Council’s recommendations for the proposed 2015 and 2016 harvest specifications (79 FR 72593, December 8, 2014) were based largely on information contained in the final 2013 SAFE report for the GOA groundfish fisheries, dated November 2013 (see **ADDRESSES**). The Council proposed that the final OFLs, ABCs, and TACs established for the 2015 groundfish fisheries (79 FR 12890, March 6, 2014) be used for the proposed 2015 and 2016 harvest specifications, pending completion and review of the 2014 SAFE report at its December 2014 meeting.

As described previously, the SSC adopted the final 2015 and 2016 OFLs and ABCs recommended by the Plan Team. The Council adopted the SSC’s OFL and ABC recommendations and the AP’s TAC recommendations for 2015 and 2016. The final 2015 ABCs are higher than the proposed 2015 ABCs published in the proposed 2015 and 2016 harvest specifications (79 FR

72593, December 8, 2014) for pollock, Pacific cod, sablefish, shallow-water flatfish, deep-water flatfish, arrowtooth flounder, flathead sole, Pacific ocean perch, dusky rockfish, longnose skate, and “other skates.” The final 2015 ABCs are lower than the proposed 2015 ABCs for northern rockfish, rougheye rockfish, demersal shelf rockfish, and big skates. The final 2016 ABCs are higher than the proposed 2016 ABCs for pollock, Pacific cod, shallow-water flatfish, flathead sole, Pacific ocean perch, longnose skate, and “other skates.” The final 2016 ABCs are lower than the proposed 2016 ABCs for deep-water flatfish, rex sole, arrowtooth flounder, northern rockfish, dusky rockfish, rougheye rockfish, and big skates. For the remaining target species—Atka mackerel, sculpins, sharks, squids, and octopus—the Council recommended, and the Secretary approved, the final 2015 and 2016 ABCs that are the same as the proposed 2015 and 2016 ABCs.

Additional information explaining the changes between the proposed and final ABCs is included in the final 2014 SAFE report, which was not available when the Council made its proposed ABC and TAC recommendations in October 2014. At that time, the most recent stock assessment information was contained in the final 2013 SAFE report. The final 2014 SAFE report contains the best and most recent scientific information on the condition of the groundfish stocks, as previously discussed in this preamble, and is available for review (see **ADDRESSES**). The Council considered the final 2014 SAFE report in December 2014 when it made recommendations for the final 2015 and 2016 harvest specifications. In the GOA, the total final 2015 TAC amount is 536,158 mt, an increase of 5 percent from the total proposed 2015 TAC amount of 511,599 mt. The total final 2016 TAC amount is 590,161 mt, an increase of 15 percent from the total proposed 2016 TAC amount of 511,599 mt. The following table in this preamble summarizes the principle reason for the difference between the proposed and final TACs.

Based on changes to the assessment method (model) used by stock assessment scientists, for 2015 and 2016 the greatest TAC increase is for Pacific cod. Based on changes in the estimates of overall biomass, the greatest TAC increases are for shallow-water flatfish, longnose skate, other skates, and Pacific ocean perch. Based upon changes in the estimates of biomass, the greatest decreases in TACs are for rougheye rockfish, demersal shelf rockfish, and big skate. For all other species and species groups, changes from the

proposed to the final TACs are within plus or minus five percent of the proposed TACs. These TAC changes correspond to associated changes in the ABCs and TACs, as recommended by the SSC, AP, and Council.

Additionally, based upon the Council's recommended changes in setting the TACs at amounts below ABCs, the greatest decreases in TACs are for shallow-water flatfish,

arrowtooth flounder, flathead sole, and "other rockfish." The Council believed, and NMFS concurs, that setting TACs for the three preceding flatfish species equal to ABCs would not reflect anticipated harvest levels accurately, as the Council and NMFS expect halibut PSC limits to constrain these fisheries in 2015 and 2016.

Detailed information providing the basis for the changes described above is

contained in the final 2014 SAFE report. The final TACs are based on the best scientific information available. These TACs are specified in compliance with the harvest strategy described in the proposed and final rules for the 2015 and 2016 harvest specifications. The changes in TACs between the proposed rule and this final rule are compared in the following table.

COMPARISON OF PROPOSED AND FINAL 2015 AND 2016 GOA TOTAL ALLOWABLE CATCH LIMITS
[Values are rounded to the nearest metric ton and percentage]

Species	2015 and 2016 proposed TAC	2015 Final TAC	2015 Final minus 2015 Proposed TAC	Percentage difference	2016 final TAC	2016 final minus 2016 proposed TAC	Percentage difference	Principle reason for difference
Pollock	193,809	199,151	5,342	3	257,178	63,369	33	Model ¹
Pacific cod	61,519	75,202	13,683	22	75,202	13,683	22	Model
Sablefish	9,554	10,522	968	10	9,558	4	0	N/A
Shallow-water flatfish	32,027	35,381	3,354	10	32,877	850	3	Biomass ²
Deep-water flatfish	13,303	13,334	31	0	13,177	-126	-1	Biomass
Rex sole	9,155	9,150	-5	0	8,979	-176	-2	Biomass
Arrowtooth flounder	103,300	103,300	0	0	103,300	0	0	N/A
Flathead sole	27,726	27,756	30	0	27,759	33	0	N/A
Pacific ocean perch	19,764	21,012	1,248	6	21,436	1,672	8	Biomass
Northern rockfish	5,010	4,998	-12	0	4,721	-289	-6	Biomass
Shortraker rockfish	1,323	1,323	0	0	1,323	0	0	N/A
Dusky rockfish	5,081	5,109	28	1	4,711	-370	-7	Biomass
Rougheye rockfish	1,262	1,122	-140	-11	1,142	-120	-10	Biomass
Demersal shelf rockfish	274	225	-49	-18	225	-49	-18	Biomass
Thornyhead rockfish	1,841	1,841	0	0	1,841	0	0	N/A
Other rockfish	1,811	1,811	0	0	1,811	0	0	N/A
Atka mackerel	2,000	2,000	0	0	2,000	0	0	N/A
Big skate	3,762	3,255	-507	-13	3,255	-507	-13	Biomass
Longnose skate	2,876	3,218	342	12	3,218	342	12	Biomass
Other skates	1,989	2,235	246	12	2,235	246	12	Biomass
Sculpins	5,569	5,569	0	0	5,569	0	0	N/A
Sharks	5,989	5,989	0	0	5,989	0	0	N/A
Squids	1,148	1,148	0	0	1,148	0	0	N/A
Octopuses	1,507	1,507	0	0	1,507	0	0	N/A
Total	511,599	536,158	24,559	5	590,161	78,562	15	

¹ Model—Change in assessment methodology.
² Biomass—Change in estimate of biomass.

The final 2015 and 2016 TAC recommendations for the GOA are within the OY range established for the

GOA and do not exceed the ABC for any species or species group. Tables 1 and 2 list the final OFL, ABC, and TAC

amounts for GOA groundfish for 2015 and 2016, respectively.

TABLE 1—FINAL 2015 ABCs, TACs, AND OFLs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC	
Pollock ²	Shumagin (610)	n/a	31,634	31,634	
	Chirikof (620)	n/a	97,579	97,579	
	Kodiak (630)	n/a	52,594	52,594	
	WYK (640)	n/a	4,719	4,719	
	W/C/WYK (subtotal)		256,545	191,309	186,526
	SEO (650)		16,833	12,625	12,625
	Total		273,378	203,934	199,151
Pacific cod ³	W	n/a	38,702	27,091	
	C	n/a	61,320	45,990	
	E	n/a	2,828	2,121	
	Total		140,300	102,850	75,202
	Sablefish ⁴	W	n/a	1,474	1,474
C		n/a	4,658	4,658	
WYK		n/a	1,708	1,708	
SEO		n/a	2,682	2,682	
E (WYK and SEO) (subtotal)			n/a	4,390	4,390

TABLE 1—FINAL 2015 ABCs, TACs, AND OFLs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC	
Shallow-water flatfish ⁵	Total	12,425	10,522	10,522	
	W	n/a	22,074	13,250	
	C	n/a	19,297	19,297	
	WYK	n/a	2,209	2,209	
	SEO	n/a	625	625	
	Total	54,207	44,205	35,381	
Deep-water flatfish ⁶	W	n/a	301	301	
	C	n/a	3,689	3,689	
	WYK	n/a	5,474	5,474	
	SEO	n/a	3,870	3,870	
	Total	15,993	13,334	13,334	
	Rex sole	W	n/a	1,258	1,258
	C	n/a	5,816	5,816	
	WYK	n/a	772	772	
	SEO	n/a	1,304	1,304	
	Total	11,957	9,150	9,150	
Arrowtooth flounder	W	n/a	30,752	14,500	
	C	n/a	114,170	75,000	
	WYK	n/a	36,771	6,900	
	SEO	n/a	11,228	6,900	
	Total	226,390	192,921	103,300	
	Flathead sole	W	n/a	12,767	8,650
	C	n/a	24,876	15,400	
	WYK	n/a	3,535	3,535	
	SEO	n/a	171	171	
	Total	50,792	41,349	27,756	
Pacific ocean perch ⁷	W	n/a	2,302	2,302	
	C	n/a	15,873	15,873	
	WYK	n/a	2,014	2,014	
	W/C/WYK subtotal	23,406	20,189	20,189	
	SEO	954	823	823	
	Total	24,360	21,012	21,012	
Northern rockfish ⁸	W	n/a	1,226	1,226	
	C	n/a	3,772	3,772	
	E	n/a	n/a	n/a	
	Total	5,961	4,998	4,998	
	Shortraker rockfish ⁹	W	n/a	92	92
		C	n/a	397	397
	E	n/a	834	834	
	Total	1,764	1,323	1,323	
Dusky rockfish ¹⁰	W	n/a	296	296	
	C	n/a	3,336	3,336	
	WYK	n/a	1,288	1,288	
	SEO	n/a	189	189	
	Total	6,246	5,109	5,109	
	Rougheye and Blackspotted rockfish ¹¹	W	n/a	115	115
C		n/a	632	632	
E		n/a	375	375	
Total		1,345	1,122	1,122	
Demersal shelf rockfish ¹²		SEO	361	225	225
Thornyhead rockfish		W	n/a	235	235
	C	n/a	875	875	
	E	n/a	731	731	
	Total	2,454	1,841	1,841	
Other rockfish ^{13 14}	W and C	n/a	1,031	1,031	
	WYK	n/a	580	580	
	SEO	n/a	2,469	200	
	Total	5,347	4,080	1,811	
	Atka mackerel	GW	6,200	4,700	2,000
	Big skate ¹⁵	W	n/a	731	731
C		n/a	1,257	1,257	
E		n/a	1,267	1,267	
Total		4,340	3,255	3,255	
Longnose skate ¹⁶		W	n/a	152	152
		C	n/a	2,090	2,090
	E	n/a	976	976	
	Total	4,291	3,218	3,218	
	Other skates ¹⁷	GW	2,980	2,235	2,235

TABLE 1—FINAL 2015 ABCs, TACs, AND OFLs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC
Sculpins	GW	7,448	5,569	5,569
Sharks	GW	7,986	5,989	5,989
Squids	GW	1,530	1,148	1,148
Octopus	GW	2,009	1,507	1,507
Total		870,064	685,597	536,158

¹ Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

² The aggregate pollock ABC for the Western, Central, and West Yakutat Regulatory Areas is apportioned among four statistical areas after deducting 2.5 percent of the ABC for the State's pollock GHL fishery. These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in Table 3. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

³ The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 5 lists the final 2015 Pacific cod seasonal apportionments.

⁴ Sablefish is allocated to trawl and hook-and-line gear in 2015. Table 7 lists the final 2015 allocations of sablefish TACs.

⁵ "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

⁶ "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

⁷ "Pacific ocean perch" means *Sebastes alutus*.

⁸ "Northern rockfish" means *Sebastes polyspinis*. For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the other rockfish species group.

⁹ "Shortraker rockfish" means *Sebastes borealis*.

¹⁰ "Dusky rockfish" means *Sebastes variabilis*.

¹¹ "Rougheye rockfish" means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

¹² "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

¹³ "Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, other rockfish also includes northern rockfish, *S. polyspinis*.

¹⁴ "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes other rockfish.

¹⁵ "Big skate" means *Raja binoculata*.

¹⁶ "Longnose skate" means *Raja rhina*.

¹⁷ "Other skates" means *Bathyraja* spp.

TABLE 2—FINAL 2016 ABCs, TACs, AND OFLs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC
Pollock ²	Shumagin (610)	n/a	41,472	41,472
	Chirikof (620)	n/a	127,936	127,936
	Kodiak (630)	n/a	68,958	68,958
	WYK (640)	n/a	6,187	6,187
	W/C/WYK (subtotal)	321,067	250,824	244,553
	SEO (650)	16,833	12,625	12,625
	Total	337,900	263,449	257,178
Pacific cod ³	W	n/a	38,702	27,091
	C	n/a	61,320	45,990
	E	n/a	2,828	2,121
	Total	133,100	102,850	75,202
Sablefish ⁴	W	n/a	1,338	1,338
	C	n/a	4,232	4,232
	WYK	n/a	1,552	1,552
	SEO	n/a	2,436	2,436
	E (WYK and SEO) (subtotal)	n/a	3,988	3,988
	Total	11,293	9,558	9,558
Shallow-water flatfish ⁵	W	n/a	19,577	13,250
	C	n/a	17,114	17,114
	WYK	n/a	1,959	1,959
	SEO	n/a	554	554
	Total	48,407	39,204	32,877
Deep-water flatfish ⁶	W	n/a	299	299
	C	n/a	3,645	3,645
	WYK	n/a	5,409	5,409
	SEO	n/a	3,824	3,824

TABLE 2—FINAL 2016 ABCs, TACs, AND OFLS OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, AND IN THE WEST YAKUTAT, SOUTHEAST OUTSIDE, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC
Rex sole	Total	15,803	13,177	13,177
	W	n/a	1,234	1,234
	C	n/a	5,707	5,707
	WYK	n/a	758	758
	SEO	n/a	1,280	1,280
Arrowtooth flounder	Total	11,733	8,979	8,979
	W	n/a	29,545	14,500
	C	n/a	109,692	75,000
	WYK	n/a	35,328	6,900
	SEO	n/a	10,787	6,900
Flathead sole	Total	217,522	185,352	103,300
	W	n/a	12,776	8,650
	C	n/a	24,893	15,400
	WYK	n/a	3,538	3,538
	SEO	n/a	171	171
Pacific ocean perch ⁷	Total	50,818	41,378	27,759
	W	n/a	2,358	2,358
	C	n/a	16,184	16,184
	WYK	n/a	2,055	2,055
	W/C/WYK	23,876	20,597	20,597
	SEO	973	839	839
Northern rockfish ⁸	Total	24,849	21,436	21,436
	W	n/a	1,158	1,158
	C	n/a	3,563	3,563
	E	n/a	n/a	n/a
	Total	5,631	4,721	4,721
Shortraker rockfish ⁹	W	n/a	92	92
	C	n/a	397	397
	E	n/a	834	834
	Total	1,764	1,323	1,323
Dusky rockfish ¹⁰	W	n/a	273	273
	C	n/a	3,077	3,077
	WYK	n/a	1,187	1,187
	SEO	n/a	174	174
	Total	5,759	4,711	4,711
	Rougheye and Blackspotted rockfish ¹¹	W	n/a	117	117
C		n/a	643	643
E		n/a	382	382
Total		1,370	1,142	1,142
SEO		361	225	225
Demersal shelf rockfish ¹²	W	n/a	235	235
	C	n/a	875	875
	E	n/a	731	731
	Total	2,454	1,841	1,841
Thornyhead rockfish	W and C	n/a	1,031	1,031
	WYK	n/a	580	580
	SEO	n/a	2,469	200
	Total	5,347	4,080	1,811
Atka mackerel	GW	6,200	4,700	2,000
	W	n/a	731	731
	C	n/a	1,257	1,257
	E	n/a	1,267	1,267
Big skate ¹⁵	Total	4,340	3,255	3,255
	W	n/a	152	152
	C	n/a	2,090	2,090
	E	n/a	976	976
Longnose skate ¹⁶	Total	4,291	3,218	3,218
	GW	2,980	2,235	2,235
	GW	7,448	5,569	5,569
Other skates ¹⁷	GW	7,986	5,989	5,989
	GW	1,530	1,148	1,148
Sculpins	GW	1,530	1,148	1,148
	GW	2,009	1,507	1,507
Sharks	GW	2,009	1,507	1,507
	GW	2,009	1,507	1,507
Squids	GW	2,009	1,507	1,507
	GW	2,009	1,507	1,507
Octopus	GW	2,009	1,507	1,507
	GW	2,009	1,507	1,507
Total		910,895	731,049	590,161

¹ Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

²The aggregate pollock ABC for the Western, Central, and West Yakutat Regulatory Areas is apportioned among four statistical areas after deducting 2.5 percent of the ABC for the State's pollock GHL fishery. These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in Table 4. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

³The annual Pacific cod TAC is apportioned 60 percent to the A season and 40 percent to the B season in the Western and Central Regulatory Areas of the GOA. Pacific cod in the Eastern Regulatory Area is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Table 6 lists the final 2016 Pacific cod seasonal apportionments.

⁴Sablefish is only allocated to trawl gear for 2016. Table 8 lists the final 2016 allocation of sablefish TACs to trawl gear.

⁵"Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

⁶"Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

⁷"Pacific ocean perch" means *Sebastes alutus*.

⁸"Northern rockfish" means *Sebastes polyspinis*. For management purposes the 2 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the other rockfish species group.

⁹"Shortraker rockfish" means *Sebastes borealis*.

¹⁰"Dusky rockfish" means *Sebastes variabilis*.

¹¹"Rougheye rockfish" means *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).

¹²"Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

¹³"Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergry), *S. diploproa* (splintnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, other rockfish also includes northern rockfish, *S. polyspinis*.

¹⁴"Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes other rockfish.

¹⁵"Big skate" means *Raja binoculata*.

¹⁶"Longnose skate" means *Raja rhina*.

¹⁷"Other skates" means *Bathyrja* spp.

Apportionment of Reserves

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, sculpins, sharks, squids, and octopuses in reserve for possible apportionment at a later date during the fishing year. For 2015 and 2016, NMFS proposed reapportionment of all the reserves in the proposed 2015 and 2016 harvest specifications published in the **Federal Register** on December 8, 2014 (79 FR 72593). NMFS did not receive any public comments on the proposed reapportionments. For the final 2015 and 2016 harvest specifications, NMFS reapportioned, as proposed, all the reserves for pollock, Pacific cod, flatfish, sculpins, sharks, squids, and octopuses. The TACs listed in Tables 1 and 2 reflect reapportionments of reserve amounts for these species and species groups.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. Pursuant to § 679.20(a)(5)(iv)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630, pursuant to § 679.20(a)(5)(iv)(A). In the A and B seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS winter surveys. In the C and D seasons, the apportionments are in proportion to the distribution of pollock biomass based on the four most recent NMFS summer surveys. However, for 2015 and 2016, the Council recommended, and NMFS approves, averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season instead of using the distribution based on only the winter surveys. The average is intended to reflect the migration patterns and distribution of pollock, and the anticipated performance of the fishery, in that area during the A season for the 2015 and 2016 fishing years. For the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 8 percent, 67 percent, and 25 percent in Statistical Areas 610, 620, and 630, respectively. For the B season, the apportionment is based on the relative distribution of pollock biomass at 8 percent, 83 percent, and 9 percent in Statistical Areas 610, 620, and 630, respectively. For the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 27 percent, 32 percent, and 41 percent in Statistical Areas 610, 620, and 630, respectively.

Within any fishing year, the amount by which a seasonal allowance is underharvested or overharvested may be

added to, or subtracted from, subsequent seasonal allowances in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the subsequent seasonal apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas (§ 679.20(a)(5)(iv)(B)). The pollock TACs in the WYK and SEO District of 4,719 mt and 12,625 mt, respectively, in 2015, and 6,187 mt and 12,625 mt, respectively, in 2016, are not allocated by season.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year during the course of fishing activities by the offshore component.

Tables 3 and 4 list the final 2015 and 2016 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown.

TABLE 3—FINAL 2015 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

Season ¹	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total ²
A (Jan 20–Mar 10)	3,632	(7.99%)	30,503	(67.11%)	11,316	(24.90%)	45,452
B (Mar 10–May 31)	3,632	(7.99%)	37,820	(83.21%)	4,000	(8.80%)	45,452
C (Aug 25–Oct 1)	12,185	(26.81%)	14,628	(32.18%)	18,639	(41.01%)	45,452
D (Oct 1–Nov 1)	12,185	(26.81%)	14,628	(32.18%)	18,639	(41.01%)	45,452
Annual Total	31,634	.....	97,579	.....	52,594	.....	181,806

¹ As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

² The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

TABLE 4—FINAL 2016 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GOA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton and percentages are rounded to the nearest 0.01]

Season ¹	Shumagin (Area 610)		Chirikof (Area 620)		Kodiak (Area 630)		Total ²
A (Jan 20–Mar 10)	4,760	(7.99%)	39,992	(67.11%)	14,839	(24.90%)	59,592
B (Mar 10–May 31)	4,760	(7.99%)	49,586	(83.21%)	5,245	(8.80%)	59,592
C (Aug 25–Oct 1)	15,975	(26.81%)	19,179	(32.18%)	24,437	(41.01%)	59,592
D (Oct 1–Nov 1)	15,975	(26.81%)	19,179	(32.18%)	24,437	(41.01%)	59,592
Annual Total	41,472	.....	127,936	.....	68,958	.....	238,366

¹ As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 to March 10, March 10 to May 31, August 25 to October 1, and October 1 to November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

² The WYK and SEO District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Annual and Seasonal Apportionments of Pacific Cod TAC

Section 679.20(a)(12)(i) requires the allocation of the Pacific cod TACs in the Western and Central Regulatory Areas of the GOA among gear and operational sectors. Section 679.20(a)(6)(ii) requires the allocation of the Pacific cod TACs in the Eastern Regulatory Area of the GOA between the inshore and offshore components. NMFS allocates the 2015 and 2016 Pacific cod TAC based on these sector allocations annually between the inshore and offshore components in the Eastern GOA; seasonally between vessels using jig gear, catcher vessels (CVs) using hook-and-line gear, catcher/processors (C/Ps) using hook-and-line gear, CVs using trawl gear, and vessels using pot gear in the Western GOA; seasonally between vessels using jig gear, CVs less than 50 feet in length overall using hook-and-line gear, CVs equal to or greater than 50 feet in length overall using hook-and-line gear, C/Ps using hook-and-line gear, CVs using trawl gear, C/Ps using trawl gear, and vessels using pot gear in the Central GOA. The overall seasonal apportionments in the Western and

Central GOA are 60 percent of the annual TAC to the A season and 40 percent of the annual TAC to the B season.

Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod allowance from the A season will be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that NMFS determines is likely to go unharvested by a sector may be reapportioned to other sectors for harvest during the remainder of the fishery year.

Pursuant to § 679.20(a)(12)(i)(A) and (B), a portion of the annual Pacific cod TACs in the Western and Central GOA will be allocated to vessels with an FFP that use jig gear before TAC is apportioned among other non-jig sectors. In accordance with the FMP, the annual jig sector allocations may increase to up to 6 percent of the annual Western and Central GOA Pacific cod TACs, depending on the annual performance of the jig sector (See Table 1 of Amendment 83 to the FMP for a detailed discussion of the jig sector allocation process (76 FR 74670, December 1, 2011)). Jig sector allocation

increases are established for a minimum of 2 years. NMFS has evaluated the 2014 harvest performance of the jig sector in the Western and Central GOA, and is revising the 2015 and 2016 Pacific cod apportionments to this sector as follows.

NMFS allocates the jig sector 3.5 percent of the annual Pacific cod TAC in the Western GOA, a 1.0 percent increase from the 2014 jig sector allocation. The 2015 and 2016 allocations include a base allocation of 1.5 percent, an addition of 1.0 percent and an additional 2.0 percent because this sector harvested greater than 90 percent of its initial 2012 and 2014 allocations in the Western GOA. NMFS also allocates the jig sector 1.0 percent of the annual Pacific cod TAC in the Central GOA, a 1.0 percent decrease from the 2014 jig sector allocation. The 2015 and 2016 allocations consist of a base allocation of 1.0 percent. The Central GOA jig sector harvested greater than 90 percent of its initial 2012 allocation in the Central GOA and received an additional 1.0 percent of the Central GOA Pacific cod TAC in 2013 and 2014. However, in both 2013 and 2014, the jig sector harvested less than 90 percent of the annual Central GOA

Pacific cod allocation, resulting in the loss of this sector's performance-based 1.0 percent increase. Tables 5 and 6 list the seasonal apportionments and allocations of the 2015 and 2016 Pacific cod TACs.

TABLE 5—FINAL 2015 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	948	N/A	569	N/A	379
Hook-and-line CV	366	0.70	183	0.70	183
Hook-and-line C/P	5,176	10.90	2,850	8.90	2,327
Trawl CV	10,039	27.70	7,242	10.70	2,797
Trawl C/P	627	0.90	235	1.50	392
All Pot CV and Pot C/P	9,934	19.80	5,176	18.20	4,758
Total	27,091	60.00	16,255	40.00	10,837
Central GOA:					
Jig (1.0% of TAC)	460	N/A	276	N/A	184
Hook-and-line <50 CV	6,648	9.32	4,241	5.29	2,407
Hook-and-line ≥50 CV	3,054	5.61	2,554	1.10	500
Hook-and-line C/P	2,324	4.11	1,870	1.00	454
Trawl CV ¹	18,933	21.14	9,623	20.45	9,310
Trawl C/P	1,911	2.00	912	2.19	999
All Pot CV and Pot C/P	12,660	17.83	8,118	9.97	4,542
Total	45,990	60.00	27,594	40.00	18,396
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	2,121	1,909		212	

¹ Trawl vessels participating in Rockfish Program cooperatives receive 3.81 percent of the annual Central GOA TAC (see Table 28c to 50 CFR part 679), which is deducted from the Trawl CV B season allowance (see Table 12).

TABLE 6—FINAL 2016 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount.]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	948	N/A	569	N/A	379
Hook-and-line CV	366	0.70	183	0.70	183
Hook-and-line C/P	5,176	10.90	2,850	8.90	2,327
Trawl CV	10,039	27.70	7,242	10.70	2,797
Trawl C/P	627	0.90	235	1.50	392
All Pot CV and Pot C/P	9,934	19.80	5,176	18.20	4,758
Total	27,091	60.00	16,255	40.00	10,837
Central GOA:					
Jig (1.0% of TAC)	460	N/A	276	N/A	184
Hook-and-line <50 CV	6,648	9.32	4,241	5.29	2,407
Hook-and-line ≥50 CV	3,054	5.61	2,554	1.10	500
Hook-and-line C/P	2,324	4.11	1,870	1.00	454
Trawl CV ¹	18,933	21.14	9,623	20.45	9,310
Trawl C/P	1,911	2.00	912	2.19	999
All Pot CV and Pot C/P	12,660	17.83	8,118	9.97	4,542

TABLE 6—FINAL 2016 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH AMOUNTS IN THE GOA; ALLOCATIONS FOR THE WESTERN GOA AND CENTRAL GOA SECTORS AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS—Continued

[Values are rounded to the nearest metric ton and percentages to the nearest 0.01. Seasonal allowances may not total precisely to annual allocation amount.]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Total	45,990	60.00	27,594	40.00	18,396
Eastern GOA		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	2,121	1,909		212	

¹ Trawl vessels participating in Rockfish Program cooperatives receive 3.81 percent of the annual Central GOA TAC (see Table 28c to 50 CFR part 679), which is deducted from the Trawl CV B season allowance (see Table 13).

Allocations of the Sablefish TACs

Section 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawl gear in the SEO District of the Eastern Regulatory Area, the Council recommended and NMFS approves the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District, making the remainder of the WYK

sablefish TAC available to vessels using hook-and-line gear. NMFS allocates 100 percent of the sablefish TAC in the SEO District to vessels using hook-and-line gear. This action results in a 2015 allocation of 220 mt to trawl gear and 1,489 mt to hook-and-line gear in the WYK District, a 2015 allocation of 2,682 mt to hook-and-line gear in the SEO District, and a 2016 allocation of 199 mt to trawl gear in the WYK District. Table 7 lists the allocations of the 2015 sablefish TACs to hook-and-line and trawl gear. Table 8 lists the allocations of the 2016 sablefish TACs to trawl gear.

The Council recommended that the hook-and-line sablefish TAC be established annually to ensure that this Individual Fishery Quota (IFQ) fishery is conducted concurrently with the halibut IFQ fishery and is based on recent sablefish survey information. The Council also recommended that only a trawl sablefish TAC be established for two years so that retention of incidental

catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. Since there is an annual assessment for sablefish and the final harvest specifications are expected to be published before the IFQ season begins March 14, 2015, the Council recommended that the hook-and-line sablefish TAC be set on an annual basis, rather than for two years, so that the best scientific information available could be considered in establishing the sablefish ABCs and TACs. With the exception of the trawl allocations that were provided to the Rockfish Program cooperatives, directed fishing for sablefish with trawl gear is closed during the fishing year. Also, fishing for groundfish with trawl gear is prohibited prior to January 20. Therefore, it is not likely that the sablefish allocation to trawl gear would be reached before the effective date of the final 2015 and 2016 harvest specifications.

TABLE 7—FINAL 2015 SABLEFISH TAC SPECIFICATIONS IN THE GOA AND ALLOCATIONS TO HOOK-AND-LINE AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Western	1,474	1,179	295
Central	4,658	3,726	932
West Yakutat ¹	1,708	1,489	220
Southeast Outside	2,682	2,682	0
Total	10,522	9,076	1,446

¹ The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside combined) sablefish TAC to trawl gear in the West Yakutat District.

TABLE 8—FINAL 2016 SABLEFISH TAC SPECIFICATIONS IN THE GOA AND ALLOCATION TO TRAWL GEAR ¹
 [Values are rounded to the nearest metric ton]

Area/district	TAC	Hook-and-line allocation	Trawl allocation
Western	1,338	n/a	268
Central	4,232	n/a	846
West Yakutat ²	1,552	n/a	199
Southeast Outside	2,436	n/a	0
Total	9,558	n/a	1,313

¹ The Council recommended that harvest specifications for the hook-and-line gear sablefish Individual Fishing Quota fisheries be limited to 1 year.

² The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside combined) sablefish TAC to trawl gear in the West Yakutat District.

Demersal Shelf Rockfish (DSR)

The recommended 2015 and 2016 DSR TAC is 225 mt, and management of DSR is delegated to the State. The Alaska Board of Fish has apportioned the annual SEO District DSR TACs between the commercial fishery (84 percent) and the sport fishery (16 percent) after deductions were made for anticipated subsistence harvests (7 mt). This results in 2015 and 2016 allocations of 183 mt to the commercial fishery and 35 mt to the sport fishery.

The State deducts estimates of incidental catch of DSR in the commercial halibut fishery and test fishery mortality from the DSR commercial fishery allocation. In 2014, this resulted in 32 mt being available for the directed commercial DSR fishery apportioned in one DSR district. The State estimated that there was not sufficient DSR quota available to have orderly fisheries in the three other DSR districts. DSR harvest in the halibut fishery is linked to the annual halibut catch limits; therefore the State can only estimate potential DSR incidental catch because halibut catch limits are established by the International Pacific Halibut Commission (IPHC). Federally permitted CVs using hook-and-line or jig gear fishing for groundfish and Pacific halibut in the SEO District of the GOA are required to retain all DSR (§ 679.20(j)).

Apportionments to the Central GOA Rockfish Program

These final 2015 and 2016 harvest specifications for the GOA include the various fishery cooperative allocations and sideboard limitations established by the Central GOA Rockfish Program. Program participants are primarily trawl CVs and trawl C/Ps, with limited participation by vessels using longline gear. The Rockfish Program assigns quota share and cooperative quota to participants for primary and secondary species, allows participants holding a license limitation program (LLP) license with rockfish quota share to form a rockfish cooperative, and allows holders of C/P LLP licenses to opt out of the fishery. The Rockfish Program also has an entry level fishery for rockfish primary species for vessels using longline gear.

Under the Rockfish Program, rockfish primary species (Pacific ocean perch, northern rockfish, and dusky rockfish) in the Central GOA are allocated to participants after deducting for incidental catch needs in other directed groundfish fisheries. Participants in the Rockfish Program also receive a portion of the Central GOA TAC of specific secondary species (Pacific cod, rougheye rockfish, sablefish, shortraker rockfish, and thornyhead rockfish).

Additionally, the Rockfish Program establishes sideboard limits to restrict the ability of harvesters operating under the Rockfish Program to increase their participation in other, non-Rockfish

Program fisheries. Besides groundfish species, the Rockfish Program allocates a portion of the trawl halibut PSC limit (191 mt) from the third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d)), which includes 117 mt to the trawl CV sector and 74 mt to the trawl C/P sector.

Section 679.81(a)(2)(ii) requires allocations of 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 30 mt of dusky rockfish to the entry level longline fishery in 2015 and 2016. The allocation for the entry level longline fishery would increase incrementally each year if the catch exceeds 90 percent of the allocation of a species. The incremental increase in the allocation would continue each year until it is the maximum percent of the TAC for that species. In 2014, the catch did not exceed 90 percent of any allocated rockfish species. Therefore, NMFS is not increasing the entry level longline fishery 2015 and 2016 allocations in the Central GOA. Longline gear includes hook-and-line, jig, troll, and handline gear. The remainder of the TACs for the rockfish primary species would be allocated to the CV and C/P cooperatives. Table 9 lists the allocations of the 2015 and initial 2016 TACs for each rockfish primary species to the entry level longline fishery, the incremental increase for future years, and the maximum percent of the TAC for the entry level longline fishery.

TABLE 9—FINAL 2015 AND INITIAL 2016 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES TO THE ENTRY LEVEL LONGLINE FISHERY IN THE CENTRAL GULF OF ALASKA

Rockfish primary species	2015 and 2016 allocations	Incremental increase in 2016 if ≥90% of 2015 allocation is harvested	Up to maximum % of TAC
Pacific ocean perch	5 metric tons	5 metric tons	1
Northern rockfish	5 metric tons	5 metric tons	2
Dusky rockfish	30 metric tons	20 metric tons	5

Section 679.81(a)(2) requires allocations of the rockfish primary species among various sectors of the Rockfish Program. Tables 10 and 11 list the final 2015 and 2016 allocations of rockfish primary species in the Central GOA to the entry level longline fishery and Rockfish CV and C/P Cooperatives in the Rockfish Program. NMFS also is setting aside incidental catch amounts (ICAs) for other directed fisheries in the

Central GOA of 2,000 mt of Pacific ocean perch, 200 mt of northern rockfish, and 250 mt of dusky rockfish. These amounts are based on recent average incidental catches in the Central GOA by other groundfish fisheries. Allocations between vessels belonging to CV or C/P cooperatives are not included in these final harvest specifications. Rockfish Program applications for CV cooperatives and

C/P cooperatives are not due to NMFS until March 1 of each calendar year, therefore, NMFS cannot calculate 2015 and 2016 allocations in conjunction with these final harvest specifications. NMFS will post these allocations on the Alaska Region Web site at (<http://alaskafisheries.noaa.gov/sustainablefisheries/rockfish/>) when they become available after March 1.

TABLE 10—FINAL 2015 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM
[Values are rounded to the nearest metric ton]

Rockfish primary species	TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline ¹ fishery	Allocation to the Rockfish Cooperatives ²
Pacific ocean perch	15,873	2,000	13,873	5	13,868
Northern rockfish	3,772	200	3,572	5	3,567
Dusky rockfish	3,336	250	3,086	30	3,056
Total	22,981	2,450	20,531	40	20,491

¹ Longline gear includes hook-and-line, jig, troll, and handline gear.
² Rockfish Cooperatives include vessels in CV and C/P cooperatives.

TABLE 11—FINAL 2016 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM
[Values are rounded to the nearest metric ton]

Rockfish primary species	TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline ¹ fishery	Allocation to the Rockfish Cooperatives ²
Pacific ocean perch	16,184	2,000	14,184	5	14,179
Northern rockfish	3,563	200	3,363	5	3,358
Dusky rockfish	3,077	250	2,827	30	2,797
Total	22,824	2,450	20,374	40	20,334

¹ Longline gear includes hook-and-line, jig, troll, and handline gear.
² Rockfish Cooperatives include vessels in CV and C/P cooperatives.

Section 679.81(c) requires allocations of rockfish secondary species to CV and C/P cooperatives in the Central GOA. CV cooperatives receive allocations of Pacific cod, sablefish from the trawl gear

allocation, and thornyhead rockfish. C/P cooperatives receive allocations of sablefish from the trawl allocation, roughey rockfish, shortraker rockfish, and thornyhead rockfish. Tables 12 and

13 list the apportionments of the 2015 and 2016 TACs of rockfish secondary species in the Central GOA to CV and C/P cooperatives.

TABLE 12—FINAL 2015 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES
[Values are rounded to the nearest metric ton]

Rockfish secondary species	Annual central GOA TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	45,990	3.81	1,752	0.00	.....
Sablefish	4,658	6.78	316	3.51	163
Shortraker rockfish	397	0.00	.....	40.00	159
Roughey rockfish	632	0.00	.....	58.87	372
Thornyhead rockfish	875	7.84	69	26.50	232

TABLE 13—FINAL 2016 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES
[Values are rounded to the nearest metric ton]

Rockfish secondary species	Annual central GOA TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	45,990	3.81	1,752	0.00	.....
Sablefish	4,232	6.78	287	3.51	149
Shorthead rockfish	397	0.00	.....	40.00	159
Rougheye rockfish	643	0.00	.....	58.87	379
Thornyhead rockfish	875	7.84	69	26.50	232

Halibut PSC Limits

Section 679.21(d) establishes the annual halibut PSC limit apportionments to trawl and hook-and-line gear, and authorizes the establishment of apportionments for pot gear. Amendment 95 to the FMP (79 FR 9625, February 20, 2014) implemented measures establishing GOA halibut PSC limits in Federal regulations and reducing the halibut PSC limits in the GOA trawl and hook-and-line groundfish fisheries. These reductions are incorporated into the final 2015 and 2016 halibut PSC limits. For most gear and operational types, the halibut PSC limit reductions are phased-in over 3 years, beginning in 2014 and ending in 2016.

In December 2014, the Council incorporated these reductions into its recommended final 2015 and 2016 harvest specifications. The Council recommended 2015 halibut PSC limits of 1,759 mt for trawl gear, 261 mt for hook-and-line gear, and 9 mt for the DSR fishery. The Council also recommended 2016 halibut PSC limits of 1,706 mt for the trawl sector, 256 mt for the hook-and-line sector, and 9 mt for the DSR fishery.

The DSR fishery in the SEO District is defined at § 679.21(d)(2)(ii)(A). This fishery is apportioned 9 mt of the halibut PSC limit in recognition of its small-scale harvests of groundfish. NMFS estimates low halibut bycatch in the DSR fishery because 1) the duration of the DSR fisheries and the gear soak times are short, 2) the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and

halibut, and 3) the directed commercial DSR fishery has a low DSR TAC.

The FMP authorizes the Council to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from the non-trawl halibut PSC limit for 2015 and 2016. The Council recommended, and NMFS approves, these exemptions because 1) the pot gear fisheries have low annual halibut bycatch mortality; 2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a catcher vessel holds unused halibut IFQ (§ 679.7(f)(11)); 3) sablefish IFQ fishermen typically hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ; and 4) NMFS estimates negligible halibut mortality for the jig gear fisheries. NMFS estimates that halibut mortality is negligible in the jig gear fisheries given the small amount of groundfish harvested by jig gear, the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

The best available information on estimated halibut bycatch consists of data collected by fisheries observers during 2014. The calculated halibut bycatch mortality through December 20, 2014, is 1,394 mt for trawl gear and 199 mt for hook-and-line gear for a total halibut mortality of 1,593 mt. This halibut mortality was calculated using groundfish and halibut catch data from the NMFS Alaska Region's catch accounting system. This accounting

system contains historical and recent catch information compiled from each Alaska groundfish fishery.

Section 679.21(d)(4)(i) and (ii) authorizes NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require the Council and NMFS to consider the following information in seasonally apportioning halibut PSC limits: 1) Seasonal distribution of halibut; 2) seasonal distribution of target groundfish species relative to halibut distribution; 3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species; 4) expected bycatch rates on a seasonal basis; 5) expected changes in directed groundfish fishing seasons; 6) expected actual start of fishing effort; and 7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The Council considered information from the 2014 SAFE report, NMFS catch data, State of Alaska catch data, IPHC stock assessment and mortality data, and public testimony when apportioning the halibut PSC limits. NMFS concurs with the Council's recommendations listed in Tables 14 and 15, which respectively shows the final 2015 and 2016 Pacific halibut PSC limits, allowances, and apportionments.

Sections 679.21(d)(4)(iii) and (iv) specify that any underages or overages of a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the fishing year.

TABLE 14—FINAL 2015 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS
[Values are in metric tons]

Trawl gear			Hook-and-line gear ¹				
Season	Percent	Amount	Other than DSR			DSR	
			Season	Percent	Amount	Season	Amount
January 20–April 1	27.5	484	January 1–June 10	86	225	January 1–December 31	9

TABLE 14—FINAL 2015 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS—Continued
[Values are in metric tons]

Trawl gear			Hook-and-line gear ¹				
Season	Percent	Amount	Other than DSR			DSR	
			Season	Percent	Amount	Season	Amount
April 1–July 1	20	352	June 10–September 1	2	5	.....	.....
July 1–September 1	30	528	September 1–December 31	12	31	.....	.....
September 1–October 1	7.5	132	.....	.....	.....	.....	.....
October 1–December 31	15	264	.....	.....	.....	.....	.....
Total .....	.....	1,759	.....	.....	261	.....	9

¹ The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries. Note: Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 15—FINAL 2016 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS
[Values are in metric tons]

Trawl gear			Hook-and-line gear ¹				
Season	Percent	Amount	Other than DSR			DSR	
			Season	Percent	Amount	Season	Amount
January 20–April 1	27.5	469	January 1–June 10	86	220	January 1–December 31	9
April 1–July 1	20	341	June 10–September 1	2	5	.....	.....
July 1–September 1	30	512	September 1–December 31	12	31	.....	.....
September 1–October 1	7.5	128	.....	.....	.....	.....	.....
October 1–December 31	15	256	.....	.....	.....	.....	.....
Total .....	.....	1,706	.....	.....	256	.....	9

¹ The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. The hook-and-line sablefish fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries. Note: Seasonal or sector apportionments may not total precisely due to rounding.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories. The annual apportionments are based on each category’s proportional share of the anticipated halibut bycatch mortality during the fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are 1) a deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and 2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water

flatfish, flathead sole, Atka mackerel, skates, and “other species” (sculpins, sharks, squids, and octopuses) (§ 679.21(d)(3)(iii)). Tables 16 and 17 list, respectively, the final 2015 and 2016 apportionments of halibut PSC trawl limits between the trawl gear deep-water and the shallow-water species fishery categories. Table 28d to 50 CFR part 679 specifies the amount of the trawl halibut PSC limit that is assigned to the CV and C/P sectors that are participating in the Central GOA Rockfish Program. This includes 117 mt of halibut PSC limit to the CV sector and 74 mt of halibut PSC limit to the C/P sector. These amounts

are allocated from the trawl deep-water species fishery’s halibut PSC third seasonal apportionment. Section 679.21(d)(4)(iii)(B) limits the amount of the halibut PSC limit allocated to Rockfish Program participants that could be re-apportioned to the general GOA trawl fisheries to no more than 55 percent of the unused annual halibut PSC apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by vessels directed fishing with trawl gear for the remainder of the fishing year.

TABLE 16—FINAL 2015 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES
[Values are in metric tons]

Season	Shallow-water	Deep-water ¹	Total
January 20–April 1	396	88	484
April 1–July 1	88	264	352
July 1–September 1	176	352	528
September 1–October 1	132	Any remainder	132
Subtotal January 20–October 1	792	704	1,496

TABLE 16—FINAL 2015 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES—Continued
[Values are in metric tons]

Season	Shallow-water	Deep-water ¹	Total
October 1–December 31 ²	264
Total	1,760

¹ Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191 mt of the third season (July 1 through September 1) deep-water species fishery halibut PSC apportionment.
² There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).

TABLE 17—FINAL 2016 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES
[Values are in metric tons]

Season	Shallow-water	Deep-water ¹	Total
January 20–April 1	384	85	469
April 1–July 1	85	256	341
July 1–September 1	171	341	512
September 1–October 1	128	Any remainder	128
Subtotal January 20–October 1	768	682	1,450
October 1–December 31 ²	.....	.....	256
Total	.....	.....	1,706

¹ Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191 mt of the third season (July 1 through September 1) deep-water species fishery halibut PSC apportionment.
² There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).

Section 679.21(d)(2)(B) requires that the “other hook-and-line fishery” halibut PSC limit apportionment to vessels using hook-and-line gear must be apportioned between CVs and C/Ps in accordance with § 679.21(d)(2)(iii) in conjunction with these harvest specifications. A comprehensive description and example of the calculations necessary to apportion the “other hook-and-line fishery” halibut PSC limit between the hook-and-line CV and C/P sectors were included in the proposed rule to implement Amendment 83 (76 FR 44700, July 26, 2011) and are not repeated here.

For 2015, NMFS apportions halibut PSC limits of 145 mt and 116 mt to the hook-and-line CV and hook-and-line C/P sectors, respectively. For 2016, NMFS apportions halibut PSC limits of 140 mt and 116 mt to the hook-and-line CV and hook-and-line C/P sectors, respectively. Tables 18 and 19 list, respectively, the final 2015 and 2016 apportionments of

halibut PSC limits between the hook-and-line CV and hook-and-line C/P sectors.

Pursuant to § 679.21(d)(2)(iii), the hook-and-line halibut PSC limit is apportioned between the CV and C/P sectors in proportion to the total Western and Central GOA Pacific cod allocations, which vary annually based on the proportion of the Pacific cod biomass. Pacific cod is apportioned among these two management areas based on the percentage of overall biomass per area, as calculated in the 2014 Pacific cod stock assessment. Updated information in the final 2014 SAFE report describes this distributional change, which is based on allocating ABC among regulatory areas on the basis of the three most recent stock surveys. The distribution of the total GOA Pacific cod ABC has changed to 36 percent Western GOA, 61 percent Central GOA, and 3 percent Eastern GOA. Therefore, the calculations made

in accordance with § 679.21(d)(2)(iii) incorporate the most recent change in GOA Pacific cod distribution with respect to establishing the annual halibut PSC limits for the CV and C/P hook-and-line sectors. The annual halibut PSC limits are divided into three seasonal apportionments, using seasonal percentages of 86 percent, 2 percent, and 12 percent.

No later than November 1 of each year, NMFS will calculate the projected unused amount of halibut PSC limit by either of the hook-and-line sectors for the remainder of the year. The projected unused amount of halibut PSC limit is made available to the other hook-and-line sector for the remainder of that fishing year if NMFS determines that an additional amount of halibut PSC is necessary for that sector to continue its directed fishing operations (§ 679.21(d)(2)(iii)(C)).

TABLE 18—FINAL 2015 APPORTIONMENTS OF THE “OTHER HOOK-AND-LINE FISHERIES” ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS
[Values are in metric tons]

“Other than DSR” allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
261	Catcher Vessel	145	January 1–June 10	86	125
			June 10–September 1	2	3

TABLE 18—FINAL 2015 APPORTIONMENTS OF THE “OTHER HOOK-AND-LINE FISHERIES” ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS—Continued
[Values are in metric tons]

“Other than DSR” allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
	Catcher/Processor	116	September 1–December 31	12	17
			January 1–June 10	86	100
			June 10–September 1	2	2
			September 1–December 31	12	14

TABLE 19—FINAL 2016 APPORTIONMENTS OF THE “OTHER HOOK-AND-LINE FISHERIES” ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS
[Values are in metric tons]

“Other than DSR” allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
256	Catcher Vessel	140	January 1–June 10	86	120
			June 10–September 1	2	3
			September 1–December 31	12	17
	Catcher/Processor	116	January 1–June 10	86	100
			June 10–September 1	2	2
			September 1–December 31	12	14

Estimates of Halibut Biomass and Stock Condition

The IPHC annually assesses the abundance and potential yield of the Pacific halibut using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC’s 2014 Pacific halibut stock assessment (December 2014), available on the IPHC Web site at www.iphc.int. The IPHC considered the 2014 Pacific halibut stock assessment at its January 2015 annual meeting when it set the 2015 commercial halibut fishery catch limits.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the

Regional Administrator uses observed halibut incidental catch rates, discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery’s halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS is implementing the Council’s recommendation that the halibut DMRs developed and recommended by the IPHC for the 2013 through 2015 GOA groundfish fisheries be used for monitoring the final 2015 and 2016 halibut bycatch mortality allowances (see Tables 14 through 19). The IPHC developed the DMRs for the 2013 through 2015 GOA groundfish fisheries using the 10-year mean DMRs for those

fisheries. Long-term average DMRs were not available for some fisheries, so rates from the most recent years were used. For the skate, sculpin, shark, squid, and octopus target fisheries, where not enough halibut mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A discussion of the DMRs and how the IPHC establishes them is available from the Council (see **ADDRESSES**). Table 20 lists the final 2015 and 2016 DMRs. These DMRs are unchanged from the proposed 2015 and 2016 harvest specifications (79 FR 72593, December 8, 2014).

TABLE 20—FINAL 2015 AND 2016 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA
[Values are percent of halibut assumed to be dead]

Gear	Target fishery	Mortality rate (%)
Hook-and-line	Other fisheries ¹	11
	Skates	11
	Pacific cod	11
	Rockfish	9
Trawl	Arrowtooth flounder	73
	Deep-water flatfish	43
	Flathead sole	65
	Non-pelagic pollock	60
	Other fisheries ¹	62
	Pacific cod	62
	Pelagic pollock	71
	Rex sole	69
Rockfish	66	

TABLE 20—FINAL 2015 AND 2016 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA—Continued

[Values are percent of halibut assumed to be dead]

Gear	Target fishery	Mortality rate (%)
Pot	Sablefish	71
	Shallow-water flatfish	67
	Other fisheries ¹	17
	Pacific cod	17

¹ Other fisheries includes all gear types for skates, sculpins, sharks, squids, octopuses, and hook-and-line sablefish.

Chinook Salmon Prohibited Species Catch Limits

In 2012, NMFS issued a final rule to implement Amendment 93 to the GOA FMP (77 FR 42629, July 20, 2012). Amendment 93 established separate Chinook salmon PSC limits in the Western and Central GOA in the directed pollock fishery. These limits require NMFS to close the pollock directed fishery in the Western and Central regulatory areas of the GOA if the applicable limit is reached (§ 679.21(h)(6)). The annual Chinook salmon PSC limits in the pollock directed fishery of 6,684 salmon in the Western GOA and 18,316 salmon in the Central GOA are set in regulation at § 679.21(h)(2)(i) and (ii). In addition, all salmon (regardless of species) taken in the pollock directed fisheries in the Western and Central GOA must be retained until an observer at the processing facility that takes delivery of the catch is provided an opportunity to count the number of salmon and to collect any scientific data or biological samples from the salmon (§ 679.21(h)(4)).

As described earlier in this preamble, NMFS issued a final rule to implement Amendment 97 to the FMP (79 FR 71350, December 2, 2014). That action established an initial annual PSC limit of 7,500 Chinook salmon for the non-pollock groundfish fisheries. This limit is apportioned among three sectors: 3,600 Chinook salmon to trawl catcher/

processors, 1,200 Chinook salmon to trawl catcher vessels participating in the Central GOA Rockfish Program, and 2,700 Chinook salmon to trawl catcher vessels not participating in the Central GOA Rockfish Program that are fishing for groundfish species other than pollock (§ 679.21(i)(3)). NMFS will monitor the Chinook salmon PSC in the non-pollock GOA groundfish fisheries and close an applicable sector if it reaches its Chinook salmon PSC limit.

The Chinook salmon PSC limit for two sectors, trawl catcher/processors and trawl catcher vessels not participating in the Central GOA Rockfish Program, may be increased in subsequent years based on the performance of these two sectors and their ability to minimize their use of their respective Chinook salmon PSC limits. If either or both of these two sectors limits its use of Chinook salmon PSC to a certain threshold amount in 2015, that sector will receive an incremental increase to its 2016 Chinook salmon PSC limit (§ 679.21(i)(3)).

American Fisheries Act (AFA) C/P and CV Groundfish Harvest and PSC Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limitations on AFA C/Ps and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from

those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA C/Ps from harvesting any species of groundfish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA C/Ps from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 ft (38.1 meters) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands less than 5,100 mt, and have made at least 40 groundfish landings from 1995 through 1997 are exempt from GOA sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iii) establishes the groundfish sideboard limitations in the GOA based on the retained catch of non-exempt AFA CVs of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period.

Tables 21 and 22 list the final 2015 and 2016 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in Tables 21 and 22.

TABLE 21—FINAL 2015 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995– 1997 non-ex- empt AFA CV catch to 1995– 1997 TAC	Final 2015 TACs	Final 2015 non-exempt AFA CV sideboard limit
Pollock	A Season, January 20– March 10.	Shumagin (610)	0.6047	3,632	2,196
		Chirikof (620)	0.1167	30,503	3,560
		Kodiak (630)	0.2028	11,316	2,295
	B Season, March 10–May 31	Shumagin (610)	0.6047	3,632	2,196
		Chirikof (620)	0.1167	37,820	4,414
		Kodiak (630)	0.2028	4,000	811

TABLE 21—FINAL 2015 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995– 1997 non-ex- empt AFA CV catch to 1995– 1997 TAC	Final 2015 TACs	Final 2015 non-exempt AFA CV sideboard limit
Pacific cod	C Season, August 25–October 1.	Shumagin (610)	0.6047	12,185	7,368
		Chirikof (620)	0.1167	14,628	1,707
		Kodiak (630)	0.2028	18,639	3,780
	D Season, October 1–November 1.	Shumagin (610)	0.6047	12,185	7,368
		Chirikof (620)	0.1167	14,628	1,707
		Kodiak (630)	0.2028	18,639	3,780
	Annual	WYK (640)	0.3495	4,719	1,649
		SEO (650)	0.3495	12,625	4,412
	A Season, ¹ January 1–June 10.	W	0.1331	16,255	2,164
		C	0.0692	27,594	1,910
W		0.1331	10,837	1,442	
C		0.0692	18,396	1,273	
Annual	E inshore	0.0079	1,909	15	
	E offshore	0.0078	212	2	
Sablefish	Annual, trawl gear	W	0.0000	295	.....
		C	0.0642	932	60
		E	0.0433	220	10
Flatfish, Shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	19,297	1,133
		E	0.0126	2,834	36
Flatfish, deep-water	Annual	W	0.0000	301	.....
		C	0.0647	3,689	239
		E	0.0128	9,344	120
Rex sole	Annual	W	0.0007	1,258	1
		C	0.0384	5,816	223
		E	0.0029	2,076	6
Arrowtooth flounder	Annual	W	0.0021	14,500	30
		C	0.0280	75,000	2,100
		E	0.0002	13,800	3
Flathead sole	Annual	W	0.0036	8,650	31
		C	0.0213	15,400	328
		E	0.0009	3,706	3
Pacific ocean perch	Annual	W	0.0023	2,302	5
		C	0.0748	15,873	1,187
		E	0.0466	2,837	132
Northern rockfish	Annual	W	0.0003	1,226	.....
		C	0.0277	3,772	104
		W	0.0000	92	.....
Shortraker rockfish	Annual	C	0.0218	397	9
		E	0.0110	834	9
		W	0.0001	296	.....
Dusky rockfish	Annual	C	0.0000	3,336	.....
		E	0.0067	1,477	10
		W	0.0000	115	.....
Rougheye rockfish	Annual	C	0.0237	632	15
		E	0.0124	375	5
		SEO	0.0020	225	.....
Demersal shelf rockfish	Annual	W	0.0280	235	7
		C	0.0280	875	25
		E	0.0280	731	20
Thornyhead rockfish	Annual	W	0.0034	.....	.....
		C	0.1699	1,031	175
		E	0.0000	780	.....
Other rockfish	Annual	Gulfwide	0.0309	2,000	62
		W	0.0063	731	5
		C	0.0063	1,257	8
Atka mackerel	Annual	E	0.0063	1,267	8
		W	0.0063	152	1
		C	0.0063	2,090	13
Big skates	Annual	E	0.0063	976	6
		Gulfwide	0.0063	2,235	14
		Gulfwide	0.0063	5,569	35
Longnose skates	Annual	Gulfwide	0.0063	5,989	38
		Gulfwide	0.0063	1,148	7
		Gulfwide	0.0063	.....	.....
Other skates	Annual	Gulfwide	0.0063	.....	.....
		Gulfwide	0.0063	.....	.....
		Gulfwide	0.0063	.....	.....
Sculpins	Annual	Gulfwide	0.0063	.....	.....
		Gulfwide	0.0063	.....	.....
		Gulfwide	0.0063	.....	.....
Sharks	Annual	Gulfwide	0.0063	.....	.....
		Gulfwide	0.0063	.....	.....
		Gulfwide	0.0063	.....	.....
Squids	Annual	Gulfwide	0.0063	.....	.....
		Gulfwide	0.0063	.....	.....
		Gulfwide	0.0063	.....	.....

TABLE 21—FINAL 2015 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/ gear	Area/component	Ratio of 1995– 1997 non-ex- empt AFA CV catch to 1995– 1997 TAC	Final 2015 TACs	Final 2015 non-exempt AFA CV sideboard limit
Octopuses	Annual	Gulfwide	0.0063	1,507	9

¹ The Pacific cod A season for trawl gear does not open until January 20.

² The Pacific cod B season for trawl gear closes November 1.

TABLE 22—FINAL 2016 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995– 1997 non-ex- empt AFA CV catch to 1995– 1997 TAC	Final 2016 TACs	Final 2016 non-exempt AFA CV sideboard limit
Pollock	A Season, January 20–March 10	Shumagin (610)	0.6047	4,760	2,879
		Chirikof (620)	0.1167	39,992	4,667
		Kodiak (630)	0.2028	14,839	3,009
	B Season, March 10–May 31	Shumagin (610)	0.6047	4,760	2,879
		Chirikof (620)	0.1167	49,586	5,787
		Kodiak (630)	0.2028	5,245	1,064
	C Season, August 25–October 1	Shumagin (610)	0.6047	15,975	9,660
		Chirikof (620)	0.1167	19,179	2,238
		Kodiak (630)	0.2028	24,437	4,956
	D Season, October 1–November 1.	Shumagin (610)	0.6047	15,975	9,660
		Chirikof (620)	0.1167	19,179	2,238
	Annual	Kodiak (630)	0.2028	24,437	4,956
		WYK (640)	0.3495	6,187	2,162
SEO (650)		0.3495	12,625	4,412	
W		0.1331	16,255	2,164	
Pacific cod	A Season ¹ , January 1–June 10	C	0.0692	27,594	1,910
		W	0.1331	10,837	1,442
Annual	B Season ² , September 1–December 31.	C	0.0692	18,396	1,273
		E inshore	0.0079	1,909	15
		E offshore	0.0078	212	2
Sablefish	Annual, trawl gear	W	0.0000	268	.....
		C	0.0642	846	54
		E	0.0433	199	9
Flatfish, Shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	17,114	1,005
		E	0.0126	2,513	32
Flatfish, deep-water	Annual	W	0.0000	299	.....
		C	0.0647	3,645	236
		E	0.0128	9,233	118
Rex sole	Annual	W	0.0007	1,234	1
		C	0.0384	5,707	219
		E	0.0029	2,038	6
Arrowtooth flounder	Annual	W	0.0021	14,500	30
		C	0.0280	75,000	2,100
		E	0.0002	13,800	3
Flathead sole	Annual	W	0.0036	8,650	31
		C	0.0213	15,400	328
		E	0.0009	3,709	3
Pacific ocean perch	Annual	W	0.0023	2,358	5
		C	0.0748	16,184	1,211
		E	0.0466	2,894	135
Northern rockfish	Annual	W	0.0003	1,158	.....
		C	0.0277	3,563	99
Shortraker rockfish	Annual	W	0.0000	92	.....
		C	0.0218	397	9
		E	0.0110	834	9
Dusky rockfish	Annual	W	0.0001	273	.....
		C	0.0000	3,077	.....
		E	0.0067	1,361	9

TABLE 22—FINAL 2016 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUND FISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2016 TACs	Final 2016 non-exempt AFA CV sideboard limit
Rougeye rockfish	Annual	W	0.0000	117	.....
		C	0.0237	643	15
		E	0.0124	382	5
Demersal shelf rockfish	Annual	SEO	0.0020	225	.....
Thornyhead rockfish	Annual	W	0.0280	235	7
		C	0.0280	875	25
		E	0.0280	731	20
Other rockfish	Annual	W	0.0034	.....	.....
		C	0.1699	1,031	175
		E	0.0000	780	-
Atka mackerel	Annual	Gulfwide	0.0309	2,000	62
Big skates	Annual	W	0.0063	731	5
		C	0.0063	1,257	8
		E	0.0063	1,267	8
		W	0.0063	152	1
Longnose skates	Annual	C	0.0063	2,090	13
		E	0.0063	976	6
		Gulfwide	0.0063	2,235	14
Other skates	Annual	Gulfwide	0.0063	5,569	35
Sculpins	Annual	Gulfwide	0.0063	5,989	38
Sharks	Annual	Gulfwide	0.0063	1,148	7
Squids	Annual	Gulfwide	0.0063	1,507	9
Octopuses	Annual	Gulfwide	0.0063	1,507	9

¹ The Pacific cod A season for trawl gear does not open until January 20.

² The Pacific cod B season for trawl gear closes November 1.

Non-Exempt AFA Catcher Vessel Halibut PSC Limits

The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from

1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997 (§ 679.64(b)(4)). Tables 23 and 24 list the final 2015 and 2016 non-exempt AFA CV halibut PSC limits for vessels using trawl gear in the GOA, respectively. The 2015 and 2016 seasonal apportionments

of trawl halibut PSC limits between the deep-water and shallow-water species fisheries categories proportionately incorporate reductions made to the annual trawl halibut PSC limits and associated seasonal apportionments (see Tables 14 and 15).

TABLE 23—FINAL 2015 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2015 PSC limit	2015 non-exempt AFA CV PSC limit
1	January 20–April 1	shallow-water	0.340	396	135
		deep-water	0.070	88	6
2	April 1–July 1	shallow-water	0.340	88	30
		deep-water	0.070	264	18
3	July 1–September 1	shallow-water	0.340	176	60
		deep-water	0.070	352	25
4	September 1–October 1	shallow-water	0.340	132	45
		deep-water	0.070	0	0
5	October 1–December 31	all targets	0.205	264	54
Total .....	.....	.....	.....	1,760	373

TABLE 24—FINAL 2016 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2016 PSC limit	2016 non-exempt AFA CV PSC limit
1	January 20–April 1	shallow-water	0.340	384	131
		deep-water	0.070	85	6
2	April 1–July 1	shallow-water	0.340	85	29
		deep-water	0.070	256	18
3	July 1–September 1	shallow-water	0.340	171	58
		deep-water	0.070	341	24
4	September 1–October 1	shallow-water	0.340	128	44
		deep-water	0.070	0	0
5	October 1–December 31	all targets	0.205	256	52
Total				1,706	361

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict these vessels' catch to their collective historical landings in each GOA

groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to catch made using an LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/ Aleutian Islands King and Tanner Crabs (70 FR 10174, March 2, 2005), Amendment 34 to the Fishery

Management Plan for Bering Sea/ Aleutian Island King and Tanner Crabs (76 FR 35772, June 20, 2011), and Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011).

Tables 25 and 26 list the final 2015 and 2016 groundfish sideboard limitations for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

TABLE 25—FINAL 2015 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2015 TACs	Final 2015 non-AFA crab vessel sideboard limit
Pollock	A Season, January 20–March 10.	Shumagin (610)	0.0098	3,632	36
		Chirikof (620)	0.0031	30,503	95
		Kodiak (630)	0.0002	11,316	2
	B Season, March 10–May 31	Shumagin (610)	0.0098	3,632	36
		Chirikof (620)	0.0031	37,820	117
		Kodiak (630)	0.0002	4,000	1
	C Season, August 25–October 1.	Shumagin (610)	0.0098	12,185	119
		Chirikof (620)	0.0031	14,628	45
		Kodiak (630)	0.0002	18,639	4
	D Season, October 1–November 1.	Shumagin (610)	0.0098	12,185	119
		Chirikof (620)	0.0031	14,628	45
	Annual		Kodiak (630)	0.0002	18,639	4
WYK (640)			0.0000	4,719	
SEO (650)			0.0000	12,625	
Pacific cod	A Season ¹ , January 1–June 10.	W Jig	0.0000	16,255	
		W Hook-and-line CV	0.0004	16,255	7
		W Hook-and-line C/P	0.0018	16,255	29
		W Pot CV	0.0997	16,255	1,621
		W Pot C/P	0.0078	16,255	127
		W Trawl CV	0.0007	16,255	11
		C Jig	0.0000	27,594	
		C Hook-and-line CV	0.0001	27,594	3
		C Hook-and-line C/P	0.0012	27,594	33

TABLE 25—FINAL 2015 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2015 TACs	Final 2015 non-AFA crab vessel sideboard limit	
Sablefish	B Season ² Jig Gear: June 10–December 31.	C Pot CV	0.0474	27,594	1,308	
		C Pot C/P	0.0136	27,594	375	
		C Trawl CV	0.0012	27,594	33	
		W Jig	0.0000	10,837		
		W Hook-and-line CV	0.0004	10,837	4	
		W Hook-and-line C/P	0.0001	10,837	20	
		W Pot CV	0.0997	10,837	1,080	
		W Pot C/P	0.0078	10,837	85	
		W Trawl CV	0.0007	10,837	8	
		C Jig	0.0000	18,396		
	All other gears: September 1–December 31	C Hook-and-line CV	0.0001	18,396	2	
		C Hook-and-line C/P	0.0012	18,396	22	
		C Pot CV	0.0474	18,396	872	
		C Pot C/P	0.0136	18,396	250	
		C Trawl CV	0.0012	18,396	22	
		Annual	E inshore	0.0110	1,909	21
			E offshore	0.0000	212	
		Annual, trawl gear	W	0.0000	295	
			C	0.0000	932	
			E	0.0000	220	
Flatfish, shallow-water	Annual	W	0.0059	13,250	78	
		C	0.0001	19,297	2	
		E	0.0000	2,834		
Flatfish, deep-water	Annual	W	0.0035	301	1	
		C	0.0000	3,689		
		E	0.0000	9,344		
Rex sole	Annual	W	0.0000	1,258		
		C	0.0000	5,816		
		E	0.0000	2,076		
Arrowtooth flounder	Annual	W	0.0004	14,500	6	
		C	0.0001	75,000	8	
		E	0.0000	13,800		
Flathead sole	Annual	W	0.0002	8,650	2	
		C	0.0004	15,400	6	
		E	0.0000	3,706		
Pacific ocean perch	Annual	W	0.0000	2,302		
		C	0.0000	15,873		
		E	0.0000	2,837		
Northern rockfish	Annual	W	0.0005	1,226	1	
		C	0.0000	3,772		
		W	0.0013	92	0	
Shortraker rockfish	Annual	C	0.0012	397	0	
		E	0.0009	834	1	
		W	0.0017	296	1	
Dusky rockfish	Annual	C	0.0000	3,336		
		E	0.0000	1,477		
		W	0.0067	115	1	
Rougeye rockfish	Annual	C	0.0047	632	3	
		E	0.0008	375	0	
		SEO	0.0000	225		
Demersal shelf rockfish	Annual	W	0.0047	235	1	
		C	0.0066	875	6	
		E	0.0045	731	3	
Thornyhead rockfish	Annual	W	0.0035			
		C	0.0033	1,031	3	
		E	0.0000	780		
Other rockfish	Annual	Gulfwide	0.0000	2,000		
		W	0.0392	731	29	
		C	0.0159	1,257	20	
Atka mackerel	Annual	E	0.0000	1,267		
		W	0.0392	152	6	
		C	0.0159	2,090	33	
Big skate	Annual	E	0.0000	976		
		W	0.0000			
		Gulfwide	0.0176	2,235	39	
Longnose skate	Annual					
Other skates	Annual					

TABLE 25—FINAL 2015 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2015 TACs	Final 2015 non-AFA crab vessel sideboard limit
Sculpins	Annual	Gulfwide	0.0176	5,569	98
Sharks	Annual	Gulfwide	0.0176	5,989	105
Squids	Annual	Gulfwide	0.0176	1,148	20
Octopuses	Annual	Gulfwide	0.0176	1,507	27

¹ The Pacific cod A season for trawl gear does not open until January 20.

² The Pacific cod B season for trawl gear closes November 1.

TABLE 26—FINAL 2016 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH HARVEST SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2016 TACs	Final 2016 non-AFA crab vessel sideboard limit
Pollock	A Season, January 20–March 10.	Shumagin (610)	0.0098	4,760	47
		Chirikof (620)	0.0031	39,992	124
		Kodiak (630)	0.0002	14,839	3
	B Season, March 10–May 31	Shumagin (610)	0.0098	4,760	47
		Chirikof (620)	0.0031	49,586	154
		Kodiak (630)	0.0002	5,245	1
	C Season, August 25–October 1.	Shumagin (610)	0.0098	15,975	157
		Chirikof (620)	0.0031	19,179	59
		Kodiak (630)	0.0002	24,437	5
	D Season, October 1–November 1.	Shumagin (610)	0.0098	15,975	157
		Chirikof (620)	0.0031	19,179	59
		Kodiak (630)	0.0002	24,437	5
	Annual	WYK (640)	0.0000	6,187	
		SEO (650)	0.0000	12,625	
		W Jig	0.0000	16,255	
Pacific cod	A Season ¹ , January 1–June 10.	W Hook-and-line CV	0.0004	16,255	7
		W Hook-and-line C/P	0.0018	16,255	29
		W Pot CV	0.0997	16,255	1,621
		W Pot C/P	0.0078	16,255	127
		W Trawl CV	0.0007	16,255	11
		C Jig	0.0000	27,594	
		C Hook-and-line CV	0.0001	27,594	3
		C Hook-and-line C/P	0.0012	27,594	33
		C Pot CV	0.0474	27,594	1,308
		C Pot C/P	0.0136	27,594	375
		C Trawl CV	0.0012	27,594	33
		W Jig	0.0000	10,837	
		W Hook-and-line CV	0.0004	10,837	4
		W Hook-and-line C/P	0.0018	10,837	20
		W Pot CV	0.0997	10,837	1,080
	B Season ² , Jig Gear: June 10–December 31. All other gears: September 1–December 31.	W Pot C/P	0.0078	10,837	85
		W Trawl CV	0.0007	10,837	8
		C Jig	0.0000	18,396	
		C Hook-and-line CV	0.0001	18,396	2
		C Hook-and-line C/P	0.0012	18,396	22
		C Pot CV	0.0474	18,396	872
		C Pot C/P	0.0136	18,396	250
		C Trawl CV	0.0012	18,396	22
		E inshore	0.0110	1,909	21
		E offshore	0.0000	212	
		W	0.0000	268	

TABLE 26—FINAL 2016 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH HARVEST SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Season/gear	Area/component/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2016 TACs	Final 2016 non-AFA crab vessel sideboard limit
Flatfish, shallow-water	Annual	C	0.0000	846	
		E	0.0000	199	
		W	0.0059	13,250	78
Flatfish, deep-water	Annual	C	0.0001	17,114	2
		E	0.0000	2,513	
		W	0.0035	299	1
Rex sole	Annual	C	0.0000	3,645	
		E	0.0000	9,233	
		W	0.0000	1,234	
Arrowtooth flounder	Annual	C	0.0000	5,707	
		E	0.0000	2,038	
		W	0.0004	14,500	6
Flathead sole	Annual	C	0.0001	75,000	8
		E	0.0000	13,800	
		W	0.0002	8,650	2
Pacific ocean perch	Annual	C	0.0004	15,400	6
		E	0.0000	3,709	
		W	0.0000	2,358	
Northern rockfish	Annual	C	0.0000	16,184	
		E	0.0000	2,894	
		W	0.0005	1,158	1
Shortraker rockfish	Annual	C	0.0000	3,563	
		E	0.0000	834	1
		W	0.0013	92	0
Dusky rockfish	Annual	C	0.0012	397	0
		E	0.0009	834	1
		W	0.0017	273	0
Rougeye rockfish	Annual	C	0.0000	3,077	
		E	0.0000	1,361	
		W	0.0067	117	1
Demersal shelf rockfish	Annual	C	0.0047	643	3
		E	0.0008	382	0
		SEO	0.0000	225	
Thornyhead rockfish	Annual	W	0.0047	235	1
		C	0.0066	875	6
		E	0.0045	731	3
Other rockfish	Annual	W	0.0035		
		C	0.0033	1,031	3
		E	0.0000	780	
Atka mackerel	Annual	Gulfwide	0.0000	2,000	
Big skate	Annual	W	0.0392	731	29
		C	0.0159	1,257	20
		E	0.0000	1,267	
Longnose skate	Annual	W	0.0392	152	6
		C	0.0159	2,090	33
		E	0.0000	976	
Other skates	Annual	Gulfwide	0.0176	2,235	39
Sculpins	Annual	Gulfwide	0.0176	5,569	98
Sharks	Annual	Gulfwide	0.0176	5,989	105
Squids	Annual	Gulfwide	0.0176	1,148	20
Octopuses	Annual	Gulfwide	0.0176	1,507	27

¹ The Pacific cod A season for trawl gear does not open until January 20.

² The Pacific cod B season for trawl gear closes November 1.

Rockfish Program Groundfish Sideboard and Halibut PSC Limitations

The Rockfish Program establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, C/P rockfish sideboard restrictions, and C/P opt-out vessel sideboard restrictions. These sideboards are intended to limit

the ability of rockfish harvesters to expand into other fisheries.

CVs participating in the Rockfish Program may not participate in directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat district and Western GOA from July 1 through July 31. Also, CVs may not participate in directed fishing for

arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

Catcher/processors participating in Rockfish Program cooperatives are restricted by rockfish and halibut PSC sideboard limits. These C/Ps are prohibited from directed fishing for dusky rockfish, Pacific ocean perch, and

northern rockfish in the West Yakutat district and Western GOA from July 1 through July 31. Holders of C/P-designated LLP licenses that opt out of participating in a Rockfish Program

cooperative will be able to access that portion of each sideboard limit that is not assigned to rockfish cooperatives. Tables 27 and 28 list the final 2015 and 2016 Rockfish Program C/P sideboard

limits in the West Yakutat district and the Western GOA. Due to confidentiality requirements associated with fisheries data, the sideboard limits for the West Yakutat district are not displayed.

TABLE 27—FINAL 2015 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA BY THE CATCHER/PROCESSOR SECTOR
[Values are rounded to the nearest metric ton]

Area	Fishery	C/P sector (% of TAC)	Final 2015 TACs	Final 2015 C/P limit
West Yakutat District	Dusky rockfish	Confidential ¹	1,288	Confidential. ¹
	Pacific ocean perch	Confidential ¹	2,014	Confidential. ¹
Western GOA	Dusky rockfish	72.3	296	214.
	Pacific ocean perch	50.6	2,302	1,165.
	Northern rockfish	74.3	1,226	911.

¹ Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

TABLE 28—FINAL 2016 ROCKFISH PROGRAM HARVEST LIMITS BY SECTOR FOR WEST YAKUTAT DISTRICT AND WESTERN GOA BY THE CATCHER/PROCESSOR SECTOR
[Values are rounded to the nearest metric ton]

Area	Fishery	C/P sector (% of TAC)	Final 2016 TACs	Final 2016 C/P limit
West Yakutat District	Dusky rockfish	Confidential ¹	1,187	Confidential. ¹
	Pacific ocean perch	Confidential ¹	2,055	Confidential. ¹
Western GOA	Dusky rockfish	72.3	273	197.
	Pacific ocean perch	50.6	2,358	1,193.
	Northern rockfish	74.3	1,158	860.

¹ Not released due to confidentiality requirements associated with fish ticket data, as established by NMFS and the State of Alaska.

Under the Rockfish Program, the C/P sector is subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water species fisheries from July 1 through July 31. No halibut PSC sideboard limits apply to the CV sector, as vessels participating in cooperatives receive a portion of the annual halibut PSC limit. C/Ps that opt out of the Rockfish Program would be able to access that portion of the deep-water and shallow-water halibut PSC sideboard limit not assigned to C/P

rockfish cooperatives. The sideboard provisions for C/Ps that elect to opt out of participating in a rockfish cooperative are described in § 679.82(c), (e), and (f). Sideboard limits are linked to the catch history of specific vessels that may choose to opt out. After March 1, NMFS will determine which C/Ps have opted-out of the Rockfish Program in 2015, and will know the ratios and amounts used to calculate opt-out sideboard ratios. NMFS will then calculate any applicable opt-out sideboards and post

these allocations on the Alaska Region Web site at <http://alaskafisheries.noaa.gov/sustainablefisheries/rockfish/>. Tables 29 and 30 list the 2015 and 2016 Rockfish Program halibut PSC limits for the catcher/processor sector. These halibut PSC limits proportionately incorporate reductions made to the annual trawl halibut PSC limits and associated season apportionments (see Tables 14 and 15).

TABLE 29—FINAL 2015 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR SECTOR
[Values are rounded to the nearest metric ton]

Sector	Shallow-water species fishery halibut PSC sideboard ratio (percent)	Deep-water species fishery halibut PSC sideboard ratio (percent)	2015 halibut mortality limit (mt)	Annual shallow-water species fishery halibut PSC sideboard limit (mt)	Annual deep-water species fishery halibut PSC sideboard limit (mt)
Catcher/processor	0.10	2.50	1,759	2	44

TABLE 30—FINAL 2016 ROCKFISH PROGRAM HALIBUT MORTALITY LIMITS FOR THE CATCHER/PROCESSOR SECTOR
[Values are rounded to the nearest metric ton]

Sector	Shallow-water species fishery halibut PSC sideboard ratio (percent)	Deep-water species fishery halibut PSC sideboard ratio (percent)	2016 halibut mortality limit (mt)	Annual shallow-water species fishery halibut PSC sideboard limit (mt)	Annual deep-water species fishery halibut PSC sideboard limit (mt)
Catcher/processor	0.10	2.50	1,706	2	43

Amendment 80 Program Groundfish and PSC Sideboard Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl C/P sector. The Amendment 80 Program established groundfish and halibut PSC catch limits for Amendment 80 Program participants to limit the ability of participants eligible for the Amendment

80 Program to expand their harvest efforts in the GOA.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the F/V GOLDEN FLEECE, to amounts no greater than the limits listed in Table 37 to 50 CFR part 679. Under regulations at § 679.92(d), the F/V GOLDEN FLEECE is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, dusky rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004. Tables 31 and 32 list the final 2015 and 2016 sideboard limits for Amendment 80 Program vessels. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in Tables 31 and 32.

TABLE 31—FINAL 2015 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS
[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2015 TAC (mt)	2015 Amendment 80 vessel sideboards (mt)
Pollock	A Season, January 20–February 25.	Shumagin (610)	0.003	3,632	11
		Chirikof (620)	0.002	30,503	61
		Kodiak (630)	0.002	11,316	23
	B Season, March 10–May 31	Shumagin (610)	0.003	3,632	11
		Chirikof (620)	0.002	37,820	76
		Kodiak (630)	0.002	4,000	8
	C Season, August 25–September 15.	Shumagin (610)	0.003	12,185	37
		Chirikof (620)	0.002	14,628	29
		Kodiak (630)	0.002	18,639	37
	D Season, October 1–November 1.	Shumagin (610)	0.003	12,185	37
		Chirikof (620)	0.002	14,628	29
		Kodiak (630)	0.002	18,639	37
Annual	WYK (640)	0.002	4,719	9	
	W	0.020	16,255	325	
	C	0.044	27,594	1,214	
Pacific cod	A Season ¹ , January 1–June 10.	W	0.020	10,837	217
		C	0.044	18,396	809
		WYK	0.034	2,121	72
Pacific ocean perch	Annual	W	0.994	2,302	2,288
		WYK	0.961	2,014	1,935
		W	1.000	1,226	1,226
Northern rockfish	Annual	W	0.764	296	226
Dusky rockfish	Annual	WYK	0.896	1,288	1,154

¹ The Pacific cod A season for trawl gear does not open until January 20.

² The Pacific cod B season for trawl gear closes November 1.

TABLE 32—FINAL 2016 GOA GROUND FISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS
 [Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2016 TAC (mt)	2016 Amendment 80 vessel sideboards (mt)
Pollock	A Season, January 20–February 25.	Shumagin (610)	0.003	4,760	14
		Chirikof (620)	0.002	39,992	80
		Kodiak (630)	0.002	14,839	30
	B Season, March 10–May 31	Shumagin (610)	0.003	4,760	14
		Chirikof (620)	0.002	49,586	99
		Kodiak (630)	0.002	5,245	10
	C Season, August 25–September 15.	Shumagin (610)	0.003	15,975	48
		Chirikof (620)	0.002	19,179	38
	D Season, October 1–November 1.	Kodiak (630)	0.002	24,437	49
		Shumagin (610)	0.003	15,975	48
	Annual	Chirikof (620)	0.002	19,179	38
		Kodiak (630)	0.002	24,437	49
Pacific cod	A Season ¹ , January 1–June 10	WYK (640)	0.002	6,187	12
		W	0.020	16,255	325
	B Season ² , September 1–December 31.	C	0.044	27,594	1,214
		W	0.020	10,837	217
	Annual	C	0.044	18,396	809
		WYK	0.034	2,121	72
Pacific ocean perch	Annual	W	0.994	2,358	2,344
		WYK	0.961	2,055	1,975
Northern rockfish	Annual	W	1.000	1,158	1,158
Dusky rockfish	Annual	W	0.764	273	209
		WYK	0.896	1,187	1,064

¹ The Pacific cod A season for trawl gear does not open until January 20.
² The Pacific cod B season for trawl gear closes November 1.

The PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 Program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors: Allocation of halibut PSC cooperative quota under the Central GOA Rockfish

Program and the exemption of the F/V GOLDEN FLEECE from this restriction (§ 679.92(b)(2)). Tables 33 and 34 list the final 2015 and 2016 halibut PSC limits for Amendment 80 Program vessels, respectively. These tables incorporate the maximum percentages of the halibut PSC sideboard limits that may be used by Amendment 80 Program vessels as contained in Table 38 to 50 CFR part

679. These halibut PSC limits proportionately incorporate the reductions made to the annual trawl halibut PSC limits and associated seasonal apportionments (see Tables 14 and 15). Additionally, residual amounts of a seasonal Amendment 80 sideboard halibut PSC limit may carry forward to the next season limit (§ 679.92(b)(2)).

TABLE 33—FINAL 2015 HALIBUT PSC LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA
 [Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2015 annual PSC limit (mt)	2015 Amendment 80 vessel PSC limit
1	January 20–April 1	shallow-water	0.0048	1,759	8
		deep-water	0.0115	1,759	20
2	April 1–July 1	shallow-water	0.0189	1,759	33
		deep-water	0.1072	1,759	189
3	July 1–September 1	shallow-water	0.0146	1,759	26
		deep-water	0.0521	1,759	92
4	September 1–October 1	shallow-water	0.0074	1,759	13
		deep-water	0.0014	1,759	2
5	October 1–December 31	shallow-water	0.0227	1,759	40
		deep-water	0.0371	1,759	65

TABLE 33—FINAL 2015 HALIBUT PSC LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA—Continued
 [Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2015 annual PSC limit (mt)	2015 Amendment 80 vessel PSC limit
				Total:	488

TABLE 34—FINAL 2016 HALIBUT PSC LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA
 [Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2016 annual PSC limit (mt)	2016 Amendment 80 vessel PSC limit
1	January 20–April 1	shallow-water	0.0048	1,706	8
		deep-water	0.0115	1,706	20
2	April 1–July 1	shallow-water	0.0189	1,706	32
		deep-water	0.1072	1,706	183
3	July 1–September 1	shallow-water	0.0146	1,706	25
		deep-water	0.0521	1,706	89
4	September 1–October 1	shallow-water	0.0074	1,706	13
		deep-water	0.0014	1,706	2
5	October 1–December 31	shallow-water	0.0227	1,706	39
		deep-water	0.0371	1,706	63
				Total:	474

Directed Fishing Closures

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines (1) that any allocation or apportionment of a target species or species group allocated or apportioned to a fishery will be reached; or (2) with respect to pollock and Pacific cod, that an allocation or apportionment to an

inshore or offshore component or sector allocation will be reached, the Regional Administrator may establish a directed fishing allowance (DFA) for that species or species group. If the Regional Administrator establishes a DFA and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified

GOA regulatory area or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TACs for the species listed in Table 35 are necessary to account for the incidental catch of these species in other anticipated groundfish fisheries for the 2015 and 2016 fishing years.

TABLE 35—2015 AND 2016 DIRECTED FISHING CLOSURES IN THE GOA
 [Amounts for incidental catch in other directed fisheries are in metric tons]

Target	Area/component/gear	Incidental catch amount and year (if amounts differ by year)
Pollock	all/offshore	not applicable ¹ .
Sablefish ²	all/trawl	1,446 (2015). 1,313 (2016).
Pacific cod	Western, catcher/processor, trawl	627.
	Central, catcher/processor, trawl ...	1,911.
Shortraker rockfish ²	all	1,323.
Rougeye rockfish ²	all	1,122 (2015). 1,142 (2016).
Thornyhead rockfish	all	1,841.
Other rockfish	all	1,811.
Atka mackerel	all	2,000.
Big skate	all	3,255.
Longnose skate	all	3,218.
Other skates	all	2,235.
Sharks	all	5,989.
Squids	all	1,148.
Octopuses	all	1,507.

¹ Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).

² Closures not applicable to participants in cooperatives conducted under the Central GOA Rockfish Program.

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species or species groups listed in Table 35 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and components in the GOA listed in Table 35. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2016.

Section 679.64(b)(5) provides for management of AFA CV groundfish harvest limits and PSC bycatch limits using directed fishing closures and PSC closures according to procedures set out at §§ 679.20(d)(1)(iv), 679.21(d)(6), and 679.21(e)(3)(v). The Regional Administrator has determined that, in addition to the closures listed above, many of the non-exempt AFA CV sideboard limits listed in Tables 21 and 22 are necessary as incidental catch to support other anticipated groundfish

fisheries for the 2015 and 2016 fishing years. In accordance with § 679.20(d)(1)(iv), the Regional Administrator sets the DFAs for the species and species groups in Table 36 at zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by non-exempt AFA CVs in the GOA for the species and specified areas listed in Table 36. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 2016.

TABLE 36—2015 AND 2016 NON-EXEMPT AFA CV SIDEBOARD DIRECTED FISHING CLOSURES FOR ALL GEAR TYPES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

Species	Regulatory area/district	Incidental catch amount
Pacific cod	Eastern	15 (inshore) and 2 (offshore).
Shallow-water flatfish	Eastern	36 in 2015, 32 in 2016.
Deep-water flatfish	Western	0.
Rex sole	Eastern and Western	6 and 1 (2015), 5 and 1 (2016).
Arrowtooth flounder	Eastern and Western	3 and 30.
Flathead sole	Eastern and Western	3 and 31.
Pacific ocean perch	Western	5.
Northern rockfish	Western	0.
Dusky rockfish	Entire GOA	10 in 2015, 9 in 2016.
Demersal shelf rockfish	SEO District	0.
Sculpins	Entire GOA	35.
Squids	Entire GOA	7.

Section 680.22 provides for the management of non-AFA crab vessel sideboards using directed fishing closures in accordance with § 680.22(e)(2) and (3). The Regional Administrator has determined that the non-AFA crab vessel sideboards listed in Tables 25 and 26 are insufficient to support a directed fishery and has set the sideboard DFA at zero mt, with the exception of Pacific cod pot CV sector apportionments in the Western and Central Regulatory Areas. Therefore, NMFS is prohibiting directed fishing by non-AFA crab vessels in the GOA for all species and species groups listed in Tables 25 and 26, with the exception of the Pacific cod pot CV sector apportionments in the Western and Central Regulatory Areas.

Closures implemented under the 2014 and 2015 GOA harvest specifications for groundfish (79 FR 12890, March 6, 2014) remain effective under authority of these final 2015 and 2016 harvest specifications, and are posted at the following Web site: http://www.alaskafisheries.noaa.gov/cm/info_bulletins/. While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in

regulations at 50 CFR part 679. NMFS may implement other closures during the 2015 and 2016 fishing years as necessary for effective conservation and management.

Comments and Response

NMFS did not receive any comments in response to the proposed 2015 and 2016 harvest specifications (79 FR 72593, December 8, 2014).

Classification

NMFS has determined that these final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Orders 12866 and 13563.

NMFS prepared an EIS for this action (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the EIS. In January 2015, NMFS prepared a Supplemental Information Report (SIR) for this action. Copies of the EIS, ROD, and SIR for this action are available from NMFS (see **ADDRESSES**). The EIS analyzes the environmental consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action

area. The EIS found no significant environmental consequences of this action and its alternatives. The preferred alternative is a harvest strategy in which TACs are set at a level that falls within the range of ABCs recommended by the Council's SSC; the sum of the TACs must achieve the OY specified in the FMP. The SIR evaluates the need to prepare a Supplemental EIS (SEIS) for the 2015 and 2016 groundfish harvest specifications.

An SEIS should be prepared if 1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or 2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the SIR and SAFE reports, the Regional Administrator has determined that 1) approval of the 2015 and 2016 harvest specifications, which were set according to the preferred harvest strategy in the EIS, do not constitute a substantial change in the action; and 2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its

impacts. Additionally, the 2015 and 2016 harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the EIS. Therefore, supplemental National Environmental Policy Act documentation is not necessary to implement the 2015 and 2016 harvest specifications.

Section 604 of the Regulatory Flexibility Act requires that, when an agency promulgates a final rule under section 553 of Title 5 of the United States Code, after being required by that section, or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis (FRFA).

Section 604 describes the required contents of a FRFA: 1) A statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 8, 2014 (79 FR 72593). NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany this action, and included a

summary in the proposed rule. The comment period closed on January 7, 2015. No comments were received on the IRFA or the economic impacts of the rule more generally.

The entities directly regulated by this action include a) entities operating vessels with groundfish FFPs catching FMP groundfish in Federal waters; b) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the state-waters parallel fisheries; and c) all entities operating vessels fishing for halibut inside three miles of the shore (whether or not they have FFPs).

On June 12, 2014, the Small Business Administration issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647, June 12, 2014). The rule increased the size standard for Finfish Fishing from \$19.0 million to \$20.5 million, Shellfish Fishing from \$ 5.0 million to \$5.5 million, and Other Marine Fishing from \$7.0 million to \$7.5 million.

Based on data from 2013 fishing activity, there were 1,156 individual catcher vessel entities with gross revenues meeting small entity criteria. Of these entities, 1,075 used hook-and-line gear, 116 used pot gear, and 33 used trawl gear (some of these entities used more than one gear type, thus the counts of entities using the different gear types do not sum to the total number of entities above). Three individual catcher/processors met the small entity criterion; two used hook-and-line gear, and one used trawl gear. Catcher/processor gross revenues were not reported for confidentiality reasons, however hook-and-line small entities had average gross revenues of \$380,000, small pot entities had average gross revenues of \$960,000, and small trawl entities had average gross revenues of \$2.8 million.

Some of these vessels are members of AFA inshore pollock cooperatives, of GOA rockfish cooperatives, or of BSAI crab rationalization cooperatives and, therefore, under the Regulatory Flexibility Act (RFA) it is the aggregate gross receipts of all participating members of the cooperative that must meet the threshold. Vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA. These relationships are accounted for, along with corporate affiliations among vessels, to the extent that they are known, in the estimated number of small entities. If affiliations exist of which NMFS is unaware, or if entities had non-fishing revenue sources, the estimates above may overstate the

number of directly regulated small entities.

This action does not modify recordkeeping or reporting requirements.

NMFS considered other, alternative harvest strategies when choosing the preferred harvest strategy (Alternative 2) in December 2006. These included the following:

- Alternative 1: Set TACs to produce fishing mortality rates, F, that are equal to maxFABC, unless the sum of the TACs is constrained by the OY established in the FMPs. This is equivalent to setting TACs to produce harvest levels equal to the maximum permissible ABCs, as constrained by OY. The term "maxFABC" refers to the maximum permissible value of FABC under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC, therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.

- Alternative 3: For species in Tiers 1, 2, and 3, set TAC to produce F equal to the most recent 5-year average actual F. For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TACs would be set to produce harvest levels equal to the most recent 5-year average actual fishing mortality rates. For stocks with insufficient scientific information, TACs would be set equal to the most recent 5-year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABCs, and recent average F may provide a better indicator of actual F than FABC does.

- Alternative 4: 1) Set TACs for rockfish species in Tier 3 at F75%. Set TACs for rockfish species in Tier 5 at F = 0.5M. Set spatially explicit TACs for shortraker and rougheye rockfish in the GOA. 2) Taking the rockfish TACs as calculated above, reduce all other TACs by a proportion that does not vary across species, so that the sum of all TACs, including rockfish TACs, is equal to the lower bound of the area OY (116,000 mt in the GOA). This alternative sets conservative and spatially explicit TACs for rockfish species that are long-lived and late to mature and sets conservative TACs for the other groundfish species.

- Alternative 5: (No Action) Set TACs at zero.

These four alternatives do not meet the objectives of this action although they have a smaller adverse economic impact on small entities than the

preferred alternative. The Council rejected these alternatives as harvest strategies in 2006, and the Secretary did so in 2007.

Alternative 1 selected harvest rates that will allow fishermen to harvest stocks at the level of ABCs, unless total harvests are constrained by the upper bound of the GOA OY of 800,000 metric tons. The sums of ABCs in 2015 and 2016 are 685,597 mt and 731,049 mt, respectively. The sums of the TACs in 2015 and 2016 are 536,158 mt and 590,161 mt, respectively. Thus, although the sum of ABCs in each year is less than 800,000 metric tons, the sums of the TACs in each year are less than the sums of the ABCs.

In most cases, the Council has set TACs equal to ABCs. The divergence between aggregate TACs and aggregate ABCs reflects a variety of special species- and fishery-specific circumstances:

- Pacific cod TACs are set equal to 70 percent in the Western GOA and 75 percent in the Central GOA of the Pacific cod ABCs in each year to account for the guideline harvest levels (GHL) set by the State of Alaska for its GHL Pacific cod fisheries (30 and 25 percent, respectively, of the Western and Central GOA ABCs). Thus, the difference between the Federal TACs and ABCs does not actually reflect a Pacific cod harvest below the Pacific cod ABC, as the balance is available for the State's cod GHL fisheries.

- Shallow-water flatfish and flathead sole TACs are set below ABCs in the Western and Central GOA regulatory areas. Arrowtooth flounder TACs are set below ABC in all GOA regulatory areas. Catches of these flatfish species rarely, if ever, approach the proposed ABCs or TACs. Important trawl fisheries in the GOA take halibut PSC, and are constrained by limits on the allowable halibut PSC mortality. These limits routinely force the closure of trawl fisheries before they have harvested the available groundfish ABC. Thus, actual harvests of groundfish in the GOA routinely fall short of some ABCs and TACs. Markets can also constrain harvests below the TACs, as has been the case with arrowtooth flounder, in the past. These TACs are set to allow for increased harvest opportunities for these targets while conserving the halibut PSC limit for use in other, more fully utilized, fisheries.

- The other rockfish TAC is set below the ABC in the Southeast Outside district based on several factors. In addition to conservation concerns for the rockfish species in this group, there is a regulatory prohibition against using trawl gear east of 140° W. longitude.

Because most species of other rockfish are caught exclusively with trawl gear, the catch of such species with other gear types, such as hook-and-line, is low. The commercial catch of other rockfish in the Eastern regulatory area, which includes the West Yakutat and Southeast Outside districts, has ranged from approximately 70 mt to 248 mt per year over the last decade.

- The GOA-wide Atka mackerel TAC is set below the ABC. The estimates of survey biomass continue to be unreliable in the GOA. Therefore, the Council recommended and NMFS agrees that the Atka mackerel TAC in the GOA be set at an amount to support incidental catch in other directed fisheries.

Alternative 3 selects harvest rates based on the most recent 5 years of harvest rates (for species in Tiers 1 through 3) or for the most recent 5 years of harvests (for species in Tiers 4 through 6). This alternative is inconsistent with the objectives of this action, because it does not take account of the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species to reduce TACs from the upper end of the OY range in the GOA to its lower end of 116,000 mt. Overall, this would reduce 2015 TACs by about 78 percent. This would lead to significant reductions in harvests of species by small entities. While production declines in the GOA would undoubtedly be associated with price increases in the GOA, these increases would still be constrained by the availability of substitutes, and are very unlikely to offset revenue declines from smaller production. Thus, this action would have a detrimental economic impact on small entities.

Alternative 5, which sets all harvests equal to zero, may also address conservation issues, but would have a significant adverse economic impact on small entities.

Impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EIS and SIR (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for this rule because delaying this rule would be contrary to the public interest. The Plan Team review occurred in November 2014, and Council consideration and recommendations occurred in December 2014. Accordingly, NMFS' review could not begin until January 2015. For all fisheries not currently closed because the TACs established under the final

2014 and 2015 harvest specifications (79 FR 12890, March 6, 2014) were not reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period, because their TACs could be reached within that period. If implemented immediately, this rule would allow these fisheries to continue because the new TACs implemented by this rule are higher than the ones under which they are currently fishing.

Certain fisheries, such as those for pollock and Pacific cod, are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, sculpins, sharks, squids, and octopuses, are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If this rule allowed for a 30-day delay in effectiveness and if a TAC were reached during those 30 days, NMFS would close directed fishing or prohibit retention for the applicable species. Any delay in allocating the final TACs in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards, thus undermining the intent of the rule. Waiving the 30-day delay allows NMFS to prevent economic loss to fishermen that could otherwise occur should the 2015 TACs be reached. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries, and causing them to close at an accelerated pace.

In fisheries subject to declining sideboard limits, a failure to implement the updated sideboard limits before initial season's end could deny the intended economic protection to the non-sideboarded sectors. Conversely, in fisheries with increasing sideboard limits, economic benefit could be denied to the sideboard limited sectors.

If the final harvest specifications are not effective by March 14, 2015, which is the start of the 2015 Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught

along with Pacific halibut, as both hook-and-line sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of the final 2015 and 2016 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season.

In addition, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly true for those species that have lower 2015 ABCs and TACs than those established in the 2014 and 2015 harvest specifications (79 FR 12890, March 6, 2014). Immediate effectiveness also would give the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with

respect to new information about TACs. Therefore, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

Small Entity Compliance Guide

This final rule is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2015 and 2016 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2015 and 2016 fishing years, and to accomplish the goals and objectives of the FMP. This action affects all

fishermen who participate in the GOA fisheries. The specific amounts of OFL, ABC, TAC, and PSC are provided in tables to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 1540 (f), 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 105-277; Pub. L. 106-31; Pub. L. 106-554; Pub. L. 108-199; Pub. L. 108-447; Pub. L. 109-241; Pub. L. 109-479.

Dated: February 17, 2015.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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Part IV

Department of Homeland Security

8 CFR Parts 214 and 274a

Employment Authorization for Certain H-4 Dependent Spouses; Final Rule

DEPARTMENT OF HOMELAND SECURITY**8 CFR Parts 214 and 274a**

[CIS No. 2501–10; DHS Docket No. USCIS–2010–0017]

RIN 1615–AB92

Employment Authorization for Certain H–4 Dependent Spouses

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Homeland Security (“DHS” or “Department”) regulations by extending eligibility for employment authorization to certain H–4 dependent spouses of H–1B nonimmigrants who are seeking employment-based lawful permanent resident (“LPR”) status. Such H–1B nonimmigrants must be the principal beneficiaries of an approved Immigrant Petition for Alien Worker (Form I–140), or have been granted H–1B status in the United States under the American Competitiveness in the Twenty-first Century Act of 2000, as amended by the 21st Century Department of Justice Appropriations Authorization Act. DHS anticipates that this regulatory change will reduce personal and economic burdens faced by H–1B nonimmigrants and eligible H–4 dependent spouses during the transition from nonimmigrant to LPR status. The final rule will also support the goals of attracting and retaining highly skilled foreign workers and minimizing the disruption to U.S. businesses resulting from H–1B nonimmigrants who choose not to pursue LPR status in the United States. By providing the possibility of employment authorization to certain H–4 dependent spouses, the rule will ameliorate certain disincentives for talented H–1B nonimmigrants to permanently remain in the United States and continue contributing to the U.S. economy as LPRs. This is an important goal considering the contributions such individuals make to entrepreneurship and research and development, which are highly correlated with overall economic growth and job creation. The rule also will bring U.S. immigration policies concerning this class of highly skilled workers more in line with those of other countries that are also competing to attract and retain similar highly skilled workers.

DATES: This final rule is effective May 26, 2015.

FOR FURTHER INFORMATION CONTACT: Jennifer Oppenheim, Adjudications Officer, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Suite 1100, Washington, DC 20529–2140; Telephone (202) 272–1470.

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I. Executive Summary*A. Purpose of the Regulatory Action*

DHS does not currently extend eligibility for employment authorization to H–4 dependents (spouses and unmarried children under 21 years of age) of H–1B nonimmigrants. *See* 8 CFR 214.2(h)(9)(iv). The lack of employment authorization for H–4 dependent spouses often gives rise to personal and economic hardships for the families of H–1B nonimmigrants. Such hardships may increase the longer these families remain in the United States. In many cases, H–1B nonimmigrants and their families who wish to acquire LPR status in the United States must wait many years for employment-based immigrant visas to become available. These waiting periods increase the disincentives for H–1B nonimmigrants to pursue LPR status and thus increase the difficulties that U.S. employers have in retaining highly educated and highly skilled nonimmigrant workers. These difficulties can be particularly acute in cases where an H–1B nonimmigrant’s family is experiencing economic strain or other stresses resulting from the H–4 dependent spouse’s inability to seek employment in the United States. Retaining highly skilled workers who intend to acquire LPR status is important to U.S. businesses and to the Nation given the contributions of these individuals to U.S. businesses and the U.S. economy. These individuals, for example, contribute to advances in entrepreneurship and research and development, which are highly correlated with overall economic growth and job creation.

In this final rule, DHS is amending its regulations to extend eligibility for employment authorization to certain H–4 dependent spouses of H–1B nonimmigrants to support the retention

of highly skilled workers who are on the path to lawful permanent residence. DHS expects this change to reduce the economic burdens and personal stresses that H-1B nonimmigrants and their families may experience during the transition from nonimmigrant to LPR status while, at the same time, facilitating their integration into American society. As such, the change will ameliorate certain disincentives that currently lead H-1B nonimmigrants to abandon efforts to remain in the United States while seeking LPR status, thereby minimizing disruptions to U.S. businesses employing such workers. The change will also support the U.S. economy, as the contributions H-1B nonimmigrants make to entrepreneurship and research and development are expected to assist overall economic growth and job creation. The rule also will bring U.S. immigration policies concerning this class of highly skilled workers more in line with those of other countries that compete to attract similar highly skilled workers.

B. Legal Authority

The authority of the Secretary of Homeland Security (Secretary) for this regulatory amendment can be found in section 102 of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 112, and section 103(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1103(a), which authorize the Secretary to administer and enforce the immigration and nationality laws. In addition, section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), recognizes the Secretary's authority to extend employment to noncitizens in the United States.

C. Summary of the Major Provisions of This Regulatory Action

On May 12, 2014, DHS published a notice of proposed rulemaking, which proposed to amend DHS regulations at

8 CFR 214.2(h)(9)(iv) and 274a.12(c) to extend eligibility for employment authorization to H-4 dependent spouses of H-1B nonimmigrants if the H-1B nonimmigrants either: (1) Are the principal beneficiaries of an approved Immigrant Petition for Alien Worker (Form I-140); or (2) have been granted H-1B status pursuant to sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000, Public Law 107-273, 116 Stat. 1758, as amended by the 21st Century Department of Justice Appropriations Act, Public Law 107-273, 116 Stat. 1758 (2002) (collectively referred to as "AC21"). See Employment Authorization for Certain H-4 Dependent Spouses, 79 FR 26886 (May 12, 2014). After careful consideration of public comments, DHS is adopting the proposed regulatory amendments with minor wording changes to improve clarity and readability.¹ Also, DHS is making additional revisions to 8 CFR 214.2(h)(9)(iv) and 8 CFR 274a.13(d) to permit H-4 dependent spouses under this rule to concurrently file an Application for Employment Authorization (Form I-765) with an Application to Extend/Change Nonimmigrant Status (Form I-539).

D. Summary of Costs and Benefits

In preparing this final rule, DHS updated its estimates of the impacted population by examining more recent data, correcting data entry errors made in calculating the population of H-4 dependent spouses assumed to be in the backlog, and revising the estimate of the population eligible pursuant to AC21. This final rule is expected to result in as many as 179,600 H-4 dependent spouses being eligible to apply for employment authorization during the first year of implementation. As many as 55,000 H-4 dependent spouses will be eligible to apply for employment authorization each year after the first year of implementation. DHS stresses that these are maximum estimates of the

number of H-4 dependent spouses who may become eligible to apply for employment authorization. Although the estimates are larger than those provided in the preamble to the proposed rule, the initial year estimate (the year with the largest number of potential eligible applicants) provided in this final rule still represents far less than one percent of the overall U.S. workforce. DHS's rationale for this rule thus remains unchanged, especially as the changes made in this rule simply alleviate the long wait for employment authorization that these H-4 dependent spouses endure through the green card process, and accelerate the timeframe within which they generally will become eligible to apply for employment authorization (such as when they apply for adjustment of status).

The costs associated with this final rule stem from filing fees and the opportunity costs of time associated with filing an Application for Employment Authorization, Form I-765 ("Application for Employment Authorization" or "Form I-765"), as well as the estimated cost of procuring two passport-style photos. These costs will only be borne by the H-4 dependent spouses who choose to apply for employment authorization. The costs to the Federal Government of adjudicating and processing the applications are covered by the application fee for Form I-765.

DHS expects these regulatory amendments to provide increased incentives to H-1B nonimmigrants and their families who have begun the immigration process to remain permanently in the United States and continue contributing to the Nation's economy as they complete this process. DHS believes these regulatory changes will also minimize disruptions to petitioning U.S. employers. A summary of the costs and benefits of the rule is presented in Table 1.

TABLE 1—TOTAL COSTS AND BENEFITS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H-4 DEPENDENT SPOUSES 10-YR PRESENT VALUE ESTIMATES AT 3% AND 7%
[\$Millions]

	Year 1 estimate (179,600 filers)	Sum of years 2-10 (55,000 filers annually)	Total over 10-year period of analysis *
3% Discount Rate: Total Costs Incurred by Filers @3%	\$76.1	\$181.3	\$257.4
7% Discount Rate: Total Costs Incurred by Filers @7%	73.2	146.1	219.3

¹ In this final rule, DHS has amended its estimate of the volume of individuals who may become eligible to apply for employment authorization

pursuant to this rulemaking. The impact on the U.S. labor market resulting from this change is

negligible, and the justification for the rule remains unaffected by this change.

TABLE 1—TOTAL COSTS AND BENEFITS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H-4 DEPENDENT SPOUSES 10-YR PRESENT VALUE ESTIMATES AT 3% AND 7%—Continued

[\$Millions]

	Year 1 estimate (179,600 filers)	Sum of years 2–10 (55,000 filers annually)	Total over 10-year period of analysis *
Qualitative Benefits	This rule is intended to remove a disincentive to pursuing lawful permanent resident (LPR) status due to the potentially long wait for employment-based immigrant visas for many H-1B nonimmigrants and their family members. This rule will encourage H-1B nonimmigrants who have already taken steps to become LPRs to not abandon their efforts because their H-4 dependent spouses are unable to work. By encouraging H-1B nonimmigrants to continue in their pursuit of becoming LPRs, this rule would minimize disruptions to petitioning U.S. employers. Additionally, eligible H-4 dependent spouses who participate in the labor market will benefit financially. DHS also anticipates that the socioeconomic benefits associated with permitting H-4 spouses to participate in the labor market will assist H-1B families in integrating into the U.S. community and economy.		

* Note: Totals may not sum due to rounding.

E. Effective Date

This final rule will be effective on May 26, 2015, 90 days from the date of publication in the **Federal Register**. *DHS has determined that this 90-day effective date is necessary to guarantee that USCIS will have sufficient resources available to process and adjudicate Applications for Employment Authorization filed by eligible H-4 dependent spouses under this rule while maintaining excellent customer service for all USCIS stakeholders, including H-1B employers, H-1B nonimmigrants, and their families. With this 90-day effective date, USCIS will be able to implement this rule in a manner that will avoid wholesale delays of processing other petitions and applications, in particular those H-1B petitioners seeking to file petitions before the FY 2016 cap is reached. DHS believes that this effective date balances the desire of U.S. employers to attract new H-1B workers, while retaining current H-1B workers who are seeking employment-based LPR status.*

II. Background

A. Current Framework

Under the H-1B nonimmigrant classification, a U.S. employer or agent may file a petition to employ a temporary foreign worker in the United States to perform services in a specialty occupation, services related to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. *See* INA section 101(a)(15)(H)(i)(b), 8

U.S.C. 1101(a)(15)(H)(i)(b); 8 CFR 214.2(h)(4). To employ a temporary nonimmigrant worker to perform such services (except for DOD-related services), a U.S. petitioner must first obtain a certification from the U.S. Department of Labor (DOL) confirming that the petitioner has filed a labor condition application (LCA) in the occupational specialty in which the nonimmigrant will be employed. *See* 8 CFR 214.2(h)(4)(i)(B) and 8 CFR 214.2(h)(1)(ii)(B). Upon certification of the LCA, the petitioner may file with U.S. Citizenship and Immigration Services (USCIS) a Petition for a Nonimmigrant Worker (Form I-129 with H supplements) (“H-1B petition” or “Form I-129”).

If USCIS approves the H-1B petition, the approved H-1B status is valid for an initial period of up to three years. USCIS may grant extensions for up to an additional three years, such that the total period of the H-1B nonimmigrant’s admission in the United States does not exceed six years. *See* INA section 214(g)(4), 8 U.S.C. 1184(g)(4); 8 CFR 214.2(h)(9)(iii)(A)(1), (3), and 8 CFR 214.2(h)(15)(ii)(B)(1). At the end of the six-year period, the nonimmigrant generally must depart from the United States unless he or she: (1) Falls within one of the exceptions to the six-year limit; ² (2) has changed to another

² These exceptions to the six-year limit include those authorized under sections 104(c) and 106(a) and (b) of AC21. Under sections 106(a) and (b) of AC21, an H-1B nonimmigrant who is the beneficiary of a permanent labor certification application or an employment-based immigrant petition that was filed at least 365 days prior to reaching the end of the sixth year of H-1B status may obtain H-1B status beyond the sixth year, in one year increments. *See* AC21 sections 106(a)-(b),

nonimmigrant status; (3) or has applied to adjust status to that of an LPR.³ *See* INA sections 245(a) and 248(a), 8 U.S.C. 1255(a) and 1258(a); 8 CFR 245.1 and 8 CFR 248.1. The dependents (*i.e.*, spouse and unmarried children under 21 years of age) of the H-1B nonimmigrants are entitled to H-4 status and are subject to the same period of admission and limitations as the H-1B nonimmigrant. *See* 8 CFR 214.2(h)(9)(iv).

For H-1B nonimmigrants seeking to adjust their status to or otherwise acquire LPR status through employment-based (EB) immigration, an employer generally must first file a petition on their behalf. *See* INA section 204(a), 8 U.S.C. 1154(a). An H-1B nonimmigrant may seek LPR status under one of the following five EB preference categories:

as amended. Another exception is found in section 104(c) of AC21. Under that provision, H-1B nonimmigrants with approved Form I-140 petitions who are unable to adjust status because of per-country visa limits are able to extend their H-1B stay in three-year increments until their adjustment of status applications have been adjudicated. *See* AC21 section 104(c).

³ For H-1B nonimmigrants performing DOD-related services, the approved H-1B status is valid for an initial period of up to five years, after which the H-1B nonimmigrants may obtain up to an additional five years of admission for a total period of admission not to exceed 10 years. *See* 8 CFR 214.2(h)(9)(iii)(A)(2), (h)(15)(ii)(B)(2). These H-1B nonimmigrants cannot benefit from AC21 sections 106(a) or (b), because those sections solely relate to the generally applicable six-year limitation on H-1B status under INA section 214(g)(4), whereas the requirements for H-1B status for DOD-related services, including the 10-year limitation, were established in section 222 of the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978; *see* 8 U.S.C. 1101 note. This rule, however, will authorize eligibility for employment authorization of H-4 dependents of H-1B nonimmigrants performing DOD-related services if the H-1B nonimmigrant is the beneficiary of an approved I-140 petition.

- First preference (EB-1)—Aliens with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers;

- Second preference (EB-2)—Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability;

- Third preference (EB-3)—Skilled workers, professionals, and other workers;

- Fourth preference (EB-4)—Special immigrants (*see* INA section 101(a)(27), 8 U.S.C. 1101(a)(27)); and

- Fifth preference (EB-5)—Employment creation immigrants. *See* INA section 203(b), 8 U.S.C. 1153(b).

Generally, the second (EB-2) and third (EB-3) preference categories require employers to obtain an approved permanent labor certification from DOL prior to filing an immigrant petition with USCIS on behalf of the worker. *See* INA section 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A); 8 CFR 204.5(a). To apply for adjustment to LPR status, the alien must be the beneficiary of an immigrant visa that is immediately available. *See* INA sections 201(a), 203(b) and (d), and 245(a); 8 U.S.C. 1151(a), 1153(b) and (d), 1255(a).

The EB-2 and EB-3 immigrant visa categories for certain chargeability areas are oversubscribed, causing long delays before applicants in those categories, including H-1B nonimmigrants, are able to obtain LPR status. U.S. businesses employing H-1B nonimmigrants suffer disruptions when such workers are required to leave the United States at the termination of their H-1B status as a result of these delays. To ameliorate those disruptions, Congress enacted provisions in AC21 that allow for the extension of H-1B status past the sixth year for workers who are the beneficiaries of certain pending or approved employment-based immigrant visa petitions or labor certification applications. *See* S. Rep. No. 106-260, at 22 (2000) (“These immigrants would otherwise be forced to return home at the conclusion of their allotted time in H-1B status, disrupting projects and American workers. The provision enables these individuals to remain in H-1B status until they are able to receive an immigrant visa number and acquire lawful permanent residence through either adjustment of status in the United States or through consular processing abroad, thus limiting the disruption to American businesses.”).

DHS cannot alleviate the delays in visa processing due to the numerical limitations set by statute and the resultant unavailability of immigrant

visa numbers.⁴ DHS, however, can alleviate a significant obstacle that may encourage highly skilled foreign workers to leave the United States,⁵ thereby preventing significant disruptions to U.S. employers in furtherance of the congressional intent expressed through AC21.

B. Proposed Rule

On May 12, 2014, DHS published a proposed rule in the **Federal Register** at 79 FR 26886, proposing to amend:

- 8 CFR 214.2(h)(9)(iv) to extend eligibility for employment authorization to H-4 dependent spouses of H-1B nonimmigrants if the H-1B nonimmigrants either: are the principal beneficiaries of an approved Immigrant Petition for Alien Worker (Form I-140);⁶ or have been granted H-1B status pursuant to sections 106(a) and (b) of AC21; and

- 8 CFR 274a.12(c) by adding paragraph (26) listing the H-4 dependent spouses described in revised 8 CFR 214.2(h)(9)(iv) as a new class of aliens eligible to request employment authorization from USCIS. Aliens within this class would only be authorized for employment following approval of their Application for Employment Authorization (Form I-765) by USCIS and receipt of an Employment Authorization Document (Form I-766) (“EAD”).

DHS also proposed conforming changes to Form I-765. DHS proposed adding

⁴ The worldwide level of EB immigrant visas that may be issued each fiscal year is set at 140,000 visas, plus the difference between the maximum number of immigrant visas which may be issued under section 203(a) of the INA, 8 U.S.C. 1153(a) (relating to family-sponsored immigrants) and the number of visas used under that section for the previous fiscal year. *See* INA section 201(d), 8 U.S.C. 1151(d). These EB visa numbers are also limited by country. Generally, in any fiscal year, foreign nationals born in any single country may use no more than 7 percent of the total number of immigrant visas available in the family- and employment-based immigrant visa classifications. *See* INA section 202(a)(2), 8 U.S.C. 1152(a)(2).

⁵ These obstacles, moreover, may discourage highly skilled foreign workers from seeking employment in the United States in the first instance. This final rule will diminish that possibility.

⁶ The H-1B nonimmigrant must be the principal beneficiary of the approved I-140 petition, not the derivative beneficiary, consistent with the preamble to the proposed rule: “Specifically, DHS is proposing to limit employment authorization to H-4 dependent spouses only during AC21 extension periods granted to the H-1B principal worker or after the H-1B principal has obtained an approved Immigrant Petition for Alien Worker.” *See* 79 FR at 26891 (emphasis added); *see also id.* at 26896 (estimating “annual demand flow of H-4 dependent spouses who would be eligible to apply for initial work authorization under this proposed rule . . . based on: (1) the number of approved Immigrant Petitions for Alien Worker (Forms I-140) where the principal beneficiary is currently in H-1B status”).

H-4 dependent spouses described in the proposed rule to the classes of aliens eligible to file the form, with the required fee. DHS also proposed a list of the types of supporting documents that may be submitted with Form I-765 to establish eligibility.

DHS received nearly 13,000 public comments to the proposed rule. An overwhelming percentage of commenters (approximately 85 percent) supported the proposal, while a small percentage of commenters (approximately 10 percent) opposed the proposal. Approximately 3.5 percent of commenters expressed a mixed opinion about the proposal.

C. Final Rule

In preparing this final rule, DHS considered all of the public comments contained in the docket. Although estimates of the current population of H-4 dependent spouses who will be eligible for employment authorization pursuant to this rule have changed, the effect of the revision does not affect the justification for the rule, and DHS is adopting the regulatory amendments set forth in the proposed rule with only minor, non-substantive changes to 8 CFR 214.2(h)(9)(iv) to improve clarity and readability. These technical changes clarify that an H-4 dependent spouse covered by this rule should include with his or her Application for Employment Authorization (Form I-765) evidence demonstrating that he or she is currently in H-4 status and that the H-1B nonimmigrant is currently in H-1B status. Also, in response to public comments regarding filing procedures for Applications for Employment Authorization (Forms I-765) under this rule, DHS is making conforming revisions to 8 CFR 214.2(h)(9)(iv) and 8 CFR 274a.13(d) to permit H-4 dependent spouses under this rule to concurrently file the Form I-765 with an Application to Extend/Change Nonimmigrant Status (Form I-539).

The rationale for the proposed rule and the reasoning provided in its background section remain valid with respect to these regulatory amendments. This final rule does not address comments seeking changes in U.S. laws, regulations, or agency policies that are unrelated to this rulemaking. This final rule also does not change the procedures or policies of other DHS components or federal agencies, or resolve issues outside the scope of this rulemaking. Comments may be reviewed at the Federal Docket Management System (FDMS) at <http://www.regulations.gov>, docket number USCIS-2010-0017.

III. Public Comments on the Proposed Rule

A. Summary of Public Comments

In response to the proposed rule, DHS received nearly 13,000 comments during the 60-day public comment period. Commenters included, among others, individuals, employers, academics, labor organizations, immigrant advocacy groups, attorneys, and nonprofit organizations. More than 250 comments were also submitted through mass mailing campaigns.

While opinions on the proposed rule varied, a substantial majority (approximately 85 percent) of commenters supported the extension of employment authorization to the class of H-4 dependent spouses described in the proposed rulemaking. Supporters of the proposed rule agreed that it would help the United States to attract and retain highly skilled foreign workers; alleviate economic burdens on H-1B nonimmigrants and their families during the transition from nonimmigrant to LPR status; and promote family unity. Some supporters also stated that the rule furthers women's rights, noting the impact the rule's change will have on promoting financial independence for the H-4 dependent spouse, potentially reducing factors which could lead to domestic violence, and assuaging negative health effects (such as depression).⁷ Others voiced the belief that this rule aligns with core U.S. values, asserting that employment authorization should be considered a constitutional or human rights issue or an issue of equal opportunity.

Commenters commonly stated that if spouses are authorized for employment, families would be more stable, contribute more to their local communities, and more fully focus on their future in the United States. Additionally, commenters outlined ways they thought this proposal would help the U.S. economy, such as by increasing disposable income, promoting job creation, generating greater tax revenue, and increasing

home sales. Several commenters agreed that extending employment authorization as described in the rule will promote U.S. leadership in innovation by strengthening the country's ability to recruit and retain sought-after talent from around the world. Finally, some commenters noted that this rule would facilitate U.S. businesses' ability to create additional U.S. jobs by improving the retention of workers with critical science, technology, engineering and math (STEM) skills.

The approximately 10 percent of commenters who opposed the proposed rule cited to potential adverse effects of the rule, including displacement of U.S. workers, increasing U.S. unemployment, and lowering of wages. Some commenters expressed concern that the rule may negatively affect other nonimmigrant categories. Other commenters were concerned that this rule may cause the lowering of minimum working standards in certain sectors of the economy, such as in the Information Technology sector. Some commenters questioned DHS's legal authority to promulgate this regulatory change.

About 3.5 percent of commenters had a mixed opinion about the proposed regulation. Some of these commenters were concerned about the size and scope of the class made eligible for employment authorization under the rule; some argued that the described class is too restrictive, while others argued that it is too broad. Other commenters expressed concern about the possibility of fraud. Approximately 200 commenters (about 1.5 percent of commenters) submitted responses that are beyond the scope of this rulemaking, such as comments discussing U.S. politics but not addressing immigration, submissions from individuals who sent in their resumes or discussed their professional qualifications without opining on the proposed rule, and comments on the merits of other commenter's views, but not on the proposed changes.

DHS has reviewed all of the public comments received in response to the proposed rule and addresses relevant comments in this final rule. DHS's responses are grouped by subject area, with a focus on the most common issues and suggestions raised by commenters.

B. Classes Eligible for Employment Authorization

1. Comments Supporting the Rule

The comments supporting the proposed rule largely underscored the positive socioeconomic benefits this

rule would have for certain H-1B nonimmigrants and their H-4 dependent spouses. For example, several commenters noted that while they knew about the restriction on H-4 employment before coming to the United States, they did not anticipate such a long wait to apply for LPR status or the emotional toll that long-term unemployment would take on them and their families. Other commenters noted they have not been able to apply for a social security card or a driver's license in certain states because they do not have an Employment Authorization Document (EAD) (Form I-766). Approximately 200 commenters noted that the current policy of allowing only the H-1B nonimmigrant to work often led to family separation or the decision to immigrate to other countries that authorize employment for dependent spouses.

A few commenters described their families as dual H-1B nonimmigrant households and supported the principle of both spouses working. These commenters voiced appreciation for the changes in the proposed rule, which will allow the H-4 dependent spouse to seek employment while the H-1B nonimmigrant continues to pursue permanent residence.

More than a thousand commenters believe this change will help U.S. businesses retain highly skilled H-1B nonimmigrants. More than 500 commenters asserted that the addition of skilled H-4 dependent spouses into the workforce will help U.S. employers. More than 60 commenters stated that they had planned to move out of the United States, but will instead remain and pursue LPR status as a result of this rule change. Approximately two dozen commenters noted that they had already moved out of the United States due to the prohibition on employment for H-4 dependent spouses. Several commenters stated that they are planning to leave the United States in the near future because H-4 dependent spouses cannot work under the current rules.

Nearly 400 commenters who supported the final rule also asserted that the regulation should be implemented without change as a matter of fairness. According to the comments, the regulation will help H-1B nonimmigrants and their families who have maintained legal status for years, contributed to the economy, and demonstrated the intent to permanently remain in the United States.

The overwhelmingly positive responses from the public to the proposed rule has strengthened DHS's view, as expressed in the proposed rule,

⁷ An H-4 dependent spouse who is the victim of domestic violence may be independently eligible for employment authorization under certain circumstances. As noted in the proposed rule, section 814(b) of the Violence Against Women Act and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109-162, amended the INA by adding new section 204(a)(1)(K), 8 U.S.C. 1154(a)(1)(K), which provides for employment authorization incident to the approval of a VAWA self-petition. Section 814(c) of VAWA 2005 amended the INA by adding new section 106, which provides eligibility for employment authorization to battered spouses of aliens admitted in certain nonimmigrant statuses, including H-1B status.

that extending employment authorization eligibility to the class of H-4 dependent spouses of H-1B nonimmigrants described in this rulemaking will have net beneficial results. Among other things, the rule will increase the likelihood that H-1B nonimmigrants will continue to pursue the LPR process through completion. DHS further believes that this rule will provide increased incentives to U.S. employers to begin the immigrant petitioning process on behalf of H-1B nonimmigrants, encourage more H-1B nonimmigrants to pursue lawful permanent residence, and bolster U.S. competitiveness. This rule will also decrease workforce disruptions and other harms among U.S. employers caused by the departure from the United States of H-1B nonimmigrants for whom businesses have filed employment-based immigrant visa petitions. This policy supports Congress' intent in enacting AC21. *See* S. Rep. No. 106-260, at 2-3, 23 (2000).

A handful of commenters supporting the proposed rule requested clarification on whether H-4 dependent spouses will be permitted to file for employment authorization based on their classification as an H-4 dependent spouse if they have a pending adjustment of status application. DHS confirms that under this rule, H-4 dependent spouses with pending adjustment of status applications are still eligible for employment authorization on the basis of their H-4 classification. They may choose to apply for employment authorization based on either the H-4 dependent spouse category established by this rule under new 8 CFR 274a.12(c)(26) or the adjustment of status category under 8 CFR 274a.12(c)(9).

Another commenter asked if H-4 dependent spouses of H-1B nonimmigrants who have extended their stay under section 104(c) of AC21 would be eligible for work authorization. DHS confirms that H-4 dependent spouses of H-1B nonimmigrants who have extended their stay under section 104(c) of AC21 are eligible for employment authorization under this rule. Section 104(c) of AC21 applies to a subset of H-1B nonimmigrants who are the principal beneficiaries of approved Form I-140 petitions.⁸ Because this rule provides

⁸ *See* Mem. from Donald Neufeld, Acting Assoc. Dir., Domestic Operations, USCIS, Supplemental Guidance Relating to Processing Forms I-140 Employment-Based Immigrant Petitions and I-129 H-1B Petitions, and I-485 Adjustment Applications Affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Pub. L. 106-313), as amended, and the American

eligibility for employment authorization to H-4 dependent spouses of all H-1B nonimmigrants who are the principal beneficiaries of approved Form I-140 petitions, it captures the section 104(c) subset. DHS has thus determined that it is unnecessary to include section 104(c) of AC21 as a separate basis for employment authorization eligibility in this rule.

2. Comments Requesting Expansion of the Rule

i. H-4 Dependent Spouses of H-1B1, H-2 and H-3 Nonimmigrants

Slightly over 200 commenters requested that DHS extend eligibility for employment authorization to the H-4 dependent spouses of H nonimmigrants who are not in H-1B status (H-1B1, H-2 and H-3 nonimmigrants), and not only to the spouses of certain H-1B nonimmigrants who have begun the process of permanent residence through employment.⁹ Some of these commenters expressed that this expansion would also help U.S. competitiveness by attracting more skilled workers from abroad.

DHS has determined that expansion of employment authorization beyond the class of H-4 dependent spouses described in the proposed rule is not appropriate at this time, and it has therefore not included such an expansion in this final rule. First, the Department believes this rule best achieves DHS's goals of helping U.S. employers minimize potential disruptions caused by the departure from the United States of certain highly skilled workers, enhancing U.S. employer's ability to attract and retain such workers, and increasing America's economic competitiveness.

Second, DHS notes two significant differences between H-1B nonimmigrants and other H nonimmigrants under the immigration laws. The INA explicitly permits H-1B nonimmigrants to have what is known as "dual intent," pursuant to which an H-1B nonimmigrant may be the beneficiary of an immigrant visa petition filed under section 204 of the INA or otherwise seek LPR status without evidencing an intention to

Competitiveness and Workforce Improvement Act of 1998 (ACWIA), Title IV of Div. C. of Public Law 105-277, at 6 (May 30, 2008) ("AC21 § 104(c) is applicable when an alien . . . is the beneficiary of an approved I-140 petition.") (emphasis in original).

⁹ The H-4 classification includes dependents of H-2A temporary agricultural workers, H-2B temporary nonagricultural workers, H-3 trainees, H-1B specialty occupation workers, and H-1B1 Free Trade Agreement specialty occupation workers from Singapore and Chile. *See* INA 101(a)(15)(H); *see also* 8 CFR 214.2(h)(9)(iv).

abandon a foreign residence for purposes of obtaining or maintaining H-1B status. *See* INA 214(h); *see also* 8 CFR 214.2(h)(16). Further, in enacting AC21, Congress permitted H-1B nonimmigrants who are the beneficiaries of certain pending or approved employment-based immigrant visa petitions or labor certification applications to remain in the United States beyond the six-year statutory maximum period of stay. Congress therefore has passed legislation specifically encouraging, and removing impediments to, the ability of H-1B nonimmigrants to seek LPR status, such that they may more readily contribute permanently to United States economic sustainability and growth. Congress has not extended similar benefits to other H nonimmigrants, including H-1B1 (Free Trade Agreement specialty workers from Chile and Singapore), H-2A (temporary agricultural workers), H-2B (temporary nonagricultural workers), or H-3 nonimmigrants (trainees). Extending employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants, and not to H-4 dependent spouses of other H nonimmigrants, thus serves to advance the Department's immediate interest in furthering the aims of AC21.¹⁰

Finally, as noted in the proposed rule, DHS may consider expanding H-4 employment eligibility in the future. *See Ctr. for Biological Diversity v. EPA*, 722 F.3d 401, 410 (D.C. Cir. 2013) (observing that "agencies have great discretion to treat a problem partially") (quoting *City of Las Vegas v. Lujan*, 891 F.2d 927, 935 (D.C. Cir. 1989)); *Lamers Dairy Inc. v. U.S. Dep't of Agric.*, 379 F.3d 466, 475 (7th Cir. 2004) ("[T]he government must be allowed leeway to approach a perceived problem incrementally. Similarly, equal protection does not require a governmental entity to choose between attacking every aspect of a problem or not attacking the problem at all.") (quotation marks omitted) (citing *FCC v. Beach Commc'ns*, 508 U.S. 307,

¹⁰ As noted in the proposed rule, to ease the negative impact of immigrant visa processing delays, Congress intended that the AC21 provisions allowing for extension of H-1B status past the sixth year for workers who are the beneficiaries of certain pending or approved employment-based immigrant visa petitions or labor certification applications would minimize disruption to U.S. businesses employing H-1B workers that would result if such workers were required to leave the United States. *See* S. Rep. No. 106-260, at 22 (2000) ("These immigrants would otherwise be forced to return home at the conclusion of their allotted time in H-1B status, disrupting projects and American workers. The provision enables these individuals to remain in H-1B status until they are able to receive an immigrant visa number and acquire LPR status either through adjustment of status in the United States or through consular processing abroad, thus limiting the disruption to American businesses.")

316 (1993); and *Dandridge v. Williams*, 397 U.S. 471, 487 (1970)).

ii. H–4 Dependent Spouses of All H–1B Nonimmigrants

Over 150 commenters noted that all dependent spouses of other nonimmigrant categories, such as the spouses of L–1 (intracompany transferee), E–1 (treaty trader), E–2 (treaty investor), and E–3 (Australian specialty occupation workers) nonimmigrants, are eligible to apply for employment authorization. These commenters stated that because the employment-based nonimmigrant categories are similar to each other, all H–4 dependent spouses of H–1B nonimmigrants—rather than only certain subclasses of H–4 dependent spouses—likewise should be eligible for employment authorization.

DHS, however, recognizes an important difference between the dependent spouse category of H–1B nonimmigrants and those of L–1, E–1, E–2, and E–3 nonimmigrants. Specifically, Congress directed by statute that DHS grant employment authorization to all spouses of L–1, E–1, E–2, and E–3 nonimmigrants.¹¹ See Public Law 107–124 (2002) (amending the INA to expressly authorize employment for spouses of E nonimmigrants); Public Law 107–125 (2002) (same for spouses of L nonimmigrants); see also INA section 214(c)(2)(E) & (e)(6), 8 U.S.C. 1184(c)(2)(E) & (e)(6). Congress has not provided such statutory direction with respect to the spouses of H–1B nonimmigrants. Thus, the fact that the INA authorizes dependent spouses of L and E nonimmigrants for U.S. employment does not indicate that H–4 dependent spouses of all H–1B nonimmigrants also must be authorized to work.

In extending such employment authorization through regulation, DHS studied congressional intent with respect to H–1B nonimmigrants. Although Congress has not specifically required extending employment authorization to dependent spouses of H–1B nonimmigrants, Congress did recognize in AC21 the importance of addressing the lengthy delays faced by such workers seeking to obtain LPR status. Consistent with this congressional concern, and the legal authorities vested in the Secretary of Homeland Security described in Section C, below, DHS has chosen to limit this

¹¹ DHS is implementing the statutory provisions authorizing employment of spouses of L–1, E–1, E–2, and E–3 nonimmigrants, though the regulations have not been revised.

regulation within that statutory framework, and the Department declines to extend the changes made by this rule to the H–4 dependent spouses of all H–1B nonimmigrants at this time.

iii. Employment Authorization Incident to Status

Over 60 commenters requested that H–4 dependent spouses be granted employment authorization “incident to status,” which would relieve the need to apply for employment authorization before receiving it. These commenters generally recommended that DHS provide employment authorization incident to status by authorizing the employment of H–4 dependent spouses through amendment to 8 CFR 274a.12(a) instead of 8 CFR 274a.12(c), which provides employment authorization through case-by-case, discretionary adjudications of each individual request.¹² For those classes of aliens listed in 8 CFR 274a.12(a), employment authorization is automatic upon the grant of immigration status. Examples of classes of aliens who are employment authorized incident to status under 8 CFR 274a.12(a) are LPRs, asylees, and refugees.

DHS is unable to classify H–4 dependent spouses described in this rule as employment authorized incident to status. Unlike other noncitizens who are employment authorized incident to status, H–4 dependent spouses will not be eligible for employment authorization based solely on their immigration status. Rather, H–4 dependent spouses must meet certain additional conditions before they can be granted employment authorization, and current USCIS systems cannot automatically and independently determine whether such conditions have been met. USCIS systems, for example, cannot independently or automatically determine whether an H–4 dependent spouse has the requisite spousal relationship to an H–1B nonimmigrant who either is the beneficiary of an approved Form I–140 petition or has been granted H–1B nonimmigrant status under sections 106(a) and (b) of AC21; that determination must be made by a USCIS adjudicator. DHS has therefore determined that it must require the filing of an application requesting employment authorization, see 8 CFR

¹² DHS regulations provide for three categories of persons eligible for employment authorization: (1) aliens authorized for employment incident to status, see 8 CFR 274a.12(a); (2) aliens authorized to work for a specific employer incident to status, see 8 CFR 274a.12(b); and (3) aliens who must apply to USCIS for employment authorization, see 8 CFR 274a.12(c).

274a.12(c) and 8 CFR 274a.13, before it can extend employment authorization to the class of H–4 dependent spouses described in this rule. This application process will ensure that only eligible H–4 dependent spouses receive a grant of employment authorization and proper documentation evidencing such employment authorization, and will avoid granting employment authorization to ineligible spouses.

iv. Employment Authorization at Different Points in Time

More than a dozen commenters requested that the class of H–4 dependent spouses who are eligible for employment authorization be expanded by permitting them to file at points in time different from those provided in the proposed rule. DHS carefully considered these suggestions for determining when an H–4 dependent spouse should be eligible for employment authorization. For the reasons that follow, DHS has determined that it will not adopt the commenters’ suggestions in this final rule.

(1) H–1B Nonimmigrants With Pending PERM Labor Certifications or Form I–140 Petitions

Some commenters requested that DHS make H–4 dependent spouses eligible for employment authorization when their H–1B nonimmigrant spouses have filed permanent (PERM) labor certifications with DOL.¹³ Other commenters suggested providing such eligibility when H–1B nonimmigrants have Form I–140 petitions or adjustment of status applications pending with USCIS.

DHS believes that the basis for eligibility in the proposed rule reasonably addresses H–4 dependent spouses’ interests in obtaining employment authorization at the earliest possible time in advancing the Department’s policy goals of attracting and retaining highly skilled workers and promoting compliance with U.S. immigration laws. In furtherance of these goals, DHS has chosen to limit eligibility for employment authorization to cases where the H–1B nonimmigrant either: (1) Is the principal beneficiary of an approved Form I–140 and thus is on a path to lawful permanent residence that is reasonably likely to conclude successfully; or (2) has been granted H–

¹³ Currently, employers seeking to file immigrant visa petitions on behalf of noncitizens in certain employment-based preference categories must first obtain a labor certification under DOL’s PERM program. See generally INA sections 204(b), 212(a)(5); 8 U.S.C. 1154(b), 1182(a)(5); 8 CFR 204.5(k)–(l); 20 CFR pt. 656.

1B status under sections 106(a) and (b) of AC21. This approach provides several benefits to the Department.

Among other things, the approach allows DHS to confirm a significant record of compliance with U.S. immigration laws, which indicates the likelihood of continued compliance in the future. Requiring an approved Form I-140 petition, for example, reduces the risk of frivolous labor certification and immigrant visa petition filings for the purpose of making H-4 dependent spouses eligible for employment authorization, because the approval of the petition generally signifies that the foreign worker is eligible for the underlying immigrant classification. In contrast, authorizing employment immediately upon the filing of a PERM application or Form I-140 petition (rather than after the 365-day waiting period or the approval of the Form I-140 petition) could produce a reasonable possibility of granting employment authorization to an H-4 dependent spouse where the H-1B nonimmigrant's case might not be approvable and the H-1B nonimmigrant has a relatively shorter record of compliance with U.S. immigration laws. The eligibility requirements in this rule also allow for better control of processing, as it is difficult for USCIS to track another agency's filings, such as PERM applications. Finally, with respect to the comment suggesting that employment should be authorized at the point when an adjustment of status application is pending, Department regulations already provide eligibility for employment authorization in that situation. *See* 8 CFR 274a.12(c)(9).

(2) H-1B Nonimmigrants Who Are Eligible for AC21 Extensions Under Sections 106(a) and (b)

Some commenters expressed support for an alternative policy that would extend employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants who are eligible for, but have not yet been approved for, extensions of status under sections 106(a) and (b) of AC21. DHS declines to adopt such a policy because it creates the possibility of granting employment authorization to H-4 dependent spouses of H-1B nonimmigrants who are later denied the extension of H-1B status. For instance, a labor certification or Form I-140 petition may have been timely filed on behalf of the H-1B nonimmigrant 365 days prior to the prospective expiration of his or her six-year limitation of stay, thus making the H-1B nonimmigrant eligible for an extension under AC21. But the labor certification or Form I-140 petition

ultimately may be denied before the H-1B nonimmigrant files for and receives the AC21 extension. Additionally, if the individual is determined to be ineligible for the H-1B extension, he or she would no longer be maintaining H-1B status and the U.S. employer will be unable to retain the worker. Accordingly, DHS believes the sounder policy is to extend employment authorization to H-4 dependent spouses of H-1B nonimmigrants who have been *granted* H-1B status pursuant to AC21, ensuring that such H-1B nonimmigrants are maintaining H-1B status and are significantly down the path to obtaining LPR status.

(3) Pending Form I-140 Immigrant Petitions With New Employer

Fewer than a dozen commenters requested that DHS extend employment authorization to H-4 dependent spouses in cases where the H-1B nonimmigrants have transferred their employment to a new employer and are in the process of obtaining approval of a new Form I-140 petition. As noted above, however, authorizing employment based solely on the filing (rather than the approval) of a PERM application or Form I-140 petition is likely to encourage frivolous filings to allow the H-4 dependent spouse to obtain employment authorization while the filings remain pending. DHS thus is not extending this rule on the basis of pending PERM applications or Form I-140 petitions. By requiring that a Form I-140 petition first be approved, DHS will further disincentivize frivolous filings and better serve the goal of extending the immigration benefit of this rule to only those spouses of H-1B nonimmigrants who are genuinely on the path to lawful permanent residence.

v. H-4 Minors

Less than 40 commenters requested that DHS authorize employment for certain H-4 dependent minor children whose H-1B nonimmigrant parent is the beneficiary of an approved Form I-140 or has been granted an extension of his or her authorized period of admission in the United States under AC21. These commenters cited concerns about H-4 dependent children being unable to obtain the same types of work experience as their peers, being unable to afford post-secondary education in the United States, and losing eligibility for H-4 status through age (known as "aging-out"¹⁴) before their parents can

file for adjustment of status. Some commenters also raised fairness concerns, given the eligibility under DHS deferred action policies that make eligible for employment authorization certain individuals who came to the United States unlawfully as children under the age of 16.¹⁵

DHS declines to adopt the commenters' suggestions to expand eligibility for employment authorization to H-4 dependent minor children. As reflected by the comments, DHS does not view the employment of dependent minor children in the United States as a significant deciding factor for an H-1B nonimmigrant considering whether to remain in the United States and seek LPR status while continuing employment with his or her U.S. employer. Also, as stated in the proposed rule, extending employment eligibility to certain H-4 dependent spouses will alleviate a significant portion of the potential economic burdens that H-1B nonimmigrants currently may face, such as paying for academic expenses for their children, during the transition from nonimmigrant to LPR status as a result of the inability of their dependent family members to work in the United States.

Additionally, limiting employment authorization to H-4 dependent spouses is consistent with the treatment of dependent minors in other nonimmigrant employment categories (such as the L and E nonimmigrant categories), which provide employment authorization to dependent spouses but not dependent children. And in the instances where DHS has extended eligibility for employment authorization to minor children, foreign policy reasons have been an underlying consideration. DHS has extended eligibility for employment authorization to minors within the following nonimmigrant categories: Dependents of Taipei Economic and Cultural

permitting certain individuals over the age of 21 to continue to qualify as a child for purposes of certain immigration benefits. *See* Public Law 107-208 (2002). If an individual becomes too old to qualify as a child under the immigration law, and in turn no longer can derivatively benefit from a petition or application on behalf of a parent, he or she is described as "aging out."

¹⁵ On June 15, 2012, the Secretary of Homeland Security announced that certain aliens who came to the United States as children and meet several guidelines may request consideration for deferred action from removal for a period of two years, subject to renewal. This policy is generally referred to as Deferred Action for Childhood Arrivals (DACA). On November 20, 2014, the Secretary announced expanded eligibility guidelines for consideration under the DACA policy and extended the period of deferred action and work authorization from two years to three years.

¹⁴ To qualify as a "child" for purposes of the immigration laws, an individual generally must be unmarried and under the age of 21. *See* INA section 101(b)(1), 8 U.S.C. 1101(b)(1). The Child Status Protection Act (CSPA) amended the INA by

Representative Office (TECRO) E-1 nonimmigrants; J-2 dependent children of J-1 foreign exchange visitors; dependents of A-1 and A-2 foreign government officials; dependents of G-1, G-3, and G-4 international organization officials; and dependents of NATO officials. Each of these instances involves foreign policy considerations that are not present in the H-1B nonimmigrant program.

DHS also declines to extend employment authorization to H-4 dependent children who age out and lose their H-4 status. Providing work authorization in such circumstances would encourage such individuals to violate the terms of their authorized stay. Moreover, comments suggesting that the Department should make changes to prevent H-4 dependent minor children from aging out are outside the scope of this rulemaking, which in no way involves the ability of a minor to maintain H-4 status or eligibility for LPR status as a derivative beneficiary of a parent's immigrant petition.

Finally, the circumstances of persons eligible for consideration of Deferred Action for Childhood Arrivals ("DACA") are distinct from those of H-4 dependent minor children, and the policy for authorizing employment for individuals who have received deferred action has no bearing on whether H-4 dependent minor children should be eligible to apply for employment authorization. The DACA program concerns the departmental exercise of prosecutorial discretion with the aim of ensuring that limited DHS enforcement resources are appropriately focused on the Department's highest enforcement priorities. The policy aims underlying this rule, as described above, are different, and for the reasons already discussed do not justify extending employment authorization to the H-4 dependent children of H-1B nonimmigrants.

vi. Principal Beneficiaries

A few dozen commenters requested that the rule also allow H-1B nonimmigrants to receive Employment Authorization Documents (EADs), which authorize employment without regard to employer, incident to status.¹⁶ One commenter requested that DHS provide one EAD to households in which both spouses have H-1B status in order to avoid necessitating one of the spouses to change to H-4 status. A few

¹⁶ The commenters' refer to these unrestricted EADs as "open market" EADs. In contrast, classes of aliens listed in 8 CFR 274a.12(b), such as H-1B nonimmigrants, are authorized for employment only with a specific employer.

commenters requested an EAD for an H-1B nonimmigrant whose spouse is also in H-1B status, but has been granted a different length of stay.

DHS declines to adopt the commenters' suggestions regarding EADs for H-1B nonimmigrants. If an H-1B nonimmigrant would like to apply for an EAD as the dependent spouse of an eligible H-1B nonimmigrant, he or she must first change to H-4 status. Moreover, issuance of an EAD to an H-1B nonimmigrant authorizing employment other than with his or her petitioning employer is incompatible with the H-1B classification, which allows employment only with the petitioning employer.¹⁷ If an H-1B nonimmigrant works on an EAD for an employer other than his or her petitioning employer, he or she may be violating the terms and conditions of his or her petition and, therefore, may no longer be maintaining a valid nonimmigrant status.

vii. H-4 Dependent Spouses Not Selected in the H-1B Lottery

Less than 20 commenters requested a carve-out for H-4 dependent spouses who had filed an H-1B petition but who were not selected in the H-1B computer-generated random selection process ("H-1B lottery").¹⁸ Although DHS appreciates the frustration that may result from not being selected in the H-1B lottery, the Department declines to extend eligibility for employment authorization to these H-4 dependent spouses. This rule is not a substitute for the H-1B program and is not intended to circumvent the H-1B lottery. A primary purpose of this rule is to help U.S. businesses retain the H-1B nonimmigrants for whom they have already filed an employment-based immigrant petition. Expanding the rule to help nonimmigrants in other situations does not directly support this goal.

¹⁷ See INA sections 101(a)(15)(H)(i)(b) (requiring that DOL determine and certify that "the *intending employer* has filed" an LCA) (emphasis added), 212(n) (establishing LCA requirements applicable to employers of H-1B nonimmigrants), 214(c) (requiring employers file petitions with the Secretary of Homeland Security to employ an H-1B nonimmigrant); 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), 1184(c).

¹⁸ If USCIS receives more than a sufficient number of H-1B petitions to reach the general statutory cap of 65,000 visas or the 20,000 cap under the advanced degree exemption during the filing period, see INA section 214(g)(1)(A), (5)(C), 8 U.S.C. 1184(g)(1)(A), (5)(C), USCIS holds a computer-generated random selection process, or lottery, to select enough petitions to meet the statutory caps. See 8 CFR 214.2(h)(8)(ii)(B). USCIS rejects and returns cap-subject petitions not randomly selected, with filing fees, unless a petition is found to be a duplicate filing.

viii. Other Nonimmigrant Categories

Less than 20 commenters requested that DHS authorize employment for the dependents of principals in other employment-based nonimmigrant classifications, such as dependents of O-1 nonimmigrants (O-3)¹⁹ and TN nonimmigrants (TD).²⁰ One commenter specifically requested employment authorization for children of O-1 and TN nonimmigrant highly skilled workers who are on the path to lawful permanent residence.

DHS declines to expand eligibility for employment authorization in this rule to the dependents of principals with other nonimmigrant classifications. DHS is narrowly tailoring the expansion of eligibility for employment authorization to meet several policy objectives, including the goal of helping U.S. businesses retain highly skilled H-1B nonimmigrants who are on the path to lawful permanent residence. DHS may consider expanding employment authorization to other dependent nonimmigrant categories in the future.

Moreover, there are significant differences between the H-1B nonimmigrant classification on the one hand, and the O-1 and TN classifications on the other, that inform the Department's decision to limit applicability of this rule to only H-4 dependent spouses. The spouses of H-1B nonimmigrants, for example, generally have greater need for the benefits of this rule than the spouses of O-1 nonimmigrants. O-1 nonimmigrants typically apply for LPR status through the EB-1 immigrant visa preference category, which has not historically suffered from visa backlogs. This allows the spouses of O-1 nonimmigrants to generally obtain employment authorization much more quickly than the spouses of H-1B nonimmigrants who typically seek LPR status through the EB-2 and EB-3 preference categories, which have historically been subject to lengthy backlogs.

¹⁹ An O-3 nonimmigrant is a dependent of an O-1 nonimmigrant. The O-1 nonimmigrant classification applies to individuals who possess extraordinary ability in the sciences, arts, education, business, or athletics, or who have a demonstrated record of extraordinary achievement in the motion picture or television industry and have been recognized nationally or internationally for those achievements. See INA section 101(a)(15)(O), 8 U.S.C. 1101(a)(15)(O); 8 CFR 214.2(o).

²⁰ A TD nonimmigrant is a dependent of a TN nonimmigrant. The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States to engage in business activities at a professional level. See INA section 214(e), 8 U.S.C. 1184(e); 8 CFR 214.6.

The spouses of TN nonimmigrants are also not similarly situated to the spouses of H-1B nonimmigrants. Unlike H-1B status, TN status stems from an international agreement—the North American Free Trade Agreement (NAFTA)—negotiated between the United States and foreign nations. As such, changes to that status implicate reciprocal international trade and foreign policy concerns that are generally not implicated with respect to the H-1B classification and are beyond the scope of this rulemaking.

3. Comments Opposing the Rule

Approximately ten percent of commenters opposed extending employment authorization to the class of H-4 dependent spouses described in the proposed rule. Many of these commenters were generally concerned that the rule would result in the displacement of U.S. workers; exacerbation of the nation's unemployment rate; and a decrease in wages. All comments discussing economic issues, both in opposition to and in support of the proposed rule, are discussed in Part III, Public Comments on Proposed Rule, Section D, Comments on Executive Orders 12866 and 13563.

Commenters also questioned whether the change in the proposed rule is actually necessary in light of other provisions of U.S. immigration law. Other commenters suggested that the proposed rule would have an adverse impact on other immigration categories or nationalities. DHS has carefully considered these concerns. But for the reasons that follow, DHS has decided to finalize the rule as proposed.

i. Change Unnecessary

More than 20 commenters believed that because current immigration laws provide the ability for H-4 dependent spouses to change status to an employment-authorized category, the proposed rule would not provide any additional incentives for H-1B nonimmigrants to remain in the United States and continue to pursue LPR status. One commenter stated that most of the comments posted on www.regulations.gov failed to indicate that potential immigrants have abandoned the immigration process, or have decided against coming to the United States in the first place, because their spouses would not be authorized to work.

DHS disagrees with these commenters and believes that the changes made by this rule are warranted. DHS acknowledges that thousands of commenters who voiced support for the rule did not provide specific reasons for

their support, including whether H-1B nonimmigrants were abandoning their applications for LPR status. DHS notes, however, that more than 60 commenters specifically indicated they planned to abandon their pursuit of lawful permanent residence without the changes in the proposed rule. Approximately, two dozen commenters stated that they left the United States because the current regulations preclude H-4 dependent spouses from engaging in employment. And several U.S. employers submitted comments in which they describe the loss of valued H-1B nonimmigrants because of the restriction on spousal employment. These employers noted that the changes in the proposed rule would help to align America's immigration laws with the policies of other countries that allow spousal employment. DHS agrees with these employers and other commenters who supported the proposed rule, and the Department believes that this change will support U.S. businesses and strengthen U.S. competitiveness. DHS also believes that this rule will fulfill its intended purpose and encourage certain highly skilled H-1B nonimmigrants to remain in the United States and continue to pursue their efforts to become LPRs.

ii. Impact on Other Categories or Nationalities

Less than 80 commenters suggested that the proposed rule would harm persons in other nonimmigrant categories or with certain nationalities. A few commenters who had changed status from H-4 status to F-1 nonimmigrant student status, for example, thought the rule was unfair because F-1 nonimmigrant graduates who had exhausted their Optional Practical Training had no path to employment authorization except through another principal nonimmigrant classification, such as the H-1B classification. These commenters argued that the rule would put recent F-1 nonimmigrant graduates at a disadvantage because they would have to go through the H-1B petition process whereas the qualifying H-4 dependent spouses would be eligible for an EAD authorizing employment without regard to employer.

DHS appreciates these commenters' concerns but does not believe that the changes made by this rule will adversely affect other classifications or specific nationalities. Rather, DHS expects that this rule will help to partially alleviate the adverse impact of oversubscription of certain chargeability categories in the EB-2 and EB-3 categories on certain H-1B

nonimmigrants and their families, without negatively impacting others. DHS has narrowly tailored this rule to provide employment authorization to only those H-4 dependent spouses of H-1B nonimmigrants who have taken active steps to become LPRs. The rule does not affect any other nonimmigrant category, nor does the rule make distinctions among persons of different nationalities. Moreover, as noted throughout this rule, DHS expects that because of the small size of the newly eligible class of workers, the rule should not negatively impact the employment of persons in other nonimmigrant categories. DHS also notes that the H-4 dependent spouses at issue may already obtain employment authorization when they file their applications to adjust status; this rule simply accelerates the timeframe in which they may enter the labor market.

iii. Impact on Universities

Several commenters suggested that because it is common for H-4 dependent spouses to change status to F-1 nonimmigrant student status to enhance their marketability and use their time productively, universities may lose revenue from decreased enrollment if such H-4 dependent spouses are allowed to work pursuant to this rule. DHS carefully considered but declined to address these concerns. First, this rule does not directly regulate U.S. institutions of higher education or its students (including F-1 nonimmigrants), and any impacts on university enrollments or revenues would be an indirect impact of this rule. Second, the rule merely expands the choices available to H-4 dependent spouses. While the rule expands the ability for such individuals to obtain employment authorization, it does nothing to restrict or otherwise change their ability to engage in study to the extent authorized by the Department in accordance with law. Third, even if the opportunity for employment authorization may mean that fewer H-4 dependent spouses eventually choose to enroll as nonimmigrant students, it is not clear how this rule could significantly impact revenues at colleges and universities considering the relatively small number of people impacted by this rule.²¹ Indeed, other

²¹ According to Department of Education statistics, approximately 21 million students are expected to enroll in postsecondary degree-granting institutions in fall 2014. See <http://nces.ed.gov/fastfacts/display.asp?id=372>. Given the relatively large student population enrolled in American schools and the narrow population impacted by this rule, DHS believes this rule would not significantly impact net college enrollments.

commenters noted that this rule could actually help university enrollment, as the increased ability for H-1B nonimmigrant families to generate income would further enable the H-1B nonimmigrant and H-4 dependent spouse to engage in higher education or contribute towards the higher education of their children. Consequently, it is uncertain if the net impact of this rule is to reduce overall enrollment and revenues, given the offsetting effects of this rule suggested by commenters. Commenters did not provide statistics or data demonstrating that this rule will have significant adverse effects on U.S. institutions of higher education or that DHS should limit employment opportunities for H-4 dependent spouses to protect revenue sources. Finally, DHS notes that it received several supportive comments both from representatives of the academic community and also from self-identified H-4 dependent spouses who viewed this rulemaking as positive.

4. Comments Requesting a More Restrictive Policy

Slightly over 180 commenters suggested limiting employment authorization to a more restricted class of H-4 nonimmigrants. For the reasons discussed below, DHS has determined that it will not adopt the commenters' suggestions in this final rule.

i. Certain Skills or Sectors

A number of commenters recommended granting employment authorization only to H-4 dependent spouses who have certain skills or work in certain sectors of the economy. Other commenters requested that DHS limit employment authorization under the rule to H-4 dependent spouses who hold advanced degrees from U.S. universities or have degrees in certain subjects, such as subjects in STEM fields. Some commenters were concerned that eligible H-4 dependents will be able to compete across all occupations, not just skilled professions.

DHS declines to restrict employment authorization eligibility to H-4 dependent spouses with certain skills or degrees. A primary purpose of this rule is to help U.S. employers retain H-1B nonimmigrant employees who have demonstrated the intent to become LPRs, which would provide substantial benefits to these employers and the U.S. economy. This rule is intended to provide this incentive to H-1B nonimmigrants regardless of the academic backgrounds of their H-4 dependent spouses. Limiting the rule to benefit only H-1B nonimmigrants

whose H-4 dependent spouses have certain skills or hold certain educational credentials would undermine the effectiveness of this rule.

ii. Reciprocity

A number of commenters recommended limiting employment authorization to H-4 dependent spouses who are from countries that authorize employment for spouses of U.S. citizens in a similar immigration status abroad (*i.e.*, when there is reciprocity). DHS's focus in this rule, however, is on retaining H-1B nonimmigrants for the benefit of U.S. employers and the U.S. economy, including by helping businesses minimize expensive disruptions caused by the departures from the United States of certain highly skilled H-1B nonimmigrants. As noted above, limiting the rule to affect only a subset of H-1B nonimmigrant families based on reciprocity would weaken the rule's efficacy. Moreover, reciprocity would implicate foreign policy considerations that are outside the scope of this rulemaking.

iii. Limiting Employment Authorization Based on AC21 Extensions

A few commenters requested that DHS extend eligibility for employment authorization only to the H-4 dependent spouses of H-1B nonimmigrants who are beneficiaries of AC21 extensions. DHS discussed this option in the proposed rule. The Department appreciates this suggestion, but believes that also extending employment authorization to the spouses of H-1B nonimmigrants who are the beneficiaries of approved Form I-140 petitions more effectively accomplishes the goals of this rulemaking. For the benefit of U.S. businesses and the U.S. economy, DHS believes the rule should provide incentives for those workers who have established certain eligibility requirements and demonstrated intent to reside permanently in the United States and contribute to the U.S. economy. Extending employment authorization to H-4 dependent spouses of H-1B nonimmigrants with either approved Form I-140 petitions or H-1B status granted pursuant to sections 106(a) and (b) of AC21 encourages a greater number of professionals with high-demand skills to remain in the United States. Moreover, by tying eligibility for employment authorization to approved Form I-140 petitions, DHS is reaching the H-4 dependent spouses of H-1B nonimmigrants granted status under section 104(c) of AC21. DHS thus declines to exclude from this rule the

spouses of H-1B nonimmigrants who have approved Form I-140 petitions.

C. Legal Authority To Extend Employment Authorization to Certain H-4 Dependent Spouses

Over 40 commenters questioned DHS's legal authority to extend employment authorization to certain H-4 dependent spouses, often emphasizing that employment for spouses of L and E nonimmigrants is expressly authorized by statute.²² Several commenters argued that it was the role of Congress, not the Executive Branch, to create immigration laws.

DHS disagrees with the view that this rule exceeds the Secretary's authority. In the INA, Congress provided the Secretary with broad authority to administer and enforce the immigration laws. The Secretary is expressly authorized to promulgate rules and "perform such other acts as he deems necessary for carrying out his authority" based upon considerations rationally related to the immigration laws. INA section 103(a)(3), 8 U.S.C. 1103(a)(3). Congress also provided the Secretary with the more specific statutory authority to set by regulation the conditions of nonimmigrant admission. INA section 214(a), 8 U.S.C. 1184(a). These provisions grant the Secretary broad discretion to determine the most effective way to administer the laws. *See Narenji v. Civiletti*, 617 F.2d 745, 747 (D.C. Cir. 1979) (observing that the INA "need not specifically authorize each and every action taken by the Attorney General [(now Secretary of Homeland Security)], so long as his action is reasonably related to the duties imposed upon him"); *see also Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012) (noting "broad discretion exercised by immigration officials" under the immigration laws).

More specifically, section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), recognizes that employment may be authorized by statute or by the Secretary. *See Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1062 (9th Cir. 2014) ("Congress has given the Executive Branch broad discretion to determine when noncitizens may work in the United States."); *Perales v. Casillas*, 903 F.2d 1043, 1050 (5th Cir. 1990) (describing the authority recognized by INA 274A(h)(3) as "permissive" and largely "unfettered"). Thus, the commenters' arguments that DHS lacks authority to grant employment eligibility to H-4 dependent spouses because Congress

²² *See* INA section 214(c)(2)(E), (e)(6); 8 U.S.C. 1184(c)(2)(E), (e)(6).

has not specifically required it by statute are misplaced. The fact that Congress has directed the Secretary to authorize employment to specific classes of aliens (such as the spouses of E and L nonimmigrants) does not mean that the Secretary is precluded from extending employment authorization to other classes of aliens by regulation as contemplated by section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B).²³

D. Comments on the Analysis of Executive Orders 12866 and 13563

1. Comments Related to Labor Market Impacts

Of the approximately ten percent of commenters who generally opposed the rule, a majority of those commenters asserted that allowing eligible H-4 dependent spouses to receive employment authorization would have negative economic impacts. Chief among these concerns was the impact of the proposed rule on the U.S. labor market. Many commenters believed that the proposed rule would increase competition for jobs; exacerbate the nation's unemployment rate; drive down wages; and otherwise negatively impact native U.S. workers. A few commenters also suggested that allowing H-4 dependent spouses to enter the labor market would negatively impact highly skilled H-1B nonimmigrants.

DHS appreciates these viewpoints and has carefully considered the potential for negative labor market impacts throughout this rulemaking. DHS affirms its belief expressed in the proposed rule that any labor market impacts will be minimal. As a preliminary matter, this regulatory change applies only to the H-4 dependent spouses of H-1B nonimmigrants who have actively taken certain steps to obtain LPR status. As such, the rule simply accelerates the timeframe by which these spouses are

able to enter the U.S. labor market. Importantly, the rule does not require eligible H-4 spouses to submit an application for an EAD, nor does the granting of an EAD guarantee that H-4 spouses will obtain employment. Further, the relatively small number of people affected by the rule limits any impact the rule may have on the labor market. Although DHS, in this final rule, increased its estimate of the number of H-4 dependent spouses who might benefit from the rule, the maximum number of such spouses who could request employment authorization and actually enter the labor market in the initial year (the year with the largest number of potential applicants) represents only 0.1156 percent of the overall U.S. civilian labor force. This increased estimate does not change the Department's conclusion that this rule will have minimal labor market impacts.

Moreover, with respect to the potential that this rule and the policy goals of retaining certain highly skilled H-1B nonimmigrants may cause native-worker displacement and wage reduction, DHS notes that there is a large body of research that supports the findings that immigration of highly skilled workers is beneficial to the U.S. economy and labor market in the long-term. For example, several commenters provided studies that refuted arguments that highly skilled immigrants are used for "cheap labor,"²⁴ while many others offered evidence that showed the positive effects of immigration, and particularly high-skilled immigration, on the U.S. labor market.²⁵ These commenters pointed to a Congressional Budget Office report and academic study²⁶ that showed that immigration

generally produces a modest increase in the wages of native-born workers in the long-run, and that any negative economic effects—in the form of wages—are largely felt by other immigrant workers with similar education and skill levels. DHS also notes that the Immigration and Nationality Act's employment-related antidiscrimination provision, enforced by the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices, prohibits employment discrimination in hiring, firing and recruiting and referring for a fee based on citizenship status. In general, employers may not reject U.S. workers in favor of nonimmigrant visa holders based on citizenship status. INA section 274B(a)(1)(B), 8 U.S.C. 1324b(a)(1)(B).

From a labor market perspective, it is important to note that there are not a fixed number of jobs in the United States. Basic principles of labor market economics recognize that individuals not only fill jobs, but also stimulate the economy and create demand for jobs through increased consumption of goods and services. On this point, approximately 2,600 commenters thought that the regulation as proposed will stimulate the U.S. economy through the spillover effects associated with dual-income households, thus leading to increased spending throughout the economy, greater investments in real estate, the potential for job creation, and increased tax revenue. Relatedly, other commenters expressed their belief that the rule will bolster U.S.

competitiveness, economic strength and innovation. A few commenters noted that the proposal will enhance the ability of U.S. businesses to attract and retain highly skilled immigrants, resulting in potential economic gains to U.S. companies and the U.S. economy.

In addition, commenters also highlighted several social benefits of the proposed rule, including: Family unification; overall family financial security and stability; providing a means for H-4 dependent spouses to be financially independent; and significantly aiding the H-1B nonimmigrant and his or her family in integrating into American culture and communities. DHS appreciates these comments and agrees that the rule will provide economic and social benefits to the H-1B nonimmigrant worker and his or her family as they wait to obtain LPR status.

Peri, G., *Rethinking the Effects of Immigration on Wages* (March 2010), available at <http://economics.ucdavis.edu/people/gperi/site/papers/rethinking-the-effect-of-immigration-on-wages>.

²³ Moreover, in the few instances in which Congress has determined to limit employment authorization for certain classes of aliens, it has done so expressly. See INA section 208(d)(2), 8 U.S.C. 1158(d)(2) ("An [asylum] applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum."); INA section 236(a)(3), 8 U.S.C. 1226(a)(3) (restricting employment authorization for aliens who have been arrested and are in removal proceedings unless the alien is a lawful permanent resident "or otherwise would (without regard to removal proceedings) be provided work authorization"); INA section 241(a)(7), 8 U.S.C. 1231(a)(7) (providing that alien who has been ordered removed is ineligible for work authorization unless the Secretary finds that the alien cannot be removed for lack of a country willing to receive the alien or "the removal of the alien is otherwise impracticable or contrary to the public interest").

²⁴ For example, commenters cited to the following studies in refuting the claim that H-1B workers are a source of cheap labor: Lofstrom, M. & Hayes, J., "H-1Bs: How Do They Stack Up to US Born Workers? IZA Discussion Paper No. 6259" (Dec. 2011), available at <http://ssrn.com/abstract=1981215>; Rothwell, J. & Ruiz, N., "H-1B Visas and the STEM Shortage: A Research Brief" (May 11, 2013), available at <http://ssrn.com/abstract=2262872>.

²⁵ Commenters cited to the following to highlight positive effects of highly skilled immigration: National Foundation for American Policy, "H-1B Visas and Job Creation" (Mar. 2008), available at <http://www.nfap.com/pdf/080311h1b.pdf>.

²⁶ Commenters cited to the following studies in highlighting the effects of immigration: Congressional Budget Office, "The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act," June 18, 2013, available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/44346-Immigration.pdf>; Mathews, D., "No, the CBO Report Doesn't Mean Immigration Brings Down Wages," June 19, 2013, available at <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/19/no-the-cbo-report-doesnt-mean-immigration-brings-down-wages/>; Ottaviano, G. &

Finally, a few commenters suggested that allowing H-4 dependent spouses to enter the labor market would negatively impact the job prospects of highly skilled H-1B nonimmigrants. These commenters generally suggested, without providing empirical support, that by allowing H-4 dependent spouses to have an EAD, U.S. employers will prefer to hire such individuals rather than to go through the additional effort of hiring an H-1B nonimmigrant. DHS appreciates these concerns but lacks data on the skillsets or educational levels of H-4 dependent spouses to indicate that they will take jobs that are typically held by highly skilled H-1B nonimmigrants. Nor, as noted above, is the U.S. labor market static; individuals who supply labor also create demand for labor through increased consumption and other spending. The fact that this rule provides employment authorization only to H-4 dependent spouses who are tied to an H-1B nonimmigrant who is sufficiently on the path to LPR status further mitigates the possibility that this rule will cause employers to hire H-4 dependent spouses over H-1B nonimmigrants. DHS anticipates that employers will continue to fully utilize the H-1B program and does not believe that this rule will adversely affect the job prospects of H-1B nonimmigrants.

2. Comments on the Volume Estimate and Methodology

Of the ten percent of commenters who opposed the rule, many felt that the Department's estimates of the potential eligible population were too low. Two commenters suggested that DHS employ a different methodology to arrive at the estimated number of likely eligible H-4 dependent spouses. One commenter provided highlighted excerpts of the Yearbook of Immigration Statistics, as published by the DHS Office of Immigration Statistics, containing statistics on individuals who had obtained LPR status under employment-based preference categories. The commenter highlighted the total number of spouses who had adjusted status to lawful permanent residence and the total number of individuals who adjusted to LPR status under the first through third employment-based preference categories. DHS assumes that the commenter was suggesting that DHS simply apply that historical average to estimate the number of H-4 dependent spouses who will be eligible to apply for employment authorization under this rule.

DHS appreciates this response and carefully considered this approach. However, that approach fails to account

for those H-1B nonimmigrants and their families who are currently in the backlog waiting for immigrant visas. Furthermore, that approach would also overstate the likely number of H-4 dependent spouses who would be eligible to apply for employment authorization under this rule. That is so because the approach does not account for the proportion of employment-based adjustment applicants who are in H-1B status as compared to those adjusting from another nonimmigrant status. Moreover, not all spouses of H-1B nonimmigrants are currently in H-4 nonimmigrant status. For these reasons, DHS disagrees with the commenters' suggested approach to estimating the volume of H-4 dependent spouses who will be eligible to apply for employment authorization under this rule. Estimating the eligible population by taking into account the backlog of H-1B nonimmigrants who have approved I-140 petitions but are unable to adjust status due to a lack of available immigrant visas, along with the estimated future flow of newly eligible spouses, is a more accurate methodology for estimating the number of H-4 dependent spouses whom this rule may impact.

DHS has carefully considered ways to estimate the volume of potential H-4 dependent spouses who will be eligible to apply for employment authorization under this rule. Based on comments received that questioned whether the estimated volume of such spouses was too low, DHS reviewed and updated its estimates in preparing this final rule. DHS acknowledges that there is some uncertainty in this analysis, but believes its methodology offers the best available estimates.

Although the estimate of H-4 dependent spouses who could be eligible to apply for employment authorization increased in this final rule,²⁷ the findings and impacts of the rule remain essentially the same. In the first year, if all 179,600 H-4 dependent spouses who DHS estimates may be eligible under the rule were to enter the U.S. labor market, that population would still constitute a small fraction of one percent of the overall U.S. civilian workforce. And many of these H-4 dependent spouses will be able to seek employment even without this rule, as immigrant visa numbers become available and H-1B nonimmigrant families become eligible to file for adjustment of status. As noted previously, this rule simply accelerates

the timeframe in which certain H-4 dependent spouses are able to enter the labor market.

Notwithstanding the revised volume estimates, the basis for this rule, as discussed throughout the proposed rule and this final rule, remains accurate. DHS is taking this action to further incentivize H-1B nonimmigrants and their families to continue to wait and contribute to the United States through an often lengthy waiting period for an immigrant visa to become available. DHS expects that these actions will also benefit U.S. employers by decreasing the labor disruptions that occur when H-1B nonimmigrants abandon the permanent resident process.

3. Comments on Specific Costs and Benefits Discussed in the Analysis

One commenter believed that the proposed rule overstated the potential costs and understated the benefits of the rule. Specifically, the commenter alleged that DHS' estimates for cost per applicant were exaggerated because DHS included the monetized opportunity costs associated with applying for employment authorization. That same commenter also believed that DHS failed to stress the economic and social benefits of the rule. Another commenter believed that the proposed rule failed to acknowledge the economic losses incurred by the current inability of H-4 dependent spouses to work.

DHS has carefully considered these comments and does not believe that the potential costs and benefits were either under- or overestimated. In the proposed rule, DHS highlighted the economic benefits to both the H-4 dependent spouse and the H-1B family unit that would accrue from additional income. In addition, in the proposed rule DHS discussed the societal integration benefits that would accrue to the H-4 dependent spouse and the H-1B family that would come from the spouse's ability to participate in the U.S. labor market. DHS disagrees with comments that the application costs were inflated because we assigned a valuation to the H-4 dependent spouse's time. DHS acknowledged in the proposed rule that these spouses do not currently work. DHS decided to use the minimum wage as a reasonable proxy to estimate the opportunity costs of their time. DHS disagrees with the questionable notion that just because these spouses are not currently able to participate in the labor market, they do not face opportunity costs and/or assign valuation in deciding how to allocate their time. As such, DHS utilized a reasonable approach in assigning value to their time.

²⁷ Please refer to Section IV.C. of this document for a deeper discussion of the final estimate of the impact of this rule.

E. Comments on the Application for Employment Authorization

Over 180 commenters raised issues related to employment authorization, including filing procedures, premium processing, validity periods, renewals, evidentiary documentation, concurrent filings for extension of stay/change of status, automatic extensions of employment authorization, and filing fees. DHS carefully considered these comments and addresses them below.

1. Streamlined or Modernized Filing Procedures

Commenters urged DHS and USCIS to utilize streamlined or modernized filing procedures for Applications for Employment Authorization (Forms I-765) submitted by H-4 dependent spouses. USCIS is moving from a paper-based application and adjudication process to an electronic one through the development of an Electronic Immigration System (“USCIS ELIS”). When complete, USCIS ELIS will allow customers to electronically view their applications, petitions or requests, receive electronic notification of decisions, and electronically receive real-time case status updates. This is a global effort affecting all USCIS benefit request programs and, therefore, is outside the scope of this rulemaking. DHS will notify the public when USCIS is prepared to begin accepting electronic filings of Applications for Employment Authorization by eligible H-4 dependent spouses. DHS will begin accepting Applications for Employment Authorization (Forms I-765) submitted by certain H-4 dependent spouses on the effective date of this rule, May 26, 2015. This effective date is intended to prevent an overlap of H-1B cap season and an initial filing surge of Forms I-765 under 8 CFR 274a.12(c)(26). As a result, USCIS will be able to implement this program in a manner that will avoid prolonged delays of processing other petition and application types, in particular those H-1B petitions seeking an FY 2016 cap number. It will also allow USCIS to maintain excellent customer service for all USCIS stakeholders, including H-1B employers, H-1B nonimmigrants and their families.

2. Employment Authorization Document (Form I-766) Validity Period

Nine commenters requested that DHS issue the Employment Authorization Document (EAD) (Form I-766) with a validity period that matches the H-4 dependent spouse’s status. Related to this request, another commenter requested a three-year validity period to

match the H-1B and H-4 authorized periods of admission. DHS agrees with commenters that to reduce possible cases of unauthorized employment, the EAD validity period should match the H-4 dependent spouse’s length of authorized admission. Thus, in issuing an EAD to an otherwise eligible H-4 dependent spouse, DHS generally will authorize a validity period that matches the H-4 spouse’s remaining authorized period of admission, which may be as long as three years in cases not involving DOD-related services. This policy will ensure that USCIS does not grant employment authorization to an H-4 dependent spouse who is not eligible for the benefit. It will also likely reduce the number of times that H-4 dependent spouses may need to request renewal of their employment authorization.

One commenter requested that DHS issue a probationary EAD with a six-to twelve-month validity period, at the end of which the H-4 dependent spouse would have to prove that he or she is working legally and paying taxes. DHS declines to adopt this suggestion. The EAD that DHS will issue H-4 dependent spouses pursuant to this rule is evidence of employment authorization to lawfully work in the United States for any employer. DHS is not aware of any risk factors—such as fraud, criminal activity, or threats to public safety or national security—associated with H-4 dependent spouses as a whole that would support imposing a six-month validity period. Moreover, the administrative burden resulting from additional adjudications and the possibility of gaps in employment authorization, together with the burdens this limitation would place on the H-4 dependent spouse, make imposing a six-month validity period unreasonable.

Regarding the suggestion that H-4 dependent spouses should be required to prove that they pay taxes as a condition of obtaining or maintaining work authorization, DHS does not require proof of payment of taxes for any of the classes of aliens eligible to file the Application for Employment Authorization. As a preliminary matter, issuance of an EAD does not require an H-4 dependent spouse to work. Nor does issuance of the EAD guarantee that an H-4 dependent spouse will find employment and therefore be required to pay taxes on any income earned through such employment. Moreover, DHS is not aware of any evidence, and the commenter provided none, indicating that H-4 dependent spouses are likely to engage in tax evasion or other tax-related unauthorized activity if they are provided employment

authorization pursuant to this rule. At the same time, USCIS would face significant operational burdens if it were required to collect and verify tax documents for each H-4 dependent spouse seeking employment authorization under this rule.

3. EAD Renewals

Five commenters requested that DHS allow H-4 dependent spouses to apply for EAD renewals up to six months in advance, in part to align with the time frame permitted for filing of the Petition for a Nonimmigrant Worker (Form I-129) to extend the H-1B nonimmigrant’s status. As explained below in Section III.E.5, DHS will permit those H-4 dependent spouses seeking to concurrently file their Form I-765 application with their Application to Extend/Change Nonimmigrant Status (Form I-539), and if applicable their spouses’ Form I-129 petition, to file up to six months in advance of the requested start date. Please note, however, that USCIS will not adjudicate the Form I-765 application until a determination has been made on the underlying Form I-539 application and/or Form I-129 petition. The time at which an H-4 dependent spouse will be eligible to apply for an EAD renewal will vary, as it is dependent on actions taken by the H-1B nonimmigrant, including actions to maintain and extend his or her H-1B status, as well as the H-4 dependent spouse’s status.

4. Acceptable Evidentiary Documentation

Several commenters submitted comments related to the Application for Employment Authorization (Form I-765) and to the evidence required to be submitted by applicants with the application. One commenter asked DHS to make changes to assist applicants in obtaining acceptable evidentiary documentation. This commenter requested that USCIS provide the H-4 dependent spouse, upon request, with his or her immigration case related paperwork, such as the original underlying petition. Another commenter requested that DHS provide clarification about the evidentiary standard relating to AC21 eligibility.

In conjunction with the proposed rule, DHS proposed conforming revisions to the Form I-765 application to add H-4 dependent spouses described in this rule to the classes of aliens eligible to file the form. Concurrent with publication of this final rule, DHS has made further changes to the form. DHS has made clarifying changes to improve readability of the form instructions describing the types of

documentary evidence that may be submitted in support of the application. As further discussed in Part III.F.1 relating to marriage fraud concerns, DHS also has revised the regulatory text in 8 CFR 214.2(h)(9)(iv) and the form instructions to clarify that supporting documentary evidence includes proof of marriage. Finally, DHS has revised the form itself to include a check box that self-identifies the applicant as an eligible H-4 dependent spouse. DHS believes that adding the check box for H-4 dependent spouses to the form will aid in the efficient processing of the form by facilitating USCIS's ability to match the application with related petitions that are integral to determining the H-4 dependent spouse's eligibility for employment authorization, as discussed below in Part III.E.5.

DHS appreciates the concerns regarding the difficulty that some applicants may face in obtaining the necessary documentation to support the Form I-765 application. DHS's revisions in this final rule to 8 CFR 214.2(h)(9)(iv) and the instructions to Form I-765 provide for flexibility in the types of evidentiary documentation that may be submitted by applicants. If the H-4 dependent spouse cannot submit the primary evidence listed in the form instructions, he or she may submit secondary evidence, such as an attestation that lists information about the underlying Form I-129 or Form I-140 petition, so that an adjudicator may be able to match the Form I-765 application with the underlying petition(s). Such information may include the petition receipt number, the beneficiary's name and/or the petitioner's name. If secondary evidence does not exist or cannot be obtained, an applicant may demonstrate this and submit two or more sworn affidavits by non-parties who have direct knowledge of the relevant events and circumstances. This approach should address the situation where the H-4 dependent spouse is unable to access the immigration paperwork relating to the H-1B nonimmigrant.

Notwithstanding the option for submitting secondary evidence, if an applicant prefers to obtain the primary evidence listed in the form instructions from USCIS for submission with the Form I-765, the applicant may make a request for documents maintained by USCIS by following established procedures for making such requests under the Freedom of Information Act (FOIA). See <http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-foiapa-request>. DHS

declines to establish new procedures for making document requests that are applicable only to applicants who are H-4 dependent spouses. The established FOIA process for making document requests promotes fairness, uniformity, and administrative efficiency, while ensuring that privacy protections are enforced.

Finally, in response to the comment on the evidentiary standard that will apply to H-4 dependent spouses, DHS notes that such spouses will have to meet the same burden of proof (*i.e.*, preponderance of the evidence) as other applicants for employment authorization. See, *e.g.*, *Matter of Chawathe*, 25 I. & N. Dec. 369, 376 (AAO 2010) (describing "preponderance of the evidence" standard).

5. Concurrent Filings

A couple of commenters requested that DHS allow eligible H-4 dependent spouses to file the Application for Employment Authorization (Form I-765) concurrently with an Immigrant Petition for Alien Worker (Form I-140) or an Application to Extend/Change Nonimmigrant Status (Form I-539). For the reasons that follow, DHS agrees to allow Form I-765 to be concurrently filed with Form I-539, but not with Form I-140.

DHS currently permits an H-4 dependent spouse to file Form I-539 concurrently with a Petition for a Nonimmigrant Worker (Form I-129) filed on behalf of the H-1B nonimmigrant. This provides several efficiencies, as the status of the H-4 dependent spouse is based on the resolution of the H-1B nonimmigrant's Form I-129 petition and both forms may be processed at the same USCIS locations. For similar reasons, DHS has decided to permit H-4 dependent spouses to file Applications for Employment Authorization (Forms I-765) concurrently with certain related benefit requests: Applications to Extend/Change Nonimmigrant Status (Forms I-539) and, if applicable, with Petitions for a Nonimmigrant Worker (Form I-129). As noted previously, DHS has decided to issue EADs to eligible H-4 dependent spouses with validity dates that match their authorized periods of admission. That period of admission is determined as part of the Form I-539 application adjudication, which, in turn, is largely dependent on the H-1B nonimmigrant's period of admission determined as part of the Form I-129 adjudication. Because adjudication of those forms are interrelated, and because they are submitted to the same USCIS locations, DHS has determined

that it is reasonable to allow those forms to be concurrently filed.

DHS, however, cannot extend the courtesy of concurrent filing with Form I-140 immigrant visa petitions filed on behalf of the H-1B nonimmigrant. Presently, Forms I-129 and I-539 are not processed at the same USCIS locations in which Form I-140 petitions are adjudicated. As a result, each form must be filed separately at the USCIS Service Center location having jurisdiction over the relevant form. Additionally, determining the spousal relationship between the H-1B nonimmigrant and the H-4 dependent spouse is not a necessary part of the adjudication of the Form I-140 petition.²⁸ To permit concurrent filing of Form I-765 with Form I-140 would undermine DHS' efforts to facilitate efficient processing of both benefit requests.

DHS also notes that it cannot adjudicate a Form I-765 filed by an H-4 dependent spouse until the Department has made a determination regarding the H-1B nonimmigrant's eligibility for H-1B status under sections 106(a) and (b) of AC21 or until a Form I-140 petition has been approved. Prior to adjudicating such Form I-765, DHS must also make a determination that the H-4 dependent spouse remains eligible for H-4 status. As such, DHS amends the current rule to clarify that the 90-day clock specified in 8 CFR 274a.13(d) authorizing DHS to issue interim employment authorization if the Form I-765 is not adjudicated within 90 days is not triggered until necessary eligibility determinations have been made on the underlying nonimmigrant status for the H-1B nonimmigrant and the H-4 dependent spouse. If the H-4 dependent spouse's employment authorization is based on a favorable eligibility determination relating to the nonimmigrant status of either the H-1B nonimmigrant or the H-4 dependent spouse, the 90-day clock is triggered when that eligibility determination is made. Alternatively, if employment authorization is based on a favorable eligibility determination relating to the nonimmigrant status of both the H-1B nonimmigrant and the H-4 dependent spouse, the 90-day clock is not triggered until an eligibility determination is made on both. Accordingly, DHS is making conforming amendments to 8 CFR 214.2(h)(9)(iv) and 8 CFR 274a.13(d) in this final rule and the instructions to Form I-765. These amendments permit H-4

²⁸ Unlike the I-140 adjudication, adjudication of Form I-539 requires evidence of such spousal relationship.

dependent spouses under this rule to concurrently file their Form I-765 with related benefit requests, specified in the form instructions to include their Application to Extend/Change Nonimmigrant Status (Form I-539), and if applicable, their spouse's Form I-129 petition. As a result of the amendments, the 90-day clock described in 8 CFR 274a.13(d) would also not start until after a determination has been made on the underlying H-1B status, H-4 status, or both.

6. Premium Processing

Three commenters requested premium processing service for H-4 dependent spouses seeking to file Applications for Employment Authorization (Forms I-765). These commenters highlighted the benefit that the extra premium processing fees could bring to USCIS. DHS appreciates these comments, but has decided not to extend premium processing to Form I-765 applications filed by H-4 dependent spouses in conjunction with this rulemaking. DHS currently offers premium processing service for certain employment-based petitions and applications, including H-1B, L, and E nonimmigrant worker petitions and certain EB-1, EB-2 and EB-3 immigrant visa petitions. Extending premium processing to Form I-765 applications, however, presents operational concerns and would be inconsistent with procedural realities for USCIS. The agency, for example, would be unable to comply with premium processing requirements on any Form I-765 application that is contingent on the adjudication of a concurrently filed Application to Extend/Change Nonimmigrant Status (Form I-539). Due to these and other operational concerns, DHS will not extend premium processing service to Form I-765 applications, including applications filed by H-4 dependent spouses under this rule at this time.

7. Automatic Extensions of Work Authorization

One commenter requested an automatic extension of work authorization for 240 days after an H-4 dependent spouse's EAD expires. DHS, however, is concerned with improperly granting employment authorization to an H-4 dependent spouse who is ineligible for it. As the validity of the H-4 dependent spouse's eligibility for employment authorization will be tied to his or her authorized period of admission, automatic extensions of employment authorization without review of the underlying extension of stay applications for the H-

1B nonimmigrant and H-4 dependent spouse could result in employment authorization being extended to individuals who will eventually be determined ineligible for this benefit. DHS thus declines to adopt this recommendation.

To avoid any potential gaps in employment authorization when seeking an extension of employment authorization, DHS recommends that the H-4 dependent spouse timely file all necessary applications. DHS's policy to permit concurrent filing of Forms I-539, I-129, and I-765 should also help H-4 dependent spouses avoid gaps in employment authorization, as these forms may be filed concurrently up to six months in advance of date of need.

8. Filing Fees

Several commenters submitted remarks on the filing fees without expressing support for or opposition to the fees. Additionally, some commenters asserted that USCIS would benefit from an increased volume of fees, and another commenter requested that the U.S. Government help pay for immigration-related application fees.

DHS is bound by statutes and regulations governing its collection of fees in connection with immigration benefit requests. *See* INA section 286(m)-(p), 8 U.S.C. 1356(m)-(p); 8 CFR 103.7. DHS generally must set application fees at a level that enables it to recover the full costs of providing services, including the costs of similar services provided without charge to certain other applicants. But DHS may offer assistance with respect to immigration-related application fees in the form of fee waivers. Discretionary fee waivers are provided on a case-by-case basis when the party requesting the benefit is unable to pay the prescribed fee and the waiver request is consistent with the underlying benefit being requested. *See* 8 CFR 103.7(c)(1).

For the reasons that follow, DHS believes that it would be unlikely that H-4 dependent spouses would be unable to pay the prescribed fee for the Application for Employment Authorization (Form I-765). By definition, H-4 dependent spouses are married to H-1B nonimmigrants who are employed and earning a salary of at least the prevailing wage in their occupation. H-4 dependent spouses will thus generally be unable to establish that they cannot pay the fee prescribed for the Form I-765 application. For these reasons, DHS declines to establish a general fee waiver for the Form I-765 filed by eligible H-4 dependent spouses under this rule. *See* 8 CFR 103.7(d). USCIS

will consider fee waiver requests on a case-by-case basis. *See* 8 CFR 103.7(c)(3)(viii). As noted above, given the nature of the H-1B nonimmigrant's employment, a showing of inability to pay as required by the regulation would be the exception rather than the rule.

9. Possible Restrictions on EADs Issued to H-4 Dependent Spouses

A few commenters recommended imposing certain restrictions on employment authorization issued to H-4 dependent spouses, such as: Creating a cap on the number of EADs that could be granted to H-4 dependent spouses; prohibiting the H-1B nonimmigrant and H-4 dependent spouse from having the same employer or working in the same occupation; prohibiting employers from replacing an American veteran with an H-1B nonimmigrant; restricting H-4 work authorization to certain employers; creating a National Registry of Jobs that H-4 dependent spouses would be allowed to apply for; forcing individuals to surrender their foreign passports when they obtain U.S. citizenship as a way of proving allegiance; allocating EADs in a proportionate manner based on nationality; and requiring H-4 dependent spouses to pay for training programs for U.S. citizens.

DHS declines to incorporate the suggested restrictions into this final rule. A primary purpose of this rule is to assist U.S. employers in retaining certain highly skilled H-1B nonimmigrants. Allowing certain H-4 dependent spouses to apply for employment authorization removes a disincentive that currently undermines this goal. Imposing the suggested restrictions, such as numerical caps or per-country quotas, would limit the effectiveness and purpose of this rule. Additionally, DHS believes that EADs provide inherent protections that mitigate the risk of abuse and exploitation. Because these EADs may be used to work for any employer, workers are free to find new employment at any point during the EAD's validity, including if they are dissatisfied with their pay or working conditions. Finally, DHS reiterates that the individuals being provided employment authorization under this rule belong to a class of aliens that is already likely to enter the U.S. labor market with EADs. In sum, DHS does not believe that extending eligibility for employment authorization to H-4 dependent spouses will lead to the broad exploitation of EADs.

10. Circular EADs

One commenter noted that this rule could lead to “circular EADs,” whereby spouses who are both eligible for H–1B status may switch status (H–1B to H–4 and vice versa) so that one spouse may maintain an EAD at all times. This commenter conveyed the concern that H–1B nonimmigrants might initiate the primary steps towards permanent residence, then switch back and forth between H–1B and H–4 statuses to stay in the United States forever.

DHS acknowledges that H–1B nonimmigrants will be able to change status, as permitted by law. DHS believes it is extremely unlikely, however, that an H–1B nonimmigrant will seek to remain in the United States forever by switching between nonimmigrant statuses as a result of this rule. The rule is intended to benefit those H–1B nonimmigrants who are already well on the path to lawful permanent residence and, therefore, seek to remain in the United States permanently on this basis. Although the waiting period for an immigrant visa may be lengthy, there is an end date as indicated on the Department of State’s Visa Bulletin. So any incentive to switch between statuses indefinitely would be weighed by the nonimmigrant against the benefits of obtaining LPR status, including the ability to work in the United States without being tied to a specific employer and the ability of the H–4 dependent spouse to work without needing to periodically apply and pay for an EAD. Moreover, with lawful permanent residency, an individual is eligible to apply for U.S. citizenship, generally after five years, and to petition for relatives to immigrate to the United States, benefits that are not available to persons with H–1B or H–4 status.

11. Form I–765 Worksheets

One commenter expressed concern that H–4 dependent spouses would need to demonstrate economic need for employment because of the reference in the Paperwork Reduction Act section of the proposed rule to the Form I–765 Worksheet (Form I–765WS). DHS is clarifying that H–4 dependent spouses are not required to establish economic need for employment authorization. H–4 dependent spouses are not required to submit Form I–765WS with their Application for Employment Authorization (Form I–765). DHS has corrected this error in the form instructions to the Application for Employment Authorization (Form I–765).

12. Other Related Issues

Several commenters sought guidance on issues tangential to the issuance of employment authorization to H–4 dependent spouses. For example, one commenter asked for clarification on the type of status that an H–4 dependent spouse will receive when readmitted into the United States after traveling abroad. Another commenter wanted to know if an H–4 dependent spouse could work from home in the United States for his or her native country employer on the native country salary. Because this rulemaking is limited to extending eligibility for employment authorization to H–4 dependent spouses and does not make changes to admission requirements or conditions of employment authorization, DHS considers these questions outside the scope of this rulemaking. Please consult the USCIS Web site at www.uscis.gov or contact USCIS Customer Service at 1–800–375–5283 for current guidance.

Finally, several commenters requested clarification about EAD processing and adjudication times. USCIS posts current processing times on its Web site and encourages interested stakeholders to consult www.uscis.gov if they have questions about adjudication times.²⁹

F. Fraud and Public Safety Concerns

Over 100 commenters raised concerns related to fraud and public safety, including issues related to resume fraud, marriage fraud, participation by individuals with criminal records, unauthorized employment, and employer abuse in the H–1B program. Strict consequences are already in place for immigration-related fraud and criminal activities, including inadmissibility to the United States, mandatory detention, ineligibility for naturalization, and removability. *See, e.g.,* INA sections 101(f), 212(a)(2) & (a)(6), 236(c), 237(a)(1)(G) & (a)(2), 318; 8 U.S.C. 1101(f), 1182(a)(2) & (a)(6), 1226(c), 1227(a)(1)(G) & (a)(2), 1429. Nevertheless, the Department welcomes suggestions to further prevent fraud and protect public safety in the implementation of its programs. The Department carefully considered these comments and addresses them below.

1. Falsifying Credentials and Marriage Fraud

Over 100 commenters anticipated that certain H–4 dependent spouses would

falsify their resumes or qualifications or marry for immigration purposes. With respect to potential resume fraud, DHS notes that eligibility for employment authorization for H–4 dependent spouses will not depend in any way on their professional or educational qualifications or their resumes. It will be up to potential employers to verify the qualifications of H–4 dependent spouses they may be seeking to hire. This concern is therefore outside the scope of this rulemaking.

With respect to marriage fraud, DHS is revising 8 CFR 214.2(h)(9)(iv) to clarify that establishing eligibility for employment authorization under this rule requires evidence of the spousal relationship between the H–4 dependent spouse and the H–1B nonimmigrant. DHS is also making conforming revisions to the form instructions to Form I–765 to require that H–4 dependent spouses submit proof of marriage to the H–1B nonimmigrant with the form. USCIS officers are specially trained to recognize indicia of fraud, including marriage fraud and falsified documents, and review other immigration petitions for these circumstances as well. If such fraud is suspected, the relevant USCIS officer may refer the case to the local fraud unit for further inquiry. USCIS may also submit leads related to significant fraud to U.S. Immigration and Customs Enforcement for criminal investigation. DHS believes that current fraud-detection training, mechanisms for detecting and investigating fraud, and fraud-related penalties are sufficient for deterring and detecting marriage fraud in this context.

2. Prohibition Related to Felony Charges and Convictions

Two commenters requested a prohibition against participation by anyone charged with, awaiting trial for, or convicted of a felony. DHS appreciates the commenters’ concerns over public safety and notes that the eligibility for employment authorization extended by this rule to certain H–4 dependent spouses is discretionary. DHS officers will consider any adverse information—including criminal convictions, charges, and other criminal matters—on a case-by-case basis.

3. Unauthorized Employment

A few commenters thought that this rule would help curb any unauthorized employment in which H–4 dependent spouses are currently engaging. Additionally, several commenters raised concerns that this rule could encourage illegal immigration and increase the number of undocumented workers in

²⁹ For example, as of January 26, 2015, the processing time at the California Service Center (CSC) for the Application for Employment Authorization, Form I–765, ranged from 3 weeks to 3 months depending on the basis for the Form I–765. *See* <https://dashboard.uscis.gov/index.cfm?formtype=12&office=2&charttype=1>.

the United States. DHS disagrees that this rule may encourage illegal immigration. DHS believes that this rule will provide options to certain H-4 dependent spouses allowing them to engage in authorized employment. Individuals eligible for employment authorization under this rule must have been granted H-4 status and must remain in such lawful status before they can be granted employment authorization pursuant to this rule. An H-4 dependent spouse who engaged in unauthorized employment would not have been maintaining lawful H-4 status and therefore would be ineligible for this new benefit. Therefore, the Department does not believe that this rule will incentivize unauthorized employment or any other illegal activities.

4. Employer Abuse of H-1B Nonimmigrants and H-4 Dependent Spouses

A number of commenters raised concerns over potential employer abuse of H-1B nonimmigrants and H-4 dependent spouses. These concerns included failure to pay prevailing wages and demanding long hours without adequate compensation. DHS appreciates these concerns and maintains that employers must not intimidate, threaten, restrain, coerce, blacklist, discharge or otherwise discriminate or take unlawful action against any employee. Violators face severe penalties. *See* INA 212(n)(2)(C)(iv), 8 U.S.C. 1182(n)(2)(C)(iv). DHS takes seriously any potential abuse of H-1B nonimmigrants and H-4 dependent spouses and encourages any workers who feel that their rights have been violated by their employers to file a complaint with DOL or another appropriate entity, such as the Equal Employment Opportunity Commission.³⁰ Any concerns raised by commenters regarding H-1B nonimmigrants and worker protections in the H-1B program, however, are outside the scope of this rulemaking.

G. General Comments

Over 300 commenters submitted feedback about general immigration issues. A few commenters expressed support for or opposition to immigration. Comments ranged from requesting DHS to discontinue all types

of immigration to underscoring the need for comprehensive reform of the immigration laws to general support of immigration. DHS is charged with administering the immigration laws enacted by Congress, and only Congress can change those laws. The comments described above are therefore outside the scope of this rulemaking. DHS, however, is committed to comprehensive immigration reform that creates a workable system that strengthens border security, improves the U.S. economy, unites families, and preserves national security and public safety.

Additionally, fewer than a dozen commenters objected to the ability of non-U.S. citizens to submit comments on the proposed rule. As noted in that rule, DHS welcomed comments from all interested parties and did not place any restrictions based on citizenship or nationality.

H. Modifications to the H-1B Program and Immigrant Visa Processing

1. H-1B Visa Program

i. Circumventing the H-1B Cap

A few commenters suggested that employers may try to exploit this regulation by using it to avoid the H-1B numerical cap and hiring more foreign specialty occupation workers than permitted by the statute. As a preliminary matter, DHS cannot agree with the premise that hiring an individual with general (rather than employer-specific) employment authorization constitutes circumvention of the cap on H-1B nonimmigrants. This is particularly so when such employment authorization is contingent on being married to an individual who was selected in the H-1B program and is subject to the cap. Moreover, commenters provided no evidence or data that would support the contention that this rule will be used by employers and H-4 dependent spouses to circumvent the cap. For example, DHS does not have, and commenters did not provide, data on the skillsets or educational levels of H-4 dependent spouses to indicate that they will generally qualify for jobs that are typically held by highly skilled H-1B nonimmigrants. Finally, it is unlikely that highly skilled individuals who could independently qualify under the H-1B program will instead opt to enter the United States as H-4 dependent spouses and subject themselves to lengthy periods of unemployment with the intent to circumvent the H-1B cap. As noted previously, this rule provides eligibility for employment authorization only to those H-4 dependent spouses

who are married to certain H-1B nonimmigrants who have taken substantial steps, generally taking many years, towards obtaining permanent residence. Such an individual may eventually obtain a job for which an H-1B nonimmigrant could possibly have qualified, but the Department does not consider this a circumvention of the H-1B cap.

ii. Elimination or Modification of the H-1B program

More than a dozen commenters requested that the H-1B program be terminated. An approximately equal number of commenters requested that the H-1B visa cap be eliminated or modified in various ways. Several commenters requested that DHS increase the number of visas available, other commenters asked DHS to eliminate the H-1B visa cap, while others recommended decreasing the number of visas available.

DHS cannot address the commenters' suggestions in this rulemaking. The H-1B program is required by statute, which also sets the current cap on H-1B visa numbers. Congressional action is thus required to address the commenters' concerns, as the Secretary does not have the authority to eliminate the program or change the visa cap without congressional action. The suggested changes are thus outside the scope of this rulemaking.

Additionally, one commenter requested that DHS allow for more flexible filing times for H-1B visas. This request would require DHS to amend its H-1B regulations, which currently provide that an H-1B petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services. *See* 8 CFR 214.2(h)(9)(i)(B). This rulemaking, however, does not make substantive changes to the H-1B program or its regulations. The request is thus outside the scope of this rulemaking.

iii. More Flexible Change of Status From H-1B to H-4

One commenter requested a modification of the H-1B program to allow a family member who has been in the United States for more than five years to choose between H-1B and H-4 status. To some extent, H-1B nonimmigrants currently have this option. An H-4 dependent spouse may seek classification as an H-1B nonimmigrant if an employer files a petition on his or her behalf. As long as one of the spouses maintains H-1B status, the other is eligible for H-4 status. However, the underlying H-1B status is connected to the need of a U.S.

³⁰ An individual can submit a Nonimmigrant Worker Information Form, Form WH-4, with DOL. This form was authorized by the American Competitiveness and Workforce Improvement Act (ACWIA) of 1998. *See* INA sections 212(n)(2)(G), 8 U.S.C. 1182(n)(2)(G). It is available on-line at <http://www.dol.gov/whd/forms/wh-4.pdf>.

employer. To the extent that the commenter is suggesting a change to this requirement such that both spouses could be present in the United States in H-4 status, such a change would require congressional action and, therefore, is beyond the scope of this rulemaking.

iv. Applying for H-1B Status and Cap Exemption

One commenter recommended that H-4 dependent spouses be allowed to apply for H-1B visas and be exempt from the cap. This final rule does not prohibit H-4 dependent spouses from seeking and obtaining H-1B status. Once an H-4 spouse seeks to change to H-1B status, he or she is subject to annual limitations on H-1B nonimmigrants. Only Congress can exempt groups of individuals from the statutory H-1B numerical limitations. This request is therefore beyond the scope of this rulemaking.

v. Dependents of G Principal Nonimmigrants

One commenter requested that DHS change its G visa regulations to allow dependents of principal G visa holders to more freely obtain a different visa classification (such as H-1B classification). Such a change is outside the scope of this rulemaking.

2. Immigrant Visa Processing and Adjustment of Status

Over 30 commenters requested the elimination of the worldwide quotas for immigrant visas.³¹ One commenter requested allowing the submission and receipt of applications for adjustment of status when visas are not available, and another requested that the rule include provisions to expedite the permanent residence process for the EB-2 and EB-3 preference categories. Several commenters requested that USCIS grant EADs to LPR applicants while they wait for their immigrant visas. Another commenter requested that USCIS grant one skilled worker visa per eligible family unit (rather than per each individual family member), for the purpose of reducing backlogs. One commenter requested that USCIS establish a procedure by which those in the process of seeking LPR status could “pre-register” their intention to apply to adjust status.

DHS appreciates feedback from the public regarding possible changes to the

immigration laws and the system for obtaining LPR status. DHS, however, will not respond to these comments as they do not address changes to the regulations made by this rulemaking and are therefore outside the scope of this rulemaking.

I. H-1B Nonimmigrant’s Maintenance of Status

Several commenters asked for more information about the effect that an H-1B nonimmigrant’s loss of employment or change of employer would have on the H-4 dependent spouse’s employment authorization. As stated in the proposed rule, the H-4 dependent’s status is tied to the H-1B nonimmigrant’s status. Thus, if the H-1B nonimmigrant fails to maintain status, the H-4 dependent spouse also fails to maintain status and would therefore no longer be eligible for employment authorization. Under current regulations, DHS may seek to revoke employment authorization if, prior to the expiration date of such authorization, any condition upon which it was granted has not been met or no longer exists. *See* 8 CFR 274a.14(b).

J. Environmental Issues

In the proposed rule, DHS requested comments relating to the environmental effects that might arise from the proposed rule. Nine commenters submitted related feedback, noting general environmental issues that come with an increased population. DHS appreciates these comments but notes that the vast majority of the population immediately affected by the rule is already in the United States and has been here for a number of years while waiting for their immigrant visas. The H-4 dependent spouses affected by this rule generally will eventually be able to seek employment even without this rule, as immigrant visa numbers become available and H-1B nonimmigrant families become eligible to file for adjustment of status. As noted previously, this rule simply accelerates the timeframe in which these individuals are able to enter the labor market.

K. Reporting

A few commenters requested more information about how DHS will monitor the outcome of the final rule, such as by tracking EAD adjudications for H-4 dependent spouses and publishing annual reports. DHS maintains statistics on all immigration benefit programs and will monitor H-4 EAD adjudications and include relevant information in its annual reports in

accordance with current reporting protocols.

L. Implementation

Several hundred commenters requested that the rule be implemented as soon as possible. One commenter requested that a sunset provision be included in the rule. At the end of the sunset period, the commenter recommended that DHS evaluate the program, and, if the results are positive, expand it. DHS believes that a general sunset provision would not be practicable or fair as it would require DHS to provide different periods of employment authorization to H-4 dependent spouses depending on when they become eligible to apply. Further, DHS considers a sunset provision to be at odds with the rule’s purpose, which is to retain highly skilled workers who often have a multi-year wait before being eligible to apply for permanent residence.

With respect to implementation of this rule, DHS must consider the 30-day effective date requirement at 5 U.S.C. 553(d) as well as USCIS’s implementation requirements. Based on these factors, DHS has decided that this rule will be effective 90 days from the date of publication, May 26, 2015.

IV. Statutory and Regulatory Requirements

A. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The value equivalent of \$100,000,000 in 1995 adjusted for inflation to 2014 levels by the Consumer Price Index for All Urban Consumers is \$155,000,000.

This rule does not exceed the \$100 million expenditure in any one year when adjusted for inflation (\$155,000,000 in 2014 dollars), and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and DHS has not prepared a statement under the Act.

³¹ Section 201(d) of the INA, 8 U.S.C. 1151(d), prescribes the worldwide level of employment-based immigrants. Section 203(b) of the INA, 8 U.S.C. 1153(b), prescribes the preference allocation for employment-based immigrants. Section 202 of the INA, 8 U.S.C. 1152, prescribes per country levels for family-sponsored and employment-based immigrants.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States companies to compete with foreign-based companies in domestic and export markets.

C. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

DHS is amending its regulations to extend eligibility for employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants who either: (1) Are principal beneficiaries of an approved Immigrant Petition for Alien Worker (Form I-140); or (2) have been granted H-1B status under sections 106(a) and (b) of AC21.

1. Summary

Currently, USCIS does not issue work authorization to H-4 dependent

spouses. To obtain work authorization, the H-4 dependent spouse generally must have a pending Application to Register Permanent Resident Status or Adjust Status or have changed status to another nonimmigrant classification that permits employment. AC21 provides for an authorized period of admission and employment authorization beyond the typical six-year limit for H-1B nonimmigrants who are seeking permanent residence. This final rule will extend eligibility for employment authorization to H-4 dependent spouses where: the H-1B nonimmigrant is the principal beneficiary of an approved Form I-140 petition; or the H-1B nonimmigrant has been granted status pursuant to sections 106(a) and (b) of AC21.

DHS has updated its estimate of the population of H-4 dependent spouses who will be impacted by the rule. DHS estimates the current population of H-4 dependent spouses who will be eligible for employment authorization could initially be as many as 179,600 after taking into account the backlog of H-1B nonimmigrants who have approved I-140 petitions, or who are likely to have such petitions approved, but who are unable to adjust status because of the lack of immigrant visas. For ease of analysis, DHS has assumed that those H-4 dependent spouses in the backlog population will file for employment authorization in the first year of implementation. DHS estimates the flow of new H-4 dependent spouses who could be eligible to apply for initial employment authorization in subsequent years may be as many as 55,000 annually. Even with the increased estimate of H-4 dependent spouses who could be eligible to apply for employment authorization, DHS still affirms in the initial year (the year with the largest number of eligible applicants) that the rule will result in

much less than a one percent change in the overall U.S. labor force.

DHS is unable to determine and does not include in this analysis the filing volume of H-4 dependent spouses who will need to renew their employment authorization documents under this rule as they continue to wait for immigrant visas. Eligible H-4 dependent spouses who wish to apply for employment authorization must pay the \$380 filing fee to USCIS, provide two passport-style photos, and incur the estimated 3-hour-and-25-minute opportunity cost of time burden associated with filing an Application for Employment Authorization (Form I-765). After monetizing the expected opportunity cost and combining it with the filing fee³² and the estimated cost associated with providing two passport-style photos, an eligible H-4 dependent spouse applying for employment authorization will face an anticipated total cost of \$436.18.

The maximum anticipated annual cost to eligible H-4 dependent spouses applying for initial employment authorization in Year 1 is estimated at \$78,337,928 (non-discounted), and \$23,989,900 (non-discounted) in subsequent years. The 10-year discounted cost of this rule to eligible H-4 dependent spouses applying for employment authorization is \$257,403,789 at 3 percent and \$219,287,568 at 7 percent. Table 2 shows the maximum anticipated estimated costs over a 10-year period of analysis for the estimate of 179,600 applicants for initial employment authorization, and the 55,000 applicants expected to file for initial employment authorization annually in subsequent years.

TABLE 2—TOTAL COSTS AND BENEFITS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H-4 DEPENDENT SPOUSES 10-YR PRESENT VALUE ESTIMATES AT 3% AND 7%

[\$Millions]

	Year 1 estimate (179,600 filers)	Sum of Years 2–10 (55,000 filers annually)	Total over 10-year period of analysis *
3% Discount Rate:			
Total Costs Incurred by Filers @3%	\$76.1	\$181.3	\$257.4
7% Discount Rate			
Total Costs Incurred by Filers @7%	73.2	146.1	219.3

³² The filing fee is assumed to be a reasonable approximation for USCIS’s costs of processing the

application. See INA section 286(m), 8 U.S.C. 1356(m).

TABLE 2—TOTAL COSTS AND BENEFITS OF INITIAL EMPLOYMENT AUTHORIZATION FOR CERTAIN H-4 DEPENDENT SPOUSES 10-YR PRESENT VALUE ESTIMATES AT 3% AND 7%—Continued

[\$Millions]

	Year 1 estimate (179,600 filers)	Sum of Years 2–10 (55,000 filers annually)	Total over 10-year period of analysis *
Qualitative Benefits	This rule is intended to remove a disincentive to pursuing LPR status due to the potentially long wait for employment-based immigrant visas for many H-1B nonimmigrants and their family members. This rule will encourage H-1B nonimmigrants who have already taken steps to become LPRs to not abandon their efforts because their H-4 dependent spouses are unable to work. By encouraging H-1B nonimmigrants to continue in their pursuit of becoming LPRs, this rule would minimize disruptions to petitioning U.S. employers. Additionally eligible H-4 dependent spouses who participate in the labor market will benefit financially. DHS also anticipates that the socioeconomic benefits associated with permitting H-4 spouses to participate in the labor market will assist H-1B families in integrating into the U.S. community and economy.		

* Note: Totals may not sum due to rounding.

2. Purpose of the Rule

According to the most recently released reports prepared by the DHS Office of Immigration Statistics, in Fiscal Year (FY) 2013 a total of 990,553 persons became LPRs of the United States.³³ Most new LPRs (54 percent) were already living in the United States and obtained their LPR status by applying for adjustment of status within the United States.

Employment-based immigrant visas accounted for approximately 16 percent of the total number of persons obtaining LPR status, and 30 percent of total LPRs who adjusted status in FY 2013. In FY 2013, there were a total of 161,110 LPRs admitted under employment-based preference visa categories. Of these 161,110 individuals, “priority workers” (first preference or EB-1) accounted for 24 percent; “professionals with advanced degrees” (second preference or EB-2) accounted for 39 percent; and “skilled workers, professionals, and other workers” (third preference or EB-3) accounted for 27 percent.³⁴

Based on historical trends, H-1B nonimmigrants seeking to adjust status to lawful permanent residence will most likely adjust under the EB-2 and EB-3 preference categories, with a much smaller amount qualifying under the EB-1 preference category. As of January 2015, the employment-based preference categories are “current” and have visas available, *except* for Chinese and Indian nationals seeking admission under the second preference category and

individuals of all nationalities seeking admission under the third preference category.³⁵ Thus, the employment-based categories under which H-1B nonimmigrants typically qualify to pursue LPR status are the very categories that are currently oversubscribed.³⁶

In many cases, the timeframe associated with seeking lawful permanent residence is lengthy, extending well beyond the six-year period of stay allotted by the H-1B nonimmigrant visa classification. As a result, retention of highly educated and highly skilled nonimmigrant workers can become challenging for U.S. employers. Retaining highly skilled persons who intend to acquire LPR status is important when considering the contributions they make to the U.S. economy, including advances in research and development and other entrepreneurial endeavors, which are highly correlated with overall economic growth and job creation. By some estimates, immigration was responsible for one quarter of the explosive growth in patenting in past decades, and these

innovations have the potential to contribute to increasing U.S. gross domestic product (GDP).³⁷ In addition, over 25 percent of tech companies founded in the United States from 1995 to 2005 had a key leader who was foreign-born.³⁸ Likewise, the Kauffman Foundation reported that immigrants were more than twice as likely to start a business in the United States as the native-born in 2012, and a report by the Partnership for a New American Economy found that more than 40 percent of Fortune 500 companies in 2010 were founded by immigrants or their children.³⁹ Additionally, in March 2013, the House Committee on the

³⁷ See generally Jennifer Hunt & Marjolaine Gauthier-Loiselle, *How Much Does Immigration Boost Innovation?*, Nat’l Bureau of Econ. Research, Sept. 2008, available at <http://www.nber.org/papers/w14312>.

³⁸ See Wadhwa, Vivek, et al., “America’s New Immigrant Entrepreneurs,” Report by the Duke School of Engineering and the UC Berkeley School of Information (Jan. 4, 2007) available at http://people.ischool.berkeley.edu/~anno/Papers/Americas_new_immigrant_entrepreneurs_1.pdf; see also Wadhwa, Vivek, et al., *Intellectual Property, the Immigration Backlog, and a Reverse Brain-Drain—America’s New Immigrant Entrepreneurs, Part III, Center for Globalization, Governance & Competitiveness* (Aug. 2007), available at http://www.cgsc.duke.edu/documents/IntellectualProperty_theImmigrationBacklog_andaReverseBrainDrain_003.pdf; cf. Preston, Julia, “Work Force Fueled by Highly Skilled Immigrants,” *N.Y. Times*, Apr. 15, 2010, available at http://www.nytimes.com/2010/04/16/us/16skilled.html?_r=1.

³⁹ See Fairlie, Robert, “Kauffman Index of Entrepreneurial Activity: 1996–2012,” The Ewing Marion Kauffman Foundation, Apr. 2013, available at <http://www.kauffman.org/what-we-do/research/2013/04/kauffman-index-of-entrepreneurial-activity-19962012>; Partnership for a New American Economy, 2011, The “New American” Fortune 500, available at http://www.nyc.gov/html/om/pdf/2011/partnership_for_a_new_american_economy_fortune_500.pdf.

³³ See DHS Office of Immigration Statistics, Annual Flow Report, U.S. Lawful Permanent Residents: 2013 (May 2014), available at http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2013.pdf.

³⁴ *Id.*

³⁵ See Department of State Bureau of Consular Affairs, December 2014 Visa Bulletin (Nov. 7, 2014), available at http://travel.state.gov/content/dam/visas/Bulletins/visabulletin_January2015.pdf.

³⁶ See Wadhwa, Vivek, et al., *Intellectual Property, the Immigration Backlog, and a Reverse Brain-Drain—America’s New Immigrant Entrepreneurs, Part III, Center for Globalization, Governance & Competitiveness* (Aug. 2007), available at http://www.cgsc.duke.edu/documents/IntellectualProperty_theImmigrationBacklog_andaReverseBrainDrain_003.pdf. Note: The report examined the 2003 cohort of employment-based immigrants and showed that 36.8 percent of H-1B nonimmigrants that adjust status do so through the EB-3 category and another 28 percent do so through the EB-2 category, while only 4.62 percent adjust through the EB-1 category.

Judiciary held a hearing on Enhancing American Competitiveness Through Skilled Immigration, providing some members of the business community with an opportunity to provide their perspectives on immigration. The witnesses represented various industries, but underscored a unified theme: Skilled immigrants are contributing significantly to U.S. economic competitiveness and it is in our national interest to retain these talented individuals.⁴⁰

As noted above, this rule is intended to reduce the disincentives to pursue lawful permanent residence due to the potentially long wait for immigrant visas for many H-1B nonimmigrants and their families. Also, this rule will encourage those H-1B nonimmigrants who have already started the process for permanent residence not to abandon their efforts because their H-4 dependent spouses are unable to work.

3. Volume Estimate

Due to current data limitations, DHS is unable to precisely track the population of H-4 dependent spouses tied to H-1B nonimmigrants who have an approved Immigrant Petition for Alien Worker (Form I-140) or who have been granted H-1B status under the provisions of AC21. DHS databases are currently “form-centric” rather than “person-centric.” As USCIS transforms its systems to a more fully electronic process, there will be a shift from application- and form-based databases to one database that tracks information by the applicant or petitioner and which will improve DHS’s ability to track the number of potential H-4 employment authorization applicants.

In the proposed rule, DHS estimated that as many as 100,600 H-4 dependent spouses would be eligible to apply for employment authorization in the first year, and as many as 35,900 H-4 dependent spouses would be eligible to apply annually in subsequent years. The estimates provided in the proposed rule have been updated in this final rule. In an effort to provide a reasonable approximation of the number of H-4 dependent spouses who will be eligible for employment authorization under this final rule, DHS has compared historical data on persons obtaining LPR status against employment-based immigrant demand estimates. Based on current visa availability, DHS believes that dependent spouses of H-1B

nonimmigrants who are seeking employment-based visas under the second or third preference categories will be the group most impacted by the provisions of this rule, because certain chargeability areas in these preference categories are currently oversubscribed. In addition, in line with the goals of this rule and AC21, and based on immigration statistics, we assume that the large majority of H-4 dependent spouses who will be eligible for this provision are residing in the United States and will seek to acquire LPR status by applying to adjust status with USCIS rather than by departing for an indeterminate period to pursue consular processing of an immigrant visa application overseas. This assumption is supported by immigration statistics on those obtaining LPR status. In FY 2013, there were a total of 161,110 employment-based immigrant visa admissions, of which 140,009 (or 86.9 percent) obtained LPR status through adjustment of status in the United States.⁴¹ This analysis limits the focus and presentation of impacts based only on the employment-based preference immigrant population seeking to adjust status to that of a lawful permanent resident, rather than the employment-based preference immigrant population seeking to obtain an immigrant visa through consular processing.

DHS will extend eligibility to apply for employment authorization to the H-4 dependent spouses of H-1B nonimmigrants who are principal beneficiaries of approved Form I-140 petitions or who have been granted H-1B status pursuant to sections 106(a) and (b) of AC21. Therefore, DHS assumes that the volume of H-4 dependent spouses newly eligible for employment authorization is comprised of two estimates: (1) an immediate, first year estimate due to the current backlog of Form I-140 petitions; and (2) an annual estimate based on future demand to immigrate under employment-based preference categories. Extending eligibility for employment authorization to H-4 dependent spouses is ultimately tied to the actions taken by the H-1B nonimmigrant; therefore, the overall volume estimate is based on the population of H-1B nonimmigrants who have taken steps to acquire LPR status under employment-based preference categories.

DHS has estimated the number of persons waiting for LPR status in the first through third employment-based preference categories as of June 30, 2014. In this analysis, the estimated number of persons waiting for an immigrant visa is referred to as the “backlog” and includes those with an approved Form I-140 petition as of June 30, 2014 and those with a filed Form I-140 petition that is pending as of June 30 but is likely to be approved in the future.⁴² Currently, the first preference employment-based (EB-1) visa category is not oversubscribed. Therefore, DHS believes that the majority of H-4 dependent spouses applying for employment authorization under this rule will be those whose H-1B principals are seeking to adjust status under the second or third preference category. However, as there are persons with pending Form I-140 petitions in the first preference category that are approved or likely to be approved based on historical approval rates, and because the provisions of AC21 apply to these individuals, DHS has included them in this analysis.⁴³ Additionally, DHS has examined detailed characteristics about the LPR population for FY 2009–FY 2013 to further refine this estimate.⁴⁴ We have laid out each of our assumptions and methodological steps for both the backlog and annual estimates of H-4 dependent spouses who will be eligible to apply for employment authorization. Again, the estimates are based on the actions and characteristics of the H-1B nonimmigrant (e.g., whether the H-1B nonimmigrant reports being married) because the H-4 dependent spouse’s

⁴² Source for backlog estimation: USCIS Office of Policy & Strategy analysis of data obtained from the USCIS Office of Performance and Quality. Analysis based on CLAIMS3 data captured in approved Immigrant Petition for Alien Worker (Form I-140). Of the Form I-140 petitions that were approved or pending as of June 30, 2014, USCIS allocated those that were pending that were “likely to be approved” based on USCIS approval rates in order to more accurately estimate the cases in the backlog.

⁴³ Despite the fact that a beneficiary is in a preference category where a visa is immediately available, and the beneficiary is able to apply to adjust status to an LPR immediately upon the filing of the I-140 petition, DHS is including estimates of first-preference LPRs that have an approved Form I-140 or are waiting for Form I-140 approval as of June 30, 2014 for which we are unable to determine that an adjustment of status application has been concurrently filed. As mentioned previously, principal beneficiaries of Form I-140 petitions and their dependents who are eligible to file for adjustment of status also are eligible for employment authorization.

⁴⁴ Source: USCIS Office of Policy & Strategy analysis of data obtained from DHS Office of Immigration Statistics. Analysis based on CLAIMS3 data captured in Application to Register Permanent Residence or Adjust Status (Form I-485) records approved in the FY 2009–13 period.

⁴⁰ See Enhancing American Competitiveness through Skilled Immigration: Hearing before the H. Judiciary Subcomm. on Immigration, 113th Cong. 15 (2013), available at <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg79724/pdf/CHRG-113hhrg79724.pdf>.

⁴¹ See DHS Office of Immigration Statistics, 2013 Yearbook of Immigration Statistics, Table 6, available at <http://www.dhs.gov/yearbook-immigration-statistics-2013-lawful-permanent-residents> (compare statistics listed under “total employment-based preferences” and “adjustment of status employment-based preferences”).

eligibility to apply for employment authorization is tied to the steps taken on behalf of the H-1B nonimmigrant to acquire LPR status under an employment-based preference category.

a. Backlog Estimate

The estimate of the number of individuals who are the principal beneficiaries of either an approved Form I-140 petition or a Form I-140 petition that is likely to be approved and who are waiting for an immigrant visa in the EB-1, EB-2, and EB-3 categories is shown in Table 3. Importantly, the number of principal workers shown in Table 3 is not limited only to those individuals who are currently in H-1B status. The estimates in Table 3 include

aliens who are currently in H-1B and other nonimmigrant statuses, as well as those seeking to immigrate under employment-based preference categories who are currently abroad.

TABLE 3—DHS ESTIMATE OF BACKLOG (PRINCIPALS ONLY) AS OF JUNE 30, 2014

Preference category	Principal workers
EB-1	9,000
EB-2	146,500
EB-3	78,500

DHS is unable to precisely determine the number of H-1B nonimmigrants in

the backlog who will be impacted by this rule. Instead, DHS examined detailed statistics of those obtaining LPR status from FY 2009–2013, and used this information as a proxy to refine the estimate of principal workers in the backlog that DHS expects to be married H-1B nonimmigrants seeking to adjust status. That estimate provides the basis for approximating the number of H-4 dependent spouses who will be impacted by this rule.⁴⁵ Table 4 presents the assumptions and steps taken to determine the upper-bound estimate of H-4 dependent spouses who are represented in the backlog and will likely now be eligible to apply for work authorization.

TABLE 4—STEPS TAKEN TO ARRIVE AT THE UPPER-BOUND FINAL ESTIMATE OF H-4 DEPENDENT SPOUSES OF H-1B NONIMMIGRANTS WHO ARE IN THE “BACKLOG”⁴⁶

Assumption and/or Step	EB-1	EB-2	EB-3	Total
(1) Principal workers in the backlog (as of June 30, 2014)	9,000	146,500	78,500	234,000
(2) Historical percentage of principal workers who obtained LPR Status through adjustment of status, average over FY 09–FY13 data	96.1%	98.2%	89.3%	.....
(3) Estimated proportion of the backlog that DHS assumes will adjust status (rounded)	8,649	143,863	70,128	222,640
(4) Historical percentage of those who adjusted status who were H-1B nonimmigrants, average over FY 09–FY13 data	32.5%	89.3%	61.6%	.....
(5) DHS estimated proportion of the assumed H-1B nonimmigrants who adjusted status (rounded)	2,811	128,470	43,199	174,480
(6) Historical percentage of H-1B principal workers who adjusted status and who reported being married, average over FY 09–FY13 data	81.1%	72.6%	67.2%	.....
(7) DHS estimated proportion of the assumed H-1B nonimmigrants who adjusted status and who report being married (rounded)	2,280	93,269	29,030	124,579
(8) Final Estimate of H-1B Nonimmigrants in the Backlog Potentially Impacted by the Final Rule (Rounded Up)				124,600

As shown in Table 4, DHS estimates there are approximately 124,600 H-1B nonimmigrants currently in the backlog for an immigrant visa under the first through third employment-based preference categories who are married. Accordingly, DHS assumes by proxy that there could be as many as 124,600 H-4 dependent spouses of H-1B nonimmigrants currently in the backlog who could be initially eligible to apply for employment authorization under this rule. DHS does not have a similar way to parse out the backlog data for those classified as “dependents” to capture only those who are spouses rather than children. Furthermore, DHS recognizes that the estimate of H-4 dependent spouses in the backlog who will now be eligible to apply for

employment authorization is a maximum estimate since there is no way to further refine this estimate by determining the immigration or citizenship status of the spouses of H-1B nonimmigrants who report being married. For instance, the spouse of the H-1B nonimmigrant could reside abroad, be a U.S. citizen or LPR, or be in another nonimmigrant status that confers employment eligibility. Additionally, H-4 dependent spouses who may be eligible for employment authorization under this rule may decide not to work and therefore not apply for an EAD. Accordingly, DHS believes that the estimate of 124,600 represents an upper-bound estimate of H-4 dependent spouses of H-1B

nonimmigrants currently waiting for immigrant visas.

b. Annual Demand Estimate

The annual demand flow of H-4 dependent spouses who will be eligible to apply for initial employment authorization under the final rule is based on: (1) The number of Form I-140 petitions approved where the principal beneficiary is currently in H-1B status; and (2) the number of extensions of stay petitions approved for H-1B nonimmigrants pursuant to AC21.⁴⁷ Petitioners request extensions of stay or status for an H-1B nonimmigrant using the Petition for a Nonimmigrant Worker (Form I-129). Section 104(c) of AC21 allows for extensions of stay for an H-1B nonimmigrant who has an

⁴⁵ *Id.*

⁴⁶ Note: In the proposed rule, there was a data compilation error in step 4 for EB-2 estimates of the H-1B population which carried through the calculations. Instead of 19,159 reported in the proposed rule as the estimated proportion of H-1B nonimmigrants that adjusted their status to EB-2 and reported being married, that total should have

read approximately 60,000. The proposed rule’s total estimate of H-1B in the backlog as of September 2012 (step 8 of the calculation) should have read approximately 106,000 based on FY 08–FY 11 data.

⁴⁷ There may be a very limited number of instances where an individual could be abroad and obtain an H-1B nonimmigrant visa pursuant to

AC21; however, USCIS is unable to precisely determine this limited population due to current system limitations. As such, this analysis focuses only on those cases where an H-1B nonimmigrant is currently in the United States and requesting an extension of their H-1B status pursuant to AC21.

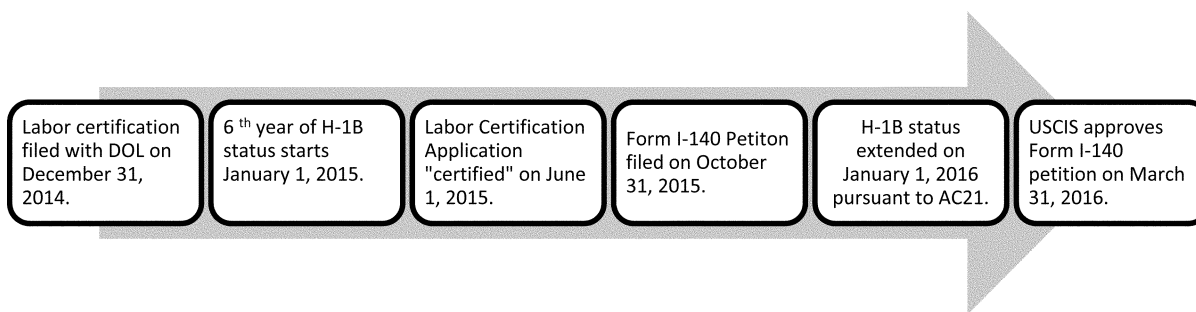
approved Form I-140 petition but is unable to apply to adjust to LPR status because of visa unavailability. Sections 106(a) and (b) of AC21 allow for extensions of stay for an H-1B nonimmigrant on whose behalf a labor certification application or a Form I-140 petition was filed at least 365 days prior to reaching the end of the sixth year of his or her H-1B status.

In the preamble of the proposed rule, DHS used colloquial language to describe the basis for H-1B nonimmigrants to be eligible for extensions of their stay under section 106 of AC21. It is typical to describe H-1B nonimmigrants who are eligible

for AC21 extensions as those H-1B nonimmigrants who are the beneficiaries of a labor certification application or Form I-140 petition that *has been pending for at least 365 days* prior to reaching the end of the sixth year of H-1B status. This colloquial description was used in the proposed rule; however, this language does not accurately describe AC21 eligibility. Per the statute, an H-1B nonimmigrant is eligible for an extension of stay pursuant to AC21 provided that they are the beneficiary of a labor certification application or a Form I-140 petition that has been *filed* at least 365 days prior to the end of their sixth year of H-

1B status. From a practical standpoint, neither the labor certification nor the Form I-140 petition needs to remain pending adjudication for 365 days or more to qualify for an extension pursuant to AC21.

It may be helpful to illustrate this description using a graphical illustration of a case where an H-1B nonimmigrant would generally be eligible for an extension of his or her maximum period of stay pursuant to AC21, even though neither the labor certification application nor the Form I-140 petition remain pending with DOL or DHS, respectively, for a year or more.



In this illustration, the H-1B nonimmigrant would be eligible for extension of his or her stay pursuant to sections 106(a) and (b) of AC21, even though his or her labor certification was certified in 6 months and the Form I-140 petition had only been pending for two months at the time of AC21 extension.

In this final rule's preamble, DHS is correcting the description of how H-1B nonimmigrants become eligible for extensions of stay pursuant to sections 106(a) and (b) of AC21. Importantly, this language change does not impact who ultimately qualifies to apply for employment authorization under this final rule. The informal language used in the preamble of the proposed rule also does not impact the USCIS adjudication of petitions to authorize H-1B status pursuant to AC21. Accurately describing the statutory conditions of AC21 does, however, necessitate that DHS amend its estimate of the annual flow projections of H-4 dependent spouses who may be eligible to apply for employment authorization. In the proposed rule, DHS estimated the number of H-4 dependent spouses who would be eligible to apply for work authorization pursuant to AC21 by examining historical data of labor certifications or Form I-140 petitions pending for a year or more with the DOL and DHS, respectively. In contrast, this

final rule examines the historical data of extensions of stay petitions approved for nonimmigrants currently in H-1B status to estimate the volume of H-4 dependent spouses eligible to apply for work authorization pursuant to AC21.

To recap, this rule will permit certain H-4 dependent spouses of H-1B nonimmigrants to be eligible to apply for employment authorization provided that the H-1B nonimmigrants are: (1) The principal beneficiaries of an approved Form I-140 petition, or (2) granted H-1B status pursuant to sections 106(a) and (b) of AC21. The annual flow estimate will therefore be based on historical data of these two categories. USCIS began tracking those cases that were approved for an extension pursuant to AC21 on October 17, 2014; in the past, USCIS databases have not captured and stored this information.⁴⁸ An extension of stay request may be submitted on behalf of H-1B nonimmigrants at any point throughout their authorized maximum six-year period of stay, or to extend stay

⁴⁸ On October 17, 2014, USCIS began capturing this information during the adjudication of Form I-129 petitions. Importantly, the tracking of cases that were approved for extension pursuant to AC21 do not distinguish between cases approved under section 104 and cases approved under section 106. There is thus a potential for overlap between the estimate of cases approved under AC21 and the estimate of persons with approved Form I-140 petitions.

beyond the maximum six years pursuant to AC21. Typically, an extension of stay request seeking eligibility pursuant to AC21 would be at least the second extension request filed on behalf of that H-1B nonimmigrant. The historical data of H-1B nonimmigrants who have been approved for extensions of stay include all requests, only some of which relate to extensions pursuant to AC21.

The number of approved Form I-140 petitions and approved Form I-129 extension of stay petitions where the beneficiary currently has H-1B status is presented in Table 5.

TABLE 5—FORM I-140 AND FORM I-129 (EXTENSION OF STATUS OR STAY (EOS) ONLY) APPROVALS FOR BENEFICIARIES CURRENTLY IN H-1B NONIMMIGRANT STATUS

Fiscal year	Form I-140 approvals	Form I-129 Extensions of status/ stay approvals
2010	48,511	116,363
2011	54,363	163,208
2012	45,732	125,679
2013	43,873	158,482
2014	42,465	191,531
5-Year Average	46,989	151,053

Based on approximately 90 days of tracking data (which is all that is

currently available), DHS estimates that 18.3 percent of approved extension of stay requests filed on behalf of H-1B nonimmigrants are approved pursuant to AC21. Assuming this proportion holds constant, DHS estimates that annually it will approve approximately 27,643⁴⁹ extension of stay requests pursuant to AC21. Importantly, because the tracking of extensions pursuant to AC21 does not distinguish between those cases adjudicated under section 104(c) of AC21 and those cases adjudicated under section 106 of AC21, there is likely some overlap in the baseline estimate of 27,643 and the estimate of persons who have approved I-140 petitions. Because DHS is unable to parse out the individuals who have extended their status pursuant to section 104(c) of AC21, and because such persons have approved I-140 petitions, DHS may be overestimating the annual number of H-4 dependent spouses who will be eligible to apply for initial employment authorization. However, while there is uncertainty that may result in overstating the annual estimates, DHS relied on the best available information to arrive at this estimate. Thus, for purposes of this analysis, DHS will use 74,632⁵⁰ as the baseline projection of H-1B nonimmigrants who have started the immigration process.

To refine the annual flow projection estimates, DHS has chosen to estimate the proportion of applications filed in the first through third employment-based preference categories. Additionally, since DHS has already limited the historical counts in Table 5 to those approved petitions where the beneficiary's current nonimmigrant classification is H-1B, DHS has made the assumption that the petitions shown in Table 5 represent H-1B nonimmigrants who are physically present in the United States and intend to adjust status. As shown in Table 4, the historical proportion of H-1B nonimmigrants obtaining LPR status under EB-1, EB-2, and EB-3 categories who reported being married was 81.1 percent, 72.6 percent, and 67.2 percent, respectively, resulting in an average of 73.6 percent. Applying this percentage to the baseline projection results in an annual flow estimate of 55,000 (rounded).⁵¹ Again, due to the fact that

⁴⁹ Calculation: 151,053 (5-year average of I-129 extension of stay approvals) × 18.3 percent = 27,643 extensions approved pursuant to AC21.

⁵⁰ Calculation: 46,989 (5-year average of Form I-140 approvals) + 27,643 (annual estimate of approved extensions of stay pursuant to AC21) = 74,632 baseline estimate.

⁵¹ Calculation: 74,632 × 73.6 percent = 54,929 or 55,000 rounded up to the nearest hundred.

DHS is unable to estimate the proportion of H-1B nonimmigrants granted extensions of status pursuant only to section 106 of AC21, and because DHS is unable to determine the immigration or citizenship status of spouses of H-1B nonimmigrants who report being married, this is an upper-bound estimate of H-4 dependent spouses who could be eligible to apply for employment authorization under the rule.

Therefore, DHS estimates that this rule will result in a maximum initial estimate of 179,600⁵² H-4 dependent spouses who could be newly eligible to apply for employment authorization in the first year of implementation, and an annual flow of as many as 55,000 who are newly eligible in subsequent years.

4. Costs

i. Filer Costs

The final rule will permit certain H-4 dependent spouses to apply for employment authorization in order to work in the United States. Therefore, only H-4 dependent spouses who decide to seek employment while residing in the United States will face the costs associated with obtaining employment authorization. The costs of the rule will stem from filing fees and the opportunity costs of time associated with filing Form I-765.

The current filing fee for Form I-765 is \$380. The fee is set at a level to recover the processing costs to DHS. Applicants for employment authorization are required to submit two passport-style photos along with the application, which is estimated to cost \$20.00 per application based on Department of State estimates.⁵³ DHS estimates the time burden of completing this application to be 3 hours and 25 minutes. DHS recognizes that H-4 dependent spouses do not currently participate in the U.S. labor market, and, as a result, are not represented in national average wage calculations. However, to provide a reasonable proxy of time valuation, DHS chose to use the minimum wage to estimate the opportunity cost consistent with methodology employed in other DHS rulemakings when estimating time

⁵² Calculation: Backlog of 124,600 plus annual demand estimate for married H-1Bs of 55,000 = 179,600.

⁵³ DOS estimates an average cost of \$10 per passport photo in the Paperwork Reduction Act (PRA) Supporting Statement found under OMB control number 1450-0004. A copy of the Supporting Statement is found on Reginfo.gov at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201102-1405-001 (see question #13 of the Supporting Statement) (accessed Oct. 21, 2014).

burden costs for those who are not work authorized.

The Federal minimum wage is currently \$7.25 per hour.⁵⁴ In order to anticipate the full opportunity cost to petitioners, we multiplied the average hourly U.S. wage rate by 1.46 to account for the full cost of employee benefits such as paid leave, insurance, and retirement for a total of \$10.59 per hour.⁵⁵ Based on this wage rate, H-4 dependent spouses who decide to file Form I-765 applications will face an estimated opportunity cost of time of \$36.18 per applicant.⁵⁶ Combining the opportunity costs with the fee and estimated passport-style photo costs, the total cost per application will be \$436.18.⁵⁷ In the first year of implementation, DHS estimates the total maximum cost to the total of H-4 dependent spouses who could be eligible to file for an initial employment authorization will be as much as \$78,337,928 (non-discounted), and \$23,989,900 annually in subsequent years. The 10-year discounted cost of this rule to filers of initial employment authorizations is \$257,403,789 at 3 percent, while the 10-year discounted cost to filers is \$219,287,568 at 7 percent. Importantly, in future years the applicant pool of H-4 dependent spouses filing for employment authorization will include both those initially eligible and those who will seek to renew their EADs as they continue to wait for visas to become available. DHS could not project the number of renewals as the volume of H-4 dependent spouses who will need to renew is dependent upon visa availability, which differs based on the preference category and the country of nationality. H-4 dependent spouses needing to renew their employment authorization will still face a per-application cost of \$436.18.

⁵⁴ U.S. Dep't of Labor, Wage and Hour Division. The minimum wage in effect as of July 24, 2009, available at <http://www.dol.gov/dol/topic/wages/minimumwage.htm>.

⁵⁵ The calculation to burden the wage rate: \$7.25 × 1.46 = \$10.59 per hour. See Economic News Release, U.S. Dep't of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (June 2014), available at http://www.bls.gov/news.release/archives/ecec_09102014.htm (viewed Oct. 23, 2014).

⁵⁶ Calculation for opportunity cost of time: \$10.59 per hour × 3.4167 hours (net form completion time) = \$36.18.

⁵⁷ Calculation for total application cost: \$380 (filing fee) + \$20 (cost estimate for passport photos) + \$36.18 (opportunity cost of time) = \$436.18.

ii. Government Costs

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs and services provided without charge to certain applicants and petitioners. See INA section 286(m), 8 U.S.C. 1356(m). DHS has established the fee for the adjudication of Form I-765 in accordance with this requirement. As such, there are no additional costs to the Federal Government resulting from this rule.

iii. Impact on States

Currently, once visas are determined to be immediately available, H-1B nonimmigrants and their dependent family members may be eligible to apply for adjustment of status to that of a lawful permanent resident. Upon filing an adjustment of status application, the H-4 dependent spouse is eligible to request employment authorization. This rule will significantly accelerate the timeframe by which qualified H-4 dependent spouses are eligible to enter the U.S. labor market. As a result of the changes made in this rule, certain H-4 dependent spouses will be eligible to request employment authorization well before they are eligible to apply for adjustment of status. Even with the change in the maximum number of H-4 dependent spouses who may be impacted as reported in the proposed rule and this final rule, DHS maintains that the expected outcomes are the same. DHS believes that this regulatory change will encourage families to stay committed to the immigrant visa process during the often lengthy wait for employment-based visas whereas, otherwise, they may leave the United States and abandon immigrant visa processing altogether. As such, DHS presents the geographic labor impact of this rule even though this rule does not result in “new” additions to the labor market; it simply accelerates the timeframe by which they can enter the labor market. As mentioned previously, DHS estimates this rule can add as many as 179,600 additional persons to the U.S. labor force in the first year of implementation, and then as many as 55,000 additional persons annually in subsequent years. As of 2013, there were an estimated 155,389,000 people in the U.S. civilian labor force.⁵⁸

⁵⁸ See News Release, United States Dep’t of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics, Regional and State Unemployment—2013 Annual Averages, Table 1 “Employment status of the civilian noninstitutional population 16 years of age and over by region,

Consequently, 179,600 additional available workers in the first year (the year with the largest number of eligible applicants) represent a little more than one-tenth of a percent, 0.1156 percent, of the overall U.S. civilian labor force ($179,600/155,389,000 \times 100 = 0.1156$ percent).⁵⁹

The top five States where persons granted LPR status have chosen to reside are: California (20 percent), New York (14 percent), Florida (10 percent), Texas (9 percent), and New Jersey (5 percent).⁶⁰ While allowing certain H-4 dependent spouses the opportunity to work will result in a negligible increase to the overall domestic labor force, the states of California, New York, Florida, Texas, and New Jersey may have a slightly larger share of additional workers compared with the rest of the United States. Based on weighted average proportions calculated from FY 2009–2013, and assuming the estimate for first year impacts of 179,600 additional workers were distributed following the same patterns, DHS anticipates the following results: California could receive approximately 35,920 additional workers in the first year of implementation; New York could receive approximately 25,144 additional workers; Florida could receive approximately 17,960 additional workers; Texas could receive approximately 16,164 additional workers; and New Jersey could receive approximately 8,980 additional workers. To provide context, California had 18,597,000 persons in the civilian labor force in 2013.⁶¹ The additional 35,920 workers who could be added to the Californian labor force as a result of this rule in the first year would represent less than two-tenths of a percent of that state’s labor force ($35,920/18,597,000 \times 100 = 0.1931$ percent). As California is the state estimated to receive the highest number of additional workers, the

division, and state, 2012–13 annual averages” (Feb. 28, 2014), available at http://www.bls.gov/news.release/archives/sgune_02282014.pdf.

⁵⁹ Note that even with the changed estimate from the proposed rule, the finding remains consistent; the overall impact to the U.S. labor force is a fraction of one percent.

⁶⁰ DHS Office of Immigration Statistics, Annual Flow Reports, “U.S. Legal Permanent Residents” for 2009–2012 and “U.S. Lawful Permanent Residents: 2013,” available at <http://www.dhs.gov/immigration-statistics-publications#0>. Author calculated percentage distributions by State weighted over FY 2009–2013 (rounded).

⁶¹ See News Release, U.S. Dep’t of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics, Regional and State Unemployment—2013 Annual Averages, Table 1, Employment status of the civilian noninstitutional population 16 years of age and over by region, division, and state, 2012–13 annual averages (Feb. 28, 2014), available at http://www.bls.gov/news.release/archives/sgune_02282014.pdf.

impact on the states civilian labor force is minimal.

5. Benefits

As previously mentioned, once this rule is finalized, these amendments will increase incentives of certain H-1B nonimmigrants who have begun the process of becoming LPRs to remain in the United States and contribute to the U.S. economy as they complete this process. Providing the opportunity for certain H-4 dependent spouses to obtain employment authorization during this process will further incentivize H-1B nonimmigrants to not abandon their intention to remain in the United States while pursuing LPR status. Retaining highly skilled persons who intend to become LPRs is important when considering the contributions of these individuals to the U.S. economy, including advances in research and development and other entrepreneurial endeavors. As previously discussed, much research has been done to show the positive impacts on economic growth and job creation from highly skilled immigrants. In addition, these regulatory amendments will bring U.S. immigration policies more in line with the policies of other countries that seek to attract skilled foreign workers. For instance, in Canada spouses of temporary workers may obtain an “open” work permit allowing them to accept employment if the temporary worker meets certain criteria.⁶² As another example, in Australia, certain temporary work visas allow spousal employment.⁶³

This final rule will result in direct, tangible benefits for the spouses who will be eligible to enter the labor market earlier than they would have otherwise been able to do so due to the lack of immigrant visas. While there will be obvious financial benefits to the H-4 dependent spouse and the H-1B nonimmigrant’s family, there is also evidence that participating in the U.S. workforce and improving socio-economic attainment has a high correlation with smoothing an

⁶² See Canadian Government, Citizenship and Immigration Canada, Help Centre under Topic “Work Permit—Can my spouse or common-law partner work in Canada?”, available at <http://www.cic.gc.ca/english/helpcentre/index-featured-can.asp#tab1> (last visited Jan. 13, 2015).

⁶³ See Australian Government, Dep’t of Immigration and Citizenship, Temporary Work (Skilled) visa (subclass 457), available at <http://www.immi.gov.au/Visas/Pages/457.aspx> (last visited Jan. 13, 2015).

immigrant's integration into American society.⁶⁴

Prior to this rule being effective, H-4 dependent spouses were not able to apply for employment authorization until they were eligible to submit their applications for adjustment of status or otherwise acquire a nonimmigrant status authorizing employment. The amendments to the regulations made by this final rule accelerate the timeframe by which H-4 dependent spouses of H-1B nonimmigrants who are on the path to being LPRs are able to enter into the U.S. labor market.

6. Alternatives Considered

One alternative considered by DHS was to permit employment authorization for all H-4 dependent spouses. As explained in both the proposed rule and in response to public comments, DHS declines to extend the changes made by this rule to H-4 dependent spouses of all H-1B nonimmigrants at this time. Such an alternative would offer eligibility for employment authorization to those spouses of nonimmigrant workers who have not taken steps to demonstrate a desire to continue to remain in and contribute to the U.S. economy by seeking lawful permanent residence. In enacting AC21, Congress was especially concerned with avoiding the disruption to U.S. businesses caused by the required departure of H-1B nonimmigrants (for whom the businesses intended to file employment-based immigrant visa petitions) upon the expiration of the workers' maximum six-year period of authorized stay. See S. Rep. No. 106-260, at 22 (2000). This rule further alleviates these concerns.

Another alternative considered was to limit employment eligibility to just those H-4 dependent spouses of H-1B nonimmigrants who extended their status under the provisions of AC21. As discussed in Section 3.b of this Executive Order 12866/13563 assessment, DHS databases began tracking the number of extensions of H-1B status that were approved pursuant to AC21 on October 17, 2014. Historically DHS did not capture this information. Based on approximately 90 days of case history, DHS believes that

approximately 18.3 percent of all extension of stay applications filed on behalf of H-1B nonimmigrants are approved pursuant to AC21. DHS estimates that there could be as many as 27,643⁶⁵ H-1B nonimmigrants with extensions of stay requests that were approved pursuant to AC21. Further, DHS estimates that there could be as many as 20,400⁶⁶ married H-1B nonimmigrants who are granted an extension of stay pursuant to AC21. This alternative would also result in some fraction of the backlog population being eligible for employment authorization in the first year after implementation, but DHS is unsure of what portion of the backlog population has been granted an extension under AC21. However, DHS believes that this alternative is too limiting and fails to recognize that other H-1B nonimmigrants and their H-4 dependent spouses also experience long waiting periods while on the path to lawful permanent residence. One of the primary goals of this rulemaking is to provide an incentive to H-1B nonimmigrant families to continue on the path to obtaining LPR status in order to minimize the potential for disruptions to U.S. businesses caused by the departure from the United States of these workers. The Department believes that also extending employment authorization to the spouses of H-1B nonimmigrants who are the beneficiaries of approved Form I-140 petitions more effectively accomplishes the goals of this rulemaking, because doing so incentivizes these workers, who have established certain eligibility requirements and demonstrated intent to reside permanently in the United States and contribute to the U.S. economy, to continue their pursuit of LPR status. Thus, extending employment authorization to H-4 dependent spouses of H-1B nonimmigrants with either approved Form I-140 petitions or who have been granted H-1B status pursuant to sections 106(a) and (b) of AC21 encourages a greater number of professionals with high-demand skills to remain in the United States.

D. Regulatory Flexibility Act

USCIS examined the impact of this rule on small entities under the Regulatory Flexibility Act (RFA), 5

U.S.C. 601(6). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business under the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than fifty thousand people). After considering the impact of this rule on such small entities, DHS has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual H-4 dependent spouses to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

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

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. See Public Law 104-13, 109 Stat. 163 (May 22, 1995). This final rule requires that eligible H-4 dependent spouses requesting employment authorization complete an Application for Employment Authorization (Form I-765), covered under OMB Control number 1615-0040. As a result of this final rule, this information collection will be revised. DHS has received approval of the revised information collection from OMB.

DHS submitted the proposed revisions to Form I-765 to OMB for review. DHS has considered the public comments received in response to the publication of the proposed rule. Over 180 commenters raised issues related to employment authorization requests, including filing procedures, premium

⁶⁴ See Jimenez, Tomás, *Immigrants in the United States: How Well Are They Integrating into Society?* (2011) Washington, DC: Migration Policy Institute, available at <http://www.migrationpolicy.org/research/immigrants-united-states-how-well-are-they-integrating-society>; see also Terrazas, Aaron, *The Economic Integration of Immigrants in the United States: Long- and Short-Term Perspectives* (2011) Washington, DC: Migration Policy Institute, available at <http://www.migrationpolicy.org/research/economic-integration-immigrants-united-states>.

⁶⁵ Calculation: 151,053 (5-year average of I-129 extension of stay approvals) × 18.3 percent = 27,643 extensions approved pursuant to AC21.

⁶⁶ Calculation: 27,643 (extensions approved pursuant to AC21) × 73.6 percent (average percentage of H-1B nonimmigrants who adjust to LPR status that report being married) = 20,345 or 20,400 (rounded up).

processing, validity periods, renewals, evidentiary documentation, concurrent filings for extension of stay/change of status, automatic extensions of employment authorization, filing fees, and marriage fraud. One commenter asked for clarification regarding whether H-4 dependent spouses under this rule are required to demonstrate economic need for employment authorization using the Form I-765 Worksheet (I-765WS).

DHS's responses to these comments appear under Part III.E. and F. USCIS has submitted the supporting statement to OMB as part of its request for approval of this revised information collection instrument.

DHS has revised the originally proposed Form I-765 and form instructions to clarify the supporting documentation that applicants requesting employment authorization pursuant to this rule must submit with the form to establish eligibility, and to state that USCIS will accept Forms I-765 filed by such applicants concurrently with Forms I-539. DHS has also revised the Form I-765 to include a check box for the applicant to identify him or herself as an H-4 dependent spouse. The inclusion of this box will aid USCIS in its efforts to more efficiently process the form for adjudication by facilitating USCIS's ability to match the application with related petitions integral to the adjudication of Form I-765. DHS does not anticipate any of these changes will result in changes to the previously reported time burden estimate. The revised materials can be viewed at www.regulations.gov.

Lastly, DHS has updated the supporting statement to reflect a change in the estimate for the number of respondents that USCIS projected would submit this type of request from 1,891,823 respondents to 1,981,516 respondents. This change of the initially projected number of respondents is due to better estimates regarding the general population of I-765 filers, in addition to this final rule's revised estimate on the new number of applicants that will request EADs, which results in a change of the estimated population of aliens that DHS expects could file Form I-765. Specifically, in the proposed rule USCIS estimated that approximately 58,000 new respondents would file requests for EADs as a result of the changes prompted by this rule. USCIS has revised that estimate and projects in this final rule that approximately 117,300 new respondents will be able to file a Form I-765. With this change on the number of Form I-765 application filers, the estimate for the total number of

respondents has been updated. The current hour inventory approved for this form is 7,140,900 hours, and the requested new total hour burden is 8,159,070 hours, which is an increase of 1,018,170 annual burden hours.

V. Regulatory Amendments

DHS adopted most of the proposed regulatory amendments without change, except for conforming amendments to 8 CFR 214.2(h)(9)(iv) and 8 CFR 274a.13(d) and minor punctuation and wording changes in 8 CFR 214.2(h)(9)(iv) to improve clarity and readability.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

- 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Public Law 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

- 2. Section 214.2 is amended by revising paragraph (h)(9)(iv) to read as follows:

§214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(9) * * *

(iv) *H-4 dependents.* The spouse and children of an H nonimmigrant, if they are accompanying or following to join such H nonimmigrant in the United States, may be admitted, if otherwise admissible, as H-4 nonimmigrants for the same period of admission or extension as the principal spouse or parent. H-4 nonimmigrant status does not confer eligibility for employment

authorization incident to status. An H-4 nonimmigrant spouse of an H-1B nonimmigrant may be eligible for employment authorization only if the H-1B nonimmigrant is the beneficiary of an approved Immigrant Petition for Alien Worker, or successor form, or the H-1B nonimmigrant's period of stay in H-1B status is authorized in the United States under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Public Law 106–313, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273 (2002). To request employment authorization, an eligible H-4 nonimmigrant spouse must file an Application for Employment Authorization, or a successor form, in accordance with 8 CFR 274a.13 and the form instructions. If such Application for Employment Authorization is filed concurrently with another related benefit request(s), in accordance with and as permitted by form instructions, the 90-day period described in 8 CFR 274.13(d) will commence on the latest date that a concurrently filed related benefit request is approved. An Application for Employment Authorization must be accompanied by documentary evidence establishing eligibility, including evidence of the spousal relationship and that the principal H-1B is the beneficiary of an approved Immigrant Petition for Alien Worker or has been provided H-1B status under sections 106(a) and (b) of AC21, as amended by the 21st Century Department of Justice Appropriations Authorization Act, the H-1B beneficiary is currently in H-1B status, and the H-4 nonimmigrant spouse is currently in H-4 status.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

- 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110–229; 48 U.S.C. 1806; 8 CFR part 2.

- 4. Section 274a.12 is amended by adding a new paragraph (c)(26), to read as follows:

§274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(26) An H-4 nonimmigrant spouse of an H-1B nonimmigrant described as eligible for employment authorization in 8 CFR 214.2(h)(9)(iv).

* * * * *

■ 5. Section 274a.13 is amended by revising the first sentence of paragraph (d), to read as follows:

§ 274a.13 Application for employment authorization.

* * * * *

(d) *Interim employment authorization.* USCIS will adjudicate the

application within 90 days from the date of receipt of the application, except as described in 8 CFR 214.2(h)(9)(iv), and except in the case of an initial application for employment authorization under 8 CFR 274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and 8 CFR 274a.12(c)(9) in so far as it is

governed by 8 CFR 245.13(j) and 245.15(n). * * *

Jeh Charles Johnson,
Secretary.

[FR Doc. 2015-04042 Filed 2-24-15; 8:45 am]

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FEDERAL REGISTER

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Part V

The President

Proclamation 9233—Establishment of the Pullman National Monument
Presidential Determination No. 2015–04 of February 20, 2015—
Determination and Waiver Pursuant to Section 1209 of the Carl Levin and
Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal
Year 2015 Regarding the Provision of Assistance to Appropriately Vetted
Elements of the Syrian Opposition

Presidential Documents

Title 3—

Proclamation 9233 of February 19, 2015

The President

Establishment of the Pullman National Monument

By the President of the United States of America

A Proclamation

The Pullman National Historic Landmark District (Pullman Historic District) in Chicago, Illinois, typifies many of the economic, social, and design currents running through American life in the late 19th and early 20th century, yet it is unlike any other place in the country. Industrialist George Mortimer Pullman built the model town to house workers at his luxury rail car factories. Although his goal was to cure the social ills of the day, the tight control he exercised over his workers helped spark one of the Nation's most widespread and consequential labor strikes. The remaining structures of the Pullman Palace Car Company (Pullman Company), workers' housing, and community buildings that make up the Pullman Historic District are an evocative testament to the evolution of American industry, the rise of unions and the labor movement, the lasting strength of good urban design, and the remarkable journey of the Pullman porters toward the civil rights movement of the 20th century.

The model factory town of Pullman was created in the 1880s by the Pullman Company to manufacture railroad passenger cars and house workers and their families. Company founder George Pullman saw the positive incentives of good housing, parks, and amenities as a way to foster a happy and reliable workforce. Pullman and his wealthy industrialist peers could not fail to see the poor living conditions in which many of their workers lived. The industrial revolution drew hundreds of thousands to urban areas, which led to a rise in slums and social ills. The widening gulf between management and workers contributed to labor unrest, which was acutely felt in Chicago. Pullman was convinced that capital and labor should cooperate for mutual benefit and sought to address the needs of his workers using his philosophy of capitalist efficiency. He attempted an uncommon solution to the common problems of the day by creating a model town.

Pullman engaged young architect Solon Spencer Beman and landscape architect Nathan F. Barrett to plan the town and design its buildings and public spaces to be both practical and aesthetically pleasing. Beman designed housing in the simple yet elegant Queen Anne style and included Romanesque arches for buildings that housed shops and services. Though he strove to avoid monotony, Beman imbued the town with visual continuity. The scale, detailing, and architectural sophistication of the community were unprecedented. Barrett broke up the monotony of the grid of streets with his landscape design. Trees and street lights enlivened the streetscape. Unified, orderly, and innovative in its design, the model town of Pullman, then an independent town south of Chicago's city limits, became an internationally famous experiment in planning and attracted visitors from far and wide.

The model factory town of Pullman is considered the first planned industrial community in the United States, and served as both an influential model and a cautionary tale for subsequent industrial developments. The beauty, sanitation, and order George Pullman provided his workers and their families were not without cost. Pullman believed people did not value the things they did not pay for. The Pullman Company owned every building and

charged rents that would ensure a return on the company's investment in building the town. He also created a system of social control and hierarchy discernible in the standards of conduct for residents and in the architecture and layout of the community that can still be seen today in the well-preserved Pullman Historic District. For example, the larger, more ornate, and finely finished houses on Arcade Row were reserved for company officers, while junior workers resided in smaller, simpler row houses, and single and unskilled workers resided in tenement blocks with less ornamentation located farther away from the town's public face.

In 1893, the worst economic depression in American history prior to the Great Depression hit the country in general and the railroad industry in particular. Orders at the Pullman Company declined. The Pullman Company lowered its workers' wages but not the rents it charged those workers for company housing. These measures angered the workers and sparked the Pullman strike of 1894. The American Railway Union, led by Eugene V. Debs, had formed the year prior in Chicago, with membership open to all white railroad employees of any profession. In solidarity, American Railway Union members nationwide boycotted Pullman cars, disrupting rail traffic across much of the Nation. Thus, the strike that began as a local walkout on May 11, 1894, grew into one of American history's largest labor actions, paralyzing most of the railroads west of Detroit and threatening the national economy.

On June 27, 1894, as the Pullman strike was growing, the Congress passed legislation designating Labor Day a Federal holiday, and President Grover Cleveland signed it the next day. Thirty-one States had already adopted the holiday, but it was the Pullman strike of 1894 that spurred final Federal action in an attempt to placate workers across the Nation.

At its peak, the Pullman strike affected some 250,000 workers in 27 States and disrupted Federal mail delivery. The United States secured a court injunction declaring the strike illegal under the Sherman Antitrust Act, and President Cleveland ultimately intervened with Federal troops. The strike ended violently by mid-July, a labor defeat with national reverberations.

George Pullman did not loosen his tight control of the town of Pullman after the strike ended. Illinois sued the Pullman Company in August 1894, alleging that the company's ownership and operation of the town violated its corporate charter. The Illinois Supreme Court agreed in an 1898 decision, and ordered the company to sell all non-industrial land holdings in the town. By that time, Robert Todd Lincoln, the oldest son of President Abraham Lincoln and general counsel of the Pullman Company during the 1894 strike, had succeeded George Pullman as president of the company. In 1907, the company finally sold most of its residential properties to comply with the Illinois Supreme Court's order.

The Pullman Company would again be the focus of a nationally important labor event when, in 1937, the Brotherhood of Sleeping Car Porters (BSCP), an influential African American union founded by A. Philip Randolph, won a labor contract for the Pullman porters from the company. The Pullman Company leased its cars to railroads and directly employed the attendants—porters, waiters, and maids. At its founding, the company hired recently freed former house slaves as porters. The porters remained a group of exclusively African American men throughout the company's history, playing a significant role in the rise of the African American middle class. By 1937, the Pullman Company had been the Nation's largest employer of African Americans for over 20 years and Pullman porters composed 44 percent of the Pullman Company workforce. The 1937 contract was the first major labor agreement between a union led by African Americans and a corporation and is considered one of the most important markers since Reconstruction toward African American independence from racist paternalism. The agreement served as a model for other African American workers and significantly contributed to the rise of the civil rights movement in the United States. The Pullman Historic District is an important site

for understanding the iconic historic connection between the Pullman porters, the BSCP, and the Pullman Company.

The architecture, urban planning, transportation, labor relations, and social history of the Pullman Historic District have national significance. The Pullman Historic District tells rich, layered stories of American opportunity and discrimination, industrial engineering, corporate power and factory workers, new immigrants to this country and formerly enslaved people and their descendants, strikes and collective bargaining. The events and themes associated with the Pullman Company continue to resonate today as employers and workers still seek opportunities for better lives.

WHEREAS section 320301 of title 54, United States Code (known as the "Antiquities Act"), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS the Pullman Historic District was designated a National Historic Landmark on December 30, 1970, establishing its national significance based on its importance in social history, architecture, and urban planning;

WHEREAS the Governor of Illinois, Members of Congress, the City of Chicago, other State, local, and private entities, including Pullman neighborhood organizations, and others have expressed support for the establishment of a national monument in the Pullman Historic District and its inclusion in the National Park System;

WHEREAS the State of Illinois Historic Preservation Agency has donated to the United States certain lands and interests in lands within the Pullman Historic District, including fee title to the Administration Clock Tower Building and an access easement thereto, for administration by the Secretary of the Interior (Secretary) through the National Park Service in accordance with the provisions of the Antiquities Act and other applicable laws;

WHEREAS it is in the public interest to preserve and protect the historic objects in the Pullman Historic District, Chicago, Illinois;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Pullman National Monument (monument) and, for the purpose of protecting those objects, reserve as a part thereof all lands and interests in lands owned or controlled by the Federal Government within the "National Monument Boundary" described on the accompanying map, which is attached to and forms a part of this proclamation. These reserved Federal lands and interests in lands encompass approximately 0.2397 acres, together with appurtenant easements for all necessary purposes.

All Federal lands and interests in lands within the "National Monument Boundary" described on the accompanying map are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public land laws, from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The establishment of the monument is subject to valid existing rights. Lands and interests in lands not owned or controlled by the Federal Government within the "National Monument Boundary" described on the accompanying map shall be reserved as a part of the monument, and objects identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government. The "National Monument Boundary" described on

the accompanying map is confined to the smallest area compatible with the proper care and management of the objects to be protected within those boundaries.

The Secretary shall manage the monument through the National Park Service, pursuant to applicable legal authorities, consistent with the purposes and provisions of this proclamation. The Secretary shall prepare a management plan for the monument within 3 years of the date of this proclamation. The management plan shall ensure that the monument fulfills the following purposes for the benefit of present and future generations: (1) to preserve the historic resources; (2) to interpret the industrial history and labor struggles and achievements associated with the Pullman Company, including the rise and role of the Brotherhood of Sleeping Car Porters; and (3) to interpret the history of urban planning and design of which the planned company town of Pullman is a nationally significant example.

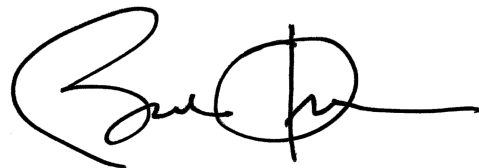
The management plan shall, among other provisions, set forth the desired relationship of the monument to other related resources, programs, and organizations within its boundaries, as well as at other places related to the Pullman Company and the stories associated with it. The management planning process shall provide for full public involvement, including coordination with the State of Illinois and the City of Chicago and consultation with interested parties including museums and preservation and neighborhood organizations. The management plan shall identify steps to be taken to provide interpretive opportunities and coordinate visitor services for the entirety of the Pullman Historic District to the extent practicable and appropriate for a broader understanding of the monument and the themes that contribute to its national significance.

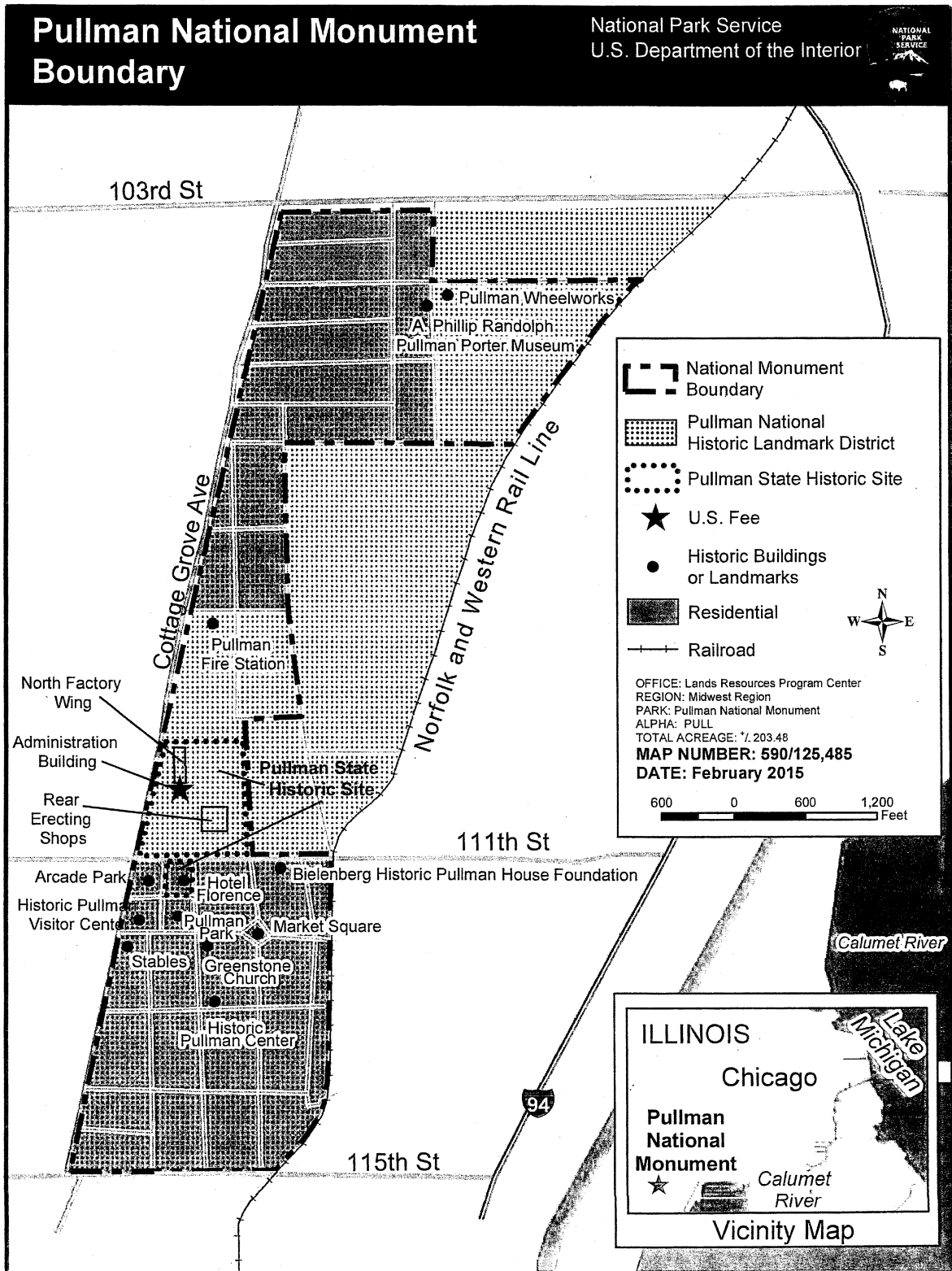
The National Park Service is directed to use applicable authorities to seek to enter into agreements with others to address common interests and promote management efficiencies, including provision of visitor services, interpretation and education, establishment and care of museum collections, and preservation of historic objects.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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

A handwritten signature in black ink, appearing to be Barack Obama's signature, written in a cursive style.



[FR Doc. 2015-04090

Filed 2-24-15; 11:15 a.m.]

Billing code 4310-10-C

Presidential Documents

Presidential Determination No. 2015–04 of February 20, 2015

Determination and Waiver Pursuant to Section 1209 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 Regarding the Provision of Assistance to Appropriately Vetted Elements of the Syrian Opposition

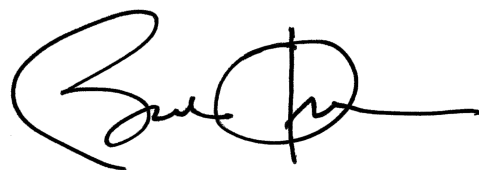
Memorandum for the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 1209 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Public Law 113–291), I hereby:

— determine that sections 40 and 40A of the Arms Export Control Act; section 2249a of Title 10, U.S. Code; and Chapter 137 of Title 10, U.S. Code, would impede national security objectives of the United States by prohibiting, restricting, delaying, or otherwise limiting the provision of assistance, including training, equipment, supplies, stipends, construction of training and associated facilities, and sustainment, to appropriately vetted elements of the Syrian opposition and other appropriately vetted Syrian groups and individuals; and

— waive said provisions of law, to the extent necessary to allow the Department of Defense, with the coordination of the Department of State, to carry out the purposes of section 1209 of the NDAA FY 2015.

You are hereby authorized and directed to report this determination and the accompanying Memorandum of Justification to the Congress and publish the determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 20, 2015

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