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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1083

[Docket No.: CFPB–2016–0028]

RIN 3170–AA62

Civil Penalty Inflation Adjustments

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing for public comment an interim final rule to adjust the civil monetary penalties within the Bureau's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act or the Act), as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act).

DATES: This rule is effective on July 14, 2016. Comments must be received on or before July 14, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0028 or RIN 3170–AA62, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0028 or RIN 3170–AA62 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kristin Bateman, Counsel, Legal Division, Consumer Financial Protection Bureau, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, requires Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016, and then by January 15 every year thereafter.[1] Agencies must make the initial 2016 adjustments through an interim final rulemaking published in the **Federal Register**.[2] Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.[3] The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

II. Method of Calculation

The Inflation Adjustment Act prescribes a specific method for calculating the inflation adjustments.[4] As amended by the 2015 Act, the Act provides that the maximum (and minimum, if applicable) amounts for each civil penalty must be increased by the ''cost-of-living adjustment,'' a term that the Act defines. For purposes of the initial adjustments that agencies must make by July 1, 2016, the ''cost-of-living adjustment'' is defined as the percentage increase in the Consumer Price Index between (1) October of the calendar year during which the civil penalty amount was established or adjusted under a provision of law other than the Inflation Adjustment Act and (2) October 2015. The Consumer Price Index to be used for purposes of this calculation is the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor.[5] The Office of Management and Budget (OMB) has published guidance for implementing this requirement.[6] OMB's guidance memorandum provides multipliers that agencies should use to adjust penalty amounts based on the year the penalty was established or last adjusted under authority other than the Inflation Adjustment Act.

To determine the new penalty amount, the agency must apply the multiplier reflecting the ''cost-of-living adjustment'' [7] to the penalty amount as it was most recently established or adjusted under a provision of law other

[1] *See* 28 U.S.C. 2461 note.

[2] The statute also provides that, for the initial 2016 adjustment, an agency may adjust a civil penalty by less than the otherwise required amount if (1) it determines, after publishing a notice of proposed rulemaking and providing an opportunity for comment, that increasing the civil penalty by the otherwise required amount would have a negative economic impact or that the social costs of increasing the civil penalty by the otherwise required amount outweigh the benefits, and (2) the Director of the Office of Management and Budget concurs with that determination. Inflation Adjustment Act section 4(c), *codified at* 28 U.S.C. 2461 note. The Bureau has chosen not to make use of this exception.

[3] Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

[4] Inflation Adjustment Act section 5, *codified* at 28 U.S.C. 2461 note.

[5] U.S. Dep't of Labor, Bureau of Labor Statistics, CPI Tables, *http://www.bls.gov/cpi/#tables.*

[6] Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Feb. 24, 2016), *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

[7] The multipliers reflecting the ''cost-of-living adjustment'' that OMB provides are rounded to five decimal places. The Bureau has used the OMB multipliers in calculating its civil penalty adjustments.

than the Inflation Adjustment Act. The agency must then round that amount to the nearest dollar.[8] The increase made by this initial adjustment may not exceed 150 percent of the penalty amount in effect on the date the 2015 Act was enacted, November 2, 2015.

III. Description of the Interim Final Rule

This interim final rule establishes the inflation-adjusted maximum amounts for each civil penalty within the Bureau's jurisdiction. The following table lists the civil penalties within the Bureau's jurisdiction and summarizes the relevant information needed to calculate the inflation adjustments pursuant to the statutory method.

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	Penalty amount in effect on November 2, 2015
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A).	Tier 1 penalty	$5,000	[9]2010	[10]$5,000
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B).	Tier 2 penalty	25,000	[11]2010	[12]25,000
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C).	Tier 3 penalty	1,000,000	[13]2010	[14]1,000,000
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Per violation	1,000	[15]1989	[16]1,000
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Annual cap	1,000,000	[17]1989	[18]1,000,000
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Per failure	50	[19]1990	[20]50
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Annual cap	100,000	[21]1990	[22]100,000
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A).	Per failure, where intentional.	100	[23]1990	[24]100
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	25,000	[25]2008	[26]25,000
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	10,000	[27]2010	[28]10,000
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	20,000	[29]2010	[30]20,000

The Bureau followed the procedure outlined above in part II to calculate the adjusted civil penalty amounts. In accordance with the statutory requirements and OMB guidance, the Bureau multiplied each penalty amount as established or last adjusted under a provision other than the Inflation Adjustment Act by the OMB multiplier corresponding to the appropriate year, and then rounded that amount to the nearest dollar, to calculate the new, inflation-adjusted civil penalty amount. The Bureau then confirmed that the amount by which each civil penalty increased did not exceed 150 percent of the corresponding civil penalty level in effect on November 2, 2015. None of the increases exceeded this 150-percent threshold. The following chart summarizes the results of these calculations:

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	OMB "cost-of-living adjustment" multiplier	New penalty amount
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A).	Tier 1 penalty	$5,000	2010	1.08745	$5,437
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B).	Tier 2 penalty	25,000	2010	1.08745	27,186

[8] In rounding to the nearest dollar, the Bureau has rounded down where the digit immediately following the decimal point is less than 5 and has rounded up where the digit immediately following the decimal point is 5 or greater.

[9] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1055(c)(2)(A), 124 Stat. 1376, 2030 (2010).

[10] 12 U.S.C. 5565(c)(2)(A) (2015).

[11] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1055(c)(2)(B), 124 Stat. 1376, 2030 (2010).

[12] 12 U.S.C. 5565(c)(2)(B) (2015).

[13] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1055(c)(2)(C), 124 Stat. 1376, 2030 (2010).

[14] 12 U.S.C. 5565(c)(2)(C) (2015).

[15] Department of Housing and Urban Development Reform Act, Public Law 101–235, section 111, 103 Stat. 1987, 2014 (1989).

[16] 15 U.S.C. 1717a(a)(2) (2015).

[17] Department of Housing and Urban Development Reform Act, Public Law 101–235, section 111, 103 Stat. 1987, 2014 (1989).

[18] 15 U.S.C. 1717a(a)(2) (2015).

[19] Cranston–Gonzalez National Affordable Housing Act, Public Law 101–625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

[20] 12 U.S.C. 2609(d)(1) (2015).

[21] Cranston–Gonzalez National Affordable Housing Act, Public Law 101–625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

[22] 12 U.S.C. 2609(d)(1) (2015).

[23] Cranston–Gonzalez National Affordable Housing Act, Public Law 101–625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

[24] 12 U.S.C. 2609(d)(2)(A) (2015).

[25] Housing and Economic Recovery Act of 2008, Public Law 110–289, section 1514(d)(2), 122 Stat. 2654, 2823 (2008).

[26] 12 U.S.C. 5113(d)(2) (2015).

[27] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1472(a), 124 Stat. 1376, 2189 (2010).

[28] 15 U.S.C. 1639e(k)(1) (2015).

[29] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1472(a), 124 Stat. 1376, 2190 (2010).

[30] 15 U.S.C. 1639e(k)(2) (2015).

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	OMB "cost-of-living adjustment" multiplier	New penalty amount
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C).	Tier 3 penalty	1,000,000	2010	1.08745	1,087,450
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Per violation	1,000	1989	1.89361	1,894
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Annual cap	1,000,000	1989	1.89361	1,893,610
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Per failure	50	1990	1.78156	89
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Annual cap	100,000	1990	1.78156	178,156
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A).	Per failure, where intentional.	100	1990	1.78156	178
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	25,000	2008	1.09819	27,455
Truth in Lending Act, 15 U.S.C. 1639e(k)(1).	First violation	10,000	2010	1.08745	10,875
Truth in Lending Act, 15 U.S.C. 1639e(k)(2).	Subsequent violations.	20,000	2010	1.08745	21,749

This rule codifies these civil penalty amounts by adding new part 1083 to title 12 of the CFR and new § 1083.1 therein.

IV. Legal Authority and Effective Date

The Bureau issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,[31] as amended by the Debt Collection Improvement Act of 1996,[32] and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[33] which requires the Bureau to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

The Administrative Procedure Act (APA) generally requires an agency to publish a rule at least 30 days before its effective date.[34] This rule satisfies that requirement.

V. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule.

VI. Regulatory Requirements

Notice and Comment

Under the APA, notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[35] This interim final rule adjusts the civil penalty amounts within the Bureau's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The amendments in this interim final rule are technical, and they merely apply the statutory method for adjusting civil penalty amounts. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Moreover, the statute expressly requires the Bureau to make these initial adjustments through an interim final rulemaking to be published by July 1, 2016,[36] and OMB's guidance confirms that agencies need not complete a notice-and-comment process before promulgating the rule.[37] Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[38]

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[39] the Bureau reviewed this interim final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the interim final rule.

List of Subjects in 12 CFR Part 1083

Administrative practice and procedure, Consumer protection, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds part 1083 to chapter X in title 12 of the Code of Federal Regulations to read as set forth below:

PART 1083—CIVIL PENALTY ADJUSTMENTS

Sec.
1083.1 Adjustments of civil penalty amounts.

Authority: 12 U.S.C. 2609(d); 12 U.S.C. 5113(d)(2); 12 U.S.C. 5565(c); 15 U.S.C. 1639e(k); 15 U.S.C. 1717a(a); 28 U.S.C. 2461 note.

§ 1083.1 Adjustments of civil penalty amounts.

(a) The maximum amount of each civil penalty within the jurisdiction of the Consumer Financial Protection Bureau to impose is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal

[31] Public Law 101–410, 104 Stat. 890 (1990).

[32] Public Law 104–134, section 31001(s)(1), 110 Stat. 1321, 1321–373 (1996).

[33] Public Law 114–74, section 701, 129 Stat. 584, 599 (2015).

[34] *See* 5 U.S.C. 553(d).

[35] 5 U.S.C. 553(b)(B).

[36] Inflation Adjustment Act, section 4(b)(1)(A), *codified at* 28 U.S.C. 2461 note.

[37] Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies 3 (Feb. 24, 2016), *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

[38] 5 U.S.C. 603(a), 604(a).

[39] 44 U.S.C. 3506; 5 CFR 1320.

Civil Penalties Inflation Adjustment Act Improvements Act of 2015, (28 U.S.C. 2461 note) as follows:

U.S. code citation	Civil penalty description	Adjusted maximum civil penalty amount
12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	$5,437
12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	27,186
12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,087,450
15 U.S.C. 1717a(a)(2)	Per violation	1,894
15 U.S.C. 1717a(a)(2)	Annual cap	1,893,610
12 U.S.C. 2609(d)(1)	Per failure	89
12 U.S.C. 2609(d)(1)	Annual cap	178,156
12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	178
12 U.S.C. 5113(d)(2)	Per violation	27,455
15 U.S.C. 1639e(k)(1)	First violation	10,875
15 U.S.C. 1639e(k)(2)	Subsequent violations	21,749

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after July 14, 2016, regardless of when the violation for which the penalty is assessed occurred.

Dated: June 7, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–14031 Filed 6–13–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 11, 121, 125, and 135

Office of the Secretary

14 CFR Part 382

[Docket No.: FAA–2014–0554; Amdt. Nos. 1–69; 11–60; 121–374, 125–65, 135–133]

RIN 2120–AK32

Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft; Correction

AGENCY: Federal Aviation Administration (FAA) and the Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: This final rule replaces the existing process by which the Federal Aviation Administration (Agency or FAA) approves portable oxygen concentrators (POC) for use on board aircraft in air carrier operations, commercial operations, and certain other operations using large aircraft. The FAA currently assesses each POC make and model on a case-by-case basis and if the FAA determines that a particular POC is safe for use on board an aircraft, the FAA conducts rulemaking to identify the specific POC model in an FAA regulation. This final rule replaces the current process and allows passengers to use a POC on board an aircraft if the POC satisfies certain acceptance criteria and bears a label indicating conformance with the acceptance criteria. The labeling requirement only affects POCs intended for use on board aircraft that were not previously approved for use on aircraft by the FAA. Additionally, this rulemaking will eliminate redundant operational requirements and paperwork requirements related to the physician's statement. As a result, this rulemaking will reduce burdens for POC manufacturers, passengers who use POCs while traveling, and affected aircraft operators. This final rule also makes conforming amendments to the Department of Transportation's (Department or DOT) rule implementing the Air Carrier Access Act (ACAA) to require carriers to accept all POC models that meet FAA acceptance criteria as detailed in this rule.

DATES: This correction will become effective on June 23, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact DK Deaderick, 121 Air Carrier Operations Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, AFS–220, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7480; email *dk.deaderick@faa.gov.* For questions regarding the Department's disability regulation (14 CFR part 382), contact Clereece Kroha, Senior Attorney, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9041; email *clereece.kroha@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2016, the FAA published a final rule entitled, ''Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft'' (81 FR 33098).

This final rule affects the use of POCs on board aircraft in operations conducted under title 14 of the Code of Federal Regulations (14 CFR) parts 121, 125, and 135, by replacing the existing FAA case-by-case approval process for each make and model of POC in Special Federal Aviation Regulation (SFAR) No. 106, with FAA acceptance criteria. Under SFAR No. 106, each time the FAA approves a specific model of POC for use on board aircraft, the agency updates the list of approved POCs in the SFAR.

This final rule removes SFAR No. 106 and replaces it with POC acceptance criteria and specific labeling requirements to identify POCs that conform to the acceptance criteria. POCs that conform to the final rule acceptance criteria will be allowed on board aircraft without additional FAA review and rulemaking.

As with existing requirements for FAA approval of POCs that may be used on aircraft, the final rule acceptance criteria and labeling requirement only apply to POCs intended for use on board aircraft. Table 1 provides a comparison of the final rule acceptance criteria and labeling requirement with related SFAR No. 106.

However, the final rule was published with an incorrect amendment number, ''11–59,'' which is the same amendment number as the rule entitled ''Administrative Practices and Procedures, Reporting and Recordkeeping Requirements '' (81 FR 13969), published on March 16, 2016. The correct amendment number for this rule should be ''11–60.''

Correction

In FR Doc. 2016–11908 beginning on page 33098 in the **Federal Register** of May 24, 2016, make the following correction:

Correction

1. On page 33098, in the first column, in the document heading, revise ''[Docket No.: FAA–2014–0554; Amdt. Nos. 1–69, 11–59, 121–374, 125–65, and 135–133]'' to read ''[Docket No.: FAA–2014–0554; Amdt. Nos. 1–69, 11–60, 121–374, 125–65, and 135–133]''.

Issued under authority provided by 49 U.S.C. 106(f) in Washington, DC, on June 1, 2016.

Dale A. Bouffiou,

Acting Director, Office of Rulemaking.

[FR Doc. 2016–13955 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6899; Directorate Identifier 2016–NM–066–AD; Amendment 39–18558; AD 2016–12–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–09–11 for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2016–09–11 required removing fasteners, doing a rototest inspection of fastener holes, installing new fasteners, oversizing the holes and doing rototest inspections for cracks if necessary, and repairing any cracking that is found. This new AD requires the same actions as AD 2016–09–11, but includes Model A330–300 series airplanes in paragraph (g)(2) of this AD. This AD was prompted by the discovery of missing affected airplanes in paragraph (g)(2) of AD 2016–09–11 that resulted from converting a table in the proposed AD to text in AD 2016–09–11. We are issuing this AD to detect and correct cracking on certain holes of certain frames of the center wing box (CWB), which could affect the structural integrity of the airplane.

DATES: This AD is effective June 29, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 13, 2016 (81 FR 27986, May 9, 2016).

We must receive comments on this AD by July 29, 2016.

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

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

For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6899.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6899; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Discussion

On April 21, 2016, we issued AD 2016–09–11, Amendment 39–18509 (81 FR 27986, May 9, 2016) (''AD 2016–09–11''), for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2016–09–11 was prompted by reports that cracks were found on an adjacent hole of certain frames of the CWB. AD 2016–09–11 required removing fasteners, doing a rototest inspection of fastener holes, installing new fasteners, oversizing the holes and doing rototest inspections for cracks if necessary, and repairing any cracking that was found. We issued AD 2016–09–11 to detect and correct cracking on certain holes of certain frames of the CWB that could affect the structural integrity of the airplane.

Since we issued AD 2016–09–11, we discovered missing affected airplanes in paragraph (g)(2) of AD 2016–09–11 that resulted from converting a table to text in that AD. We stated in the preamble of AD 2016–09–11 that we revised the format of paragraph (g) of that AD, at the request of the Office of the Federal Register, by converting the table to text. We also stated this change to the format does not affect the requirements of that paragraph.

However, in converting the table to text, we inadvertently omitted Model A330–300 series airplanes from paragraph (g)(2) of AD 2016–09–11. We have changed paragraph (g)(2) of this AD to include Model A330–300 series airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0149, dated June 13, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. The MCAI states:

> During accomplishment of A330 Airworthiness Limitation Item (ALI) task 57–11–04 on the rear fitting of the Frame (FR) 40 between stringers 38 and 39 on both [left-hand] LH/[right-hand] RH sides, cracks were found on an adjacent hole. After reaming at second oversize of the subject hole, the crack was still present.
>
> Other crack findings on this adjacent hole have been reported on A330 and A340–200/–300 aeroplanes as a result of sampling inspections.

This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.

For the reasons described above, this [EASA] AD requires removal of the fasteners and repetitive rototest inspections of fastener holes at FR40 vertical web located above Center Wing Box (CWB) lower panel reference and/or below CWB lower panel reference on both sides and, depending on findings, accomplishment of the applicable corrective actions.

Note: These holes affected by this [EASA] AD are different from the ones affected by EASA AD 2009–0001 [*http://ad.easa.europa.eu/blob/easa_ad_2009_0001.pdf/AD_2009–0001_1*].

Required actions also include oversizing certain holes, installing new fasteners, and repairing any cracking that is found. The initial compliance times range from 13,500 to 30,900 flight cycles, or 57,000 to 162,000 flight hours, depending on airplane operation and utilization. The repetitive compliance times are 7,400 flight cycles/24,300 flight hours or 5,950 flight cycles/40,400 flight hours from ALI embodiment. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6899.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information. The service information describes procedures for removing the fasteners and doing a repetitive rototest inspection of fastener holes at FR40 vertical web on both sides, installing new fasteners in transition fit, and oversizing the holes.

- Airbus Service Bulletin A330–57–3114, dated March 12, 2013.
- Airbus Service Bulletin A330–57–3115, dated April 4, 2013.
- Airbus Service Bulletin A330–57–3116, dated March 12, 2013.
- Airbus Service Bulletin A340–57–4123, dated March 12, 2013.
- Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.
- Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

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

FAA's Justification and Determination of the Effective Date

We are superseding AD 2016–09–11 to correct an error in the regulatory text that we made when we converted a table to text in paragraph (g)(2) of AD 2016–09–11. No other changes have been made to AD 2016–09–11. Therefore, we determined that notice and opportunity for prior public comment are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–6899; Directorate Identifier 2016–NM–066–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 35 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	78 work-hours × $85 per hour = $6,630 per inspection cycle.	$0	$6,630 per inspection cycle	$232,050 per inspection cycle.

We estimate the following costs to do any necessary repairs that will be required based on the results of the inspection. We have no way of determining the number of airplanes that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Oversize, installation, and inspection	98 work-hours × $85 per hour = $8,330	$136,400	$144,730

We have received no definitive data that will enable us to provide cost estimates for the on-condition repair specified in this AD.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–09–11, Amendment 39–18509 (81 FR 27986, May 9, 2016), and adding the following new AD:

2016–12–09 Airbus: Amendment 39–18558. Docket No. FAA–2016–6899; Directorate Identifier 2016–NM–066–AD.

(a) Effective Date

This AD is effective June 29, 2016.

(b) Affected ADs

This AD replaces AD 2016–09–11, Amendment 39–18509 (81 FR 27986, May 9, 2016) (''AD 2016–09–11'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification (Mod) 55792 or Mod 55306 has been embodied in production, and except those on which Airbus Repair Instruction R57115092 has been embodied in service on both right-hand (RH) and left-hand (LH) sides.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243 –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports that cracks were found on an adjacent hole of certain frames of the center wing box (CWB). We are issuing this AD to detect and correct cracking on certain holes of the CWB, which could affect the structural integrity of the airplane.

(f) Compliance

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

(g) Inspection

Do a rototest inspection of the fastener holes at the frame (FR) 40 vertical web, on both sides, as specified in paragraphs (g)(1) through (g)(6) of this AD, except as required by paragraph (k) of this AD.

(1) For Model A330–300 series airplanes in pre-mod 44360 configuration: At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD, inspect below the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3114, dated March 12, 2013.

(i) At the applicable time specified in paragraph 1.E., ''Compliance'' of Airbus Service Bulletin A330–57–3114, dated March 12, 2013.

(ii) Within 2,400 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(2) For Model A330–200 and –300 series airplanes in post-mod 44360 and pre-mod 49202 configuration: At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, inspect below the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3116, dated March 12, 2013.

(i) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A330–57–3116, dated March 12, 2013.

(ii) Within 2,400 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(3) For Model A330–200 and –300 series airplanes in pre-mod 55306 and pre-mod 55792 configuration: At the later of the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD, inspect above the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3115, dated April 4, 2013.

(i) At the applicable time specified in paragraph 1.E., ''Compliance'' of Airbus Service Bulletin A330–57–3115, dated April 4, 2013.

(ii) Within 2,400 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(4) For Model A340–200 and –300 series airplanes in pre-mod 44360 configuration: At the later of the times specified in paragraphs (g)(4)(i) and (g)(4)(ii) of this AD, inspect below the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4123, dated March 12, 2013.

(i) At the applicable time specified in paragraph 1.E., ''Compliance'' of Airbus Service Bulletin A330–57–4123, dated March 12, 2013.

(ii) Within 1,300 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(5) For Model A340–200 and –300 series airplanes in pre-mod 55306 and pre-mod 55792 configuration: At the later of the times specified in paragraphs (g)(5)(i) and (g)(5)(ii) of this AD, inspect above the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.

(i) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.

(ii) Within 1,300 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(6) For Model A340–200 and –300 series airplanes in post-mod 44360 and pre-mod 49202 configuration: At the later of the times specified in paragraphs (g)(6)(i) and (g)(6)(ii) of this AD, inspect below the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

(i) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

(ii) Within 1,300 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(h) Follow-On Actions: No Cracking

If no crack is found during any inspection required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Before further flight, install new fasteners in the transition fit, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD.

(2) Repeat the inspection required by paragraph (g) of this AD thereafter at the applicable time identified in paragraph 1.E., ''Compliance,'' of the applicable service information identified in paragraph (g) of this AD.

(i) Follow-On Actions: Crack Findings

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, oversize the holes to the first oversize in comparison with the current hole diameter, and do a rototest inspection for cracks, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD.

(1) If no cracking is found during the rototest inspection required by paragraph (i) of this AD, do the actions specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Before further flight: Install new fasteners in the transition fit, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD.

(ii) Repeat the inspection required by paragraph (g) of this AD thereafter at the applicable time identified in paragraph 1.E., ''Compliance,'' of the applicable service information identified in paragraph (g) of this AD.

(2) If cracking is found during the rototest inspection required by paragraph (i) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(j) Terminating Action Specifications

Accomplishment of the initial and repetitive inspections required by this AD terminates accomplishment of Airworthiness Limitation Items Tasks 57–11–04 and 57–11–02 of the Airworthiness Limitation Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT ALI).

(1) Installation of new fasteners, as specified in paragraph (h)(1) of this AD, does not terminate the repetitive inspections required by paragraph (g) of this AD.

(2) Accomplishment of the corrective actions specified in the introductory text of paragraph (i) and paragraph (i)(1) of this AD does not terminate the repetitive inspections required by paragraph (g) of this AD.

(3) Accomplishment of the repair specified in paragraph (i)(2) of this AD does not terminate repetitive inspections required by paragraph (g) of this AD, unless the approved repair method specifies otherwise.

(k) Exceptions to Service Information

(1) If the applicable service information identified in paragraph (g) of this AD specifies contacting Airbus for appropriate action: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(2) Where paragraph 1.E., ''Compliance,'' of the applicable service information specified in paragraph (g) of this AD specifies a compliance time in terms of a ''Threshold'' and ''Grace Period,'' this AD requires compliance at the later of the applicable threshold and grace period.

(3) Where paragraph 1.E., ''Compliance,'' of the applicable service information specified in paragraph (g) of this AD specifies a threshold as ''before next flight,'' this AD requires compliance before the next flight after the applicable finding.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (i) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (l)(1), (l)(2), (l)(3), (l)(4), (l)(5), (l)(6), (l)(7), (l)(8), or (l)(9) of this AD. This service information is not incorporated by reference in this AD.

(1) Airbus Technical Disposition LR57D11023270, Issue B, dated July 12, 2011.

(2) Airbus Technical Disposition LR57D11029171, Issue B, dated September 6, 2011.

(3) Airbus Technical Disposition LR57D11029173, Issue B, dated September 6, 2011.

(4) Airbus Technical Disposition LR57D11030741, Issue B, dated September 22, 2011.

(5) Airbus Technical Disposition LR57D11029170, Issue C, dated September 6, 2011.

(6) Airbus Technical Disposition LR57D11023714, Issue B, dated July 12, 2011.

(7) Airbus Technical Disposition LR57D11029172, Issue B, dated September 6, 2011.

(8) Airbus Technical Disposition LR57D11030740, Issue C, dated September 22, 2011.

(9) Airbus Service Bulletin A340–57–4124, dated April 4, 2013.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0149, dated June 13, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. *FAA–2016–6899.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(4) and (o)(5) of this AD.

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 13, 2016, (81 FR 27986, May 9, 2016).

(i) Airbus Service Bulletin A330–57–3114, dated March 12, 2013.

(ii) Airbus Service Bulletin A330–57–3115, dated April 4, 2013.

(iii) Airbus Service Bulletin A330–57–3116, dated March 12, 2013.

(iv) Airbus Service Bulletin A340–57–4123, dated March 12, 2013.

(v) Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.

(vi) Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

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

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

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

Issued in Renton, Washington, on June 3, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13856 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6900; Directorate Identifier 2016–NM–064–AD; Amendment 39–18559; AD 2016–12–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–09–07 for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2016–09–07 required replacing certain pitot probes on the captain, first officer, and standby sides. This new AD retains those requirements, but with a revised compliance time. Since we issued AD 2016–09–07, we received additional reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. We are issuing this AD to prevent airspeed indication discrepancies caused by accumulation of ice crystals during inclement weather, which, depending on the prevailing altitude, could lead to reduced controllability of the airplane.

DATES: This AD is effective June 29, 2016.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in this AD as of June 10, 2016 (81 FR 27298, May 6, 2016).

We must receive comments on this AD by July 29, 2016.

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

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

For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6900.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6900; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On April 20, 2016, we issued AD 2016–09–07, Amendment 39–18505 (81 FR 27298, May 6, 2016) (''AD 2016–09–07''), for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2016–09–07 was prompted by reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. AD 2016–09–07 required replacing certain pitot probes on the captain, first officer, and standby sides with certain new pitot probes. We issued AD 2016–09–07 to prevent airspeed indication discrepancies caused by accumulation of ice crystals during inclement weather, which, depending on the prevailing altitude, could lead to reduced controllability of the airplane.

Since we issued AD 2016–09–07, we have received additional reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. Certain pitot probes are susceptible to adverse environmental conditions and have a high tendency to accumulate ice crystals resulting in airspeed indication discrepancies, which could result in reduced controllability of the airplane.

As we explained in AD 2016–09–07, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA Airworthiness Directive 2015–0205, dated October 9, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> Occurrences were reported on A320 family aeroplanes of airspeed indication discrepancies while flying at high altitudes in inclement weather conditions. Investigation results indicated that A320 aeroplanes equipped with Thales Avionics Part Number (P/N) 50620–10 or P/N C16195AA pitot probes appear to have a greater susceptibility to adverse environmental conditions than aeroplanes equipped with certain other pitot probes.
>
> Prompted by earlier occurrences, DGAC [Direction Générale de l'Aviation Civile] France issued [DGAC] AD 2001–362 [*http://ad.easa.europa.eu/ad/F-2001-362*] [which corresponds to paragraph (f) of FAA AD 2004–03–33, Amendment 39–13477 (69 FR 9936, March 3, 2004)] to require replacement of Thales (formerly known as Sextant) P/N 50620–10 pitot probes with Thales P/N C16195AA probes.
>
> Since that [DGAC] AD was issued, Thales pitot probe P/N C15195BA was designed, which improved airspeed indication behavior in heavy rain conditions, but did not demonstrate the same level of robustness to withstand high-altitude ice crystals. Based on these findings, EASA decided to implement replacement of the affected Thales [pitot] probes as a precautionary measure to improve the safety level of the affected aeroplanes.
>
> Consequently, EASA issued AD 2014–0237 (later revised) [*http://ad.easa.europa.eu/blob/easa_ad_2014_0237.pdf/AD_2014-0237*], retaining the requirements of DGAC France AD 2001–362, which was superseded, and cancelling two other [DGAC] ADs, to require replacement of Thales Avionics pitot probes P/N C16195AA and P/N C16195BA.
>
> Since EASA AD 2014–0237R1 [*http://ad.easa.europa.eu/ad/2014-0237R1*] was issued, results of further analyses have determined that the compliance time (48 months) of that AD has to be reduced in relation to the risk assessment.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0237R1, which is superseded, but reduces the compliance time [24 months].

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6900.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Airbus Service Bulletin A320–34–1170, Revision 30, dated June 18, 2015.
- Airbus Service Bulletin A320–34–1456, Revision 01, dated May 15, 2012.
- Airbus Service Bulletin A320–34–1463, Revision 01, dated May 15, 2012.

The service information describes procedures for replacing certain Thales pitot probes on the captain, first officer, and standby sides. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

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

Explanation of Compliance Time

We have reduced the compliance time in this AD for the pitot probe replacement because of the new reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. The MCAI requires replacement within 2 years after the effective date of the original MCAI 2014–0237 (November 12, 2014). Both EASA and Airbus recommend the pitot probe replacement in accordance with the MCAI requirement. Based on new reports of airspeed indication discrepancies, our risk assessment considered the overall risk to the fleet, including the severity of the failure and the likelihood of the failure's occurrence. In support of the MCAI compliance requirement and Airbus recommendation, we have therefore concluded that the pitot probes must be replaced by November 12, 2016. That compliance time corresponds to the date specified by the MCAI and represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. In conjunction with the manufacturer, we have determined that the new compliance time will accommodate the time necessary to ensure the availability of required parts.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because airspeed indication discrepancies caused by accumulation of ice crystals during inclement weather, which, depending on the prevailing altitude, could lead to reduced controllability of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–6900; Directorate Identifier 2016–NM–064–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 953 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Pitot probe replacement (retained actions from AD 2016–09–07).	4 work-hours × $85 per hour = $340	$21,930	$22,270	$21,223,310

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–09–07, Amendment 39–18505 (81 FR 27298, May 6, 2016), and adding the following new AD:

2016–12–10 Airbus: Amendment 39–18559. Docket No. FAA–2016–6900; Directorate Identifier 2016–NM–064–AD.

(a) Effective Date

This AD is effective June 29, 2016.

(b) Affected ADs

(1) This AD replaces AD 2016–09–07, Amendment 39–18505 (81 FR 27298, May 6, 2016) (''AD 2016–09–07'').

(2) This AD affects AD 2004–03–33, Amendment 39–13477 (69 FR 9936, March 3, 2004) (''AD 2004–03–33'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. We are issuing this AD to prevent airspeed indication discrepancies caused by accumulation of ice crystals during inclement weather, which, depending on the prevailing altitude, could lead to reduced controllability of the airplane.

(f) Compliance

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

(g) Pitot Probe Replacement

On or before November 12, 2016: Replace any Thales pitot probe having part number (P/N) C16195AA or P/N C16195BA with a Goodrich pitot probe having P/N 0851HL, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1170, Revision 30, dated June 18, 2015. The replacement in this paragraph terminates the requirements of paragraph (f) of AD 2004–03–33 for that airplane only.

(h) Other Acceptable Compliance

(1) Replacement of the pitot probes in accordance with the Accomplishment Instructions of both Airbus Service Bulletin A320–34–1456, Revision 01, dated May 15, 2012 (pitot probes on the captain and standby sides); and Airbus Service Bulletin A320–34–1463, Revision 01, dated May 15, 2012 (pitot probes on the first officer side); is an acceptable method of compliance for the requirements of paragraph (g) of this AD.

(2) Airplanes on which Airbus Modification 25578 was embodied in production, except for post-modification 25578 airplanes on which Airbus Modification 155737 (installation of Thales pitot probes) was also embodied in production, are compliant with the requirements of paragraph (g) of this AD, provided it can be conclusively determined that no Thales pitot probe having P/N C16195AA, P/N C16195BA, or P/N 50620–10 has been installed since the date of issuance of the original certificate of airworthiness or the date of issuance of the original export certificate of airworthiness. Post-modification-25578 airplanes on which Airbus Modification 155737 (installation of Thales pitot probes) was also embodied in production must be in compliance with the requirements of paragraph (g) of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before June 10, 2016 (the effective date of AD 2016–09–07), using service information identified in paragraphs (i)(1)(i) through (i)(1)(xxvi) of this AD. This service information is not incorporated by reference in this AD.

(i) Airbus Service Bulletin A320–34–1170, Revision 04, dated May 24, 2000.

(ii) Airbus Service Bulletin A320–34–1170, Revision 05, dated September 11, 2000.

(iii) Airbus Service Bulletin A320–34–1170, Revision 06, dated October 18, 2001.

(iv) Airbus Service Bulletin A320–34–1170, Revision 07, dated December 4, 2001.

(v) Airbus Service Bulletin A320–34–1170, Revision 08, dated January 15, 2003.

(vi) Airbus Service Bulletin A320–34–1170, Revision 09, dated February 17, 2003.

(vii) Airbus Service Bulletin A320–34–1170, Revision 10, dated November 21, 2003.

(viii) Airbus Service Bulletin A320–34–1170, Revision 11, dated August 18, 2004.

(ix) Airbus Service Bulletin A320–34–1170, Revision 12, dated December 2, 2004.

(x) Airbus Service Bulletin A320–34–1170, Revision 13, dated January 18, 2005.

(xi) Airbus Service Bulletin A320–34–1170, Revision 14, dated April 21, 2005.

(xii) Airbus Service Bulletin A320–34–1170, Revision 15, dated July 19, 2005.

(xiii) Airbus Service Bulletin A320–34–1170, Revision 16, dated November 23, 2006.

(xiv) Airbus Service Bulletin A320–34–1170, Revision 17, dated February 14, 2007.

(xv) Airbus Service Bulletin A320–34–1170, Revision 18, dated October 9, 2009.

(xvi) Airbus Service Bulletin A320–34–1170, Revision 19, dated November 9, 2009.

(xvii) Airbus Service Bulletin A320–34–1170, Revision 20, dated December 1, 2010.

(xviii) Airbus Service Bulletin A320–34–1170, Revision 21, dated March 24, 2011.

(xix) Airbus Service Bulletin A320–34–1170, Revision 22, dated July 19, 2011.

(xx) Airbus Service Bulletin A320–34–1170, Revision 23, dated February 3, 2012.

(xxi) Airbus Service Bulletin A320–34–1170, Revision 24, dated April 12, 2012.

(xxii) Airbus Service Bulletin A320–34–1170, Revision 25, dated September 4, 2012.

(xxiii) Airbus Service Bulletin A320–34–1170, Revision 26, dated September 16, 2013.

(xxiv) Airbus Service Bulletin A320–34–1170, Revision 27, dated March 18, 2014.

(xxv) Airbus Service Bulletin A320–34–1170, Revision 28, dated September 1, 2014.

(xxvi) Airbus Service Bulletin A320–34–1170, Revision 29, dated February 16, 2015.

(2) This paragraph provides credit for the replacement of pitot probes on the captain and standby sides specified in paragraph (h)(1) of this AD, if the replacement was performed before June 10, 2016 (the effective date of AD 2016–09–07), using Airbus Service Bulletin A320–34–1456, dated December 2, 2009, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for the replacement of pitot probes on the first officer side as specified in paragraph (h)(1) of this AD, if those actions were performed before June 10, 2016 (the effective date of AD 2016–09–07), using Airbus Service Bulletin A320–34–1463, dated March 9, 2010, which is not incorporated by reference in this AD.

(j) Parts Installation Limitations

(1) At the applicable time specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD: No person may install on any airplane a Thales pitot probe having P/N C16195AA or P/N C16195BA.

(i) For airplanes with a Thales pitot probe having P/N C16195AA or P/N C16195BA installed: After replacement with BF Goodrich pitot probe P/N 0851HL.

(ii) For airplanes without a Thales pitot probe having P/N C16195AA or P/N C16195BA installed: As of June 10, 2016 (the effective date of AD 2016–09–07).

(2) As of June 10, 2016 (the effective date of AD 2016–09–07), no person may install on any airplane a Thales pitot probe having P/N 50620–10.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local

Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) Required for Compliance (RC): If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0205, dated October 9, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6900.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(4) and (m)(5) of this AD.

(m) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 10, 2016 (81 FR 27298).

(i) Airbus Service Bulletin A320–34–1170, Revision 30, dated June 18, 2015.

(ii) Airbus Service Bulletin A320–34–1456, Revision 01, dated May 15, 2012.

(iii) Airbus Service Bulletin A320–34–1463, Revision 01, dated May 15, 2012.

(4) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on June 2, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13857 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–5573; Airspace Docket No. 16–ASO–7]

RIN 2120–AA66

Modification of VOR Federal Airway V–552; Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VOR Federal airway V–552 by amending the route description to exclude the airspace within restricted area R–4403F, Stennis Space Center, MS, during periods when the restricted area is in use.

DATES: Effective date 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

VOR Federal airway V–552 extends between Beaumont, TX, and Monroeville, AL. In that segment of the airway between the Picayune, MS, VOR/DME and the CAESA, MS, navigation fix, restricted area R–4403F infringes on the 4 nautical mile (NM) wide protected airspace on the south side of the airway. The northernmost point of R–4403F is approximately 3.73 NM from the centerline of the airway instead of the required 4 NM clearance. R–4403F is subject to intermittent use by Notice to Airmen (NOTAM) issued at least 24 hours in advance. This action amends the V–552 airway description to exclude the airspace in R–4403F from the airway while the restricted area is activated.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be subsequently amended in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) part 71 by adding the words ''The airspace within R–4403F is excluded during its times of use'' to the regulatory text of VOR Federal airway V–552. Because this amendment is necessary to ensure the safe separation of airway traffic from restricted airspace when the restricted area is active, I find that notice and public procedure under 5 U.S.C. 553(b) are impractical and contrary to the public interest.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–552 [Amended]

From Beaumont, TX, via INT Beaumont 056° and Lake Charles, LA, 272° radials; Lake Charles; INT Lake Charles 064° and Lafayette, LA, 281° radials; Lafayette; Tibby, LA; Harvey, LA; Picayune, MS; Semmes, AL; INT Semmes 063° and Monroeville, AL, 216° radials; to Monroeville. The airspace within restricted area R–4403F is excluded during its times of use.

* * * * *

Issued in Washington, DC, on June 6, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–13938 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 578

[Docket No. FR–5476–I–03]

RIN 2506–AC29

Continuum of Care Program—Increasing Mobility Options for Homeless Individuals and Families With Tenant-Based Rental Assistance

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: On July 31, 2012, HUD published an interim rule entitled ''Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program.'' The Continuum of Care (CoC) program is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. This rule amends the CoC program regulations to allow individuals and families to choose housing outside of a CoC's geographic area, subject to certain conditions, and to retain the tenant-based rental assistance under the CoC program. In addition to allowing individuals and families to choose housing outside of the CoC's geographic area, this interim rule exempts recipients and subrecipients from compliance with all nonstatutory regulations when a program participant moves to flee domestic violence, dating violence, sexual assault, or stalking. This relaxation of conditions is consistent with the Violence Against Women Reauthorization Act of 2013, directing greater protections for victims of domestic violence, dating violence, sexual assault, or stalking.

DATES:

Effective date: July 14, 2016.

Comment due date: August 15, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and

interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number 202–708–4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Continuum of Care (CoC) program is authorized by the McKinney-Vento Homeless Assistance Act (McKinney-Vento), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, which is Division B of Public Law 111–22, approved May 20, 2009 (HEARTH Act). The purposes of the CoC program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers and by State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness. Section 1504 of the HEARTH Act directs HUD to establish regulations for the CoC program. (See 42 U.S.C. 11301 note.) On July 31, 2012, at 77 FR 45422, HUD published an interim rule to establish, in 24 CFR part 578, the regulatory framework for the CoC program and the CoC planning process.

Continuum of Care not only is the name of the program, but refers to the body responsible for carrying out the duties under the CoC program. In order to be eligible for funds under the CoC program, representatives from relevant organizations within a geographic area must establish a CoC. Representatives from relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals. Where these organizations are located within the geographic area served by the CoC, HUD expects a representative of the organization to be a part of the CoC.

Although HUD issued its July 31, 2012, rule for effect, HUD also sought public comment, and at the end of the public comment period on October 1, 2012, HUD had received 551 public comments. HUD received valuable feedback from the public comments. However, HUD did not immediately move to the next rule stage because HUD wanted to examine how the interim regulations worked in practice. HUD has gained valuable information on where modifications may need to be made to its existing CoC regulations, not only on the basis of public comments received, but also on the basis of experience with the existing regulations to date.

II. This Rule

This rule focuses on a narrow area of the existing CoC program regulations and that is the ability of an individual or family with tenant-based rental assistance funded through the CoC program to choose housing, outside of a CoC's geographic area, subject to certain conditions, and to retain the tenant-based rental assistance under the CoC program if the program participant moves outside the CoC's geographic area.

McKinney-Vento and the CoC program regulations provide that CoC program grant funds may be used for rental assistance for homeless individuals and families. Rental assistance includes tenant-based rental assistance, project-based rental assistance, or sponsor-based rental assistance. With respect to tenant-based rental assistance, § 578.51 of the CoC program regulations states that tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. However, the CoC program regulations limit use of tenant-based rental assistance to within the CoC's geographic area. This limitation was determined reasonable because to serve individuals and families outside of the CoC's geographic area may impose greater burden and cost on the recipient providing the assistance. The only exception in the CoC program regulations to the limitation for retention of tenant-based rental assistance is for program participants who are victims of domestic violence, dating violence, sexual assault, or stalking who are at imminent threat of further harm. These participants, however, must have complied with all other obligations of the program and must reasonably believe that they are imminently threatened by harm from further violence if they remain in the assisted dwelling unit.

Commenters on the July 2012 interim rule advised that the exception to retention of tenant-based rental assistance to the CoC's geographic area was too narrow. HUD received comments, generally, about high-cost housing markets and the difficulty that providers are having in locating affordable units within their CoC's geographic area because of the high cost of housing. A commenter stated that the requirement to use CoC program funds within the CoC's geographic area would cause undue hardship for clients and subrecipients due to the difficulty and time required to find affordable units in high-cost areas of their State. HUD also received comments about how the limitation requiring CoC program funds to be used within the CoC's geographic area restricted tenant-choice and limited opportunities for program participants to identify affordable housing. In response to these concerns, several commenters proposed, as a partial solution, that the regulation be changed to permit program participants to use CoC program funds to rent units outside of the CoC's geographic area.

In light of the comments received on increasing mobility in the CoC program, and HUD's recently issued Affirmatively Furthering Fair Housing final rule,

which emphasizes the importance of housing choice,[1] HUD has determined to amend the CoC program regulations to allow all individuals and families receiving tenant-based rental assistance being paid for with CoC program funds (program participants) to choose housing outside of the CoC's geographic area and to retain their tenant-based rental assistance if they move outside of the CoC's geographic area, subject to the following conditions:

- The decision of a program participant to choose housing or move outside of the CoC's geographic area is one that is made in consultation between the program participant and the recipient or subrecipient.
- The recipient or subrecipient may decline a program participant's request to choose housing or move outside of the CoC's geographic area if the recipient or subrecipient is unable to comply with all CoC program requirements in the geographic area where the housing selected by the program participant is selected, including ensuring the housing meets required safety and quality standards (at the time of publication of this rule compliance with Housing Quality Standards (HQS) is required), carrying out environmental reviews where necessary, calculating the program participant's income for determining rent contributions, conducting an annual assessment of the program participant's service needs, making supportive services available for the duration of the program participant's residence in the project, ensuring supportive services are provided in compliance with all State and local licensing codes, and providing monthly case management in the case of rapid rehousing (RRH) projects. The only reason the provider may decline a program participant's request to choose housing or move outside of the CoC's geographic area is that the recipient or subrecipient cannot reasonably meet all statutory and regulatory program requirements. If the program participant's request to move is declined, but the program participant believes the provider could have reasonably accommodated the request, the program participant may contact the CoC or HUD directly.
- The receiving CoC (the CoC with jurisdiction over the geographic area to which the program participant seeks to move) is not involved in the decision to allow a program participant to move. Since discretion to move rests with the program participant, in consultation with the recipient or subrecipient providing the tenant-based rental assistance, with the goal being continuation of service by the original recipient or subrecipient, the receiving CoC may not prohibit the program participant from moving into its geographic area.
- The program participant remains in the Homeless Management Information System of the CoC where the program participant is enrolled for assistance.

In brief, this rule provides the opportunity for persons who are experiencing homelessness to have access to additional possible housing options while still maintaining their tenant-based rental assistance from the recipient within the CoC where they were determined eligible for, and began receiving assistance. This rule will accomplish this by allowing program participants to use their tenant-based rental assistance in an area outside of the CoC's geographic area where the household presented for, and was determined eligible for CoC program-funded tenant-based rental assistance. While this interim rule allows for expanded mobility, HUD anticipates that tenant-based rental assistance will be used principally within the CoC's geographic area.

With respect to a CoC program participant who has tenant-based rental assistance and is fleeing imminent threat of further harm from domestic violence, the existing regulations allow such participant to move outside of the CoC's geographic area, but the program participant's move is subject to the program participant having complied with all program requirements during their residence in the CoC's geographic area. This rule would exempt the recipient or subrecipient from regulatory requirements (such as providing monthly case management for RRH projects and conducting an annual assessment of the service needs of the program participant that has moved), but the recipient or subrecipient would not be exempt from statutory requirements such as participating in HMIS, ensuring housing meets quality standards, and ensuring the educational needs of children are met. This amendment would facilitate ensuring the safety needs of victims of domestic violence, dating violence, sexual assault, or stalking by imposing less burdensome requirements on recipients and subrecipients while still ensuring that the housing that will be occupied by the victim of domestic violence, dating violence, sexual assault, or stalking meets all statutory requirements, including minimum quality standards.

Specific Request for Comment: HUD seeks input from providers on the impact of exempting recipients or subrecipients from nonstatutory regulatory requirements when a program participant is fleeing imminent threat of further harm from domestic violence, dating violence, sexual assault, or stalking, and moves to another CoC's geographic area.

HUD also seeks input on exempting recipients or subrecipients from non-statutory regulatory requirements when any program participant, not just a program participant fleeing imminent threat of further harm from domestic violence, dating violence, sexual assault, or stalking, wishes to move outside of the CoC's geographic area, in order to support mobility of tenants that may be moving to access better job opportunities, schools, or other resources.

III. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD, generally, publishes its rules for advance public comment.[2] Notice and public procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public comment procedures are ''impracticable, unnecessary, or contrary to the public interest.'' (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay these two amendments to the existing CoC regulations. HUD's work, subsequent to the July 2012, CoC interim rule on improving the voucher portability process, and the enactment of the Violence Against Women Act of 2013 [3] emphasized to HUD the need to provide for mobility for participants in its programs and not terminating tenant-based assistance. As noted in HUD's Streamlining the Portability Process final rule,[4] and in HUD's Affirmatively Furthering Fair Housing final rule, mobility allows individuals or families

[1] See Affirmatively Furthering Fair Housing final rule, published on July 16, 2015, at 80 FR 42272.

[2] The Administrative Procedure Act (5 U.S.C. Subchapter II) (APA), which governs Federal rulemaking, provides in section 553(a) that matters involving a military or foreign affairs function of the United States or a matter relating to Federal agency management or personnel or to public property, loans, grants, benefits, or contracts are exempt from the advance notice and public comment requirement of sections 553(b) and (c) of the APA. In its regulations in 24 CFR 10.1, HUD has waived the exemption for advance notice and public comment for matters that relate to public property, loans, grants, benefits, or contracts, and has committed to undertake notice and comment rulemaking for these matters.

[3] Public Law 113–4, approved March 7, 2013.

[4] See final rule published on August 20, 2015, at 80 FR 50564.

greater choice in living in the areas of their choice. As noted in the preamble, this interim rule would allow program participants, in consultation with their service providers, to move to outside of a CoC's geographic area of service. The consultation is necessary because the goal is to strive for and ensure continued CoC service to the program participant. The interim rule removes the prohibition that only allowed individuals and families who are victims of domestic violence, dating violence, sexual assault, or stalking to move outside of the CoC's geographic area of service. Additionally, this rule removes additional requirements imposed on individuals and families who are victims of domestic violence, dating violence, sexual assault, or stalking seeking to move outside of CoC's geographic area of service, which may delay the ability of such individuals or families to move to a safe location.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

HUD expects it will receive few requests from program participants who are not domestic violence victims to move outside of the CoC's geographic area where they are currently residing. HUD does expect some requests will arise from program participants residing with the jurisdictions of CoCs that cover small geographic areas. HUD expects no increase or decrease in the number of requests from program participants who are victims of domestic violence as these program participants already have this flexibility. For these reasons, HUD believes the impact of this rule would be minimal, but the flexibility to move provided would align with two major HUD rulemakings: HUD's Affirmatively Furthering Fair Housing final rule and HUD's Violence Against Women Act 2013 final rule, to be issued later this year.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Environmental Impact

This rule covers tenant-based rental assistance. Accordingly, under 24 CFR 50.19(b)(11), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the ability of individuals and families participating in the CoC program and who have tenant-based rental assistance to move outside of a CoC's geographic service area but continue to be serviced by that CoC or under the CoC program.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

List of Subjects in 24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 578 to read as follows:

PART 578—CONTINUUM OF CARE PROGRAM

■ 1. The authority citation for part 578 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

■ 2. In § 578.51, paragraph (c) is revised to read as follows:

§ 578.51 Rental assistance.

* * * * *

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. Up to 5 years' worth of rental assistance may be awarded to a project in one competition.

(1) When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Program participants who are receiving rental assistance in

transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move.

(3) Program participants who have complied with all program requirements during their residence, who have been a victim of domestic violence, dating violence, sexual assault, or stalking, who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence) if they remain in the assisted unit, and who are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the assisted unit to protect their health and safety. These program participants may move to a different Continuum of Care's geographic service area even if the recipient or subrecipient cannot meet all regulatory requirements of this part in the new geographic area where the unit is located. The recipient or subrecipient, however, must be able to meet all statutory requirements of the Continuum of Care program either directly or through a third-party contract or agreement.

(4) Program participants other than those described in paragraph (c)(3) of this section may choose housing outside of the Continuum of Care's geographic area if the recipient or subrecipient, through its employees or contractors, is able to meet all requirements of this part in the geographic area where the program participant chooses housing. If the recipient or subrecipient is unable to meet the requirements of this part, either directly or through a third-party contract or agreement, the recipient or subrecipient may refuse to permit the program participant to retain the tenant-based rental assistance if the program participant chooses to move outside of the Continuum of Care's geographic area.

* * * * *

Dated: May 24, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

Approved on: May 24, 2016.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2016–13684 Filed 6–13–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 41

[167A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AF08

Grants to Tribal Colleges and Universities and Diné College

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Education is updating its regulations governing grants to Tribal colleges and universities and Diné College. The Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (TCCUA), authorizes Federal assistance to institutions of higher education that are formally controlled or have been formally sanctioned or chartered by the governing body of an Indian Tribe or Tribes. The Navajo Community College Assistance Act of 1978, as amended (NCCA) authorizes Federal assistance to the Navajo Nation in construction, maintenance, and operation of Diné College. This final rule would update implementing regulations in light of amendments to the TCCUA and the NCCA.

DATES: This rule is effective July 14, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education (202) 208–3559.

SUPPLEMENTARY INFORMATION:

I. Background

The TCCUA authorizes grants for operating and improving Tribal colleges and universities to insure [sic] continued and expanded educational opportunities for Indian students and to allow for the improvement and expansion of the physical resources of such institutions. *See,* 25 U.S.C. 1801 *et seq*. The TCCUA also authorizes grants for the encouragement of endowment funds for the operation and improvement of Tribal colleges and universities. The NCCA authorizes grants to the Navajo Nation to assist in the construction, maintenance and operation of Diné College. *See* 25 U.S.C. 640a *et seq*.

In 1968, the Navajo Nation created the first Tribal college, now called Diné College—and other Tribal colleges quickly followed in California, North Dakota, and South Dakota. Today, there are 37 Tribal colleges in 17 states. The Tribally controlled institutions were chartered by one or more Tribes and are locally managed.

Tribal colleges generally serve geographically isolated populations. In a relatively brief period of time, they have become essential to educational opportunity for American Indian students. Tribal colleges are unique institutions that combine personal attention with cultural relevance, in such a way as to encourage American Indians—especially those living on reservations—to overcome barriers to higher education.

II. The Rule's Changes to the Current Regulations

The regulations at 25 CFR part 41 were originally published in 1979. Since the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471, Title I) was enacted on October 17, 1978, over 30 years of amendments to the Act have been made. These include Public Law 98–192 (December 1, 1983), Public Law 99–428 (September 30, 1996), Public Law 105–244 (October 7, 1998), and Public Law 110–315 (August 14, 2008). Similarly, the Navajo Community College Assistance Act of 1978 (Pub. L. 95–471, Title II) was amended by Public Law 110–315 (August 14, 2008). This final rule incorporates updates required by those amendments. Specifically, the final rule:

- Makes ''plain language'' revisions under Executive Order 12866 and 12988 and by the Presidential Memorandum of June 1, 1998;
- Updates institutional names (*e.g.,* changing ''Director, Office of Indian Education Programs'' to ''Director of the Bureau of Indian Education'');
- Adds statutory authorities and makes accompanying statutory updates; and
- Combines the purpose, scope, and definitions into a new subpart A.

Significant changes the final rule makes include clarifying that: (1) The calculation of an Indian Student Count (ISC) only includes students making satisfactory progress, as defined by the Tribal college, towards a degree or certificate; (2) no credit hours earned by a high school student that will be used towards the student's high school degree or its equivalent are included in the ISC; and (3) grantees may exclude high school students for the purpose of calculating the total number of full-time equivalent students. Changes clarify often misunderstood requirements for an ISC and when high school students cannot be counted towards an ISC. The final rule also updates definitions per amended legislation; reorganizes and clarifies institutional grant eligibility, grant application procedures, Department of the Interior (DOI) grant reporting requirements, and essential information for determining Indian student eligibility. Presently, information is embedded in extended definitions and is difficult to find; the changes increase accessibility and correct outdated language and requirements.

The final rule makes several terminology changes throughout to reflect statutory language. These include replacing ''Tribally controlled community colleges'' with ''Tribal colleges and universities,'' replacing ''Navajo Community College'' with ''Diné College,'' and replacing ''feasibility'' with ''eligibility'' in appropriate places. A detailed table listing changes from the current rule to the final rule can be referenced in the publication of the proposed rule, 80 FR 49946 (August 18, 2015) because there have been no significant changes from the proposed to the final version of this rule.

III. Comments Received on the Proposed Rule and Responses to Comments

The BIE received one written comment and five oral comments. The following summarizes the comments received and our responses.

A. Definitions (41.3)

One commenter stated a concern that limiting the calculation of ISC to only include students making satisfactory progress would lead to a decrease in funding that could be used to help the very students who need it. The final rule indicates satisfactory progress is defined by the Tribal college or university. Tribal colleges and universities have accreditation requirements set by a nationally recognized accrediting agency or association determined by the U.S. Secretary of Education. Therefore, each Tribal college or university sets the requirements to meet satisfactory progress towards a degree or certificate.

A commenter asked why the proposed rule failed to include a definition of ''unused portion of received funds''. The final rule details how the Tribal college or university reports how much funds remain unspent and how the BIE will reallocate the unspent funds, incorporating the definition. *See* 25 CFR 41.33.

B. Indian Student Count (41.5)

Three comments addressed how ISC is determined. The first comment noted there is a reduction in time for counting Full-Time Equivalents (FTEs) from the first six weeks to the first three weeks of the semester, and asked what implications this would have on Tribal colleges and universities that have an add/drop deadline after the first three-weeks. The final rule, implementing an explicit requirement at 25 U.S.C. 1801(b)(1), requires ISC to be calculated on the basis of Indian students who are registered at the conclusion of the third week.

The second comment noted there is inconsistency throughout the regulation with the use of the term ''students'' and requested clarification as to whether the student is Native or non-Native. The definition of ''Indian student'' includes a student who is a member of an Indian Tribe or a biological child of a living or deceased member of an Indian Tribe. *See* 25 U.S.C. 1801(a)(7); 25 CFR 41.3. The final rule replaces ''student'' with ''Indian student'' where applicable to clarify that the provisions address Indian students only. *See, e.g.,* 25 CFR 41.5.

The third comment asked about whether online students are included in the ISC calculation and whether those students must also be Indian students. The final rule includes distance learning students who otherwise meet the definition of ''Indian student'' in the ISC count. *See* 25 CFR 41.5. The final rule's definition of ''Indian student'' includes a student who is a member of an Indian Tribe or a biological child of a living or deceased member of an Indian Tribe; documentation is required to verify eligibility. *See* 25 U.S.C. 1801(a)(7); 25 CFR 41.3.

C. Role of the Secretary of Education (41.17)

A commenter asked what the role of the U.S. Secretary of Education is, and if there will be any consultations between the Secretary of Education, Director of the BIE, and Tribes that charter Tribal colleges and universities to discuss how they can expand their joint responsibilities. The final rule establishes the role of the Secretary of Education at § 41.17. The BIE follows the Department of the Interior Tribal Consultation Policy and consults with Tribes on policies that have a substantial direct effect on one or more Tribes.

IV. Procedural Requirements

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

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not have any effect on small entities because only Tribal colleges and universities are recipients of funding under the program governed by this rule. The Department provides funding to Tribal colleges and universities, which were created in response to the higher education needs of American Indians and generally serve geographically isolated populations that have no other means of accessing education beyond the high school level.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more

in any one year, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule is limited to addressing grants for Tribal colleges and universities that are below the stated threshold and funding for the operation and improvement of Tribal colleges and universities comes from the Federal Government budget.

D. Unfunded Mandates Reform Act

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

E. Takings (E.O. 12630)

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

F. Federalism (E.O.) 13132

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements statutory provisions that authorize grants for operating and improving Tribal colleges or universities to ensure continued and expanded educational opportunities for Indian students by providing financial assistance to be used for the operating expenses of education programs. Because the rule does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government, it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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

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

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

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will further implement the grants program for Tribal colleges and universities; accordingly, we have coordinated with representatives of federally recognized Tribes throughout the development of this rule. We collaborated with the American Indian Higher Education Consortium (AIHEC), which represents Tribal colleges and universities that will be affected by the rule. Presidents of Tribal colleges and universities provided the initial comments and drafted the Preliminary Discussion Draft. The BIE held five consultation sessions in 2014 (79 FR 54936, September 15, 2014) on the Preliminary Discussion Draft. The BIE received 35 comments and those that were significant were considered into the proposed rule. Following publication of the proposed rule, BIE hosted two Tribal consultation sessions with Indian Tribes. BIE has addressed the input received during those sessions in this final rule.

I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* prohibits a Federal agency from conducting or sponsoring a collection of information that requires Office of Management and Budget (OMB) approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. This rule contains information collection requirements that already have OMB approval and are not being revised. OMB has approved the information collections and assigned two control numbers: OMB Control Number 1076–0018, and OMB Control Number 1076–0105, each expiring on December 31, 2018, and each with an estimated annual burden of 308 hours.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. *See* 43 CFR 46.210(i). We have also determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

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

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

L. Drafting Information

The primary authors of this document are Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education, Dawn Baum, Office of the Solicitor—Division of Indian Affairs, and Regina Gilbert, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 41

Colleges or universities, Grants programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior amends title 25 of the Code of Federal Regulations to revise part 41 to read as follows:

PART 41—GRANTS TO TRIBAL COLLEGES AND UNIVERSITIES AND DINÉ COLLEGE

Subpart A—Applicability and Definitions

Sec.

Subpart B—Tribal Colleges and Universities

Authority: Public Law 95–471, Oct. 17, 1978, 92 Stat. 1325; amended Public Law 98–192, Dec. 1, 1983, 97 Stat. 1335; Public Law 99–428, Sept. 30, 1986, 100 Stat. 982; Public Law 105–244, Oct. 7, 1998, 112 Stat. 1619; Public Law 110–315, Aug. 14, 2008, 122 Stat. 3460; 25 U.S.C. 1801 *et seq.;* Public Law 98–192, Dec. 15, 1971, 85 Stat. 646; and Public Law 110–315, Aug. 14, 2008, 122 Stat. 3468; 25 U.S.C. 640a *et seq.*

Subpart A—Applicability and Definitions

§ 41.1 When does this subpart apply?

The provisions in this subpart A apply to subparts B and C.

§ 41.3 What definitions are needed?

As used in this part:

Academic facilities mean structures suitable for use as:

(1) Classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students;

(2) Research facilities;

(3) Facilities for administration of educational or research programs;

(4) Dormitories or student services buildings; or

(5) Maintenance, storage, support, or utility facilities essential to the operation of the foregoing facilities.

Academic term means a semester, trimester, or other such period (not less than six weeks in duration) into which a Tribal college or university normally subdivides its academic year, but does not include a summer term.

Academic year means a twelve month period established by a Tribal college or university as the annual period for the operation of the Tribal college's or university's education programs.

Assistant Secretary means the Assistant Secretary—Indian Affairs of the Department of the Interior.

BIE means the Bureau of Indian Education.

College or university means an institution of higher education that is formally controlled, formally sanctioned, or chartered by the governing body of an Indian Tribe or Tribes. To qualify under this definition, the college or university must:

(1) Be the only institution recognized by the Department for the Tribe, excluding Diné College; and

(2) If under the control, sanction, or charter of more than one Tribe, be the only institution recognized by the Department for at least one Tribe that currently has no other formally controlled, formally sanctioned, or chartered college or university.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Education.

Eligible continuing education units (CEUs) means non-degree credits that meet the criteria established by the International Association of Continuing Education and Training.

Full-time means registered for 12 or more credit hours for an academic term.

Indian Student Count (ISC) or Indian Full-Time Equivalent (FTE) means a number equal to the total number of Indian students enrolled at a Tribal college or university, determined according to the formula in § 41.5.

Indian student means a student who is a member of an Indian Tribe, or a biological child of a living or deceased member of an Indian Tribe. Documentation is required to verify eligibility as a biological child of a living or deceased member of an Indian Tribe, and may include birth certificate and marriage license; Tribal records of student's parent; Indian Health Service eligibility cards; other documentation necessary to authenticate a student as eligible to be counted as an *Indian student* under this definition.

Indian Tribe means an Indian Tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, to be listed in the **Federal Register** pursuant to 25 CFR 83.5(a) as recognized by and eligible to receive services from the Bureau of Indian Affairs.

Institution of higher education means an institution as defined by section 1001(a) of Title 20 of the United States Code, except that clause (2) of such section is not applicable and the reference to Secretary in clause (5)(A) of such section will be deemed to refer to the Secretary of the Interior.

National Indian organization means an organization which the Secretary finds to be nationally based, represents a substantial Indian constituency and has expertise in the fields of Tribal colleges and universities, and Indian higher education.

NCCA means the Navajo Community College Act of 1978, as amended (25 U.S.C. 640a *et seq.*).

Operating expenses of education programs means the obligations and expenditures of a Tribal college or university for postsecondary education, except for obligations and expenditures for acquisition or construction of academic facilities. Permissible expenditures may include:

(1) Administration;

(2) Instruction;

(3) Maintenance and repair of facilities; and

(4) Acquisition and upgrade of equipment, technological equipment, and other physical resources.

Part-time means registered for less than 12 credit hours for an academic term.

Satisfactory progress means satisfactory progress toward a degree or certificate as defined by the Tribal college or university.

Secretary, unless otherwise designated, means the Secretary of the Interior, or his/her duly authorized representative.

TCCUA means the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (25 U.S.C. 1801 *et seq.*).

You or *your* means the Tribal college or university.

§ 41.5 How is ISC/FTE calculated?

(a) ISC is calculated on the basis of eligible registrations of Indian students as of the conclusion of the third week of each academic term.

(b) To calculate ISC for an academic term, begin by adding all credit hours of full-time Indian students and all credit hours of part-time Indian students, including full-time and part-time distance education Indian students, who are registered at the conclusion of the third week of the academic term.

(c) Credit hours earned by Indian students who have not obtained a high school degree or its equivalent may be added if you have established criteria for the admission of such students on the basis of their ability to benefit from the education or training offered. You will be presumed to have established such criteria if your admission procedures include counseling or testing that measures students' aptitude to successfully complete the courses in which they enroll.

(d) No credit hours earned by an Indian student attending high school and applied towards the student's high school degree or its equivalent may be counted toward computation of ISC; and no credit hours earned by an Indian student not making satisfactory progress toward a degree or certificate may count toward the ISC.

(e) If ISC is being calculated for a fall term, add to the calculation in paragraph (b) of this section any credits earned in classes offered during the preceding summer term.

(f) Add to the calculation in paragraph (b) of this section those credits being earned in an eligible continuing education program at the conclusion of the third week of the academic term. Determine the number of those credits as follows:

(1) For institutions on a semester system: One credit for every 15 contact hours and

(2) For institutions on a quarter system: One credit for every 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as described in the criteria established by the International Association for Continuing Education and Training. Limit the number of calculated eligible continuing education credits to 10 percent of your ISC.

(g) Divide by 12 the final calculation in paragraph (f) of this section. The formula for the full calculation is expressed mathematically as:

$$ISC = (FTCR + PTCR + SCR + CECR)/12$$

(h) In the formula in paragraph (g) of this section, the abbreviations used have the following meanings:

(1) FTCR = the number of credit hours carried by full-time Indian students (students carrying 12 or more credit hours at the end of the third week of each academic term); and

(2) PTCR = the number of credit hours carried by part-time Indian students (students carrying fewer than 12 credit hours at the end of the third week of each academic term).

(3) SCR = in a fall term, the number of credit hours earned during the preceding summer term.

(4) CECR = the number of credit hours being earned in an eligible continuing education program at the conclusion of the third week of the academic term, in accordance with paragraph (f)(2) of this section.

§ 41.7 What happens if false information is submitted?

Persons submitting or causing to be submitted any false information in connection with any application, report, or other document under this part may be subject to criminal prosecution under provisions such as sections 371 or 1001 of Title 18, U.S. Code.

Subpart B—Tribal Colleges and Universities

§ 41.9 What is the purpose of this subpart?

This subpart prescribes procedures for providing financial and technical assistance under the TCCUA for the operation and improvement of Tribal colleges and universities and advancement of educational opportunities for Indian students. This subpart does not apply to Diné College.

§ 41.11 Who is eligible for financial assistance under this subpart?

(a) A Tribal college or university is eligible for financial assistance under this subpart only if it:

(1) Is governed by a board of directors or board of trustees, a majority of whom are Indians;

(2) Demonstrates adherence to stated goals, a philosophy, or a plan of operation directed to meet the needs of Indians;

(3) Has a student body that is more than 50 percent Indian (unless it has been in operation for less than one year);

(4) Is either:

(i) Accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority with regard to the quality of training offered; or

(ii) Is making reasonable progress toward accreditation according to such agency or association;

(5) Has received a positive determination after completion of an eligibility study; and

(6) Complies with the requirements of § 41.19.

(b) Priority in grants is given to institutions that were in operation on October 17, 1978, and that have a history of service to Indian people.

§ 41.13 For what activities can financial assistance to Tribal colleges and universities be used?

Tribal colleges and universities may use financial assistance under this subpart to defray expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college or university.

§ 41.15 What activities are prohibited?

Tribal colleges and universities must not use financial assistance awarded under this subpart in connection with religious worship or sectarian instruction. However, nothing in this subpart will be construed as barring instruction or practice in comparative religions or cultures or in languages of Indian Tribes.

§ 41.17 What is the role of the Secretary of Education?

(a) The Secretary may enter into an agreement with the Secretary of Education to obtain assistance to:

(1) Develop plans, procedures, and criteria for eligibility studies required under this subpart; and

(2) Conduct such studies.

(b) BIE must consult with the Secretary of Education to determine the reasonable number of students required to support a Tribal college or university.

§ 41.19 How can a Tribal college or university establish eligibility to receive a grant?

(a) Before a Tribal college or university can apply for an initial grant under this part, the governing body of one or more Indian Tribes must request a determination of eligibility on the college's or university's behalf.

(b) Within 30 days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, BIE will initiate an eligibility study to determine whether there is justification to encourage and maintain a Tribal college or university.

(c) The eligibility study will analyze the following factors:

(1) Financial feasibility based upon reasonable potential enrollment; considering:

(i) Tribal, linguistics, or cultural differences;

(ii) Isolation;

(iii) Presence of alternate educational sources;

(iv) Proposed curriculum;

(2) Levels of Tribal matriculation in and graduation from postsecondary educational institutions; and

(3) The benefits of continued and expanded educational opportunities for Indian students.

(d) Based upon results of the study, the Director will send the Tribe a written determination of eligibility.

(e) The Secretary and the BIE, to the extent practicable, will consult with national Indian organizations and with Tribal governments chartering the colleges or universities being considered.

§ 41.21 How can a Tribe appeal the results of an eligibility study?

If a Tribe receives a negative determination under § 41.19(d), it may submit an appeal to the Assistant Secretary within 45 days.

(a) Following the timely filing of a Tribe's notice of appeal, the Tribal college or university and the Tribe have a right to a formal review of the eligibility study, including a hearing upon reasonable notice within 60 days. At the hearing, the Tribal college or university and the appealing Tribe may present additional evidence or arguments to justify eligibility.

(b) Within 45 days of the hearing, the Assistant Secretary will issue a written ruling confirming, modifying, or reversing the original determination. The ruling will be final and BIE will mail or deliver it within one week of its issuance.

(c) If the Assistant Secretary does not reverse the original negative determination, the ruling will specify the grounds for the decision and state the manner in which the determination relates to each of the factors in § 41.11.

§ 41.23 Can a Tribal college or university request a second eligibility study?

If a Tribe is not successful in its appeal under § 41.21, it can request another eligibility study 12 months or more after the date of the negative determination.

§ 41.25 How does a Tribal college or university apply for a grant?

(a) If the Tribal college or university receives a positive determination of the eligibility study under § 41.19(d), it is entitled to apply for financial assistance under this subpart.

(b) To be considered for assistance, a Tribal college or university must submit an application by or before June 1st of the year preceding the academic year for which the Tribal college or university is requesting assistance. The application must contain the following:

Required information	Required details
(1) Identifying information	(i) Name and address of the Tribal college or university. (ii) Names of the governing board members, and the number of its members who are Indian. (iii) Name and address of the Tribe or Tribes that control or have sanctioned or chartered the Tribal college or university.
(2) Eligibility verification	The date on which an eligibility determination was received.
(3) Curriculum materials	(i) A statement of goals, philosophy, or plan of operation demonstrating how the education program is designed to meet the needs of Indians. (ii) A curriculum, which may be in the form of a college catalog or similar publication, or information located on the Tribal college or university Web site.
(4) Financial information	(i) A proposed budget showing total expected education program operating expenses and expected revenues from all sources for the academic year to which the information applies. (ii) A description of record-keeping procedures used to track fund expenditures and to audit and monitor funded programs.
(5) Enrollment information	(i) If the Tribal college or university has been in operation for more than one year, a statement of the total number of ISC (FTE Indian students) and the total number of all FTE students. Grantees may exclude high school students for the purpose of calculating the total number of FTE students. (ii) If the Tribal college or university has not yet begun operations, or has been in operation for less than one year, a statement of expected enrollment, including the total number of FTE students and the ISC (FTE Indian students) and may also require verification of the number of registered students after operations have started.
(6) Assurances and requests	(i) Assurance that the Tribal college or university will not deny admission to any Indian student because that student is, or is not, a member of a specific Tribe. (ii) Assurance that the Tribal college or university will comply with the requirements in § 41.39 of this subpart. (iii) A request and justification for a specific waiver of any requirement of 25 CFR part 276 which a Tribal college or university believe to be inappropriate.
(7) Certification	Certification by the chief executive that the information on the application is complete and correct.

(c) Material submitted in a Tribal college's or university's initial successful grant application will be retained by the BIE. A Tribal college or university submitting a subsequent application for a grant, must either confirm the information previously submitted remains accurate or submit updated information, as necessary.

§ 41.27 When can the Tribal college or university expect a decision on its application?

Within 45 days of receiving an application, the Director will notify the Tribal college or university in writing whether or not the application has been approved.

(a) If the Director approves the application, written notice will explain when the BIE will send the Tribal college or university a grant agreement under § 41.19.

(b) If the Director disapproves the application, written notice will include:

(1) The reasons for disapproval; and

(2) A statement advising the Tribal college or university of the right to amend or supplement the Tribal college's or university's application within 45 days.

(c) The Tribal college or university may appeal a disapproval or a failure to act within 45 days of receipt following the procedures in § 41.21.

§ 41.29 How will a grant be awarded?

If the Director approves the Tribal college's or university's application, the BIE will send the Tribal college or university a grant agreement that incorporates the Tribal college's or university's application and the

provisions required by § 41.25. The Tribal college or university grant will be for the fiscal year starting after the approval date of the application.

(a) The BIE will generally calculate the amount of the Tribal college or university grant using the following procedure:

(1) Begin with a base amount of $8,000 (adjusted annually for inflation);

(2) Multiply the base amount by the number of FTE Indian students in attendance during each academic term; and

(3) Divide the resulting sum by the number of academic terms in the academic year.

(b) All grants under this section are subject to availability of appropriations.

(c) If there are insufficient funds to pay the amount calculated under paragraph (a) of this section, BIE will reduce the grant amount awarded to each eligible Tribal college or university on a pro rata basis.

§ 41.31 When will the Tribal college or university receive funding?

(a) BIE will authorize payments equal to 95 percent of funds available for allotment by either July 1 or within 14 days after appropriations become available, with the remainder of the payment made no later than September 30.

(b) BIE will not commingle funds appropriated for grants under this subpart with other funds expended by the BIE.

§ 41.33 What if there isn't enough money to pay the full grant amount?

This section applies if BIE has to reduce payments under § 41.29(c).

(a) If additional funds have not been appropriated to pay the full amount of grants under this part on or before June 1st of the year, the BIE will notify all grant recipients in writing. The Tribal college or university must submit a written report to the BIE on or before July 1st explaining how much of the grant money remains unspent.

(b) After receiving the Tribal college's or university's report under paragraph (a) of this section, BIE will:

(1) Reallocate the unspent funds using the formula in § 41.29 in proportion to the amount of assistance to which each grant recipient is entitled but has not received;

(2) Ensure that no Tribal college or university will receive more than the total annual cost of its education programs;

(3) Collect unspent funds as necessary for redistribution to other grantees under this section; and

(4) Make reallocation payments on or before August 1st of the academic year.

§ 41.35 What will happen if the Tribal college or university doesn't receive its appropriate share?

(a) If the BIE determines the Tribal college or university has received financial assistance to which the Tribal college or university was not entitled, BIE will:

(1) Promptly notify the Tribal college or university; and

(2) Reduce the amount of the Tribal college's or university's payments under this subpart to compensate for any overpayments or otherwise attempt to recover the overpayments.

(b) If a Tribal college or university has received less financial assistance than the amount to which the Tribal college or university was entitled, the Tribal college or university should promptly notify the BIE. If the BIE confirms the miscalculation, BIE will adjust the amount of the Tribal college's or university's payments for the same or subsequent academic years to compensate for the underpayments. This adjustment will come from the Department's general funds and not from future appropriated funds.

§ 41.37 Is the Tribal college or university eligible for other grants?

Yes. Eligibility for grants under this subpart does not bar a Tribal college or university from receiving financial assistance under any other Federal program.

§ 41.39 What reports does the Tribal college or university need to provide?

(a) The Tribal college or university must provide the BIE, on or before December 1 of each year, a report that includes:

(1) An accounting of the amounts and purposes for which the Tribal college or university spent assistance received under this part during the preceding academic year;

(2) An accounting of the annual cost of the Tribal college's or university's education programs from all sources for the academic year; and

(3) A final performance report based upon the criteria the Tribal college's or university's goals, philosophy, or plan of operation.

(b) The Tribal college or university must report to the BIE their FTE Indian student enrollment for each academic term of the academic year within three (3) weeks of the date the Tribal college or university makes the FTE calculation.

§ 41.41 Can the Tribal college or university receive technical assistance?

(a) If a Tribal college or university sends the BIE a written request for technical assistance, BIE will respond within 30 days.

(b) The BIE will provide technical assistance either directly or through annual contract to a national Indian organization that the Tribal college or university designates.

(c) Technical assistance may include consulting services for developing programs, plans, and eligibility studies and accounting, and other services or technical advice.

§ 41.43 How must the Tribal college or university administer its grant?

In administering any grant provided under this subpart, a Tribal college or university must:

(a) Provide services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because they either are, or are not, a member of a specific Indian Tribe; and

(c) Comply with part 276 of this chapter, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to a Tribal college or university request and justification for a waiver.

§ 41.45 How does the Tribal college or university apply for programming grants?

(a) Tribes and Tribal entities may submit a written request to the BIE for a grant to conduct planning activities for the purpose of developing proposals for the establishment of Tribally controlled colleges and universities, or to determine the need and potential for the establishment of such colleges and universities. BIE will provide written notice to the Tribal college or university of its determination on the grant request within 30 days.

(b) Subject to the availability of appropriations, BIE may provide such grants to up to five Tribes and Tribal entities in the amount of $15,000 each.

§ 41.47 Are Tribal colleges or universities eligible for endowments?

Yes. Tribal colleges and universities are eligible for endowments under a signed agreement between the Tribal college and university and the Secretary as described in 25 U.S.C. 1832. Endowments must be invested in a trust fund and the Tribal college or university may only use the interest deposited for the purpose of defraying expenses associated with the operation of the Tribal college or university (25 U.S.C. 1833).

Subpart C—Diné College

§ 41.49 What is the purpose of this subpart?

The purpose of this subpart is to assist the Navajo Nation in providing

education to the members of the Tribe and other qualified applicants through a community college, established by that Tribe, known as Diné College. To that end, the regulations in this subpart prescribe procedures for providing financial and technical assistance for Diné College under the NCCA.

§ 41.51 What is the scope of this subpart?

The regulations in this subpart are applicable to the provision of financial assistance to Diné College pursuant to NCCA, title II of the TCCUA.

§ 41.53 How does Diné College request financial assistance?

To request financial assistance, Diné College must submit an application. The application must be certified by the Diné College chief executive officer and include:

(a) A statement of Indian student enrollment and total FTE enrollment for the preceding academic year;

(b) A curriculum description, which may be in the form of a college catalog or like publication or information located on the Diné College Web site; and

(c) A proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the grant year.

§ 41.55 How are grant funds processed?

(a) BIE will identify the budget request for Diné College separately in its annual budget justification.

(b) BIE will not commingle funds appropriated for grants under this subpart with appropriations that are historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

§ 41.57 When will the application be reviewed?

Within 45 days of receiving the application the BIE will send a grant agreement for signature by the Diné College president or his or her designee in an amount determined under § 41.29(a). The grant agreement will incorporate the grant application and include the provisions required by § 41.25.

§ 41.59 When will grant funds be paid?

(a) Initial grant funds will be paid in an advance installment of not less than 40 percent of the funds available for allotment by October 1st.

(b) The remainder of the grant funds will be paid by July 1st after the BIE adjusts the amount to reflect any overpayments or underpayments made in the first disbursement.

§ 41.61 Is Diné College eligible to receive other grants?

Yes. Eligibility for grants under this subpart does not bar Diné College from receiving financial assistance under any other Federal program.

§ 41.63 How can financial assistance be used?

(a) The Diné College must use financial assistance under this subpart only for operation and maintenance, including educations programs, annual capital expenditures, major capital improvements, mandatory payments, supplemental student services, and improvement and expansion, as described in 25 U.S.C. 640c–1(b)(1);

(b) The Diné College must not use financial assistance under this subpart for religious worship or sectarian instruction. However, this subpart does not prohibit instruction about religions, cultures or Indian Tribal languages.

§ 41.65 What reports must be provided?

(a) Diné College must submit on or before December 1st of each year a report that includes:

(1) An accounting of the amounts and purposes for which Diné College spent the financial assistance during the preceding academic year;

(2) The annual cost of Diné College education programs from all sources for the academic year; and

(3) A final report of Diné College's performance based upon the criteria in its stated goals, philosophy, or plan of operation.

(b) Diné College must report its FTE Indian student enrollment for each academic term within six weeks of the date it makes the FTE calculation.

§ 41.67 Can Diné College receive technical assistance?

Technical assistance will be provided to Diné College as noted in § 41.41.

§ 41.69 How must Diné College administer its grant?

In administering any grant provided under this subpart, Diné College must:

(a) Provide all services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because the student is, or is not, a member of a specific Indian Tribe; and

(c) Comply with part 276 of this chapter, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to Diné College's request and its justification for a waiver.

§ 41.71 Can Diné College appeal an adverse decision under a grant agreement by the Director?

Diné College has the right to appeal to the Assistant Secretary by filing a written notice of appeal within 45 days of the adverse decision. Within 45 days after receiving notice of appeal, the Assistant Secretary will conduct a formal hearing at which time the Diné College may present evidence and argument to support its appeal. Within 45 days of the hearing, the Assistant Secretary will issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director. If the ruling does not reverse the adverse decision, the Assistant Secretary will state in detail the basis of his/her ruling. The ruling of the Assistant Secretary on an appeal will be final for the Department.

Dated: May 26, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–14094 Filed 6–13–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 3, 100, and 165

[Docket Number USCG–2016–0060]

Renaming of Sector Baltimore as Sector Maryland-National Capital Region; Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Code of Federal Regulations (CFR) to reflect its renaming of Coast Guard Sector Baltimore as Coast Guard Sector Maryland-National Capital Region. These conforming amendments are necessary to ensure the CFR accurately reflects the new command name changes that were approved September 17, 2015. These amendments are not expected to have a substantive impact on the public.

DATES: This rule is effective June 14, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0060 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Dennis Sens, Fifth Coast Guard District, Prevention Division, telephone 757–398–6204, email *Dennis.M.Sens@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OFCO Operating Facility Change Order
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On September 17, 2015, the Coast Guard approved renaming Sector Baltimore as Sector Maryland-National Capital Region. The Coast Guard is renaming the Sector to more clearly identify the unit's missions and area of responsibility to the public.

We did not publish a notice of proposed rulemaking (NPRM) before this final rule. The Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553(a)(2) and (b)(A) because the changes it makes are conforming amendments involving agency management and organization. The Coast Guard also finds good cause exists under 5 U.S.C. 553(b)(B) for not publishing an NPRM because the changes will have no substantive effect on the public, and notice and comment are therefore unnecessary. For the same reasons, the Coast Guard finds good cause under 5 U.S.C. 553(d)(3) to make the rule effective fewer than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 93. The purpose of this rule is to more clearly identify the functions and area of responsibility of this Coast Guard unit to the public. The Sector's location and boundaries are described in 33 CFR 3.25–15. The previous organization of Sector Baltimore is described and reflected in regulations, which also contain contact details and other references to Sector Baltimore. These conforming amendments update those regulations so that they contain current information under unit name Sector Maryland-National Capital Region.

IV. Discussion of the Rule

This rule amends existing regulations in 33 CFR to reflect the renaming of Sector Baltimore as ''Sector Maryland-National Capital Region.'' It also removes a temporary section that mentions Sector Baltimore, § 165.T05–0767, which we intended to be a rule lasting 6 hours that was to expire in 2013 but which still appears in the CFR. There will be no relocation of units, operational assets or personnel due to the renaming of Sector Baltimore. Sector Maryland-National Capital Region will retain Captain of the Port, Federal Maritime Security Coordinator, Officer in Charge Marine Inspection, Federal on Scene Coordinator, and all other authorities, responsibilities and sub-units, as previously assigned to Sector Baltimore. Only the title of these officials will change to reflect the new name of the sector. See Operating Facility Change Order (OFCO) No. 007–16 which is available in the docket for this rule.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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 not been designated a ''significant regulatory action,'' under Executive order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. Because this rule involves internal agency organization and non-substantive changes, it will not impose any costs on the public.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general NPRM and therefore is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have considered its potential impact on small entities and found that it will not have a significant economic impact on a substantial number of small entities.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves internal administrative action involving the renaming a Coast Guard unit. It is categorically excluded from further review under paragraph 34(b) of Figure 2–1 of the Commandant Instruction.

List of Subjects

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 3, 100, and 165 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

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

Authority: 14 U.S.C. 92 & 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1, para. 2(23).

§ 3.25–15 [Amended]

■ 2. In § 3.25–15, in the section heading, remove the word ''Baltimore'' and add in its place the words ''Maryland-National Capital Region'' and in the text, remove the word ''Baltimore's'' in the first and second sentences and add in its place the words ''Sector Maryland-National Capital Region's''.

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

§ 100.501 [Amended]

■ 4. In § 100.501—

■ a. In paragraph (d)(2), remove the words ''Sector Baltimore'' and add, in their place, the words ''Sector Maryland-National Capital Region'' and remove the words ''Baltimore, Maryland'' and add, in their place, the words ''Maryland-National Capital Region''; and

■ b. In the Table to § 100.501, in heading (b.), remove the word ''Baltimore'' and add, in its place, the words ''Maryland-National Capital Region''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T05–0767 [Removed]

■ 6. Remove § 165.T05–0767.

§ 165.500 [Amended]

■ 7. In § 165.500—

■ a. In paragraph (b), remove the word ''Baltimore'' and add, in its place, the words ''Maryland-National Capital Region''; and

■ b. In paragraphs (c)(2), remove the words ''Baltimore, Maryland'', and add, in their place, the words ''Maryland-National Capital Region''.

§ 165.502 [Amended]

■ 8. In § 165.502, in paragraph (b)(1), remove the words ''Baltimore, Maryland'', and add, in their place, the words ''Maryland-National Capital Region''.

§ 165.505 [Amended]

■ 9. In § 165.505, in paragraph (b)(1), remove the words ''Baltimore, Maryland'', and add, in their place, the words ''Maryland-National Capital Region''.

§ 165.506 [Amended]

■ 10. In § 165.506—

■ a. In paragraph (c)(2), remove the words ''Sector Baltimore'' and add, in their place, the words ''Sector Maryland-National Capital Region'' and remove the words ''Baltimore, Maryland'' and add, in their place, the words ''Maryland-National Capital Region''; and

■ b. In the Table to § 165.506, in heading (b.), remove the word ''Baltimore'' and add, in its place, the words ''Maryland-National Capital Region''.

§ 165.507 [Amended]

■ 11. In § 165.507—

■ a. In paragraph (a) remove the words ''Baltimore, Maryland'' wherever they appear, and add, in their places the words ''Maryland-National Capital Region''; and

■ b. In paragraphs (c)(2) and (3), remove the words ''Baltimore, Maryland'' wherever they appear, and add, in their places the words ''Maryland-National Capital Region'' and in paragraph (c)(3) remove the words ''Baltimore to'' and add, in their place, the words ''Sector Maryland-National Capital Region''.

§ 165.508 [Amended]

■ 12. In § 165.508—

■ a. In paragraph (a) remove paragraph designation (1) and remove the words ''Baltimore, Maryland'' wherever they appear, and add, in their places the words ''Maryland-National Capital Region''; and

■ b. In paragraphs (c)(2) and (3), remove the words ''Baltimore, Maryland'' wherever they appear, and add, in their places the words ''Maryland-National Capital Region'' and in paragraph (c)(3) remove the words ''Baltimore to'' and add, in their place, the words ''Sector Maryland-National Capital Region''.

§ 165.509 [Amended]

■ 13. In § 165.509, in paragraphs (a) and (c)(2) and (3), remove the words ''Baltimore, Maryland'' wherever they appear, and add, in their places, the words ''Maryland-National Capital Region'', and in paragraph (c)(3) remove the words ''Baltimore to'' and add, in their place the words ''Sector Maryland-National Capital Region''.

§ 165.512 [Amended]

■ 14. In § 165.512—

■ a. In paragraph (a)(1), remove the words ''Baltimore, Maryland'' wherever they appear, and add, in their places, the words ''Maryland-National Capital Region''; and remove the words ''Sector Baltimore'' and add, in their place, the words ''Sector Maryland-National Capital Region''; and

■ b. In paragraphs (c)(2) and (3), remove the words ''Baltimore, Maryland'' wherever they appear, and add, in their places the words ''Maryland-National Capital Region''.

§ 165.513 [Amended]

■ 15. In § 165.513—
■ a. In paragraph (a) remove the words ''Port Baltimore'' wherever they appear, and add, in their places, the words ''Port, Maryland-National Capital Region'' and remove the words ''Baltimore, Maryland'' wherever they appear, and add, in their places the words ''Maryland-National Capital Region''; and
■ b. In paragraphs (c)(2)–(4), remove the words ''Port Baltimore'' wherever they appear, and add, in their places, the words ''Port, Maryland-National Capital Region''.

§ 165.518 [Amended]

■ 16. In § 165.518, in paragraph (c)(7) remove the word ''Baltimore'' and add, in its place, the words ''Maryland-National Capital Region'', and in paragraph (c)(3) remove the words ''Baltimore to'' and add, in their place, the words ''Sector Maryland-National Capital Region''.

Dated: June 8, 2016.

Katia Kroutil,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2016–13983 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0472]

Drawbridge Operation Regulation; Middle River, Between Bacon Island and Lower Jones Tract, California

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the San Joaquin County (Bacon Island Road) highway bridge across Middle River, mile 8.6, at between Bacon Island and Lower Jones Tract, California. The deviation is necessary to allow the bridge owner to make emergency mechanical and electrical repairs. This deviation allows the bridge to be secured in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective without actual notice from June 14, 2016 until 11:59 p.m. on July 1, 2016. For the purposes of enforcement, actual notice will be used from June 8, 2016, until June 14, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0472], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.*

SUPPLEMENTARY INFORMATION: San Joaquin County Department of Public Works has requested a temporary change to the operation of the San Joaquin County (Bacon Island Road) highway drawbridge, mile 8.6, over Middle River, between Bacon Island and Lower Jones Tract, California. The drawbridge navigation span provides approximately 8 feet vertical clearance above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.171(a). Navigation on the waterway is commercial and recreational.

The drawspan operating machinery failed unexpectedly on May 28, 2016 and the drawspan will remain secured in the closed-to-navigation position until 11:59 p.m. on July 1, 2016, to allow the bridge owner to make emergency repairs. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies. Old River can be used as an alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard has also informed waterway users through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: June 8, 2016.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2016–13987 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–1029]

RIN 1625–AA00

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its safety zones relating to recurring fireworks shows and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This rule informs the public of regularly scheduled events that require additional safety measures through the establishing of a safety zone. Through this rulemaking the current list of recurring safety zones is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these safety zones are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective June 14, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–1029 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *James.C.Robinson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Captain of the Port (COTP) Ohio Valley is establishing, amending, and updating its current list of recurring safety zones codified in Table 1 of 33 CFR 165.801, for the COTP Ohio Valley zone.

On March 7, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Sector Ohio Valley Annual and Recurring Safety Zones Update'' (81 FR 11706). The public comment period ended on June 6, 2016. Before the comment period closed, the Coast Guard received information regarding two of the events. For the event listed in Table 1, Line 21, the event sponsor provided a new location and for the event listed in Table 1, Line 56, the event sponsor requested that for 2016 the event be held on July 1 instead of July 4. See Section IV. for more information on these two events.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Though we are not providing a full 30 day notice period, the Coast Guard is now providing less than 30 days notice before the first recurring event enforcement is required on July 2. It is impracticable to provide a full 30-days notice because this rule must be effective July 2, 2016.

III. Legal Authority and Need for Rule

The Coast Guard's authority for establishing a safety zone is contained at 33 U.S.C. 1231. The Coast Guard is amending and updating the safety zones under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include fireworks displays, air shows, and others. The current list in Table 1 of 33 CFR 165.801 requires amending to provide new information on existing safety zones, include new safety zones expected to recur annually or biannually, and to remove safety zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring safety zones.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received information correcting the location for one recurring event and a date change for another from the event sponsors during the NPRM comment period. Therefore for 2016, we will be issuing a temporary final rule under Docket number 2016–0502 to establish a safety zone for the Riverfront Independence Festival Fireworks event, listed in Table 1, Line 21. The temporary final rule will be issued because for 2016, the event sponsor requested to change the location of the event from Ohio River, Mile 602.0–603.5 (Indiana) to Ohio River, Mile 607.5–608.6 (Indiana). If the event sponsor decides to continue to hold the event annually at the new location, the Coast Guard will publish an NPRM in the **Federal Register** to permanently change the event location.

In addition for 2016, we will be issuing a temporary final rule under Docket number 2016–0279 to establish a safety zone for the Kindred Communications/Dawg Dazzle event, listed in Table 1, Line 56. The temporary final rule will reflect that for 2016 the event will be held on July 1 instead of July 4, which is the date listed in this final rule. If the event sponsor decides to continue to hold the event annually on July 1, the Coast Guard will publish an NPRM in the **Federal Register** to permanently change the event date.

All other proposed amendments will be adopted without change from the NPRM.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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. 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 not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This rule establishes safety zones limiting access to certain areas under 33 CFR 165 within Sector Ohio Valley's AOR. The effect of this rulemaking will not be significant because these safety zones are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and thus will be able to plan around the safety zones in advance. Deviation from the safety zones established through this proposed rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these safety zones so that they may plan accordingly for these short restrictions on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the safety zone areas during periods of enforcement. The safety zones will not have a significant economic impact on a substantial number of small entities because they are limited in scope and will be in effect for short periods of time. Before the enforcement period, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the safety zones established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34(g)) of the Instruction because it involves establishment of safety zones.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.801 by revising table 1 to read as follows:

§ 165.801 Annual Fireworks displays and other events in Sector Ohio Valley's AOR.

* * * * *

Date	Sponsor/name	Location	Safety zone
1. Multiple days—April through November.	Pittsburgh Pirates/Pittsburgh Pirates Fireworks.	Pittsburgh, PA	Allegheny River, Mile 0.2–0.8 (Pennsylvania).
2. Multiple days—April through November.	Cincinnati Reds/Cincinnati Reds Season Fireworks.	Cincinnati, OH	Ohio River, Mile 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
3. 2 days—Third Friday and Saturday in April.	Thunder Over Louisville/Thunder Over Louisville.	Louisville, KY	Ohio River, Mile 602.0–606.0 (Kentucky).
4. Last Sunday in May	Friends of Ironton	Ironton, OH	Ohio River, Mile 326.7–327.7 (Ohio).
5. 3 days—Third weekend in April	Henderson Tri-Fest/Henderson Breakfast Lions Club.	Henderson, KY	Ohio River, Mile 803.5–804.5 (Kentucky).
6. 1 day—A Saturday in July	Paducah Parks and Recreation Department/Cross River Swim.	Paducah, KY	Ohio River, Mile 934.0–936.0 (Kentucky).
7. 1 day—First weekend in June	Bellaire All-American Days	Bellaire, OH	Ohio River, Mile 93.5–94.5 (Ohio).
8. 2 days—Second weekend of June	Rice's Landing Riverfest	Rices Landing, PA	Monongahela River, Mile 68.0–68.8 (Pennsylvania).
9. 1 day—First Sunday in June	West Virginia Symphony Orchestra/Symphony Sunday.	Charleston, WV	Kanawha River, Mile 59.5–60.5 (West Virginia).
10. 1 day—Saturday before 4th of July	Riverfest Inc./Saint Albans Riverfest	St. Albans, WV	Kanawha River, Mile 46.3–47.3 (West Virginia).
11. 1 day—4th July	Greenup City	Greenup, KY	Ohio River, Mile 335.2–336.2 (Kentucky).
12. 1 day—4th July	Middleport Community Association	Middleport, OH	Ohio River, Mile 251.5–252.5 (Ohio).
13. 1 day—4th July	People for the Point Party in the Park	South Point, OH	Ohio River, Mile 317–318 (Ohio).

Date	Sponsor/name	Location	Safety zone
14. 1 day—Last weekend in June or first weekend in July.	Riverview Park Independence Festival	Louisville, KY	Ohio River, Mile 618.5–619.5 (Kentucky).
15. 1 day—Third or fourth week in July.	Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks.	Wheeling, WV	Ohio River, Mile 90.0–90.5 (West Virginia).
16. 1 day—4th or 5th of July	City of Cape Girardeau July 4th Fireworks Show on the River.	Cape Girardeau, MO	Upper Mississippi River, Mile 50.0–52.0.
17. 1 day—Third or fourth of July	Harrah's Casino/Metropolis Fireworks	Metropolis, IL	Ohio River, Mile 942.0–945.0 (Illinois).
18. 1 day—During the first week of July.	Louisville Bats Baseball Club/Louisville Bats Firework Show.	Louisville, KY	Ohio River, Mile 603.0–604.0 (Kentucky).
19. 1 day—July 4th	Waterfront Independence Festival/Louisville Orchestra Waterfront 4th.	Louisville, KY	Ohio River, Mile 603.0–604.0 (Kentucky).
20. 1 day—During the first week of July.	Celebration of the American Spirit Fireworks/All American 4th of July.	Owensboro, KY	Ohio River, Mile 755.0–759.0 (Kentucky).
21. 1 day—During the first week of July.	Riverfront Independence Festival Fireworks.	New Albany, IN	Ohio River, Mile 602.0–603.5 (Indiana).
22. 1 day—July 4th	Shoals Radio Group/Spirit of Freedom Fireworks.	Florence, AL	Tennessee River, Mile 255.0–257.0 (Alabama).
23. 1 day—Saturday before July 4th	Town of Cumberland City/Lighting up the Cumberlands Fireworks.	Cumberland City, TN	Cumberland River, Mile 103.0–105.0 (Tennessee).
24. 1 day—July 4th	Knoxville office of Special Events/Knoxville July 4th Fireworks.	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).
25. 1 day—July 4th	NCVC/Music City July 4th	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
26. 1 day—Saturday before July 4th, or Saturday after July 4th.	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Mile 450.0–450.5 (Tennessee).
27. 1 day—Second Saturday in July	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Mile 468.2–469.2 (Kentucky and Ohio).
28. 1 day—Sunday before Labor Day	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 469.2–470.5 (Kentucky and Ohio).
29. 1 day—July 4th	Summer Motions Inc./Summer Motion	Ashland, KY	Ohio River, Mile 322.1–323.1 (Kentucky).
30. 1 day—Last weekend in June or First weekend in July.	City of Point Pleasant/Point Pleasant Sternwheel Fireworks.	Point Pleasant, WV	Ohio River, Mile 265.2–266.2 (West Virginia).
31. 1 day—July 3rd or 4th	City of Charleston/City of Charleston Independence Day Celebration.	Charleston, WV	Kanawha River, Mile 58.1–59.1 (West Virginia).
32. 1 day—July 4th	Civic Forum/Civic Forum 4th of July Celebration.	Portsmouth, OH	Ohio River, Mile 355.5–356.5 (Ohio).
33. 1 day—Second Saturday in August.	Guyasuta Days Festival/Borough of Sharpsburg.	Pittsburgh, PA	Allegheny River, Mile 005.5–006.0 (Pennsylvania).
34. 1 day—Third week in October	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5 (Pennsylvania).
35. 1 day—Second full week of August.	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Mile 0.8–1.0 (Pennsylvania).
36. 1 day—Third week of August	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Mile 25.2–25.8 (Pennsylvania).
37. 1 day—December 31	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh.	Pittsburgh, PA	Allegheny River Mile, 0.5–1.0 (Pennsylvania).
38. 1 day—Friday before Thanksgiving	Pittsburgh Downtown Partnership/Light Up Night.	Pittsburgh, PA	Allegheny River, Mile 0.0–1.0 (Pennsylvania).
39. Multiple days—April through November.	Pittsburgh Riverhounds/Riverhounds Fireworks.	Pittsburgh, PA	Monongahela River, Mile 0.22–0.77 (Pennsylvania).
40. 3 days—Second or third weekend in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN	Ohio River, Miles 791.0–795.0 (Indiana).
41. 1 day—Second or third Saturday in June, the last day of the Riverbend Festival.	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN	Tennessee River, Mile 463.5–464.5 (Tennessee).
42. 2 days—Second Friday and Saturday in June.	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 469.6–470.0 (Kentucky and Ohio).
43. 1 day—Last Saturday in June	City of Aurora/Aurora Firecracker Festival.	Aurora, IN	Ohio River Mile, 496.7; 1400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
44. 1 day—second weekend in June	City of St. Albans/St. Albans Town Fair.	St. Albans, WV	Kanawha River, Mile 46.3–47.3 (West Virginia).
45. 1 day—Saturday before July 4th	PUSH Beaver County/Beaver County Boom.	Beaver, PA	Ohio River, Mile 24.0–25.6 (Pennsylvania).
46. 1 day—4th of July (Rain date—July 5th).	Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration.	Monongahela, PA	Monongahela River, Mile 032.0–033.0 (Pennsylvania).
47. 1 day—Saturday Third or Fourth full week of July (Rain date—following Sunday).	Oakmont Yacht Club/Oakmont Yacht Club Fireworks.	Oakmont, PA	Allegheny River, Mile 12.0–12.5 (Pennsylvania).

Date	Sponsor/name	Location	Safety zone
48. 1 day—Week of July 4th	Three Rivers Regatta Fireworks/EQT 4th of July Celebration.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
49. 1 day—3rd or 4th of July	City of Paducah, KY	Paducah, KY	Ohio River, Mile 934.0–936.0; Tennessee River, mile 0.0–1.0 (Kentucky).
50. 1 day—3rd or 4th of July	City of Hickman, KY	Hickman, KY	Lower Mississippi River, Mile 921.0–923.0 (Kentucky).
51. 1 day—During the first week of July.	Evansville Freedom Celebration	Evansville, IN	Ohio River, Miles 791.0–795.0 (Indiana).
52. 3 days—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta.	Madison, IN	Ohio River, Miles 555.0–560.0 (Indiana).
53. 1 day—July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks.	Newport, KY	Ohio River, Miles 469.6–470.2 (Kentucky and Ohio).
54. 2 days—second weekend in July	Marietta Riverfront Roar/Marietta Riverfront Roar.	Marietta, OH	Ohio River, Mile 171.6–172.6 (Ohio).
55. 1 day—1st weekend in July	Gallia County Chamber of Commerce/Gallipolis River Recreation Festival.	Gallipolis, OH	Ohio River, Mile 269.5–270.5 (Ohio).
56. 1 day—July 4th	Kindred Communications/Dawg Dazzle.	Huntington, WV	Ohio River, Mile 307.8–308.8 (West Virginia).
57. 1 day—Last weekend in August	Swiss Wine Festival/Swiss Wine Festival Fireworks Show.	Ghent, KY	Ohio River, Mile 537 (Kentucky).
58. 1 day—Saturday of Labor Day weekend.	University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks.	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25 (Pennsylvania).
59. Sunday, Monday, or Thursday from September through January.	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Ohio River, Mile 0.3–Allegheny River, Mile 0.2 (Pennsylvania).
60. 3 days—Third weekend in September.	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV	Ohio River, Mile 90.2–90.7 (West Virginia).
61. 1 day—Second Saturday in September.	Ohio River Sternwheel Festival Committee fireworks.	Marietta, OH	Ohio River, Mile 171.5–172.5 (Ohio).
62. 1 day—Second weekend of October.	Leukemia and Lymphoma Society/Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
63. 1 day—First Saturday in October	West Virginia Motor Car Festival	Charleston, WV	Kanawha River, Mile 58–59 (West Virginia).
64. 1 day—Friday before Thanksgiving	Kittanning Light Up Night Firework Display.	Kittanning, PA	Allegheny River, Mile 44.5–45.5 (Pennsylvania).
65. 1 day—First week in October	Leukemia & Lymphoma Society/Light the Night.	Pittsburgh, PA	Ohio River, Mile 0.0–0.4 (Pennsylvania).
66. 1 day—Friday before Thanksgiving	Duquesne Light/Santa Spectacular	Pittsburgh, PA	Monongahela River, Mile 0.00–0.22, Allegheny River, Mile 0.00–0.25, and Ohio River, Mile 0.0–0.3 (Pennsylvania).

* * * * *

Dated: June 9, 2016.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–14030 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0389]

RIN 1625–AA00

Safety Zone; Ohio River Mile 43.2 to Mile 43.6, East Liverpool, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Ohio River from mile 43.2 to mile 43.6. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Pittsburgh.

DATES: This rule is effective on July 2, 2016, from 9 p.m. until 10:30 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0389 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5

U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard received notice on April 26, 2016 that this fireworks display would take place. After receiving and fully reviewing the event information, circumstances, and exact location, the Coast Guard determined that a safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display on the navigable waterway. It would be impracticable to complete the full NPRM process for this safety zone because it needs to be established by July 2, 2016. The fireworks display has been advertised and the local community has prepared for the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For these same reasons, the Coast Guard finds good cause for implementing this rule less than thirty days before the effective date of the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that a safety zone is needed on July 2, 2016. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone on July 2, 2016 from 10:00 p.m. until 11:30 p.m. The safety zone will cover all navigable waters on the Ohio River from mile 43.2 to mile 43.6. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based firework display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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. 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 not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a small portion of the waterway and for a limited duration of less than two hours. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than two hours that will prohibit entry on the Ohio River between mile 43.2 and mile 43.6, during the barge-based firework event. It is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0389 to read as follows:

§ 165.T08–0389 Safety Zone, Ohio River, East Liverpool, OH.

(a) *Location.* The following area is a safety zone: Ohio River mile 43.2 to mile 43.6.

(b) *Enforcement.* This rule will be enforced, from 10:00 p.m. until 11:30 p.m. on July 2, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh or a designated representative. The Captain of the Pittsburgh representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) *Information broadcasts.* The Captain of the Port Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: May 27, 2016.

L. McClain, Jr.,

Commander, U.S. Coast Guard, Acting Captain of the Port Pittsburgh.

[FR Doc. 2016–14027 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0235; FRL–9946–75]

Chlorantraniliprole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of chlorantraniliprole in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested the tolerances associated with pesticide petition number (PP) 5E8371, under the Federal Food, Drug, and Cosmetic Act (FFDCA). Additionally, the Agency is amending the existing tolerance for egg that was inadvertently omitted in a previous action.

DATES: This regulation is effective June 14, 2016. Objections and requests for hearings must be received on or before August 15, 2016, 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–2013–0235, 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: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through

the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0235 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 August 15, 2016. 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–2013–0235, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 26, 2015 (80 FR 51759) (FRL–9931–74), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP) 5E8371 by Interregional Research Project Number 4 (IR–4), 500 College Road East, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on nut, tree, group 14–12 at 0.02 parts per million (ppm); and fruit, stone, group 12–12 at 2.5 ppm. This petition additionally requested that 40 CFR 180.628 be amended by revising the existing tolerance in or on artichoke, globe from 4.0 ppm to 2.0 ppm; and hop, dried cones from 90 ppm to 40 ppm. Upon establishment of the tolerances associated with (PP) 5E8371, IR–4 requests to remove the following existing tolerances in 40 CFR 180.628: Nut, tree, group 14 at 0.04 ppm; pistachio at 0.04 ppm; fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum at 4.0 ppm; cherry, sweet at 2.0 ppm; cherry, tart at 2.0 ppm; plum, chickasaw at 2.0 ppm; and plum, damson at 2.0 ppm. That document referenced a summary of the petition prepared on behalf of IR–4 by DuPont Crop Protection, the registrant, which is available in the docket EPA–HQ–OPP–2013–0235 at *http://www.regulations.gov.*

There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for chlorantraniliprole, consistent with FFDCA section 408(b)(2).

In the **Federal Register** of February 7, 2014 (79 FR 7397) (FRL–9905–56), EPA established tolerances for residues of chlorantraniliprole in or on fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum at 4.0 ppm; onion, green subgroup 3–07B at 3.0 ppm; peanut, hay at 90 ppm; and peanut at 0.06 ppm. EPA is relying upon those risk assessments and the findings made in the February 7, 2014 **Federal Register** document in support of this action. The toxicity profile of chlorantraniliprole has not changed. Moreover, because EPA is simply lowering the previously assessed tolerance levels (where the EPA assumed tolerance-level residues for all crops and including the tree nut group 14–12 at 0.02 ppm), the previous dietary estimates also do not change as a result of this action. Therefore, the previously published risk assessments that supported the establishment of those tolerances remain valid.

The petitioner requested to lower currently established tolerances for residues of chlorantraniliprole in/on hops dried cones from 90 ppm to 40 ppm and globe artichoke from 4.0 ppm to 2.0 ppm in order to harmonize with the Codex maximum residue limits (MRLs). Crop field trial studies were submitted for hops and globe artichoke that indicate lowering these tolerances are appropriate and will support the existing U.S. registrations. The petitioner also requested to lower the existing tolerance of 4.0 ppm for stone fruit group 12–12, except cherry, chickasaw plum, and damson plum and remove the cherry, sweet; cherry, tart; plum, chickasaw; and plum, damson tolerances established at 2.0 ppm and establish a tolerance for stone fruit crop group 12–12 at 2.5 ppm to align with the Canadian MRL. EPA has determined that the existing residue chemistry data support this new tolerance level, which is lower than the current tolerances for some commodities and higher for others. Further, the petitioner requested to convert the tree nut crop group 14 to tree nut crop group 14–12 and to remove the tolerance for pistachio to lower the tolerance for the group (and for the now-included pistachio commodity) from 0.40 ppm to 0.02 ppm to harmonize the U.S. tolerance with the Codex and Canadian MRLs. EPA has determined that the existing residue chemistry data support the request for crop group conversion and for lowering the tolerance level.

Furthermore, EPA issued a final rule in the **Federal Register** of September 18, 2013, concerning the addition of certain commodities to the 40 CFR 180.628. The EPA determined that the tolerance level for egg should be increased from 0.2 ppm to 1.0 ppm, and EPA assessed egg using the tolerance of 1.0 ppm in 2013 as well as in February 2014. This was inadvertently omitted from the table in the 2013 Final Rule. Therefore, this document corrects that omission.

Therefore, EPA relies upon the findings made in the February 7, 2014, **Federal Register** document, as well as the review of the additional globe artichoke and dried cones hop field trial data and existing residue chemistry data in support of this rule. EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to chlorantraniliprole residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for these tolerances, please refer to the February 7, 2014, **Federal Register** document and its supporting documents, available at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2013–0235. Further information about EPA's determination that an updated risk assessment was not necessary may be found in the document, ''Chlorantraniliprole (DPX–E2Y45): Petition for Updating Crop Group Tolerances for Nut Tree Group 14–12 and Fruit Stone Group 12–12, and Amending Established Tolerances for Chlorantraniliprole in/on Artichoke Globe and Hop Dried Cones.'' in docket ID number EPA–HQ–OPP–2013–0235.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, liquid chromatography mass spectrometry/mass spectrometry (LC/MS/MS); Method uPont-11374, is available to enforce the tolerance expression.

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

B. International Residue Limits

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

Based on the data supporting the petition, EPA has harmonized chlorantraniliprole tolerances in or on artichoke, globe at 2.0 ppm; hop, dried cones at 40 ppm; and nut, tree, group 14–12 at 0.02 ppm with established Codex MRLs.

C. International Trade Considerations

In this rulemaking, EPA is reducing the tolerances for hops, dried cones from 90 ppm to 40 ppm; globe artichoke from 4.0 ppm to 2.0 ppm; lowering the existing tolerance of 4.0 ppm for stone fruit group 12–12, except cherry, chickasaw plum, and damson plum and establishing a lower tolerance for stone fruit crop group 12–12 at 2.5 ppm; and converting and lowering the tree nut crop group 14 and pistachio tolerances to tree nut crop group 14–12 at 0.40 ppm to 0.02 ppm. The petitioner requested these reductions in order to harmonize with Codex and Canadian MRLs. The reduction is appropriate based on available data and residue levels resulting from registered use patterns.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures Agreement, EPA notified the WTO of the request to revise these tolerances on September 14, 2015 as WTO notification G/SPS/N/USA/2778. In this action, EPA is allowing the existing higher tolerances to remain in effect for 6 months following the publication of this rule in order to allow a reasonable interval for producers in the exporting countries to adapt to the requirements of these modified tolerances. On December 14, 2016, those existing higher tolerances will expire, and the new reduced tolerances for artichoke, globe; fruit, stone, group 12–12; hop, dried cones; and nut, tree, group 14–12 will remain to cover residues of chlorantraniliprole on those commodities. Before that date, residues of chlorantraniliprole on those commodities would be permitted up to the higher tolerance levels; after that date, residues of chlorantraniliprole on artichoke, globe; the commodities contained in stone fruit group 12–12 and tree nut group 14–12; and hop, dried cones will need to comply with the new lower tolerance levels. This reduction in tolerance is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods.

V. Conclusion

Therefore, tolerances are established for residues of chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on in or on artichoke, globe at 2.0 ppm; fruit, stone, group 12–12 at 2.5 ppm; hop, dried cones at 40 ppm; and nut, tree, group 14–12 at 0.02 ppm. Upon establishment of the aforementioned tolerances, the Agency is removing the tolerances for cherry, sweet at 2.0 ppm; cherry, tart at 2.0 ppm; plum, chickasaw at 2.0 ppm; and plum, damson at 2.0 ppm as they are subsumed within the newly established group 12–12 tolerances. The Agency is adding an expiration date of December 14, 2016 to the existing tolerances for artichoke, globe at 4.0 ppm; nut, tree, group 14 at 0.04 ppm; pistachio at 0.04 ppm; fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum at 4.0 ppm; and hop, dried cones at 90 ppm. Residues of chlorantraniliprole will be covered by these higher tolerances until the expiration date, after which time, they will need to comply with the lower tolerances being established today. Finally, the Agency is amending the existing tolerance for egg (increasing the tolerance level from 0.2 ppm to 1.0 ppm) to finalize its efforts to establish that tolerance in the **Federal Register** of September 18, 2013.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of

Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 31, 2016.

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 § 180.628, in the table in paragraph (a):

■ a. Remove the entries for ''Cherry, sweet,'' ''Cherry, tart,'' ''Plum, chickasaw,'' and ''Plum, damson;''

■ b. Revise the entry for ''Egg;''

■ c. Amend the existing entries by adding a footnote for ''Artichoke, globe,'' ''Fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum,'' ''Hop, dried cones,'' ''Nut, tree, group 14,'' and ''Pistachio;'' and

■ d. Add alphabetically the entries for ''Artichoke, globe,'' ''Fruit, stone, group 12–12,'' ''Hop, dried cones,'' and ''Nut, tree, group 14–12.''

The additions and revisions read as follows:

§ 180.628 Chlorantraniliprole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Artichoke, globe [1]	4.0
Artichoke, globe	2.0
* * * * *	
Egg	1.0
* * * * *	
Fruit, stone, group 12–12	2.5
Fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum [1]	4.0
* * * * *	
Hop, dried cones [1]	90
Hop, dried cones	40
* * * * *	
Nut, tree, group 14 [1]	0.04
Nut, tree, group 14–12	0.02
* * * * *	
Pistachio [1]	0.04
* * * * *	

[1] This tolerance expires on December 14, 2016.

* * * * *

[FR Doc. 2016–13910 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0749; FRL–9942–23]

Clofentezine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: This regulation is effective June 14, 2016. Objections and requests for hearings must be received on or before August 15, 2016, 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–2014–0749, 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: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0749 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 August 15, 2016. 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–2014–0749, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 11, 2015 (80 FR 7559) (FRL–9921–94), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E8312) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.446 be amended by establishing tolerances for residues of the acaricide clofentezine in or on avocado at 0.3 parts per million (ppm); papaya at 0.3 ppm; fruit, pome, group 11–10 at 0.5 ppm; cherry, subgroup 12–12A at 1.0 ppm; peach, subgroup 12–12B at 1.0 ppm; and fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.0 ppm. Upon the approval of the aforementioned tolerances, IR–4 proposed that the existing tolerances for apple at 0.5 ppm; pear at 0.5 ppm; cherry at 1.0 ppm; nectarine at 1.0 ppm; peach at 1.0 ppm; and grape at 1.0 ppm be removed as unnecessary. That document referenced a summary of the petition prepared by Makhteshim Agan of North America, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received in response to the notice of filing, however it related to a different chemical.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for clofentezine including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with clofentezine follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Subchronic and chronic studies indicate the liver is the primary target organ for clofentezine with secondary effects on the thyroid. Body weight and body weight gain were decreased whereas liver weights were increased and hepatocellular enlargement was reported along with other observations (increases in plasma cholesterol and triglyceride levels). The induction of the liver enzyme, uridine diphosphate glucuronyltransferase (UDPGT) and the subsequent increase in the metabolism and the excretion of the thyroid

hormone T4 reduced the availability of T4 required for the general metabolism and the maintenance of homeostasis. The decreased levels of plasma T4 resulted in the stimulation of the thyroid by the pituitary gland to raise the plasma T4 levels. Thyroid changes in the form of colloid depletion, thyroid follicular cell hypertrophy and hyperplasia were observed as a means to regain the homeostasis.

Two pre-natal developmental toxicity studies are available, one in the rat and one in the rabbit. No evidence (quantitative or qualitative) of increased susceptibility was seen in either study (developmental NOAELs were set at or above the limit dose for both studies). There was no evidence (quantitative or qualitative) of increased susceptibility seen following pre-and/or post-natal exposure in rats for 2-generations in the reproduction study (NOAEL set at the highest dose tested).

Clofentezine does cause thyroid tumors in male rats after long-term high exposure resulting in progressive effects on the thyroid that leads to hyperplasia and eventual tumor formation. No mechanism or mode of action has been submitted to the Agency at this time for clofentezine. As a result, clofentezine has been classified as a possible human carcinogen based on male rat thyroid follicular cell adenoma and/or carcinoma combined tumor rates. The Q_1* value for use in clofentezine risk assessment using the ¾ inter species scaling factor is 3.76×10^{-2} (mg/kg/day)$^{-1}$. Clofentezine is not considered to be a mutagen.

Specific information on the studies received and the nature of the adverse effects caused by clofentezine as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Clofentezine.'' Human-Health Risk Assessment to Support a Section 3 Registration Request to Add New Uses on Avocado and Papaya, and New Uses for Pome Fruit Group 11–10, Cherry sub-group 12–12A, Peach sub-group 12–12B, and Small Fruit Vine Climbing except Fuzzy Kiwifruit Subgroup 13–07F based on Existing Tolerances on Representative Commodities'' on page 38 in docket ID number EPA–HQ–OPP–2014–0749.

B. Toxicological Points of Departure/Levels of Concern

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

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

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	No appropriate endpoint was identified including developmental toxicity studies in rats and rabbits.		
Chronic dietary (All populations)	NOAEL= 1.25 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.013 mg/kg/day. cPAD = 0.013 mg/kg/day	1-year chronic dog study—LOAEL = 25 mg/kg based on increased liver weights, hepatocellular enlargement, and increased serum cholesterol, triglycerides and alkaline phosphatase levels.
Cancer (Oral, dermal, inhalation).	Classification: Possible human carcinogen (classification of C), Q* using the ¾ interspecies scaling factor is 3.76×10^{-2} (mg/kg/day)$^{-1}$.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clofentezine, EPA considered exposure under the petitioned-for tolerances as well as all existing clofentezine tolerances in 40 CFR 180.446. EPA assessed dietary exposures from clofentezine in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for clofentezine; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, a partially refined chronic dietary exposure and risk assessment was performed that directly

incorporated average field trial residues and used percent crop treated information.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier non cancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that clofentezine should be classified as possible human carcinogen and a linear approach has been used to quantify cancer risk. Cancer risk was quantified using the same estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Average percent crop treated estimates were used in the chronic and cancer dietary risk assessments for the following crops that are currently registered for clofentezine: Almonds: 5%; apples: 2.5%; apricots: 2.5%; cherries: 5%; grapes: 1%; nectarines: 5%; peaches: 5%; pears: 5%; and walnuts: 5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which clofentezine may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for clofentezine in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of clofentezine. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of clofentezine for chronic exposures for non-cancer and cancer assessments are estimated to be 0.062 parts per billion (ppb) for surface water and 0.041 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic and cancer dietary risk assessment, the water concentration of value 0.062 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

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

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found clofentezine to share a common mechanism of toxicity with any other substances, and clofentezine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that clofentezine does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate

the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Two pre-natal developmental toxicity studies were available, one in the rat and one in the rabbit. No evidence (quantitative or qualitative) of increased susceptibility was seen in either study (developmental NOAELs were set at or above the limit dose for both studies). There was no evidence (quantitative or qualitative) of increased susceptibility seen following pre-and/or post-natal exposure in rats for 2-generations in the reproduction study (NOAEL set at the highest dose tested).

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for clofentezine is complete.

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

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

iv. There are no residual uncertainties identified in the exposure databases. The chronic and cancer analyses incorporated anticipated residues (average residues from available field trial data) for all registered and proposed commodities and the latest PCT data available. The highest estimated drinking water concentrations of clofentezine were incorporated directly into the chronic and cancer assessments. These assessments will not underestimate the exposure and risks posed by clofentezine.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to clofentezine from food and water will utilize <1% of the cPAD for all population groups. There are no residential uses for clofentezine.

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

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

4. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in this unit for cancer exposure, EPA has concluded that by applying the Q_1* of 3.76×10^{-2} mg/kg/day to the exposure value results in a cancer risk estimate of 3.8×10^{-7} to the general U.S. population. EPA generally considers cancer risks (expressed as the probability of an increased cancer case) in the range of 1 in 1 million (or 1×10^{-6}) or less to be negligible.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography (HPLC)) is available to enforce the tolerance expression.

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

B. International Residue Limits

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

There are no Codex MRLs for residues on avocado and papaya.

The U.S. pome fruit tolerance of 0.5 ppm is harmonized with the Codex MRL.

The U.S. tolerance is 1.0 ppm in/on stone fruit (12–12A and 12–12B). The Codex MRL for stone fruit is 0.5 ppm. The clofentezine residues in/on representative stone fruit crops, cherry and peach, from the submitted U.S. field trial data are greater than 0.5 ppm and

setting the tolerances for 12–12A and 12–12B at 0.5 ppm to harmonize with Codex could result a tolerance exceedance for U.S. growers. Therefore, the U.S. tolerance cannot be harmonized with Codex MRL for stone fruit at this time.

The U.S. tolerance of 1.0 ppm for the crop subgroup fruit, small, vine climbing, except fuzzy kiwifruit, 13–07F does not harmonize with the Codex MRL of 2.0 ppm. The petitioner requested a 13–07F subgroup tolerance at 1.0 ppm, which would maintain the existing tolerance on grapes at 1.0 ppm consistent with the MRL at 1.0 ppm maintained by several countries including Japan and Korea. EPA is not harmonizing with Codex in order to maintain MRL harmony with several other countries to avoid potential export issues.

V. Conclusion

Therefore, tolerances are established for residues of clofentezine in or on avocado at 0.30 ppm; papaya at 0.30 ppm; fruit, pome, group 11–10 at 0.50 ppm; cherry, subgroup 12–12A at 1.0 ppm; peach, subgroup 12–12B at 1.0 ppm; and fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.0 ppm. In addition, the existing tolerances for apple at 0.5 ppm; pear at 0.5 ppm; cherry at 1.0 ppm; nectarine at 1.0 ppm; peach at 1.0 ppm; and grape at 1.0 ppm are removed as unnecessary.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 31, 2016.

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 § 180.446, in the table in paragraph (a)(1):

■ a. Remove the entries for ''Apple'', ''Cherry'', ''Grape'', ''Nectarine'', ''Peach'', and ''Pear''; and

■ b. Add alphabetically the entries for ''Avocado'', ''Cherry, subgroup 12–12A'', ''Fruit, pome, group 11–10'', ''Fruit, small, vine climbing, except fuzzy kiwifruit, Subgroup 13–07F'', ''Papaya'', and ''Peach, subgroup 12–12B''.

The additions read as follows:

§ 180.446 Clofentezine; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Avocado	0.30
Cherry, subgroup 12–12A	1.0
Fruit, pome, group 11–10	0.50
Fruit, small, vine climbing, except fuzzy kiwifruit, Subgroup 13–07F	1.0
* * * * *	
Papaya	0.30
Peach, subgroup 12–12B	1.0
* * * * *	

* * * * *

[FR Doc. 2016–13911 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 81, No. 114
Tuesday, June 14, 2016

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 ENERGY

10 CFR Part 850

[Docket No. AU–RM–11–CBDPP]

RIN 1992–AA39

Chronic Beryllium Disease Prevention Program; Correction

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings; correction.

SUMMARY: This document corrects the **ADDRESSES** section to the notice of proposed rulemaking and public hearings which published in the **Federal Register** on June 7, 2016, regarding the Chronic Beryllium Disease Prevention Program. This correction revises the addresses relating to two of the public hearings.

DATES: June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, 202–586–4714, email: *jackie.rogers@hq.doe.gov,* or Meredith Harris, 301–903–6061, email: *meredith.harris@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule document FR 2016–12547 appearing on page 36704, in the issue of Tuesday, June 7, 2016, (81 FR 36704), the following corrections should be made:

On page 36704, in the second column, the next to the last paragraph in the **ADDRESSES** section is corrected to the following:

1. Richland, WA: HAMMER Federal Training Facility, State Department Room, 2890 Horn Rapids Road, Richland, WA 99354;

On page 36704, in the third column, the first paragraph in the **ADDRESSES** section is corrected to the following:

3. Las Vegas, NV: North Las Vegas Facility, 2621 Losee Road, Building C1, Auditorium, North Las Vegas, NV 89030–4129.

Issued in Washington, DC, on June 8, 2016.

Bill McArthur,

Acting Director, Office of Health and Safety.

[FR Doc. 2016–14020 Filed 6–13–16; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Docket No. R–1540; Regulation YY]

RIN 7100 AE 54

Enhanced Prudential Standards for Systemically Important Insurance Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for public comment on the application of enhanced prudential standards to certain nonbank financial companies.

SUMMARY: Pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Board of Governors of the Federal Reserve System is inviting public comment on the proposed application of enhanced prudential standards to certain nonbank financial companies that the Financial Stability Oversight Council has determined should be supervised by the Board. The Board is proposing corporate governance, risk-management, and liquidity risk-management standards that are tailored to the business models, capital structures, risk profiles, and systemic footprints of the nonbank financial companies with significant insurance activities.

DATES: Comments must be submitted by August 17, 2016.

ADDRESSES: You may submit comments, identified by Docket No. R–1540, RIN 7100 AE 54, by any of the following methods:

Agency Web site: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: regs.comments@federalreserve.gov. Include docket R–1540, RIN 7100 AE 54 in the subject line of the message.

FAX: (202) 452–3819 or (202) 452–3102.

Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site are *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW., (between 18th and 19th Streets), Washington, DC 20551 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Thomas Sullivan, Associate Director, (202) 475–7656, Linda Duzick, Manager, (202) 728–5881, Noah Cuttler, Senior Financial Analyst, (202) 912–4678, or Matt Walker, Senior Analyst & Insurance Team Project Manager, (202) 872–4971, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, Tate Wilson, Counsel, (202) 452–3696, or Steve Bowne, Senior Attorney, (202) 452–3900, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Board of Governors of the Federal Reserve System (Board) to establish enhanced prudential standards for nonbank financial companies that the Financial Stability Oversight Council (Council) has determined should be supervised by the Board and bank holding companies with total consolidated assets equal to or greater than $50 billion in order to prevent or mitigate risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities, of these companies.[1] The enhanced prudential standards must include risk-based capital requirements and leverage limits, liquidity requirements, certain risk-management requirements, resolution-planning requirements, single-counterparty credit limits, and stress-test requirements. Section 165 also permits the Board to establish

[1] 12 U.S.C. 5365.

additional enhanced prudential standards, including a contingent capital requirement, an enhanced public disclosure requirement, a short-term debt limit, and any other prudential standards that the Board determines are appropriate.

In prescribing enhanced prudential standards, section 165(a)(2) of the Dodd-Frank Act permits the Board to tailor the enhanced prudential standards among companies on an individual basis, taking into consideration their ''capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board . . . deems appropriate.'' [2] In addition, under section 165(b)(3) of the Dodd-Frank Act, the Board is required to take into account differences among bank holding companies covered by section 165 of the Dodd-Frank Act and nonbank financial companies supervised by the Board, based on statutory considerations.[3]

The factors the Board must consider include: (1) The factors described in sections 113(a) and (b) of the Dodd-Frank Act (12 U.S.C. 5313(a) and (b)); (2) whether the companies own an insured depository institution; (3) nonfinancial activities and affiliations of the companies; and (4) any other risk-related factors that the Board determines appropriate.[4] The Board must, as appropriate, adapt the required standards in light of any predominant line of business of nonbank financial companies, including activities for which particular standards may not be appropriate.[5] Section 165(b)(3) of the Dodd-Frank Act also requires the Board, to the extent possible, to ensure that small changes in the factors listed in sections 113(a) and 113(b) of the Dodd-Frank Act would not result in sharp, discontinuous changes in the enhanced prudential standards established by the Board under section 165(b)(1) of the Dodd-Frank Act.[6] The statute also directs the Board to take into account any recommendations made by the Council pursuant to its authority under section 115 of the Dodd-Frank Act.[7]

For bank holding companies with total consolidated assets equal to or greater than $50 billion and certain foreign banking organizations, the Board has issued an integrated set of enhanced prudential standards through a series of rulemakings, including the Board's capital plan rule,[8] stress-testing rules,[9] resolution plan rule,[10] and the Board's enhanced prudential standards rule under Regulation YY.[11] As part of the integrated enhanced prudential standards applicable to the largest, most complex bank holding companies, the Board also adopted enhanced liquidity requirements through the liquidity coverage ratio rule and adopted enhanced leverage capital requirements through a supplementary leverage ratio. Further, the Board issued risk-based capital charges and an enhanced supplementary leverage ratio for the most systemic bank holding companies.[12] In addition, through a final order the Board established enhanced prudential standards for General Electric Capital Corporation, a nonbank financial company designated by the Council for supervision by the Board.[13] In the preamble accompanying the final enhanced prudential standards regulation for bank holding companies, the Board stated its intent to assess thoroughly the business model, capital structure, and risk profile of each company in considering the application of enhanced prudential standards to nonbank financial companies designated by the Council, consistent with the Dodd-Frank Act.[14]

The Board invites public comment on the application of corporate governance and risk-management and liquidity risk-management standards to certain insurance-focused nonbank financial companies that the Council determined should be subject to Board supervision.[15] Specifically, the enhanced prudential standards would apply to any nonbank financial company that meets two requirements: (1) The Council has determined pursuant to section 113 of the Dodd-Frank Act that the company should be supervised by the Board and subjected to enhanced prudential standards, and (2) the company has 40 percent or more of its total consolidated assets related to insurance activities as of the end of either of the two most recently completed fiscal years (systemically important insurance companies) or otherwise has been made subject to these requirements by the Board. As of the date of publication of this document in the **Federal Register**, American International Group, Inc. (AIG), and Prudential Financial, Inc. (Prudential), would be required to comply with the proposed enhanced prudential standards, if adopted as proposed.[16]

The corporate governance and risk-management standard would build on the core provisions of the Board's SR letter 12–17, Consolidated Supervision Framework for Large Financial Institutions.[17] The proposed liquidity risk-management requirements would help mitigate liquidity risks at systemically important insurance companies. The proposal would tailor these standards to account for the differences in business models, capital structure, risk profiles, existing supervisory framework, and systemic footprints between bank holding companies and systemically important insurance companies.

The Board believes that it is appropriate to seek public comment on the application of the proposed standards in order to provide transparency regarding the regulation and supervision of systemically important insurance companies. The public comment process will provide systemically important insurance companies supervised by the Board and interested members of the public with the opportunity to comment and will help guide the Board in future application of enhanced prudential standards to other nonbank financial companies.

Question 1: The Board invites comment on all aspects of the proposed rule, including in particular the aspects noted in more detailed questions at the end of each section.

Question 2: The Board invites comment on the 40 percent threshold contained in the proposed definition of systemically important insurance company. Would an alternative measure be more appropriate? Why or why not?

II. Corporate Governance and Risk-Management Standard

A. Background

During the preceding decades and the recent financial crisis in particular, a number of insurers that experienced material financial distress had

[2] 12 U.S.C. 5365(a)(2).

[3] *See* 12 U.S.C. 5365(b)(3).

[4] 12 U.S.C. 5365(b)(3)(A).

[5] 12 U.S.C. 5365(b)(3)(D).

[6] 12 U.S.C. 5365(b)(3)(B).

[7] 12 U.S.C. 5365(b)(3)(C).

[8] 12 CFR 225.8.

[9] *See* 12 CFR part 252.

[10] 12 CFR part 243.

[11] *See* 79 FR 17420 (March 27, 2014).

[12] 12 CFR 217.11(c).

[13] 80 FR 142 (July 24, 2015).

[14] *See* 79 FR 17240, 17245 (March 27, 2014).

[15] The Board intends to consider enhanced risk-based capital and leverage requirements, liquidity requirements, single-counterparty credit limits, a debt-to-equity limit, and stress testing requirements at a later date. In addition, the Board has issued a resolution plan rule that by its terms applies to all nonbank financial companies supervised by the Board.

[16] As noted above, General Electric Capital Corporation is already subject by Board order to certain enhanced prudential standards.

[17] Supervision and Regulation Letter 12–17/Consumer Affairs Letter 12–14 (December 17, 2012), available at *https://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm.*

significant deficiencies in key areas of corporate governance and risk management.[18] Effective enterprise-wide risk management by large, interconnected financial companies promotes financial stability by reducing the likelihood of a large, interconnected financial company's material distress or failure. An enterprise-wide approach to risk management would allow systemically important insurance companies to appropriately identify, measure, monitor, and control risk throughout their entire organizations, including risks that may arise from intragroup transactions, unregulated entities, or centralized material operations that would not be subject to review at the legal entity level.

Accordingly, the Board is proposing to apply to systemically important insurance companies an enhanced corporate governance and risk-management standard that would build on the core provisions of SR 12–17, the Board's consolidated supervision framework for large financial institutions.[19] These standards would be applied, however, in a manner that is tailored to account for the business model, capital structure, risk profile, and activities of financial firms that are largely engaged in insurance (rather than banking) activities. Specifically, the proposal creates responsibilities for a systemically important insurance company's risk committee, chief risk officer, and chief actuary.

B. Risk Committee and Risk-Management Framework

Consistent with section 165(h)(1) of the Dodd-Frank Act, the proposed rule would require a systemically important insurance company to maintain a risk committee that approves and periodically reviews the risk-management policies of the company's global operations and oversees the operation of the company's global risk-management framework.[20] A large, interconnected financial institution's risk committee, acting in its oversight role, should fully understand the institution's corporate governance and risk-management framework and have a general understanding of its risk-management practices.

The proposal would also require that the risk committee oversee the systemically important insurance company's enterprise-wide risk-management framework, and that this framework be commensurate with the systemically important insurance company's structure, risk profile, complexity, activities, and size. An enterprise-wide risk-management framework facilitates management of and creates accountability for risks that reside in different geographic areas and lines of business. The risk-management framework would be required to include policies and procedures for establishing risk-management governance and procedures and risk-control infrastructure for the company's global operations. To implement and monitor compliance with these policies and procedures, the proposal would require the company to have processes and systems that (1) have mechanisms to identify and report risks and risk-management deficiencies, including emerging risks, and ensure effective and timely implementation of actions to address such risks and deficiencies; (2) establish managerial and employee responsibility for risk management; (3) ensure the independence of the risk-management function; and (4) integrate risk-management and associated controls with management goals and its compensation structure for its global operations.

A systemically important insurance company's risk-management framework would be strengthened by having an appropriate level of stature within its overall corporate governance framework. Accordingly, the proposal would provide that a systemically important insurance company's risk committee be an independent committee of the company's board of directors and have, as its sole and exclusive function, responsibility for the risk-management policies of the company's global operations and oversight of the operation of the company's global risk-management framework. The risk committee would be required to report directly to the systemically important insurance company's board of directors and would receive and review regular reports on not less than a quarterly basis from the company's chief risk officer. In addition, the risk committee would be required to meet at least quarterly, fully document and maintain records of its proceedings, and have a formal, written charter that is approved by the systemically important insurance company's board of directors.

Consistent with section 165(h)(3)(C) of the Dodd-Frank Act, the proposal would require that the risk committee include at least one member with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.[21] For this purpose, a financial firm would include an insurance company, a securities broker-dealer, or a bank. The individual's experience in risk management would be expected to be commensurate with the company's structure, risk profile, complexity, activities, and size, and the company would be expected to demonstrate that the individual's experience is relevant to the particular risks facing the company. While the proposal would require that only one member of the risk committee have experience in identifying, assessing, and managing risk exposures of large, complex firms, all risk committee members should have a general understanding of risk-management principles and practices relevant to the company.

Consistent with section 165(h)(3)(B) of the Dodd-Frank Act, the proposed rule also would include certain requirements to ensure that the chair of the risk committee has sufficient independence from the systemically important insurance company.[22] The proposal would require that the chair of the risk committee (1) not be an officer or employee of the company nor have been one during the previous three years; (2) not be a member of the immediate family of a person who is, or has been within the last three years, an executive officer of the company; [23] and (3) meet the requirements for an independent director under Item 407 of the Securities and Exchange Commission's (SEC) Regulation S–K, or must qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the company does not have an outstanding class of securities traded on a national securities exchange.

The Board views the active involvement of independent directors as vital to robust oversight of risk management and encourages companies

[18] *See* Standard and Poor's Ratings Services, ''What May Cause Insurance Companies to Fail and How this Influences Our Criteria'' (June 2013), at 11–13; *see also* U.S. House of Representatives, ''Failed Promises: Insurance Company Insolvencies'' (1990); Financial Crisis Inquiry Commission, ''Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States'' (January 2011), pg. 352, available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.*

[19] SR 12–17 sets forth a framework for the consolidated supervision of large financial institutions, and has two primary objectives: (1) Enhancing resiliency of a firm to lower the probability of its failure or inability to serve as a financial intermediary, and (2) reducing the impact on the financial system and the broader economy in the event of a firm's failure or material weakness.

[20] 12 U.S.C. 5365(h)(1).

[21] *See* 12 U.S.C. 5365(h)(3)(C).

[22] *See* 12 U.S.C. 5365(h)(3)(B).

[23] For purposes of this requirement, ''immediate family'' would be defined pursuant to the Board's Regulation Y, 12 CFR 225.41(b)(3), and ''executive officer'' would be defined pursuant to the Board's Regulation O, 12 CFR 215.2(e)(1).

generally to include additional independent directors as members of their risk committees. However, the Board notes that not all members of the risk committee would be required to be independent, and involvement of directors affiliated with the company on the risk committee could complement the involvement of independent directors.

Question 3: Are there additional qualifications and experience that the Board should require of a member or members of the risk committee of a systemically important insurance company?

Question 4: The Board invites comment on whether the structure of the risk committee and the duties proposed to be assigned to the risk committee are appropriate.

C. Chief Risk Officer and Chief Actuary

Most large, interconnected financial institutions, including large insurance companies, designate a chief risk officer to facilitate an enterprise-wide approach to the identification and management of all risks within an organization, regardless of where they are originated or housed. The chief risk officer supplements the work of legal entity, risk level (*e.g.,* credit or operational risk), and line of business risk-management activities by identifying, measuring, and monitoring risks that may exist intentionally or unintentionally. The proposed rule would require each systemically important insurance company to have a chief risk officer and describes the minimum responsibilities of the chief risk officer. Under the proposal, the chief risk officer's function would extend to all risks facing the systemically important insurance company, including risks from non-insurance activities and insurance activities, such as risks arising out of unanticipated increases in reserves.

The proposal provides that the chief risk officer would be responsible for overseeing (1) the establishment of risk limits on an enterprise-wide basis and monitoring compliance with such limits; (2) the implementation of and ongoing compliance with the policies and procedures establishing risk-management governance and the development and implementation of the processes and systems related to the global risk-management framework; and (3) management of risks and risk controls within the parameters of the company's risk control framework, and monitoring and testing of such risk controls. The chief risk officer also would be responsible for reporting risk-management deficiencies and emerging risks to the risk committee.

The proposal would require the chief risk officer to have experience in identifying, assessing, and managing risk exposures of large, complex financial firms. The minimum qualifications for a chief risk officer would be similar to the risk-management experience requirement that at least one member of the company's risk committee must meet. The proposal was designed with the expectation that a systemically important insurance company would be able to demonstrate that its chief risk officer's experience is relevant to the particular risks facing the company and is commensurate with the company's structure, risk profile, complexity, activities, and size.

The proposed standard would also require systemically important insurance companies to have a chief actuary to ensure an enterprise-wide view of reserve adequacy across legal entities, lines of business, and geographic boundaries. Inadequate reserving is a common cause of insurer insolvencies.[24] Insurance companies have complex balance sheets that depend heavily on estimates concerning the amount and timing of payments. Actuaries at insurance companies serve a critical role by developing these estimates and providing other technical insights on risk and financial performance. The estimates and the related processes, methodologies, and documentation can vary across jurisdictions and lines of businesses. The systemically important insurance companies have numerous insurance company subsidiaries and lines of businesses with their own actuarial functions. The organization may not have, however, an actuarial role or roles with the appropriate amount of stature and independence from the lines of business and legal entities.

The chief actuary would be responsible for advising the chief executive officer and other members of senior management and the board's audit committee on the level of reserves. Under the proposed rule, the chief actuary would also have oversight responsibilities over (1) implementation of measures that assess the sufficiency of reserves; (2) review of the appropriateness of actuarial models, data, and assumptions used in reserving; and (3) implementation of and compliance with appropriate policies and procedures relating to actuarial work in reserving. The chief actuary would be required to ensure that the company's actuarial units perform in accordance with an articulated set of standards that govern process, methodologies, data, and documentation; comply with applicable jurisdictional regulations; and adhere to the relevant codes of actuarial conduct and practice standards. The proposed rule would permit the chief actuary to have additional responsibilities, including overseeing ratemaking for insurance products.

If a systemically important insurance company has significant amounts of life insurance and property and casualty insurance business, the proposal would allow systemically important insurance companies to have co-chief actuaries—one responsible for the company's life business and one responsible for the company's property and casualty business. Within the United States, the two different businesses have historically had separate professional organizations and correspondingly different professional examination requirements to obtain actuarial credentials. The actuarial techniques used in these two businesses starkly differ. While a single position with an enterprise-wide view of reserve adequacy is desirable, the Board recognizes that the need for chief actuaries to have the expertise necessary to carry out their duties. Thus, the proposed rule would permit, but not require, a systemically important insurance company to appoint a chief actuary with enterprise-wide responsibility for the life insurance activities and a separate chief actuary with enterprise-wide responsibility for the property and casualty insurance activities.

Under the proposed rule, the chief actuary would be expected to have experience that is relevant to the functions performed and commensurate with the company's structure, risk profile, complexity, activities, and size. This background should allow the chief actuary to discuss reserve adequacy with executive management and to communicate on actual practices and techniques with the underwriting, claims, legal, treasury, and other departments.

Under the proposed rule, the chief risk officer and chief actuary would be required to maintain a level of independence. In addition to other lines of reporting, the chief risk officer and chief actuary would be required to report directly to their board's risk committee and audit committee,

[24] *See* Standard and Poor's Ratings Services, ''What May Cause Insurance Companies to Fail and How this Influences Our Criteria'' (June 2013), pg. 8–10; *see also* U.S. House of Representatives, ''Failed Promises: Insurance Company Insolvencies'' (1990).

respectively. Requiring the chief risk officer and chief actuary to report directly to board committees provides stature and independence from the lines of businesses and legal entities, which facilitates unbiased insurance risk assessment and estimation of insurance reserves. Furthermore, the proposal would not allow the chief risk officer and chief actuary roles to be performed by the same person because the positions serve distinct and separate independent oversight functions within the company. This separation would allow the risk group to review and challenge the actuarial assumptions used to prepare financial statements and provide an extra line of defense against improper reserving.

In addition, the proposal would require a systemically important insurance company to ensure that the compensation and other incentives provided to the chief risk officer and chief actuary are consistent with their functions of providing objective assessments of a company's risks and actuarial estimates. This requirement would supplement existing Board guidance on incentive compensation, which provides, among other things, that compensation for employees in risk-management and control functions should avoid conflicts of interest and that incentive compensation received by these employees should not be based substantially on the financial performance of the business units that they review.[25] In addition, the proposed requirement would allow systemically important insurance companies wide discretion to adopt compensation structures for chief risk officers and chief actuaries, whether through a compensation committee or otherwise, as long as the structure of their compensation allows them to objectively assess risk and does not create improper incentives to take inappropriate risks.

Question 5: Are the responsibilities and requirements for the chief risk officer and the chief actuary of a systemically important insurance company appropriate? What additional responsibilities and requirements should the Board consider imposing?

Question 6: Should the Board require a single, enterprise-wide chief actuary instead of allowing the position to be split between life and property and casualty operations? Why or why not?

[25] *See* Guidance on Sound Incentive Compensation Policies, 75 FR 36395 (June 25, 2010).

III. Liquidity Risk-Management Standard

A. Background

The activities and liabilities of systemically important insurance companies generate liquidity risk. The financial crisis that began in 2007 demonstrated that liquidity can evaporate quickly and cause severe stress in the financial markets. In some cases, financial companies had difficulty in meeting their obligations as they became due because sources of funding became severely restricted. The financial crisis and past insurance failures also demonstrate that even solvent insurers may experience material financial distress, including failure, if they do not manage their liquidity in a prudent manner.[26] Although many of a systemically important insurance company's liabilities are long-term or contingent upon the occurrence of a future event, such as the death of the insured or destruction of insured property, certain insurance contracts are subject to surrender or withdrawal with little or no penalty and on short notice and may create significant unanticipated demands for liquidity. Additionally, some activities and liabilities such as securities lending, issuance of some forms of funding agreements, collateral calls on derivatives used for hedging, and other sources can create liquidity needs during stress. For systemically important insurance companies, the negative effects of their material financial distress from a liquidity shortage could be transmitted to the broader economy through the sale of financial assets in a manner that could disrupt the functioning of key markets or cause significant losses or funding problems at other firms with similar holdings.

The proposal would require that a systemically important insurance company implement a number of provisions to manage its liquidity risk. For purposes of the proposed rule, liquidity is defined as a systemically important insurance company's capacity to meet efficiently its expected and unexpected cash flows and collateral needs at a reasonable cost without adversely affecting the daily operations or the financial condition of the systemically important insurance company. Under the proposed rule, liquidity risk means the risk that a systemically important insurance company's financial condition or safety and soundness will be adversely affected by its actual or perceived inability to meet its cash and collateral obligations.

The proposed rule would require a systemically important insurance company to meet key internal control requirements with respect to liquidity risk management, to generate comprehensive cash-flow projections, to establish and monitor its liquidity risk tolerance, and to maintain a contingency funding plan to manage liquidity stress events when normal sources of funding may not be available. The proposed rule also would introduce liquidity stress-testing requirements for a systemically important insurance company and would require the company to maintain liquid assets sufficient to meet net cash outflows for 90 days over the range of liquidity stress scenarios used in the internal stress testing.

B. Internal Control Requirements

To reduce the risk of failure triggered by a liquidity event, the proposed rule would require a systemically important insurance company's board of directors, risk committee, and senior management to fulfill key corporate governance and internal control functions with respect to liquidity risk management. The proposed rule would also require a systemically important insurance company to institute an independent review function to provide an objective assessment of the company's liquidity risk-management framework.

1. Board of Directors and Risk Committee Responsibilities

The proposed rule would require a systemically important insurance company's board of directors to approve at least annually the company's liquidity risk tolerance. This liquidity risk tolerance should set forth the acceptable level of liquidity risk that a systemically important insurance company may assume in connection with its operating strategies and should take into account the company's capital structure, risk profile, complexity, activities, and size. Typically, more liquid, shorter-duration assets provide lower expected returns than similar assets with longer durations. Risk tolerances should be articulated in a way that all levels of management can clearly understand and apply these tolerances to all aspects of liquidity risk management throughout the organization. In addition, the proposal

[26] *See* U.S. Govt. Accountability Office, GAO–13–583, ''Insurance Markets: Impacts of and Regulatory Response to the 2007–2009 Financial Crisis,'' June 2013, at 10–16, 46–48, available at *http://gao.gov/assets/660/655612.pdf. See also* Standard and Poor's Ratings Services, ''What May Cause Insurance Companies to Fail and How this Influences Our Criteria'' (June 2013).

would require the board of directors to (1) review liquidity risk practices and performance at least semi-annually to determine whether the systemically important insurance company is operating in accordance with its established liquidity risk tolerance, and (2) approve and periodically review the liquidity risk-management strategies, policies, and procedures established by senior management.

The proposal would also require the risk committee or a designated subcommittee of the risk committee to review and approve the systemically important insurance company's contingency funding plan at least annually and whenever the company materially revises the plan. As discussed below, the contingency funding plan is the systemically important insurance company's compilation of policies, procedures, and action plans for managing liquidity stress events. In fulfilling this proposed requirement, the risk committee or designated subcommittee would report the results of its review to a systemically important insurance company's board of directors.

2. Senior Management Responsibilities

To ensure that a systemically important insurance company properly implements its liquidity risk-management framework within the tolerances established by the company's board of directors, the Board is proposing to require senior management of a systemically important insurance company to be responsible for several key liquidity risk-management functions.

First, the proposed rule would require senior management to establish and implement strategies, policies, and procedures designed to manage effectively the systemically important insurance company's liquidity risk. In addition, the proposal would require that senior management oversee the development and implementation of liquidity risk measurement and reporting systems and determine at least quarterly whether the systemically important insurance company is operating in accordance with such policies and procedures and is in compliance with the liquidity risk-management, stress-testing, and buffer requirements.

Second, the proposal would require senior management to report at least quarterly to the board of directors or the risk committee on the systemically important insurance company's liquidity risk profile and liquidity risk tolerance. More frequent reporting would be warranted if material changes in the company's liquidity profile or market conditions occur.

Third, before a systemically important insurance company offers a new product or initiates a new activity that could potentially have a significant effect on the systemically important insurance company's liquidity risk profile, senior management would be required to evaluate the liquidity costs, benefits, and risks of the product or activity and approve it. As part of the evaluation, senior management would be required to determine whether the liquidity risk associated with the new product or activity (under both current and stressed conditions) is within the company's established liquidity risk tolerance. In addition, senior management would be required to review at least annually significant business activities and products to determine whether any of these activities or products creates or has created any unanticipated liquidity risk and whether the liquidity risk of each activity or product is within the company's established liquidity risk tolerance. An example of a significant business activity might include a company's securities lending operations or a particular line of business such as the issuance of funding agreements. This review should be done on a granular enough basis to allow for consideration of material differences in liquidity risk that might occur across jurisdictions or product features, such as a market value adjustment feature in an insurance contract.[27]

Fourth, senior management would be required to review the cash-flow projections (as described below) at least quarterly to ensure that the liquidity risk of the systemically important insurance company is within the established liquidity risk tolerance.

Fifth, senior management would be required to establish liquidity risk limits and review the company's compliance with those limits at least quarterly. As described in § 252.164(g) of the proposed rule, systemically important insurance companies would be required to establish limits on (1) concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk; (2) potential sources of liquidity risk arising from insurance liabilities; (3) the amount of non-insurance liabilities that mature within various time horizons; and (4) off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events. In addition, the proposal would require the size of each limit to be consistent with the company's established liquidity risk tolerance and reflect the company's capital structure, risk profile, complexity, activities, and size.

Sixth, senior management would be required to (1) approve the liquidity stress testing practices, methodologies, and assumptions as set out in § 252.165(a) of the proposed rule at least quarterly and whenever the systemically important insurance company materially revises such practices, methodologies, or assumptions; (2) review at least quarterly both the liquidity stress-testing results produced under § 252.165(a) of the proposed rule and the liquidity buffer provided in § 252.165(b) of the proposed rule; and (3) review periodically the independent review of the liquidity stress tests under § 252.165(d) of the proposed rule.

The proposal would allow a systemically important insurance company to assign these senior management responsibilities to its chief risk officer, who would be considered a member of the senior management of the systemically important insurance company.

Question 7: The Board invites comment on whether there are additional liquidity risk-management responsibilities that the rule should require of senior management.

3. Independent Review

An independent review function is a critical element of a financial institution's liquidity risk-management program because it can identify weaknesses in liquidity risk management that would be overlooked by the management functions that execute funding. Accordingly, the Board is proposing to require a systemically important insurance company to maintain an independent review function that meets frequently (but no less than annually) to review and evaluate the adequacy and effectiveness of the company's liquidity risk-management processes, including its liquidity stress-test processes and assumptions. Under the proposal, this review function would be required to be independent of management functions that execute funding (*e.g.,* the treasury function), but it would not be required to be independent of the liquidity risk-management function. In addition, the proposal would require the independent review function to assess whether the company's liquidity risk-management framework complies with applicable laws, regulations, supervisory guidance,

[27] Market value adjustment features tie the surrender value of an insurance contract to changes in market conditions.

and sound business practices, and report for corrective action any material liquidity risk-management issues to the board of directors or the risk committee.

An appropriate internal review conducted by the independent review function under the proposed rule should address all relevant elements of the liquidity risk-management framework, including adherence to the established policies and procedures and the adequacy of liquidity risk identification, measurement, and reporting processes. Personnel conducting these reviews should seek to understand, test, and evaluate the liquidity risk-management processes, document their review, and recommend solutions for any identified weaknesses.

C. Cash Flow Projections

Comprehensive projections of cash flows from a firm's various operations are a critical tool to help the institution manage its liquidity risk. The proposal would require that the company produce comprehensive enterprise-wide cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over short and long-term time horizons, including time horizons longer than one year. Longer time horizons are particularly important for insurance companies, which generally have liabilities that extend far into the future. In addition, tracking cash-flow mismatches can help a systemically important insurance company identify potential liquidity issues and facilitate asset liability management, particularly as it relates to reinvestment risk from interest rate changes. The proposal would require that the systemically important insurance company update short-term cash-flow projections daily and update longer-term cash-flow projections at least monthly. These updates would not always require revisiting actuarial estimates; however, the updates would need to roll the cash flows forward and revise assumptions as needed based on new data and changing market conditions.

To ensure that the cash flow projections would sufficiently analyze liquidity risk exposure to contingent events, the proposed rule would require that a systemically important insurance company establish a methodology for making projections that include all material liquidity exposures and sources, including cash flows arising from (1) anticipated claim and annuity payments; (2) policyholder options including surrenders, withdrawals, and policy loans; (3) collateral requirements on derivatives and other obligations; (4) intercompany transactions; (5) premiums on new and renewal business; (6) expenses; (7) maturities and renewals of funding instruments, including through the operation of any provisions that could accelerate the maturity; and (8) investment income and proceeds from assets sales. The proposal would require that the methodology (1) include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures, (2) identify and quantify discrete and cumulative cash flow mismatches over various time periods, and (3) include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the systemically important insurance company, and any applicable legal and regulatory requirements. The proposal provides that analyses may be categorized by business line, currency, or legal entity.

Given the critical importance that the methodology and underlying assumptions play in liquidity risk management, a systemically important insurance company would be required to adequately document its methodology and assumptions used in making its cash flow projections.

Question 8: The Board invites comment on whether the above requirements are appropriate for managing cash flows at systemically important insurance companies. Should any aspects of this cash-flow projection requirement be modified to better address the risk of systemically important insurance companies?

Question 9: Should the Board consider a different level of frequency for requiring systemically important insurance companies to update their cash flow projections? If so, what frequency would be appropriate and why?

D. Contingency Funding Plan

Under the proposed rule, a systemically important insurance company would be required to establish and maintain a contingency funding plan for responding to a liquidity crisis, identify alternate liquidity sources that the company can access during liquidity stress events, and describe steps that should be taken to ensure that the company's sources of liquidity are sufficient to fund its normal operating requirements under stress events. These provisions require the firm to develop and put in place plans designed to ensure that the firm will have adequate sources of liquidity to meet its obligations during the normal course of business. The proposal does not itself set a minimum liquidity requirement that would apply to all firms.

The proposal would require the contingency funding plan to include a quantitative assessment, an event management process, and monitoring requirements. The proposal would also require the plan to be commensurate with a systemically important insurance company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance.

Under the proposed rule, a systemically important insurance company would perform a quantitative assessment to identify liquidity stress events that could have a significant effect on the company's liquidity, assess the level and nature of such effect, and assess available funding sources during identified liquidity events. Such an assessment should delineate the various levels of stress severity that could occur during a stress event and identify the various stages for each type of event, spanning from the event's inception until its resolution. The types of events would include temporary, intermediate, and long-term disruptions. Under the proposal, possible stress events may include deterioration in asset quality, a spike in interest rates, an insurance catastrophe such as a pandemic that results in a large number of claims, an equity market decline, multiple ratings downgrades, a widening of credit default swap spreads, operating losses, negative press coverage, or other events that call into question a systemically important insurance company's liquidity. The stress events should be forecast in a comprehensive way across legal entities to identify gaps on an enterprise-wide basis. In addition, the proposal would require a systemically important insurance company to incorporate information generated by liquidity stress testing.

The proposed rule would provide that a systemically important insurance company include in its contingency funding plan procedures for monitoring emerging liquidity stress events and identifying early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size. Early warning indicators should include negative publicity concerning an asset class owned by the company, potential deterioration of the company's financial condition, a rating downgrade, and/or a widening of the company's debt or credit default swap spreads. In addition, a systemically important insurance company's contingency funding plan would be required to at least incorporate collateral and legal entity liquidity risk monitoring.

As part of the quantitative assessment, a systemically important insurance

company would be required to include in its contingency funding plan both an assessment of available funding sources and needs and an identification of alternative funding sources that may be used during the identified liquidity stress events. To determine available and alternative funding sources, a systemically important insurance company would be expected under the proposal to analyze the potential erosion of available funding at various stages and severity levels of each stress event and identify potential cash flow mismatches that may occur. This analysis would include all material on- and off-balance sheet cash flows and their related effects, and would be based on a realistic assessment of both the behavior of policyholders and other counterparties and of a systemically important insurance company's cash inflows, outflows, and funds that would be available (after considering restrictions on the transferability of funds within the group) at different time intervals during the identified liquidity stress event. In addition, a systemically important insurance company should work proactively to have in place any administrative procedures and agreements necessary to access any alternative funding source.

The proposed rule would also require a systemically important insurance company's contingency funding plan to identify the circumstances in which the company would implement an action plan to respond to liquidity shortfalls for identified liquidity stress events. The action plan would clearly describe the strategies that a systemically important insurance company would use during such an event, including (1) the methods that the company would use to access alternative funding sources, (2) the identification of a management team to execute the action plan, (3) the process, responsibilities, and triggers for invoking the contingency funding plan, and (4) the decision-making process during the identified liquidity stress events and the process for executing the action plan's contingency measures. In addition, the proposal sets out reporting and communication requirements to facilitate a systemically important insurance company's implementation of its action plan during an identified liquidity stress event.

The proposal would require that a systemically important insurance company periodically test (1) the components of its contingency funding plan to assess its reliability during liquidity stress events, (2) the operational elements of the contingency funding plan, and (3) the methods the company would use to access alternative funding sources to determine whether those sources would be available when needed. The tests required by the proposal would focus on the operational aspects of the contingency funding plan. This can often be done via ''table-top'' or ''war-room'' type exercises. In some cases, the testing would also require actual liquidation of assets in the buffer periodically as part of the exercise. This can be critical in demonstrating treasury control over the assets and an ability to convert the assets into cash. With proper planning, this can be done in a way that does not send a distress signal to the marketplace.

Market circumstances and the composition of a systemically important insurance company's business and product mix change over time. These types of changes could affect the effectiveness of a systemically important insurance company's contingency funding plan. To ensure that the contingency funding plan remains useful and instructive, the proposal would require a systemically important insurance company to update its contingency funding plan at least annually, and more frequently when changes to market and idiosyncratic conditions warrant.

Question 10: The Board invites comment on whether the above requirements for a contingency funding plan are appropriate for systemically important insurance companies. What alternative approaches to the contingency funding requirements outlined above should the Board consider?

Question 11: Should the proposed rule allow systemically important insurance companies to plan for any delay or stay of payments to policyholders or other counterparties within their contingency funding plans? Why or why not?

Question 12: What specific information should a systemically important insurance company be required to include in its action plan to describe the strategies that the company would use to respond to liquidity shortfalls for identified liquidity stress events?

E. Collateral, Legal Entity, and Intraday Liquidity Risk Monitoring

The proposal would require a systemically important insurance company to establish and maintain procedures for monitoring collateral, legal entity, and intraday liquidity risk. Robust monitoring of collateral availability, legal entity level liquidity, and intraday liquidity risk triggers contribute to effective and appropriate management of potential or evolving liquidity stress events.

Under the proposal, the systemically important insurance company would be required to establish and maintain procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. The policies and procedures would include the frequency in which a systemically important insurance company calculates its collateral positions, requirements for a company to monitor the levels of unencumbered assets (as discussed in section III.F.2, below) available to be pledged and shifts in a company's funding patterns, and requirements for a company to track operational and timing requirements associated with accessing collateral at its physical location.

A systemically important insurance company would also be required under the proposal to establish and maintain policies and procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity among legal entities.

The proposal would require a systemically important insurance company to maintain policies and procedures for monitoring the intraday liquidity risk exposure of the company, as applicable to its business, including obligations that must be settled at a specific time within the day or where intraday events could affect a systemically important insurance company's liquidity positions in a material and adverse manner. For instance, the company should have procedures in place to monitor the risk that an intraday movement in equity prices or the price of hedge instruments could materially affect the company's liquidity position. If applicable, these procedures would be required to address, among other things, how the systemically important insurance company will prioritize payments and derivative transactions to settle critical obligations and effectively hedge its risks.

Question 13: The Board invites comments on whether there are specific activities that, if carried out by a systemically important insurance company, should result in a requirement that the company engage in intraday liquidity monitoring?

F. Liquidity Stress-Testing and Buffer Requirements

To reduce the risk of a systemically important insurance company's failure due to adverse liquidity conditions, the proposal would require a systemically important insurance company to conduct rigorous and regular stress testing and scenario analysis that incorporate comprehensive information about its funding position under both normal circumstances, when regular sources of liquidity are readily available, and adverse conditions, when liquidity sources may be limited or severely constrained. The purpose of the proposed rule's liquidity stress testing and buffer requirements would be to ensure that the holding company (or another entity within the consolidated organization that is not subject to transfer restrictions) has the ability to transfer liquid assets to a legal entity within the consolidated organization that has a liquidity need so that a liquidity crisis can be avoided.

1. Liquidity Stress-Testing Requirement

Under the proposed rule, a systemically important insurance company would be required to conduct liquidity stress tests that, at a minimum, involve macroeconomic, sector-wide, and idiosyncratic events (for example, including natural and man-made catastrophes) affecting the firm's cash flows, liquidity position, profitability, and solvency. The liquidity stress tests should span the different types of liquidity events that a systemically important insurance company could face. This includes both a fast-moving scenario in which an event triggers many withdrawal requests and collateral calls as well as a more sustained scenario where the systemically important insurance company's liquidity deteriorates slowly over the course of a year or longer. In conducting its liquidity stress tests, a systemically important insurance company would be required under the proposal to take into account its current liquidity condition, risks, exposures, strategies, and activities, as well as its balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure, and other characteristics that affect its liquidity risk profile. The proposal would require a systemically important insurance company to conduct its liquidity stress tests monthly, or more frequently as required by the Board.

In conducting its liquidity stress tests, a systemically important insurance company would be required to address the potential direct adverse effect of associated market disruptions on the company and incorporate the potential actions of counterparties, policyholders, and other market participants experiencing liquidity stresses that could adversely affect the company.

As explained above, for purposes of the proposed rule, liquidity risk would encompass risks relating to collateral posting requirements. By virtue of their hedging and non-insurance operations, insurers can have large and directional derivative positions with associated collateral requirements. A systemically important insurance company would be required by the proposal to account for such hedges in its liquidity stress testing to ensure that it would have sufficient sources of assets available for posting.

Effective liquidity stress testing should be conducted over a variety of different time horizons to capture rapidly developing events and other conditions and outcomes that may materialize in the near or long term. While some types of stresses can emerge quickly for systemically important insurance companies, such as collateral calls on derivatives positions, many insurance stresses take more time to develop and provide a slower draw on cash and funds relative to the stresses that affect other financial institutions. For instance, while a natural catastrophe might cause a large number of claims seeking reimbursement for property damage, these claims will typically be paid over a several year period as the properties are rebuilt and many claims are litigated. To ensure that a systemically important insurance company's stress testing captures such events, conditions, and outcomes, the proposed rule would require that a systemically important insurance company's liquidity stress scenarios use a minimum of four time horizons: 7 days, 30 days, 90 days, and one year. The proposal would also require systemically important insurance companies to include any other planning horizons that are relevant to its liquidity risk profile.

Under the proposal, a systemically important insurance company would be required to incorporate certain assumptions designed to ensure that its liquidity stress tests provide relevant information to support the establishment of the liquidity buffer. For stress tests less than the 90-day period used to set the liquidity buffer, cash-flow sources could not include any sales of assets that are not eligible for inclusion in the liquidity buffer, as defined below. Additionally, cash-flow sources should not include borrowings from sources such as lines of credit or the Federal Home Loan Bank. While these can provide valuable sources of liquidity, the allowance of off-balance sheet funding to decrease the liquidity buffer requirement would encourage firms to place undue reliance on these transactions, which may not be available when needed in times of stress. Additionally, the borrowings could serve to exacerbate systemic risk by spreading risk to other significant financial institutions. Systemically important insurance companies could incorporate into the stress tests other cash-flow sources, including future premiums, and would be expected to make conservative assumptions that are consistent with the stress scenario regarding the availability of these sources over the planning horizon.

In all liquidity stress tests, the proposal would require systemically important insurance companies to appropriately address assets in restricted accounts such as those in legally-insulated separate accounts and in any closed block.[28] Changes in the value of these assets can affect the rest of the insurer's balance sheet through guarantees and hedging programs. Additionally, sales or purchases of large amounts of assets in these accounts can affect the markets more broadly. Consequently, separate account assets and closed block assets could be included as cash-flow sources only in proportion to the cash flow needs in these same accounts. Separate account assets have first priority to meet separate account commitments and would not be available to meet general account liquidity needs.

The proposed rule would require a systemically important insurance company to impose a discount to the fair market value of an asset that is used as a cash-flow source to offset projected funding needs in order to help account for credit risk and market volatility of the asset when there is market stress. The discounts would be required to appropriately reflect differences in credit and market volatilities across asset types. The proposed rule would require that sources of funding used to generate cash to offset projected funding needs be sufficiently diversified throughout each stress test time horizon.

The proposed rule further provides that liquidity stress testing must be tailored to, and provide sufficient detail to reflect, a systemically important

[28] Closed blocks are discrete pools of assets that are set aside to support the dividend expectations of participating policyholders from the periods prior to demutualization. Typically, changes of their values would be largely offset by future changes in the dividend rates on these participating policies.

insurance company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. This requirement is intended to ensure that the proposed liquidity stress testing is tied directly to a systemically important insurance company's business profile and the regulatory environment in which the company operates; provides for the appropriate level of aggregation; captures all appropriate risk drivers, including internal and external influences; and incorporates other key considerations that may affect the company's liquidity position. In addition, a systemically important insurance company's liquidity stress testing scenarios should appropriately capture limitations on the transfer of funds.

The proposed rule would not allow a systemically important insurance company to assume for the purposes of stress testing that the company would delay payments under insurance contracts. Although many insurance contracts allow insurers to defer payments by up to six months at the election of either the company or their insurance regulator, the proposal would not allow firms to assume such deferrals in liquidity stress testing. Crediting stays would be inconsistent with preventing the failure or material financial distress of a systemically important insurance company. Stays are measures of last resort that systemically important insurance companies would be very hesitant to invoke for reputational reasons. Because of this, assuming claims payments would be delayed also may not be realistic. Additionally, a stay by a systemically important insurance company could have substantial adverse systemic implications.

The proposed rule would impose various governance requirements related to a systemically important insurance company's liquidity stress testing. First, a systemically important insurance company would be required to establish and maintain certain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions. Second, a systemically important insurance company would be required to establish and maintain a system of controls and oversight to ensure that its liquidity stress testing processes are effective, including by ensuring that each stress test appropriately incorporates conservative assumptions around its stress test scenarios and the other elements of the stress test process. In addition, the proposal would require that the assumptions be approved by the chief risk officer and subject to review by the independent review function. Third, the proposed rule would require a systemically important insurance company to maintain management information systems and data processes sufficient to enable it to collect, sort, and aggregate data and other information related to liquidity stress testing in an effective and reliable manner.

Question 14: Are the proposed stress testing horizons ranging from seven days to one year appropriate?

Question 15: How often should systemically important insurance companies be required to conduct stress tests? What are the costs and benefits of such a frequency?

Question 16: What changes, if any, should be made to the definition of available cash-flow sources for the liquidity stress tests? How should the proposed standard treat separate account and closed block assets?

Question 17: In what scenario, if any, would delaying payments to policyholders be effective in allowing a systemically important insurance company to continue operating as a going concern without adverse impact to the company's reputation, ability to attract and retain business, and cash flows? Should systemically important insurance companies be allowed to assume that they would delay payments to policyholders in liquidity stress testing (including for purposes of calculating the liquidity buffer requirement described below)? If so, under which scenarios and planning horizons would this be appropriate and what documentation, planning, and other requirements should be placed around this? Are there historical data to support an alternative approach to the one contained in the proposal?

Question 18: What other changes, if any, should be made to the proposed liquidity stress-testing requirements (including the stress scenario requirements and required assumptions) to ensure that analyses of stress testing will provide useful information for the management of a systemically important insurance company's liquidity risk? What alternatives to the proposed liquidity stress-testing requirements, including the stress scenario requirements and required assumptions, should the Board consider? What additional parameters for the liquidity stress tests should the Board consider defining?

2. Liquidity Buffer Requirement

The proposed rule would require a systemically important insurance company to maintain a liquidity buffer sufficient to meet net cash outflows for 90 days over the range of liquidity stress scenarios used in the internal stress testing. Although the Board requires large bank holding companies to use a 30-day period for the Dodd Frank Act section 165 liquidity buffer requirement under the Board's Regulation YY, this proposed 90-day period for systemically important insurance companies is consistent with the generally longer-term nature of insurance liabilities. The 90-day period represents an intermediate view between the length of a fast-moving liquidity scenario that transpires quickly over a month or less, and the length of a persistent liquidity scenario that could take longer than a year to resolve.

For the purposes of calculating the required buffer, the proposal would exclude intragroup transactions. Including intragroup outflows within the buffer calculation would result in double counting many transactions. For instance, if intragroup transactions were included when calculating the size of the buffer, a systemically important insurance company that uses a single legal entity to enter into derivative transactions for hedging could be penalized. Such a company would have to hold buffer assets not only for the derivative transaction with a third party, but also for any offsetting intra-group transactions that transfer the benefits of this hedge back to the legal entity with the hedged item. To account for the liquidity risks of intragroup transactions, this proposal instead places limitations on where the buffer can be held.

The proposal would limit the type of assets that may be included in the buffer to highly liquid assets that are unencumbered. Limitation of the buffer to highly liquid assets would ensure that the assets in the liquidity buffer can be converted to cash over a 90-day period with little or no loss of value. The proposal's definition of highly liquid assets is tailored to reflect the assets generally held by systemically important insurance companies and the 90-day stress test period proposed for a systemically important insurance company. Over a 90-day time period, the Board would expect that a wider variety of assets could be effectively liquidated than in a shorter period (*e.g.,* 30 days).

For purposes of the proposed rule, highly liquid assets would include a range of assets, subject to the additional limitations discussed further below. Highly liquid assets would include securities backed by the full faith and credit of the U.S. government, and securities issued or guaranteed by a U.S. government sponsored enterprise if they

are investment-grade as defined by 12 CFR part 1 and the claim is senior to preferred stock. Highly liquid assets would include securities of sovereign entities outside of the U.S. as well as some international organizations, including the Bank for International Settlements, the International Monetary Fund, and the European Central Bank, if the security would have a risk weight below 20 percent under 12 CFR part 217 or the security is issued by a sovereign entity in its own currency and the systemically important insurance company holds the security in order to meet its stressed net cash outflows in the sovereign's jurisdiction.

Investment-grade corporate debt would also be eligible if the issuer's obligations have a proven record as reliable sources of liquidity during stressed market conditions. In addition, highly liquid assets would include publicly traded common equity shares if they are included in the Russell 1000 Index, issued by an entity whose publicly traded common equity shares have a proven record as a reliable source of liquidity during stressed market conditions, and, if held by a depository institution, were not acquired in satisfaction of a debt previously contracted. Investment-grade general obligation securities issued or guaranteed by public sector entities would be eligible under the same limitations as corporate debt.

To be included as highly liquid assets, all assets other than securities issued or guaranteed by the U.S. Treasury would have to be liquid and readily-marketable. To be liquid and readily marketable under the proposal, the security must be traded in an active secondary market with more than two committed market makers. There must also be a large number of non-market maker participants on both the buying and selling sides of the transactions and there must also be timely and observable market prices. Further, trading volume must be high. These requirements would help ensure that the included assets could be quickly converted to cash.

Because of the concerns about wrong-way risk that correlates with the broader economy and exacerbates stress and because of the potential for increased systemic risk due to counterparty exposures, most instruments issued by financial institutions would be excluded from the definition of highly liquid assets. Bonds from banks or insurance companies may not be included within the buffer. Similarly bank deposits would not be eligible because of potential contagion. If a systemically important insurance company were to experience liquidity stress and withdraw its bank deposits, the stress event could be spread to other parts of the financial system as banks may be forced to liquidate assets in order to honor the withdrawals.

In addition to the enumerated assets, the proposal includes criteria that could be used to identify other assets to be included in the buffer as highly liquid assets. Specifically, the proposed definition of highly liquid assets includes any other asset that a systemically important insurance company demonstrates to the satisfaction of the Board (1) has low credit risk and low market risk, (2) is liquid and readily-marketable, and (3) is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

The proposal also would limit the type of assets in the liquidity buffer to assets that are unencumbered so as to be readily available at all times to meet a systemically important insurance company's liquidity needs. Under the proposed rule, unencumbered would be defined to mean an asset that is (1) free of legal, regulatory, contractual, and other restrictions on the ability of a systemically important insurance company promptly to liquidate, sell, or transfer the asset, and (2) not pledged or used to secure or provide credit enhancement to any transaction.

Because of intercompany restrictions on the transfer of funds, the proposal would limit where a systemically important insurance company can hold assets in the liquidity buffer. Assets held at regulated entities could be included in the buffer up to the amount of their net cash outflows as calculated under the internal liquidity stress tests plus any additional amounts that would be available for transfer to the top-tier holding company during times of stress without statutory, regulatory, contractual, or supervisory restrictions. The proposal would also require that the top-tier holding company hold an amount of highly liquid assets sufficient to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity deficit of each material entity would be calculated as that entity's amount of net stressed outflows over a 90-day planning horizon less the highly liquid assets held at the material entity. For the purposes of evaluating liquidity deficits of material entities, systemically important insurance companies would be required to treat inter-affiliate exposures in the same manner as third-party exposures.

To account for deteriorations in asset valuations when there is market stress, the proposed rule also would require a systemically important insurance company to impose a discount to the fair market value of an asset included in the liquidity buffer to reflect the credit risk and market volatility of the asset. Discounts relative to fair market value would be expected to appropriately reflect the 90-day forecast period used to calculate the buffer. Longer periods allow firms more time to liquidate assets strategically to minimize losses.

In addition, to ensure that the liquidity buffer is not concentrated in a particular type of highly liquid assets, the proposed rule provides that the pool of assets included in the liquidity buffer must be sufficiently diversified by instrument type, counterparties, geographic market, and other liquidity risk identifiers.

Question 19: Is 90 days the right planning horizon for calculation of the buffer? Why or why not?

Question 20: Do the proposed rule's stress testing and liquidity buffer requirements appropriately capture restrictions on the transferability of funds between legal entities within a consolidated organization? Why or why not?

Question 21: The Board invites comment on all aspects of the proposed definition of ''highly liquid assets''. Does the definition appropriately reflect the range of assets that an insurer could use to meet cash outflows over the extended 90-day time horizon?

Question 22: Should the board include specific requirements that specify when an asset can be considered a source of liquidity during stress (e.g., less than a 20 percent drop in price within 30 days)? If so, what should those requirements be?

Question 23: Should bank deposits be eligible as highly liquid assets? Why or why not?

Question 24: What changes, if any, should be made to the proposal's guidance concerning the discounting of assets relative to their fair value? How should these discounts vary based on the length of the stress test's planning horizon?

Question 25: What changes, if any, should the Board make to the proposed definition of unencumbered to ensure that assets in the liquidity buffer will be readily available at all times to meet a systemically important insurance company's liquidity needs?

Question 26: The Board requests comment on all aspects of the proposed liquidity risk-management standard. What alternative approaches to liquidity risk management should the Board consider? Are the liquidity risk-management requirements of this

proposal too specific or too narrowly defined?

IV. Transition Arrangements and Ongoing Compliance

To provide for reasonable time frames for systemically important insurance companies to develop and implement procedures, policies, and reporting, the Board is proposing to provide meaningful phase-in periods for these enhanced prudential standards. A company that is a systemically important insurance company on the effective date of the final rule would be required to comply with the corporate governance and risk-management standard and the liquidity risk-management standard of the proposed rule beginning on the first day of the fifth quarter following the effective date of the proposal. While the Board does not anticipate that, if the rule is adopted as proposed, systemically important insurance companies would be required to make extensive changes to their structures or risk governance frameworks, outside of certain improvements that the companies are already planning to implement, the five-quarter period would ensure that systemically important insurance companies would have at least one opportunity to make any needed changes at the board of directors level through a proxy vote. Systemically important insurance companies would be encouraged to comply earlier, if possible. For the liquidity risk-management standard, the five-quarter phase-in period would balance the need for this liquidity standard with the Board's expectation that more work would be required for the systemically important insurance companies to comprehensively project cash flows in a manner that supports the proposal's stress-testing requirement. A company that becomes a systemically important insurance company after the effective date of the proposed rule would be required to comply with the corporate governance and risk-management standard and the liquidity risk-management standard no later than the first day of the fifth quarter following the date on which the Council determined that the company should be supervised by the Board.

Question 27: Are the proposed transition measures and compliance dates appropriate? What aspects of the proposed rule present implementation challenges and why? The Board invites comments on the nature and impact of these challenges and whether the Board should consider implementing transitional arrangements in the rule to address these challenges.

V. Impact Assessment

In developing this proposal, the Board considered a variety of alternatives and considered an initial balancing of costs and benefits of the proposal. Based on the information currently available to the Board, the Board believes that the benefits of the proposal outweigh the relatively modest costs of the proposal. The Board notes that a number of the expected costs and benefits from the proposal, while real, are very difficult to measure or quantify. The Board invites comment and information regarding various alternatives, as well as regarding the costs and benefits of the alternatives and the Board's proposal.

The primary benefits of this proposal would be the results of improvement in the management and resiliency of affected companies that reduce the likelihood that a systemically important insurance company would fail or experience material financial distress. These improvements may also result in increased efficiencies at systemically important insurance companies through improvements in the identification of risks and resulting reductions in losses and costs of operation.

The systemically important insurance companies covered by this proposal are large, complex financial firms that the Council has determined the failure of which would likely cause risk to the financial stability of the United States. Benefits of a reduction in the probability of failure of one of these firms include avoiding: (1) The costs to the economy from the disruption of key markets or the creation of significant losses or funding problems for other firms with holdings similar to a systemically important insurance company; (2) the cost of such a failure to policyholders through lost payments and lost coverage; (3) the cost of an insurance failure to taxpayers and other insurers, who act as guarantors for large portions of a systemically important insurance company's obligations; and (4) the cost of a failure to a systemically important insurance company's creditors.

A. Analysis of Potential Costs

1. Initial and Ongoing Costs To Comply

The corporate governance and risk-management provisions of the proposal are expected to have only modest initial and ongoing costs for the affected companies. Under the proposal, systemically important insurance companies would be required to maintain a risk committee of the board of directors that approves and periodically reviews the risk-management policies of the systemically important insurance company's global operations and oversees the operation of the systemically important insurance company's global risk-management framework. The systemically important insurance companies currently have board-level engagement on key risks, and any structural modifications to establish and operate a stand-alone risk committee of the board of the directors are likely to be modest.

Under the proposal, a systemically important insurance company's global risk-management framework would be required to include policies and procedures establishing risk-management governance, risk-management procedures, and risk control infrastructure for its global operations, as well as processes and systems for implementing and monitoring compliance with such procedures; identifying and reporting risks and risk-management deficiencies; establishing managerial and employee responsibility for risk management; ensuring the independence of the risk-management function; and integrating risk-management and associated controls with management goals and its compensation structure for its global operations. The systemically important insurance companies currently have both risk-management frameworks and policies already in place. They have already invested significant resources in building up their risk-management frameworks in recent years. The Board expects that these frameworks, along with the companies' planned improvements, would largely comply with the proposed standards. The proposal is designed to ensure that these policies and procedures are maintained and are developed as the risks within the firm change. The primary costs of maintaining and adapting these policies and procedures would be from the opportunity cost of management's time to make the changes to the framework, as well as the costs of establishing or improving new management information systems to assure the timely presentation of information to these senior level officials. These costs might also include additional staffing to administer the global risk-management framework.

Under the proposal, systemically important insurance companies also would be required to have a chief risk officer and a chief actuary. The systemically important insurance companies currently have both a chief risk officer and a chief actuary or co-chief actuaries. The proposal may require the companies to modify their reporting structures and compensation to ensure that the positions have sufficient stature and independence

from individual profit centers in order to comply with the proposal. The costs associated with such changes could include, but may not be limited to, ongoing payroll and benefit costs and the opportunity cost of the time spent making the necessary changes. These costs are expected to be minimal.

Under the proposed liquidity risk-management standard, systemically important insurance companies would be required to meet key internal control requirements with respect to liquidity risk management. The companies currently have existing processes in place to oversee liquidity risk. These processes, along with planned improvements, would largely comply with the liquidity risk-management standard's internal control requirements. Some additional changes may be required pertaining to new product approval and to ensure periodic review of all significant products and activities for liquidity risk features. These costs are expected to be relatively small.

The proposed rule would also require systemically important insurance companies to generate comprehensive cash flow projections. Both companies have procedures in place to generate cash-flow projections. Additional work may be needed to ensure that all cash flows, including those in unregulated or run-off entities, are included within the projections, and to ensure that the cash-flow projections are timely and updated at the appropriate frequency. The additional frequency of updating might require systemically important insurance companies to either hire additional staff to run these projections or to build or buy new systems that can produce these comprehensive forecasts in a timely and efficient manner. Because these firms already have in place basic infrastructure to make these projections, any marginal costs to meet the minimum requirements under the proposal are expected to be relatively modest.

The proposed rule would also require systemically important insurance companies to maintain a contingency funding plan. Both systemically important insurance companies have plans in place to respond to a liquidity crisis, and both are working to develop these plans further. Some additional work on these plans may be required to meet the requirements of the proposed rule, such as quantitatively assessing cash-flow needs and sources across legal entities.

The proposed rule also would require systemically important insurance companies to conduct liquidity stress tests and require the systemically important insurance companies to maintain liquid assets sufficient to meet net cash outflows for 90 days over the range of liquidity stress scenarios used in the internal stress tests. Both of the systemically important insurance companies have systems in place to project the company's liquidity position under stressed conditions. However, the proposal may cause the systemically important insurance companies to update these systems to facilitate monthly testing and ensure that the scenarios include all exposures and entities within the systemically important insurance company. The costs associated with these improvements are expected to be modest within the context of the organizations and could include, but may not be limited to, the costs to recruit and hire staff, including ongoing payroll and benefits costs, and the costs of development and implementation of management information systems with appropriate data to support analysis and reporting on a monthly frequency.

In addition, systemically important insurance companies may need to make balance sheet adjustments in order to come into and maintain compliance with the proposed liquidity risk-management requirements, if adopted as proposed. While both systemically important insurance companies currently appear to maintain an adequate amount of liquidity on a consolidated basis, some movement of funds between legal entities may be required to provide appropriate responsiveness in times of stress.

2. Impact on Premiums and Fees

The initial and ongoing costs of complying with the standard, if adopted as proposed, could affect the premiums and fees that the systemically important insurance companies charge. Insurance products are priced to allow insurers to recover their costs and earn a fair rate of return on their capital. In the long run, all costs of providing a policy are borne by policyholders.

Because the expected costs associated with implementing the proposal, if adopted, are not expected to be material within the context of the institutions' existing budgets, there is not expected to be a material change in the pricing of systemically important insurance companies' products from the proposed standards, if adopted as proposed. Moreover, the better identification and management of risk that is expected to result from the proposal may lead to improved efficiencies, fewer losses, and lower costs in the long term, which may offset the effects of the costs of compliance on premiums.

3. Reduced Financial Intermediation

If premiums or fees increase on some or all products, it could discourage some potential customers from purchasing these products. However, the possibility of reduced financial intermediation or economic output in the United States related to the proposed rule's corporate governance and risk-management standard and liquidity risk-management standard appears unlikely.

B. Analysis of Potential Benefits

Based on an initial assessment of available information, the benefits of the proposed standards are expected to outweigh the costs. Most significantly, the intent of the proposed rule is to reduce the probability of a systemically important insurance company failing or experiencing material financial distress. Even small changes in the probability of a systemically important firm failing can confer large expected benefits because of the enormous cost of financial crises. Additionally, the proposal would have an ancillary benefit of facilitating an orderly resolution of a systemically important insurance company, and could increase consumer confidence in the companies. Moreover, as explained below, improved risk management may improve efficiency by reducing losses and costs in the long term.

1. Benefits From a Reduction in the Likelihood That a Systemically Important Insurance Company Would Fail or Experience Material Financial Distress

This proposal is intended to reduce the risk that a systemically important insurance company would experience material financial distress or fail. A reduction of this probability carries numerous direct and indirect benefits.

The most important benefit from a reduction in the probability of default of a systemically important insurance company is a decreased potential for a potential negative impact on the United States economy caused by the failure or material financial distress of a systemically important insurance company. The Council has determined that material financial distress at each of the systemically important insurance companies could cause an impairment of financial intermediation or of financial market functioning that would be sufficiently severe to inflict significant damage on the broader economy. A reduction in the probability of failure or material financial distress at both systemically important insurance companies would promote financial stability and concomitantly materially

reduce the probability that a financial crisis would occur in any given year. The proposed rule would therefore advance a key objective of the Dodd-Frank Act and help protect the American economy from the substantial potential losses associated with a higher probability of financial crises.

In addition to the benefits to the broader economy, a reduction in a systemically important insurance company's default probability benefits its counterparties. The majority of funding for systemically important insurance companies comes from policyholders. Some of these policyholders would bear losses if the company were to fail. These losses can take the form of reduced payment for claims, reduced amounts available for withdrawal from policyholder accounts, or long delays.

The overall costs of these losses to policyholders extend beyond just their dollar value. Policyholders purchase insurance policies because they provide money when it is most needed. Insurance policies can replace lost wages when a policyholder is disabled or help a policyholder afford shelter after a natural catastrophe destroys his or her home and possessions. Other policyholders might not yet have experienced a loss event, but could be unable to obtain new coverage in the event a systemically important insurance company fails. For instance, an elderly policyholder who purchased a whole life contract many years ago would likely have difficulty obtaining a replacement policy.

Reducing the probability of a systemically important insurance company's failure or distress decreases the expected costs to policyholders, taxpayers, other counterparties, other insurance companies, and the financial system generally.

The proposal is also expected to benefit other creditors of systemically important insurance companies. In the event of a failure, the lenders and general creditors of a company also experience losses. While it is not the primary goal of this proposed regulation to protect these parties, they could potentially benefit.

The savings from a reduced probability of default would also have indirect benefits. They could also translate into lower borrowing costs for systemically important insurance companies. The lower costs could also affect insurance premiums. If systemically important insurance companies expect lower guaranty fund assessment costs, these savings could be passed on to policyholders in the form of lower premiums and fees. These savings are, however, unlikely to be material.

2. A Reduction in the Impact of a Firm's Failure or Distress on the Economy

While the primary benefit of the proposed rule would be a reduction in the probability of a firm failing or experiencing material financial distress, the proposed rule is also expected to produce benefits in a resolution of a systemically important insurance company. Liquidity is valuable in resolutions, and the restrictions on the liquidity buffer that require the buffer to be held at the holding company to be down-streamed, could facilitate a variety of strategies for an orderly resolution.

3. Improved Efficiencies Resulting From Better Risk Management

The proposed rule may result in efficiencies at systemically important insurance companies through improved risk-management practices. The proposed rule is expected to improve systemically important insurance companies' internal controls and identification and management of risks that may arise through their activities and investments. For example, the increased internal controls and liquidity stress-testing requirements could result in a systemically important insurance company discovering that a product's liquidity risks are different than it previously estimated and thus result in the systemically important insurance company being able to price that product in a way that more accurately reflects its risks. If systemically important insurance companies are better able to manage risk, then over the long term, the proposed rule may result in decreased losses and related costs to systemically important insurance companies.

Question 28: The Board invites comment on all aspects of the foregoing evaluation of the costs and benefits of the proposed rule. Are there additional costs or benefits that the Board should consider? Would the magnitude of costs or benefits be different than as described above?

VI. Administrative Law Matters

A. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

B. Paperwork Reduction Act Analysis

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is 7100–NEW. The Board reviewed the proposed rule under the authority delegated to the Board by the OMB.

The proposed rule contains requirements subject to the PRA. The recordkeeping requirements are found in sections 252.164(e)(3), 252.164(f), 252.164(h), and 252.165(a)(7). These information collection requirements would be implemented pursuant to section 165 of the Dodd-Frank Act for systemically important insurance companies.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the Board's estimate of the burden of the information collections, 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 information collections 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.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Federal Reserve Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping Requirements Associated with Enhanced Prudential Standards (Regulation YY).

Agency Form Number: Reg YY–1.

OMB Control Number: 7100—NEW.

Frequency of Response: Annual.

Affected Public: Businesses or other for-profit.

Respondents: Systemically important insurance companies.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to implement enhanced prudential standards for nonbank financial companies that the Council has determined should be supervised by the Board. Section 165 of the Dodd-Frank Act also permits the Board to establish such other prudential standards for such companies as the Board determines are appropriate.

Current Actions: Pursuant to section 165 of the Dodd-Frank Act, the Board is proposing the application of enhanced prudential standards to certain nonbank financial companies that the Council has determined should be supervised by the Board. The Board is proposing corporate governance, risk-management, and liquidity risk-management standards that are tailored to the business models, capital structures, risk profiles, and systemic footprints of the nonbank financial companies with significant insurance activities.

Section 252.164(e)(3) would require a systemically important insurance company to adequately document its methodology for making cash flow projections and the included assumptions.

Section 252.164(f) would require a systemically important insurance company to establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events and describes the steps that should be taken to ensure that the systemically important insurance company's sources of liquidity are sufficient to fund its normal operating requirements under stress events. To operate normally, a firm must have sufficient funding to pay obligations in the ordinary course as they become due and meet all solvency requirements for the writing of new and renewal policies. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant. The contingency funding plan must include specified quantitative elements, an event management process that sets out the systemically important insurance company's procedures for managing liquidity during identified liquidity stress events, and procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size.

Section 252.164(h)(1) would require a systemically important insurance company to establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties and sets forth minimum standards for those procedures.

Section 252.164(h)(2) would require a systemically important insurance company to establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

Section 252.164(h)(3) would require a systemically important insurance company to establish and maintain procedures for monitoring intraday liquidity risk exposure of the systemically important insurance company if necessary for its business. These procedures must address how the management of the systemically important insurance company will (1) monitor and measure expected daily gross liquidity inflows and outflows, (2) identify and prioritize time-specific obligations so that the systemically important insurance company can meet these obligations as expected and settle less critical obligations as soon as possible, (3) coordinate the purchase and sale of derivatives so as to maximize the effectiveness of their hedging programs, (4) consider the amounts of collateral and liquidity needed to meet obligations when assessing the systemically important insurance company's overall liquidity needs, and (5) where necessary, manage and transfer collateral to obtain intraday credit.

Section 252.35(a)(7) would require a systemically important insurance company to establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time. The systemically important insurance company would establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the final rule's stress-testing requirements. The systemically important insurance company would maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

Estimated Paperwork Burden

Number of Respondents: 2 systemically important insurance companies.

Estimated Burden per Response: 200 hours (Initial set-up 160 hours).

Estimated Annual Burden: 720 hours (320 hours for initial set-up and 400 hours for ongoing compliance).

C. Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act [29] (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

In accordance with section 165 of the Dodd-Frank Act, the Board is proposing to adopt Regulation YY (12 CFR 252 *et seq.*) to establish enhanced prudential standards for systemically important insurance companies.[30] The enhanced standards include liquidity standards and requirements for overall risk-management (including establishing a risk committee) for companies that the Council has determined pose a grave threat to financial stability.

[29] 5 U.S.C. 601 *et seq.*

[30] *See* 12 U.S.C. 5365 and 5366.

Under Small Business Administration (SBA) regulations, the finance and insurance sector includes direct life insurance carriers and direct property and casualty insurance carriers, which generally are considered ''small'' if a life insurance carrier has assets of $38.5 million or less or if a property and casualty insurance carrier has less than 1,500 employees.[31] The Board believes that the finance and insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, systemically important insurance companies with asset sizes of $38.5 million or less if such an entity is a life insurance carrier and less than 1,500 employees if such an entity is a property and casualty insurance carrier are small entities for purposes of the RFA.

As discussed in the **SUPPLEMENTARY INFORMATION**, the proposed rule generally would apply to a systemically important insurance company, which includes only nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. Companies that are subject to the proposed rule therefore substantially exceed the $38.5 million asset threshold at which a life insurance entity and the less than 1,500 employee threshold at which a property and casualty entity is considered a ''small entity'' under SBA regulations. The proposed rule would apply to a systemically important insurance company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[32] It is therefore unlikely that a financial firm that is at or below the $38.5 million asset threshold for a life insurance carrier or below the 1,500 employee threshold for a property and casualty carrier would be designated by the Council under section 113 of the Dodd-Frank Act.

As noted above, because the proposed rule is not likely to apply to any life insurance carrier with assets of $38.5 million or less or to any property and casualty carrier with less than 1,500 employees, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 165 of the Dodd-Frank Act.

[31] 13 CFR 121.201.

[32] *See* 76 FR 4555 (January 26, 2011).

List of Subjects

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 2. Add subpart P to read as follows:

Subpart P—Enhanced Prudential Standards for Systemically Important Insurance Companies

Sec.

§ 252.160 Scope.

This subpart applies to systemically important insurance companies. Unless otherwise specified, for purposes of this subpart, the term systemically important insurance company means a nonbank financial company that meets two requirements:

(a) The Council has determined pursuant to section 113 of the Dodd-Frank Act that the company should be supervised by the Board and subjected to enhanced prudential standards; and

(b) The company has 40 percent or more of its total consolidated assets related to insurance activities as of the end of either of the two most recently completed fiscal years (systemically important insurance companies) or otherwise has been made subject to this subpart by the Board.

§ 252.161 Applicability.

(a) *General applicability.* Subject to the initial applicability provisions of paragraph (b) of this section, a systemically important insurance company must comply with the risk-management and risk-committee requirements set forth in § 252.163 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.164 and 252.165 beginning on the first day of the fifth quarter following the date on which the Council determined that the company shall be supervised by the Board.

(b) *Initial applicability.* A systemically important insurance company that is subject to supervision by the Board on the date that this rule was adopted by the Board must comply with the risk-management and risk-committee requirements set forth in § 252.163 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.164 and 252.165, beginning on [date].

§ 252.162 [Reserved].

§ 252.163 Risk-management and risk committee requirements.

(a) *Risk committee*—(1) *General.* A systemically important insurance company must maintain a risk committee that approves and periodically reviews the risk-management policies of the systemically important insurance company's global operations and oversees the operation of the systemically important insurance company's global risk-management framework. The risk committee's responsibilities include liquidity risk-management as set forth in § 252.164(b).

(2) *Risk-management framework.* The systemically important insurance company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including

regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(B) Processes and systems for establishing managerial and employee responsibility for risk-management;

(C) Processes and systems for ensuring the independence of the risk-management function; and

(D) Processes and systems to integrate risk-management and associated controls with management goals and its compensation structure for its global operations.

(3) *Corporate governance requirements.* The risk committee must:

(i) Have a formal, written charter that is approved by the systemically important insurance company's board of directors;

(ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the systemically important insurance company's global operations and oversight of the operation of the systemically important insurance company's global risk-management framework;

(iii) Report directly to the systemically important insurance company's board of directors;

(iv) Receive and review regular reports on not less than a quarterly basis from the systemically important insurance company's chief risk officer provided pursuant to paragraph (b)(2)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) *Minimum member requirements.* The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the systemically important insurance company and has not been an officer or employee of the systemically important insurance company during the previous three years;

(B) Is not a member of the immediate family, as defined in § 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer of the systemically important insurance company, as defined in § 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and

(C)(*1*) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S–K (17 CFR 229.407(a)), if the systemically important insurance company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(*2*) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the systemically important insurance company does not have an outstanding class of securities traded on a national securities exchange.

(b) *Chief risk officer*—(1) *General.* A systemically important insurance company must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.* (i) The chief risk officer is responsible for overseeing:

(A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;

(B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the insurance nonbank company's risk control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) *Corporate governance requirements.* (i) The systemically important insurance company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the systemically important insurance company; and

(ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

(c) *Chief actuary*—(1) *General.* A systemically important insurance company must appoint a chief actuary with the ability to assess and balance risk selection, pricing, and reserving issues across product lines and geographies. A systemically important insurance company with significant life insurance business and property and casualty insurance business may appoint co-chief actuaries, one with responsibility for the company's life business and one with responsibility for the company's property and casualty business, in which case the below requirements would apply to each chief actuary.

(2) *Responsibilities.* (i) The chief actuary is responsible for determining on an enterprise-wide basis the adequacy of reserves and reviewing and advising senior management on the level of reserves.

(ii) The chief actuary is responsible for overseeing various activities, including but not limited to:

(A) Implementation of measures that assess the sufficiency of reserves;

(B) Review of the appropriateness of actuarial models, data, and assumptions used in reserving; and

(C) Implementation of and compliance with appropriate policies and procedures relating to actuarial work in reserving.

(iii) The systemically important insurance company must ensure that the compensation and other incentives provided to the chief actuary are consistent with providing an objective assessment of the systemically important insurance company's reserves.

(iv) The chief actuary must report directly to the audit committee of the company and may also have additional lines of reporting.

§ 252.164 Liquidity risk-management requirements.

(a) *Responsibilities of the board of directors*—(1) *Liquidity risk tolerance.* The board of directors of a systemically important insurance company must:

(i) Approve the acceptable level of liquidity risk that the systemically important insurance company may assume in connection with its operating strategies (liquidity risk tolerance) at least annually, taking into account the systemically important insurance company's capital structure, risk profile, complexity, activities, and size; and

(ii) Receive and review at least semi-annually information provided by senior management to determine whether the systemically important insurance company is operating in accordance with its established liquidity risk tolerance.

(2) *Liquidity risk-management strategies, policies, and procedures.* The board of directors must approve and periodically review the liquidity risk-management strategies, policies, and procedures established by senior

management pursuant to paragraph (c)(1) of this section.

(b) *Responsibilities of the risk committee.* The risk committee (or a designated subcommittee of such committee composed of members of the board of directors) must approve the contingency funding plan described in paragraph (f) of this section at least annually, and must approve any material revisions to the plan prior to the implementation of such revisions.

(c) *Responsibilities of senior management*—(1) *Liquidity risk.* (i) Senior management of a systemically important insurance company must establish and implement strategies, policies, and procedures designed to effectively manage the risk that the systemically important insurance company's financial condition or safety and soundness would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk). The board of directors must approve the strategies, policies, and procedures pursuant to paragraph (a)(2) of this section.

(ii) Senior management must oversee the development and implementation of liquidity risk measurement and reporting systems, including those required by this section and § 252.165.

(iii) Senior management must determine at least quarterly whether the systemically important insurance company is operating in accordance with such policies and procedures and whether the systemically important insurance company is in compliance with this section and § 252.165 (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition warrant), and establish procedures regarding the preparation of such information.

(2) *Liquidity risk tolerance reporting.* Senior management must report to the board of directors or the risk committee regarding the systemically important insurance company's liquidity risk profile and liquidity risk tolerance at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(3) *Business activities and products.* (i) Before a systemically important insurance company offers a new product or initiates a new activity that could potentially materially adversely affect the designated insurer's liquidity, senior management must approve such product or activity after evaluating the liquidity costs, benefits, and risks associated with such product or activity. In determining whether to approve the new activity or product, senior management must consider whether the liquidity risk of the new activity or product (under both current and stressed conditions) is within the company's established liquidity risk tolerance.

(ii) Senior management must review at least annually significant business activities and products to determine whether any activity or product creates or has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each activity or product is within the company's established liquidity risk tolerance.

(4) *Cash-flow projections.* Senior management must review the cash-flow projections produced under paragraph (e) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the systemically important insurance company warrant) to ensure that the liquidity risk is within the established liquidity risk tolerance.

(5) *Liquidity risk limits.* Senior management must establish liquidity risk limits as set forth in paragraph (g) of this section and review the company's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(6) *Liquidity stress testing.* Senior management must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in § 252.165(a) at least quarterly, and whenever the systemically important insurance company materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under § 252.165(a) at least quarterly;

(iii) Review the independent review of the liquidity stress tests under paragraph (d) of this section periodically; and

(iv) Approve the size and composition of the liquidity buffer established under § 252.165(b) at least quarterly.

(d) *Independent review function.* (1) A systemically important insurance company must establish and maintain a review function to evaluate its liquidity risk-management.

(2) The independent review function must:

(i) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the company's liquidity risk-management processes, including its liquidity stress test processes and assumptions;

(ii) Assess whether the company's liquidity risk-management function complies with applicable laws, regulations, supervisory guidance, and sound business practices;

(iii) Report material liquidity risk-management issues to the board of directors or the risk committee in writing for corrective action, to the extent permitted by applicable law; and

(iv) Be independent of management functions that execute funding.

(e) *Cash-flow projections.* (1) A systemically important insurance company must produce comprehensive cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons, including time horizons longer than one year. The systemically important insurance company must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

(2) The systemically important insurance company must establish a methodology for making cash-flow projections that results in projections that:

(i) Include cash flows arising from anticipated claim and annuity payments; policyholder options including surrenders, withdrawals, and policy loans; intercompany transactions; premiums on new and renewal business; expenses; maturities and renewals of funding instruments, including through the operation of any provisions that could accelerate the maturity; investment income and proceeds from assets sales; and other potential liquidity exposures;

(ii) Include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures;

(iii) Identify and quantify discrete and cumulative cash flow mismatches over these time periods; and

(iv) Include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the systemically important insurance company, and any applicable legal and regulatory requirements, and include analyses by business line, currency, or legal entity as appropriate.

(3) The systemically important insurance company must adequately document its methodology for making cash flow projections and the included assumptions.

(f) *Contingency funding plan.* (1) A systemically important insurance company must establish and maintain a contingency funding plan that sets out the company's strategies for addressing

liquidity needs during liquidity stress events and describes the steps that should be taken to ensure that the systemically important insurance company's sources of liquidity are sufficient to fund its normal operating requirements under stress events. To operate normally, a firm must have sufficient funding to pay obligations in the ordinary course as they become due and meet all solvency requirements for the writing of new and renewal policies. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) *Components of the contingency funding plan*—(i) Quantitative assessment. The contingency funding plan must:

(A) Identify liquidity stress events that could have a significant impact on the systemically important insurance company's liquidity;

(B) Assess the level and nature of the impact on the systemically important insurance company's liquidity that may occur during identified liquidity stress events;

(C) Identify the circumstances in which the systemically important insurance company would implement its action plan described in paragraph (f)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under § 252.165(a).

(ii) *Liquidity event management process.* The contingency funding plan must include an event management process that sets out the systemically important insurance company's procedures for managing liquidity during identified liquidity stress events. The liquidity event management process must:

(A) Include an action plan that clearly describes the strategies the company will use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the company will use to access alternative funding sources;

(B) Identify a liquidity stress event management team that would execute the action plan described in paragraph (f)(2)(ii)(A) of this section;

(C) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, describe the decision-making process during the identified liquidity stress events, and describe the process for executing contingency measures identified in the action plan; and

(D) Provide a mechanism that ensures effective reporting and communication within the systemically important insurance company and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(iii) *Monitoring.* The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size.

(3) *Testing.* The systemically important insurance company must periodically test:

(i) The components of the contingency funding plan to assess the plan's reliability during liquidity stress events;

(ii) The operational elements of the contingency funding plan, including operational simulations to test communications, coordination, and decision-making by relevant management; and

(iii) The methods the systemically important insurance company will use to access alternative funding sources to determine whether these funding sources will be readily available when needed.

(g) *Liquidity risk limits*—(1) *General.* A systemically important insurance company must monitor sources of liquidity risk and establish limits on liquidity risk, including limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk;

(ii) Potential sources of liquidity risk arising from insurance liabilities;

(iii) The amount of non-insurance liabilities that mature within various time horizons; and

(iv) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(2) *Size of limits.* Each limit established pursuant to paragraph (g)(1) of this section must be consistent with the company's established liquidity risk tolerance and must reflect the company's capital structure, risk profile, complexity, activities, and size.

(h) *Collateral, legal entity, and intraday liquidity risk monitoring.* A systemically important insurance company must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) *Collateral.* The systemically important insurance company must establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. These policies and procedures must provide that the systemically important insurance company:

(i) Calculates all of its collateral positions on a weekly basis (or more frequently, as directed by the Board), specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the systemically important insurance company's funding patterns, such as shifts in the tenor of obligations and collateral requirements; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) *Legal entities, currencies, and business lines.* The systemically important insurance company must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) *Intraday exposures.* The systemically important insurance company must establish and maintain procedures for monitoring the intraday liquidity risk exposure of the systemically important insurance company if necessary for its business. If applicable, these procedures must address how the management of the systemically important insurance company will:

(i) Monitor and measure expected daily gross liquidity inflows and outflows;

(ii) Identify and prioritize time-specific obligations so that the

systemically important insurance company can meet these obligations as expected and settle less critical obligations as soon as possible;

(iii) Coordinate the purchase and sale of derivatives so as to maximize the effectiveness of their hedging programs;

(iv) Consider the amounts of collateral and liquidity needed to meet obligations when assessing the systemically important insurance company's overall liquidity needs; and

(v) Where necessary, manage and transfer collateral to obtain intraday credit.

§ 252.165 Liquidity stress testing and buffer requirements.

(a) *Liquidity stress testing requirement*—(1) *General.* A systemically important insurance company must conduct stress tests to assess the potential impact of the liquidity stress scenarios set forth in paragraph (a)(3) of this section on its cash flows, liquidity position, profitability, and solvency, taking into account its current liquidity condition, risks, exposures, strategies, and activities.

(i) The systemically important insurance company must take into consideration its balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure, and other characteristics of the systemically important insurance company that affect its liquidity risk profile in conducting its stress test. Mechanisms that would imperil a systemically important insurance company's ability to continue operations—such as contractual stays—should not be taken into consideration as a source of liquidity in stress testing.

(ii) In conducting a liquidity stress test using the scenarios described in paragraph (a)(3) of this section, the systemically important insurance company must address the potential direct adverse impact of associated market disruptions on the systemically important insurance company and incorporate the potential actions of other market participants experiencing liquidity stresses, contract holders, and policyholders under the market disruptions that would adversely affect the systemically important insurance company.

(2) *Frequency.* The liquidity stress tests required under paragraph (a)(1) of this section must be performed at least monthly. The Board may require the systemically important insurance company to perform stress testing more frequently.

(3) *Stress scenarios.* (i) Each liquidity stress test conducted under paragraph (a)(1) of this section must include, at a minimum:

(A) A scenario reflecting adverse market conditions;

(B) A scenario reflecting an idiosyncratic stress event for the systemically important insurance company; and

(C) A scenario reflecting combined market and idiosyncratic stresses.

(ii) The systemically important insurance company must incorporate additional liquidity stress scenarios into its liquidity stress test, as appropriate, based on its financial condition, size, complexity, risk profile, scope of operations, or activities. The Board may require the systemically important insurance company to vary the underlying assumptions and stress scenarios.

(4) *Planning horizon.* Each stress test conducted under paragraph (a)(1) of this section must include a seven-day planning horizon, a 30-day planning horizon, a 90-day planning horizon, a one-year planning horizon, and any other planning horizons that are relevant to the systemically important insurance company's liquidity risk profile. For purposes of this section, a ''planning horizon'' is the period over which the relevant stressed projections extend. The systemically important insurance company must use the results of the stress test over the 90-day planning horizon to calculate the size of the liquidity buffer under paragraph (b) of this section.

(5) *Requirements for assets used as cash-flow sources in a stress test.* (i) To the extent an asset is used as a cash-flow source to offset projected funding needs during the planning horizon in a liquidity stress test, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.

(ii) Assets used as cash-flow sources during a planning horizon must be diversified by collateral, counterparty, borrowing capacity, and other factors associated with the liquidity risk of the assets.

(iii) For stress tests with a planning horizon of 90 days or less, cash-flow sources cannot include future borrowings or the liquidation of assets unless they meet the requirement to be part of the buffer as defined in (b)(3) of this section. In all stress tests and notwithstanding the limitations on asset liquidity, separate account assets and closed block assets would be permitted to be included as cash-flow sources in proportion to the cash flow needs in these same accounts.

(6) *Tailoring.* Stress testing must be tailored to, and provide sufficient detail to reflect, a systemically important insurance company's capital structure, risk profile, complexity, activities, and size.

(7) *Governance*—(i) *Policies and procedures.* A systemically important insurance company must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) *Controls and oversight.* A systemically important insurance company must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress-test process, taking into consideration the systemically important insurance company's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors. The assumptions must be approved by the chief risk officer and be subject to the independent review under § 252.164(d).

(iii) *Management information systems.* The systemically important insurance company must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

(b) *Liquidity buffer requirement.* (1) A systemically important insurance company must maintain a liquidity buffer that is sufficient to meet the projected net stressed cash-flow need over the 90-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraph (a)(3) of this section.

(2) *Net stressed cash-flow need.* The net stressed cash-flow need for a systemically important insurance company is the difference between the amount of its cash-flow need and the amount of its cash flow sources over the 90-day planning horizon.

(3) *Asset requirements.* The liquidity buffer must consist of highly liquid assets that are unencumbered, as defined in paragraph (b)(3)(ii) of this section:

(i) *Highly liquid asset.* A highly liquid asset includes:

(A) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(B) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government provided that the security is liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(C) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, European Community, or a multilateral development bank, that is:

(i) Either:

(A) Assigned no higher than a 20 percent risk weight under subpart D of Regulation Q (12 CFR part 217); or

(B) Issued by a sovereign entity in its own currency and the systemically important insurance company holds the security in order to meet its net cash outflows in the jurisdiction of the sovereign entity;

(ii) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(iii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and

(iv) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity;

(D) A security issued by, or guaranteed as to the timely payment of principal and interest by, a U.S. government sponsored enterprise, that is investment grade under 12 CFR part 1 as of the calculation date, provided that the claim is senior to preferred stock and liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(E) A corporate debt security that is:

(i) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section

(ii) Investment grade under 12 CFR part 1 as of the calculation date;

(iii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and

(iv) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity; or

(F) A publicly traded common equity share that is:

(i) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(ii) Included in: The Russell 1000 Index;

(iii) Issued by an entity whose publicly traded common equity shares have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions;

(iv) Not issued by a financial sector entity and not issued by a consolidated subsidiary of a financial sector entity; and

(vi) If held by a depository institution, is not acquired in satisfaction of a debt previously contracted (DPC);

(G) A general obligation security issued by, or guaranteed as to the timely payment of principal and interest by, a public sector entity where the security is:

(i) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(ii) Investment grade under 12 CFR part 1 as of the calculation date;

(iii) Issued or guaranteed by a public sector entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and

(iv) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity, except that a security will not be disqualified as a highly liquid asset solely because it is guaranteed by a financial sector entity or a consolidated subsidiary of a financial sector entity if the security would, if not guaranteed, meet the criteria of this section.

(H) Any other asset that the systemically important insurance company demonstrates to the satisfaction of the Board:

(1) Has low credit risk and low market risk;

(2) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section and

(3) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

(ii) *Unencumbered.* An asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such systemically important insurance company promptly to liquidate, sell or transfer the asset; and

(B) Is not pledged or used to secure or provide credit enhancement to any transaction.

(iii) *Liquid and readily marketable.* Liquid and readily-marketable means, with respect to a security, that the security is traded in an active secondary market with:

(1) More than two committed market makers;

(2) A large number of non-market maker participants on both the buying and selling sides of transactions;

(3) Timely and observable market prices; and

(4) A high trading volume.

(iv) *Limitations on intra-group transfer of funds.* Insurance non-bank financial companies must hold enough highly liquid, unencumbered assets at the top-tier holding company to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity deficit of each material entity would be calculated as that entity's amount of net stressed outflows over a 90-day planning horizon less the highly liquid assets held at the material entity. For the purposes of evaluating liquidity deficits of material entities, systemically important insurance companies should treat inter-affiliate exposures in the same manner as third-party exposures. The remaining highly liquid, unencumbered assets that are held to satisfy the liquidity buffer requirement can be held at a regulated company up to:

(A) The average amount of net cash outflows of the company holding the assets during the 90-day planning horizon in the scenarios set forth in paragraph (a)(3) plus.

(B) Any additional amount of assets, including proceeds from the monetization of assets that would be available for transfer to the top-tier company during times of stress without statutory, regulatory, contractual, or supervisory restrictions.

(v) *Calculating the amount of a highly liquid asset.* In calculating the amount of a highly liquid asset included in the liquidity buffer, the systemically important insurance company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(vi) *Diversification.* The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the systemically important insurance company's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

By order of the Board of Governors of the Federal Reserve System, June 9, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–14005 Filed 6–13–16; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1539]

RIN 7100 AE 53

Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is inviting comment on an advance notice of proposed rulemaking (ANPR) regarding approaches to regulatory capital requirements for depository institution holding companies significantly engaged in insurance activities (insurance depository institution holding companies), and nonbank financial companies that the Financial Stability Oversight Council (FSOC or Council) has determined will be supervised by the Board and that have significant insurance activities (systemically important insurance companies). The Board is inviting comment on two approaches to consolidated capital requirements for these institutions: An approach that uses existing legal entity capital requirements as building blocks for insurance depository institution holding companies and a simple consolidated approach for systemically important insurance companies.

DATES: Comments must be received no later than August 17, 2016.

ADDRESSES: You may submit comments, identified by Docket No. R–1539; RIN 7100 AE 53), by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include Docket No. R–1539; RIN 7100 AE 53) in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW., (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Thomas Sullivan, Associate Director, (202) 475–7656, Linda Duzick, Manager, (202) 728–5881, or Suyash Paliwal, Senior Insurance Policy Analyst, (202) 974–7033, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin W. McDonough, Special Counsel, (202) 452–2036; Tate Wilson, Counsel, (202) 452–369; David Alexander, Counsel, (202) 452–2877; or Mary Watkins, Attorney (202) 452–3722, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Robust capital is an important safeguard to protect the safety and soundness of financial institutions; enhance the resilience of financial institutions to position them to better navigate periods of financial or economic stress; and mitigate threats to financial stability that might be posed by the activities, material financial distress, or failure of financial institutions. To help achieve these benefits, various provisions of Federal law require the Board and other Federal banking agencies to establish minimum capital standards for holding companies that own insured depository institutions (IDIs) and for financial firms that are designated by the FSOC for supervision by the Board. The capital standards developed by the Board take into account the overall risk profile and the size, scope, and complexity of the operations of the institution. Further, the law allows the Board to tailor the minimum capital requirements applicable to companies that both own an IDI and significantly engage in insurance activities as well as for systemically important insurance companies.

The Board's supervisory objectives in setting capital requirements for the consolidated institution focus on the safety and soundness of the company and its IDI and on enhancing financial stability, and complement the primary mission of state legal entity insurance supervisors, which tends to focus on the protection of policyholders.[1] To achieve these objectives, the Board seeks comment on several approaches to designing a regulatory capital framework for supervised institutions significantly engaged in insurance activities that is intended to ensure that the institution has sufficient capital, commensurate with its overall institution-wide risk profile (1) to absorb losses and continue operations as a going concern throughout times of economic, financial, and insurance-related stress (*e.g.,* morbidity, mortality, longevity, natural and man-made catastrophes); (2) to serve as a source of strength to any subsidiary depository institutions; [2] and (3) to substantially mitigate any threats to financial stability that the institution might pose.

B. The Board's Consolidated Supervision of Systemically Important Insurance Companies and Insurance Depository Institution Holding Companies

This ANPR seeks comment on proposed approaches to regulatory capital requirements that are tailored to the risks of supervised insurance institutions, including both insurance depository institution holding companies and systemically important insurance companies.

The Board has broad authority to establish regulatory capital standards for

[1] For discussion regarding state supervision of insurance, *see, e.g.,* Financial Stability Oversight Council, Basis of the Financial Stability Oversight Council's Final Determination Regarding American International Group, Inc. (July 8, 2013), *available at https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf;* Financial Stability Oversight Council, Basis of the Financial Stability Oversight Council's Final Determination Regarding Prudential Financial, Inc. (Sept. 19, 2013), *available at https://www.treasury.gov/initiatives/fsoc/designations/Documents/Prudential%20Financial%20Inc.pdf.*

[2] 12 U.S.C. 1831o–1. *See also,* 12 U.S.C. 1844 and Section 706, Division O, of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2242 (2015).

savings and loan holding companies (SLHCs) and bank holding companies (BHCs) [3] under the Home Owners' Loan Act (HOLA) and Bank Holding Company Act, respectively.[4] The Board's supervisory objectives for insurance depository institution holding companies include ensuring the safe and sound operation of the consolidated firms and subsidiary IDIs, and ensuring that holding companies can serve as a source of strength for any subsidiary IDIs.[5] In addition, certain nonbank financial companies with significant insurance activities have been designated by the Council pursuant to section 113 of the Dodd-Frank Act [6] to be supervised by the Board and made subject to enhanced prudential standards. For these systemically important insurance companies, the Board is required under section 165 of the Dodd-Frank Act to establish enhanced prudential standards, including more stringent risk-based and leverage capital requirements, as well as stress tests.[7]

With respect to both insurance depository institution holding companies and systemically important insurance companies, the Board must establish minimum leverage capital requirements and minimum risk-based capital requirements that apply (1) on a consolidated basis, and (2) are at least as stringent as the generally applicable capital requirements that applied to IDIs at the time the Dodd-Frank Act was adopted, as well as current generally applicable IDI capital requirements.[8] The Dodd-Frank Act has been amended to allow the Board to tailor these minimum capital requirements as they would apply to persons regulated by state or foreign insurance regulators.[9]

The Board currently supervises twelve insurance depository institution holding companies and two systemically important insurance companies. Collectively, these firms have approximately $2 trillion in assets and represent approximately one-quarter of the assets of the U.S. insurance industry. These institutions range in size from approximately $3 billion in total assets to about $700 billion in total assets, and engage in a wide variety of insurance and non-insurance activities. Some of the firms operate exclusively in the United States, and some have material international operations. These institutions have a variety of ownership structures, including stock and mutual forms of ownership. Some of these institutions prepare financial statements according to U.S. Generally Accepted Accounting Principles (U.S. GAAP), and some do not, preparing financial statements only according to U.S. Statutory Accounting Principles (SAP) filed with their relevant state insurance regulators. The insurance depository institution holding companies tend to have simpler structures, often have an operating company, rather than a holding company, as the top-tier parent, and have a relatively greater U.S. focus in their operations. By contrast, the systemically important insurance companies are relatively larger financial institutions with substantial international operations, comparatively complex organizational structures relative to other insurance companies, and non-insurance as well as insurance activities.

The Board aims to develop regulatory capital frameworks for insurance depository institution holding companies and systemically important insurance companies that are consistent with the Board's supervisory objectives and appropriately tailored to the business of insurance. The Board is seeking comment on different frameworks that could be applied to insurance depository institution holding companies and systemically important insurance companies. As described below, this ANPR outlines two conceptual frameworks, one of which may be more appropriate for large, complex, systemically important institutions, while the other may be more appropriate for generally less complex firms such as the current population of insurance depository institution holding companies.

The Board is also seeking comment on the criteria that should be used to determine which supervised institutions are subject to regulatory capital requirements that are tailored to the business of insurance. A supervised insurance institution could become subject to tailored regulatory capital rules based on the significance of these activities for the consolidated firm. The Board could apply a threshold based on a percentage of total consolidated assets attributable to insurance activities. For example, for purposes of determining whether an SLHC is significantly engaged in insurance activities and should be subject to capital requirements that are tailored to these risks, the Board is considering using the threshold in the Board's existing capital requirements (Regulation Q).[10] Under this approach, an SLHC would be subject to the capital requirements as an insurance SLHC if it held 25 percent or more of its total consolidated assets in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit risk).[11] Further, the Board could define systemically important insurance companies as FSOC-designated nonbank financial companies with at least 40 percent of total consolidated assets related to insurance activities (as of the end of either of the two most recently completed fiscal years), or as otherwise ordered by the Board. These thresholds could reflect a level of insurance activity that is significant rather than incidental to the institution's activities.

The Board invites comment on all aspects of these frameworks, including whether these frameworks are workable, would enhance the resilience of these institutions, and would reduce risks to financial stability. The Board also invites comment and suggestions on other frameworks that may better achieve these purposes. In addition, the Board invites comment on the costs and benefits of these and alternate approaches, and on the various advantages and difficulties of each approach. To help the Board address specific issues raised by the regulatory capital frameworks discussed below, the Board also invites comment on the

[3] BHCs that are financial holding companies may engage in insurance underwriting activities. 12 U.S.C. 1844(k).

[4] 12 U.S.C. 1841 *et seq.*; 12 U.S.C. 1467a(g).

[5] 12 U.S.C. 1831o–1. *See also* 12 U.S.C. 1467a(g)(5).

[6] 12 U.S.C. 5323; *see also* Basis of the Financial Stability Oversight Council's Final Determination Regarding American International Group, Inc. (July 8, 2013), *available at http://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf;* Basis for the Financial Stability Oversight Council's Final Determination Regarding Prudential Financial, Inc. (Sept. 19, 2013), available at *http://www.treasury.gov/initiatives/fsoc/designations/Documents/Prudential%20Financial%20Inc.pdf.*

[7] 12 U.S.C. 5365. Section 165 of the Dodd-Frank Act would also direct the Board to establish consolidated capital requirements and administer stress test for any insurance depository institution holding companies that are BHCs with at least $50 billion in total consolidated assets. Presently, there are no BHCs that are also insurance depository institution holding companies.

[8] 12 U.S.C. 5371.

[9] 12 U.S.C. 5371(c)(1).

[10] 12 CFR 217.2.

[11] 12 CFR 217.2. Depository institution holding companies comprise BHCs as well as SLHCs. Presently, the population of Board-supervised insurance depository institution holding companies includes 12 SLHCs significantly engaged in insurance activities. To the extent that a BHC met the definition of an insurance depository institution holding company, the Board would need to consider whether to exclude the BHC from the Board's Regulation Q and instead apply a different approach.

specific questions listed throughout this notice.

II. Consolidated Capital Frameworks for Supervised Institutions Significantly Engaged in Insurance Activities: Two Options

In developing and evaluating potential capital frameworks, the Board relied on its experience in supervision of financial firms and with the development and application of capital standards through normal and stressed periods; discussions with affected financial firms, including firms engaged in insurance activities; the purposes of and requirements in Federal law; and information and insights provided by other supervisors, including state insurance supervisors, among other things.

Insurance supervisors, insurance companies and others have argued that because liability structures, asset classes, and asset-liability matching of insurance companies differ markedly from those of a typical BHC, the capital framework (or frameworks) should be tailored to the business mix and risk profile of insurance depository institution holding companies and systemically important insurance companies. They have also contended that leverage limits based on the ratio of equity to total assets, which are an important backstop in a banking regulatory capital framework, may have less value as a risk metric for supervised institutions significantly engaged in insurance activities because they do not address the different liability structure that is inherent to the insurance business. The Board has flexibility to develop leverage and risk-based capital requirements that are tailored to appropriately reflect the risks of supervised institutions significantly engaged in insurance activities.[12]

At the same time, supervisors and commenters recognize that a capital framework also should take into account all material risk types (insurance and non-insurance) in these institutions. Capital standards that do not account for all types of material risks tend to be ineffective and incent riskier activity. In addition, to the greatest extent possible, the capital framework should take account of risks across the entire firm—in the holding company, in regulated subsidiaries, and in unregulated subsidiaries. The financial crisis demonstrated that risks of financial distress often spread across an organization from unregulated subsidiaries to regulated subsidiaries.[13] Moreover, the framework should be as standardized as possible, rather than relying predominantly on a firm's internal capital models. Greater standardization will produce more consistent capital requirements, enhance comparability across firms, and promote greater transparency.[14]

The capital framework also should be based on U.S. regulatory and accounting standards and not foreign regulatory and accounting standards in order to best meet the needs of the U.S. financial system and insurance markets while reflecting the risks inherent in the business of insurance. The framework should strike a reasonable balance between simplicity and risk sensitivity. Achieving this balance will help ensure that risks are accurately captured while minimizing regulatory burden and increasing comparability and transparency across firms. The framework also should be executable in the short-to-medium term. Finally, the framework should contribute to the stability of the financial system and should serve as a good basis for a supervisory stress test regime to the extent these provisions apply to the regulated firm.

The Board invites comment on the considerations that should guide the development of a regulatory capital framework for insurance depository institution holding companies and systemically important insurance companies.

Question 1. *Are these identified considerations appropriate? Are there other considerations the Board should incorporate in its evaluation of capital frameworks for supervised institutions significantly engaged in insurance activities?*

Question 2. *Should the same capital framework apply to all supervised insurance institutions?*

Question 3. *What criteria should the Board use to determine whether a supervised insurance institution should be subject to regulatory capital rules tailored to the business of insurance?*

Question 4. *If multiple capital frameworks are used, what criteria should be used to determine whether a supervised insurance institution should be subject to each framework?*

Question 5. *In addition to insurance underwriting activities, what other activities, if any, should be used to determine whether a supervised institution is significantly engaged in insurance activities and should be subject to regulatory capital requirements tailored to the business mix and risk profile of insurance?*

The remainder of this section will describe two potential regulatory capital frameworks for supervised institutions significantly engaged in insurance activities; discuss the strengths and weaknesses of each approach; and suggest ways in which each approach could be effectively applied. The Board invites comment on all aspects of each approach. The Board will then use these comments to develop a specific proposal, likely based on these two approaches, and invite public comment on that specific proposal.

A. Option 1: Building Block Approach

The Board has traditionally set capital requirements for holding companies on a consolidated basis.[15] Among other things, a consolidated capital standard deters firms from placing assets in a particular legal entity, where the assets may be subject to lower, or no, capital requirements. Many SLHCs that are supervised insurance institutions because they own depository institutions do not produce consolidated financial statements.[16] This presents potential challenges to the development of consolidated capital requirements that would not impose undue burden on these institutions.

One approach that would accommodate this would aggregate capital resources and capital requirements across the different legal entities in the group to calculate combined qualifying and required capital. A firm's aggregate capital requirements generally would be the sum of the capital requirements at each subsidiary. This is a building block approach (BBA). The capital requirement for each regulated insurance or depository institution subsidiary would be based on the regulatory capital rules of that subsidiary's functional regulator—whether a state or foreign insurance regulator for insurance subsidiaries or a federal banking regulator for IDIs. The BBA would then build upon and aggregate legal entity (insurance, non-insurance financial, non-financial, and holding company) qualifying capital

[12] *See* Insurance Capital Standards Clarification Act of 2014, Public Law 113–279, 128 Stat. 3017 (2014).

[13] For example, severe losses in non-insurance subsidiaries may undermine confidence in an entire insurance organization and contribute to a firm's inability to meet obligations. Board of Governors of the Federal Reserve System, Regulatory Reform, *American International Group (AIG), Maiden Lane II and III, available at https://www.federalreserve.gov/newsevents/reform_aig.htm.*

[14] Actuarial models, as opposed to asset risk-weighting models, are nonetheless important in setting insurance reserves.

[15] *See* 12 CFR part 217.

[16] Section 171(c)(3) of the Dodd-Frank Act, as amended, prohibits the Board from requiring, pursuant to the Dodd-Frank Act or HOLA, supervised institutions that only prepare financial statements in accordance with SAP to prepare financial statements in accordance with U.S. GAAP. 12 U.S.C. 5371(c)(3)(A)–(B).

and required capital, subject to adjustments.

Under this approach, the regulatory capital requirements for a regulated insurance underwriting firm would be determined by reference to the rules of the appropriate state or foreign insurance supervisor for the firm. The regulatory capital requirement for each IDI generally would be determined under the Board's Regulation Q or under other capital rules applicable to IDIs.[17] The regulatory capital requirement for any other regulated non-insurance or unregulated subsidiary legal entity, such as a mid-tier holding company, would also be determined under the Board's Regulation Q.

As discussed further below, BBA may require the use of several types of adjustments in the calculation of a firm's enterprise-wide capital requirement. Adjustments may be necessary to conform or standardize the accounting practices under SAP among U.S. jurisdictions, and between SAP and foreign jurisdictions. Similarly, adjustments may be necessary to eliminate inter-company transactions.

Additionally, the BBA may require consideration of cross-jurisdictional differences. As discussed below, this would be achieved through the use of scalars. Scalars may, for example, be appropriate to account for differences in stringency applied by different insurance supervisors, and to ensure adequate reflection of the safety and soundness and financial stability goals, as opposed to policyholder protection, that the Board is charged with achieving.

The ratio of aggregate qualifying capital to aggregate required capital would represent capital adequacy at a consolidated level. Represented in an equation, the BBA could be summarized as follows:

$$\text{Capital Ratio (BBA)} = \frac{\sum Qualifying\ Capital(i)}{\sum [Adj.Required\ Capital(i) \cdot\ Scalar(i)]}$$

Question 6. *What are the advantages and disadvantages of applying the BBA to the businesses and risks of supervised institutions significantly engaged in insurance activities?*

Question 7. *What challenges and benefits do you foresee to the development, implementation, or application of the BBA? To what extent would the BBA utilize existing records, data requirements, and systems, and to what extent would the BBA require additional records, data, or systems? How readily could the BBA's calculations be performed across a supervised institution's subsidiaries and affiliates within and outside of the United States?*

Question 8. *What scalars and adjustments are appropriate to implement the BBA, and make the BBA effective in helping to ensure resiliency of the firm and comparability among firms, while minimizing regulatory burden and incentives and opportunity to evade the requirements?*

Question 9. *To what extent is the BBA prone to regulatory arbitrage?*

Question 10. *Which jurisdictions or capital regimes would pose the greatest challenges to inclusion in the BBA?*

Question 11. *How should the BBA apply to a supervised institution significantly engaged in insurance activity where the ultimate parent company is an insurer that is also regulated by a state insurance regulator? Are there other organizational structures that could present challenges?*

The key strengths of the BBA include the following: (1) It efficiently uses existing legal-entity-level regulatory capital frameworks; (2) it is an approach that could be developed and implemented expeditiously; (3) it would involve relatively low regulatory costs and burdens for the institutions; and (4) it would produce regulatory capital requirements that are tailored to the risks of each distinct jurisdiction and line of business of the institution.

The key weaknesses of the BBA include: (1) At the top-tier level, it is an aggregated, but not a consolidated, capital framework; (2) it would not discourage regulatory arbitrage within an institution due to inconsistencies across jurisdictional capital requirements and also may be vulnerable to gaming through techniques such as double leverage (*i.e.,* when an upstream entity issues debt to acquire an equity stake in a downstream entity); (3) it would need to account for inter-company transactions, which may result in extensive adjustments; (4) it would require the Board to determine scalars regarding a large number of state and foreign insurance regulatory capital regimes; and (5) it likely would require legal-entity-level stress tests, presenting challenges to appropriate reflection of diversification and inter-company risk transfer mechanisms and other transactions.

The strengths of the BBA would appear to be maximized and its weakness minimized were the BBA to be applied to insurance depository institution holding companies, which generally are less complex, less international, and not systemically important. In this context, incremental safety and soundness benefits would appear to be complemented by the lower compliance costs due to the smaller number of scalars involved. In particular, the BBA is standardized, executable, applies U.S.-based accounting principles for U.S. legal entities, accounts for material insurance risks, strikes a balance between risk-sensitivity and simplicity, and is well-tailored to the business model and risks of insurance.[18]

For the systemically important insurance companies, the BBA may not capture the full set of risks these firms impose on the financial system without significant use of adjustments and scalars, thereby negating any potential burden reduction from the approach. These firms also tend to prepare financial statements under U.S. GAAP, thereby making a consolidated capital requirement less burdensome to compute. Accordingly, the BBA may not be appropriate for systemically important insurance companies.

The Board continues to analyze whether the BBA is appropriate as a regulatory capital framework and whether it may be appropriate for all insurance depository institution holding companies or only a subset of these firms. Specifically, the Board is considering whether larger or more complex insurance depository institution holding companies should be subject to a regulatory capital framework other than the BBA.

Question 12. *Is the BBA an appropriate framework for insurance depository institution holding companies? How effective is the BBA at achieving the goal of ensuring the safety and soundness of an insurance depository institution holding company?*

Question 13. *Would the BBA be appropriate for larger or more complex insurance companies that might in the future acquire a depository institution?*

Further, the Board seeks comment on the following key issues regarding the design and implementation of the BBA.

[17] 12 CFR part 217.

[18] In addition, the BBA could be implemented in a manner consistent with section 171(c)(3) of the Dodd-Frank Act.

Baseline capital requirements at the legal-entity level. The BBA framework would begin with the baseline capital requirements at each legal entity. For example, for state-regulated insurance entities, the BBA could use different triggering thresholds from the state risk-based capital framework (*e.g.,* the Company Action Level, the Authorized Control Level), or some other level as the appropriate baseline capital requirement. For some regulated foreign insurance entities, the Board would need to decide whether the local minimum capital requirement, prescribed capital requirement, or some other requirement is the appropriate baseline. For subsidiary IDIs, the BBA could use the minimum common equity tier 1, tier 1, or total risk-based capital requirements under the standardized approach in the Board's Regulation Q, as well as the tier 1 leverage ratio. For unregulated subsidiaries, the BBA could use the risk-based capital or leverage requirements for depository institutions or some other, similarly stringent approach.

Question 14. *In applying the BBA, what baseline capital requirement should the Board use for insurance entities, banking entities, and unregulated entities?*

State-by-state and international variances in accounting or capital treatment for supervised institutions significantly engaged in insurance activities. The accounting practices for insurance companies can vary from state to state due to permitted and prescribed practices, and can result in significant differences in financial statements between similar entities filing SAP financial statements in different states. Regulators both within and outside of the U.S. have the authority to take actions with respect to insurance companies that may result in variances from standard accounting practices. The BBA would need to address international or state regulator approved variances in accounting or capital requirements for regulated insurance entities.

Question 15. *How should the BBA account for international or state regulator approved variances to accounting rules?*

Question 16. *What are the challenges in using financial data under different accounting frameworks? What adjustments and/or eliminations should be made to ensure comparability when aggregating to an institution-wide level?*

Question 17. *What approaches or strategies could the Board use to calibrate the various capital regimes without needing to make adjustments to the underlying accounting?*

Inter-company transactions. Any approach to regulatory capital for a supervised institution significantly engaged in insurance activities that aggregates qualifying capital and required capital at different legal entities within the institution should address inter-company transactions. Although inter-company transactions are naturally eliminated in consolidated accounting and regulatory frameworks, in an aggregated framework like the BBA, some inter-company transactions could generate redundancies in capital requirements, while others could reduce the required capital of a legal entity without reducing the overall risk profile of the institution. The BBA should include a treatment for inter-company transactions between different legal entities in the same supervised institution.

Question 18. *How should the BBA address inter-company transactions?*

Scalars. An important component of the BBA is that scalars would serve to bring jurisdictional capital frameworks to comparable levels of supervisory stringency. The BBA would need an appropriate scalar for each local regulatory capital regime, and therefore also would need a set of principles for determining those scalars. Any necessary scalars would be designed to reflect differences in supervisory purposes appropriate for insurance.

Question 19. *What criteria should be used to develop scalars for jurisdictions? What benefits or challenges are created through the use of scalars?*

Consolidation of qualifying capital. Under one version of a BBA framework, an insurance depository institution holding company or systemically important insurance company generally would determine its aggregate qualifying capital position by summing the qualifying capital position at each of its legal entities. A weakness of this approach is that it could enable the supervised institution to engage in substantial double leverage—that is, the institution's top-tier legal entity could fund its equity investments in its subsidiaries by substantial borrowings. Such an institution could have substantial qualifying capital positions at each of its major subsidiaries (and thus a robust BBA capital ratio) but could have a weak consolidated capital position.

To address this limitation of a simple BBA, the Board is considering adopting a version of the BBA that would determine an institution's aggregate qualifying capital position on a uniform, consolidated basis. Under such an approach, the BBA would continue to draw upon capital requirements set by the local regulators of each legal entity, but would use a single definition of qualifying capital for supervised institutions and would apply that definition to the institution on a fully consolidated basis. To implement this version of the BBA, the Board would need to develop a definition of consolidated regulatory capital for supervised institutions significantly engaged in insurance activities, including rules to address minority interests.

Question 20. *What are the costs and benefits of a uniform, consolidated definition of qualifying capital in the BBA?*

Question 21. *If the Board were to adopt a version of the BBA that employs a uniform, consolidated definition of qualifying capital, what criteria should the Board consider? What elements should be treated as qualifying capital under the BBA?*

Question 22. *Should the Board categorize qualifying capital into multiple tiers, such as the approach used in the Board's Regulation Q? If so, what factors should the Board consider in determining tiers of qualifying capital for supervised institutions significantly engaged in insurance activities under the BBA?*

B. Option 2: Consolidated Approach

The Board is also considering a consolidated approach (CA) to capital with risk segments and factors appropriate for supervised insurance institutions.

The CA is a proposed capital framework for supervised institutions significantly engaged in insurance activities that would categorize insurance liabilities, assets, and certain other exposures into risk segments; determine consolidated required capital by applying risk factors to the amounts in each segment; define qualifying capital for the consolidated firm; and then compare consolidated qualifying capital to consolidated required capital. Unlike the BBA, which fundamentally aggregates legal-entity-level qualifying capital and required capital, the CA would take a fully consolidated approach to qualifying capital and required capital. As distinguished from the Board's consolidated capital requirements for bank holding companies, the CA would use risk weights and risk factors that are appropriate for the longer-term nature of most insurance liabilities.

The foundation of the CA, for systemically important insurance companies, would be consolidated financial information based on U.S. GAAP, with adjustments for regulatory purposes. Application of the CA to insurance depository institution holding companies that do not file U.S. GAAP financial statements would require the development of a consolidated approach based on SAP. Initially, the CA could be

simple in design, with broad risk segmentation, but could evolve over time to have an increasingly granular segmentation approach with greater risk sensitivity. Represented as an equation, the CA could be summarized as follows:

$$\text{Capital Ratio (CA)} = \frac{Qualifying\ Capital}{\sum[Exposure\ Amount(i) \cdot\ Risk\ Factor(i)]}$$

Question 23. *What are the advantages and disadvantages of applying the CA to the businesses and risks of supervised institutions significantly engaged in insurance activities?*

Question 24. *What are the likely challenges and benefits to the development, implementation, and application of the CA? To what extent could the CA efficiently use existing records, data requirements, and systems, and to what extent would the CA require additional records, data, or systems?*

Question 25. *To what extent would the CA be prone to regulatory arbitrage?*

The CA has strengths and weaknesses as a regulatory capital framework. The key strengths of the CA include the following: (1) It has a simple and transparent factor-based design; (2) it covers all material risks of supervised institutions significantly engaged in insurance activities; (3) it is a fully consolidated framework that has the potential to reduce regulatory arbitrage opportunities and the risk of double leverage; (4) it would be relatively expeditious for the Board to develop and for institutions to implement, particularly in light of its broad risk segmentation as implemented initially; and (5) it would provide a solid basis upon which to build consolidated supervisory stress tests of capital adequacy for institutions subject to stress testing requirements.

The key weaknesses of the CA include the following: (1) The initially simple design of the CA would result in relatively crude risk segments and thus limited risk sensitivity, and (2) substantial analysis would be needed to design a set of risk factors for all the major segments of assets and insurance liabilities of supervised institutions significantly engaged in insurance activities. In addition, a separate SAP-based version of the CA would need to be developed for the insurance depository institution holding company population if CA were ever applied to an insurance depository institution holding company that only uses SAP.

Based on the Board's initial analysis of the CA's strengths and weaknesses and comparing the CA against the considerations set forth above, it appears that the CA may be an appropriate regulatory capital framework for systemically important insurance companies. The CA, as a consolidated capital framework, would reduce the opportunity for regulatory arbitrage and the potential for double leverage. The CA also would more easily enable supervisory stress testing and other macroprudential features for systemically important insurance companies.

The advantages of the CA are most salient for systemically important insurance companies that, by definition, are large, and internally and externally complex institutions. For insurance depository institution holding companies, which generally are smaller and less complex, these benefits may be outweighed by the additional implementation costs.

Question 26. *Is the CA an appropriate framework to be applied to systemically important insurance companies? What are the key challenges to applying the CA to systemically important insurance companies? How effective would the CA be at achieving the goals of ensuring the safety and soundness of a systemically important insurance company as well as minimizing the risk of a systemically important insurance company's failure or financial distress on financial stability?*

Question 27. *What should the Board consider in determining more stringent capital requirements to address systemic risk? Should these requirements be reflected through qualifying capital, required capital, or both?*

Further, the Board seeks comment on the following key issues regarding the design and implementation of the CA.

Definition of qualifying capital. Implementation of the CA would require the development of a uniform, consolidated definition of qualifying capital that is appropriate for all institutions subject to the CA.

Question 28. *What should the Board consider in developing a definition of qualifying capital under the CA? What elements should be treated as qualifying capital under the CA?*

Question 29. *For purposes of the CA, should the Board categorize qualifying capital into multiple tiers? What criteria should the Board consider in determining tiers of qualifying capital for supervised institutions significantly engaged in insurance activities under the CA?*

Segmentation of exposures. Implementing the CA would require a framework for segmenting or disaggregating balance-sheet assets, balance-sheet insurance liabilities, and certain off-balance-sheet exposures. Appropriate segmentation would be important to ensure that similar risks face broadly similar capital requirements and that the capital regime produces an appropriate degree of risk sensitivity while minimizing the opportunities for regulatory arbitrage. This segmentation process would account for differences among insurance risks as well as between insurance risks and banking and other non-insurance, financial risks. While the initial version of the CA likely would have broad risk segments, the CA could evolve over time to become more risk sensitive. One option for implementing the CA for systemically important insurance companies would be to use the segmentation framework in the Board's proposed Consolidated Financial Statements for Insurance Systemically Important Financial Institutions.[19]

Question 30. *What risk segmentation should be used in the CA? What criteria should the Board consider in determining the risk segments? What criteria should the Board consider in determining how granular or risk sensitive the segmentation should be?*

Question 31. *What challenges does U.S. GAAP present as a basis for segmentation in the CA?*

Question 32. *What are the pros and cons of using the risk segmentation framework in the proposed Consolidated Financial Statements for Insurance Systemically Important Financial Institutions as the basis of risk segmentation for the CA?*

Exposure amounts. The CA would need to identify the exposure amounts of the various kinds of balance-sheet assets, balance-sheet insurance liabilities, and off-balance-sheet exposures of an institution. Although in many cases, the reported amount of a particular exposure may be appropriate for purposes of the CA, in other cases the financial information of an institution may require adjustments. For example, adjusting insurance liabilities may be necessary in order to include additional, relevant information, such as current assumptions, or to better match the valuation of related assets. Further, the CA would require the determination of the appropriate exposure amounts for derivatives and other off-balance-sheet items in order to accurately reflect the risk exposure in determining required capital.

[19] 81 FR 24097 (Apr. 25, 2016).

Question 33. *How should the CA reflect off-balance-sheet exposures?*

Question 34. *Under what circumstances should U.S. GAAP be used or adjusted to determine the exposure amount of insurance liabilities under the CA?*

Factors. The CA would involve a set of Board-determined factors to be applied to the exposure amounts of assets, insurance liabilities, and off-balance-sheet items in each risk segment. The factor for each risk segment would reflect the riskiness of the segment and the capital required to support that risk. Because of the different liability structures between insurance companies and banks, some of the applicable insurance risk factors may differ from the analogous risk factors that apply to banks.

Question 35. *What considerations should the Board apply in determining the various factors to be applied to the amounts in the risk segments in the CA?*

Question 36. *What challenges are there in determining risk factors for global risks?*

Minimum ratio. The CA would require the establishment of a minimum ratio of consolidated qualifying capital to consolidated factor-weighted exposures in the CA. In addition, one or more definitions of capital adequacy (*e.g.*, ''well capitalized'' or ''adequately capitalized'') would be needed for early remediation and other supervisory purposes.

Question 37. *What criteria should the Board consider in developing the minimum capital ratio under the CA and definitions of a ''well-capitalized'' or ''adequately capitalized'' insurance institution?*

C. Other Assessed Frameworks

In developing the two general approaches discussed here, the Board considered a number of other potential regulatory capital frameworks that did not appear to meet the Board's supervisory objectives for supervised institutions significantly engaged in insurance activities. For example, consideration was given to applying a risk-based capital rule that is based solely on the Board's existing capital requirements for banking organizations (Regulation Q) to supervised institutions significantly engaged in insurance activities. Such an approach would not recognize the unique risks, regulation, and balance sheet composition of insurance firms. Although bank-like capital requirements may be appropriate for exposures that a supervised institution significantly engaged in insurance activities holds in a non-insurance subsidiary, an approach based solely on the Board's Regulation Q would not capture significant insurance risks. The Board is not aware of any major country that imposes bank capital requirements on insurance firms.

The Board also reviewed an approach that entirely excluded insurance subsidiaries and applied capital requirements only to the non-insurance parts of the supervised firm. This approach would, by definition, not capture all the material risks of the organization. While section 171 of the Dodd-Frank Act, as amended, permits the Board to exclude state and foreign regulated insurance entities in establishing minimum consolidated leverage and risk-based capital requirements, the parent holding company should be a source of capital strength to the entire entity, including to the subsidiary insurance companies and IDIs. To do this effectively, a consolidated capital requirement must take into account the risks within the consolidated organization, including insurance risks.

A capital approach based on the European Solvency II framework was considered, but would not appear to be appropriate for systemically important insurance companies and insurance depository institution holding companies in the United States.[20] Use of a Solvency II-based capital framework would not adequately account for U.S. GAAP and may introduce excessive volatility due to discount rate assumptions. Moreover, use of a Solvency II-based approach would involve excessive reliance on internal models. Internal models make cross-firm comparisons difficult and can lack transparency to supervisors and market participants. Additionally, such an approach would not be executable in the short-to-medium term; the notable challenges of the Solvency II regime have resulted in significantly extended implementation periods in various European jurisdictions.

The Board also analyzed a potential regulatory capital framework for supervised institutions significantly engaged in insurance activities that is based on internal stress testing. This approach would rely on internal models, be highly novel and complex, would entail a large and lengthy construction project, and would require a substantial dedication of supervisory resources to superintend. The Board intends to continue exploration of internal stress testing as it builds its supervisory stress testing program for systemically important insurance companies and its broader supervision program for supervised institutions significantly engaged in insurance activities.

Question 38. *Should the Board reevaluate any of these approaches? What additional consideration, if any, should the Board give to any of the regulatory capital approaches discussed above?*

III. Conclusion

The Board is seeking information on all aspects of its approaches to insurance regulatory capital and invites comment on the appropriate consolidated capital requirements for systemically important insurance companies and insurance depository institution holding companies. In addition, the Board invites comment on all of the questions set forth in this ANPR, as well as other issues that commenters may wish to raise.

In connection with this ANPR, the Board will review all comments submitted and supplementary information provided, as well as information regarding insurance regulatory capital derived from the Board's regulatory and supervisory activities. Once the Board has completed its review, the Board anticipates that it will issue a notice of proposed rulemaking to establish a regulatory capital framework for supervised institutions significantly engaged in insurance activities.

By order of the Board of Governors of the Federal Reserve System, June 9, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–14004 Filed 6–13–16; 8:45 am]

BILLING CODE 6210–01–P

[20] *See* Council Directive 2009/138, On the Taking-Up and Pursuit of the Buisness of Insurance and Reinsurance (Solvency II), 2009 O.J. (L 335) 1 (EC).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–127923–15]

RIN 1545–BM97

Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on the proposed regulations that provide guidance regarding the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally

determined for Federal estate tax purposes.

DATES: The public hearing is being held on Monday, June 27, 2016 at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Monday, June 20, 2016.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–127923–15), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–127923–15), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–2016–0010).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Theresa M. Melchiorre at (202) 317–6859; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–127923–15) that was published in the **Federal Register** on Friday, March 4, 2016 (81 FR 11486).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by June 20, 2016 must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Monday, June 20, 2016.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW., entrance, 1111 Constitution Avenue NW., Washington, DC 20224.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2016–14010 Filed 6–13–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0224]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks Patriots Point, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Charleston, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 29, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0224 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On March 10, 2016, The Patriots Point Maritime Museum notified the Coast Guard that it will be conducting a fireworks display from 9 p.m. to 9:30 p.m. on July 4, 2016. The fireworks are to be launched from a barge along the bank of the Cooper River at Patriots Point in Charleston, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 8:45 p.m. to 9:45 p.m. on July 4, 2016. The safety zone would cover all navigable waters within 500 yards of the barge located at Patriots Point on the Cooper River. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 9:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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. Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 1 hour that would prohibit entry within 500 yards of the fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

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

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov*

and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T07–0224 to read as follows:

§ 165.T07–0224 Safety zone; Fourth of July fireworks Patriots Point, Charleston, SC.

(a) This rule establishes a safety zone on all Cooper River waters within a 500 yard radius of barge, from which fireworks will be launched.

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

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

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on July 4, 2016 from 8:45 p.m. until 9:45 p.m.

Dated: May 31, 2016.

G.L. Tomasulo,

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

[FR Doc. 2016–13996 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[EPA–HQ–OAR–2015–0782; FRL–9947–31–OAR]

RIN 2060–AS56

Rescission of Preconstruction Permits Issued Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to revise a limitation on the rescission of stationary source preconstruction permits that is contained in the federal New Source Review (NSR) regulations. This proposal would amend the EPA's federal Prevention of Significant Deterioration (PSD) regulations to remove a date restriction from the current permit rescission provision. Other than removing the date restriction, the proposed rule is not intended to alter the circumstances under which an NSR permit may be rescinded. This proposal would also add a corresponding permit rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian country. This rule also proposes to correct an outdated cross-reference to another part of the regulations.

DATES: *Comments.* Comments must be received on or before July 14, 2016.

Public hearing. If anyone contacts us requesting a public hearing on or before June 20, 2016, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0782, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For general information on this proposed rule, please contact Ms. Jessica Montanez, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–3407 or by email at *montanez.jessica@epa.gov.* To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–0641 or by email at *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How is this ***Federal Register*** *document organized?*

The information presented in this document is organized as follows:

B. Does this action apply to me?

Entities potentially affected by this proposed rule include permit reviewing authorities responsible for the permitting of stationary sources of air pollution. This includes the EPA Regions, and both EPA-delegated air programs and EPA-approved air programs that are operated by state, local and tribal governments and that implement the federal NSR rules. Entities also potentially affected by this proposed rule include owners and operators of stationary sources that are subject to air pollution permitting under the Clean Air Act (CAA or Act).

C. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI. Do not submit this information to the EPA through *https://www.regulations.gov* or email. Clearly mark the specific information that you claim to be CBI. For CBI in a disk or CD–ROM that you mail to the 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 Code of Federal Regulations (CFR) part 2.

2. Tips for preparing comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used to support your comment.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns wherever possible, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. How can I find information about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–0641 or by email at *long.pam@epa.gov.*

E. Where can I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *https://www.epa.gov/nsr/nsr-regulatory-actions.* The docket contains, among other things, a comparison file that reflects how the proposed regulatory revisions compare to the current rules.

II. Overview of Action

The EPA is proposing to remove a date restriction by revising the permit rescission provision contained in its federal PSD permitting regulations. 40 CFR 52.21(w). This current provision authorizes the owner or operator of a stationary source that holds a PSD permit based on rules in effect on or before July 30, 1987, to request a rescission of their permit or a part of their permit. 40 CFR 52.21(w)(2).

Through this rulemaking action, we are proposing to remove the July 30, 1987, date from the 40 CFR 52.21(w)(2) provision. Experience has shown that there can be circumstances where a permit based on rules in effect after July 30, 1987, may qualify for rescissions under the criteria in paragraph (w)(3) of the current regulations. In one recent instance, the EPA determined a need for rescission authority after the Supreme Court of the United States (Supreme Court) determined that PSD permits were not required for new sources or modifications to existing sources that only emit greenhouse gases (GHGs). However, because of the date restriction in the current rule, the EPA had to revise the regulation in order to enable permits to be rescinded, consistent with the Supreme Court's ruling. Thus, the EPA is proposing to remove the July 30, 1987, date restriction in order to eliminate the need for such actions in the future. We believe that removal of the date is justified to enable the rule to cover other cases where a rescission of a permit may be appropriate under the criteria in paragraph (w)(3) of the current permit rescission provision.

Nevertheless, the EPA still intends to limit the rescission of permits to circumstances where the requirement for a source to meet the conditions of a major NSR permit is no longer present. Thus, we are not proposing to revise the criteria under which an owner or operator may qualify for rescission of an NSR permit. However, we are proposing to clarify that a rescission of a permit is not automatic; approval of a request for a rescission is contingent on an applicant's adequate demonstration that the permit is no longer needed and the permit reviewing authority's concurrence with the demonstration. Thus, a permit reviewing authority retains the discretion to deny a request for a permit rescission if it determines that the eligibility criteria are not satisfied.

We are proposing to add a similar permit rescission provision under the major nonattainment NSR rules that apply in Indian country at 40 CFR part 49. This part of the federal NSR program currently does not contain a provision addressing the rescission of major nonattainment NSR permits in Indian country. This rulemaking action also proposes to correct a cross-reference in the current rule provision.

III. Background

The major NSR program contained in parts C and D of title I of the CAA is a preconstruction review and permitting program applicable to new major sources and major modifications at such sources. In areas meeting the National Ambient Air Quality Standards (NAAQS) (''attainment areas'') or for which there is insufficient information to determine whether the NAAQS are

met (''unclassifiable areas''), the NSR requirements under part C of title I of the Act apply. We call this program the Prevention of Significant Deterioration program. In areas not meeting the NAAQS (''nonattainment areas''), the preconstruction permitting program is required under part D of the CAA. We call this program the Nonattainment NSR (NA NSR) program. Collectively, we also commonly refer to these two programs as the major NSR program. These rules are contained in 40 CFR 51.165, 51.166, 52.21 and 52.24 and 40 CFR part 51, appendices S and W.[1] The CAA also requires that State Implementation Plans (SIP) include measures to assure that achievement of the NAAQS is not impeded by construction of other sources that are not subject to the major NSR requirements. We call this program ''minor NSR.''

While the CAA establishes requirements for the permitting of construction of new major sources or modifications of such sources, it does not specify how long a permit is to remain in effect or whether there are circumstances under which an NSR permit may be invalidated or rescinded. *See, e.g.,* CAA section 165. The EPA has interpreted this silence to mean that an NSR permit should remain in effect for as long as the new or modified source continues to operate. However, the absence of a statutory provision on the continuing viability of and need for a permit does not suggest that the EPA lacks the authority and discretion to rescind a permit under some circumstances, such as when a final court ruling clarifies the meaning of some part of the CAA. Over the years, the EPA has used this authority and discretion to rescind permits under limited circumstances.

40 CFR 52.21(w) authorizes an owner or operator of a source to request, and the EPA Administrator[2] to grant, a rescission of a PSD permit if the owner or operator shows that the PSD regulations do not apply.

The original intent of the 40 CFR 52.21(w) provision was to create a means by which a limited category of sources that received a permit under the EPA's 1978 PSD regulations could be relieved of the requirements of their permits, after the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) determined that portions of those regulations were inconsistent with the CAA. The sources in question were ones that would no longer be considered ''major'' under our 1980 amendments to the PSD regulations, which were promulgated in response to the D.C. Circuit Court ruling.[3] The original paragraph (w) only applied to permits issued under the regulations in effect between June 19, 1978 (the date the first PSD regulations were published in the **Federal Register**), and August 7, 1980 (the effective date of the PSD amendments that included the new paragraph (w)).

In 1987, the EPA revised 40 CFR 52.21(w) to change the effective date requirement to apply to permits that were issued based on rules in effect on or before July 30, 1987. *See* 52 FR 24672, 24689 (July 1, 1987). The EPA made this revision in concert with its amendments to the NAAQS for particulate matter (PM), which, among other things, transitioned the PM pollution indicator from total suspended particles to PM_{10}. This revision of 40 CFR 52.21(w) effectively enabled rescission authority to apply to sources and modifications that were no longer major using the new PM_{10} indicator. Thus, the July 30, 1987, date stipulation that remains in 40 CFR 52.21(w) is an artifact of the 1987 regulatory revisions to transition to the revised PM_{10} indicator.

Following the changes made in 1987, 40 CFR 52.21(w) remained unchanged until almost three decades later when the EPA revised 40 CFR 52.21(w), in response to a Supreme Court decision, to expressly allow rescission of permits granted for sources based solely on the emissions of GHGs.[4] *See* May 7, 2015; 80 FR 26183. This 2015 regulatory action did not revise or remove the July 30, 1987, date, but was a targeted effort to expeditiously authorize the rescission of PSD permits that were required solely based on GHG emissions.

However, in the preamble to that 2015 rule, the EPA signaled its intent to undertake a subsequent rulemaking action to apply the permit rescission provision to permits issued after July 30, 1987, and to eliminate the need to conduct targeted rulemakings in the future. 80 FR 26186.

The current regulations require that the Administrator provide adequate public notice of the final permit rescission determination. Thus, the provision does not require that the EPA provide advance notice of the permit rescission determination. However, we believe that public notice and comment procedures—similar to those used when proposing a draft permit—may be appropriate in certain circumstances. This could occur when a permit rescission determination is not straightforward (*e.g.,* possible differences in interpretation over the change in the law that is the basis for the rescission request) or when there is increased public interest in the facility requesting a permit rescission. In these cases, while prior notice of the permit rescission determination is not required, the permit reviewing authority has discretion to provide notice of the rescission and to solicit comment (*e.g.,* by way of a public announcement or public hearing) before finalizing a permit rescission determination. Having this additional public input could be very important if the rescission is controversial in nature. This is consistent with the approach the EPA has recommended recently in guidance on permit extensions.[5]

Furthermore, the EPA interprets 40 CFR 124.15 of its regulations to apply to a number of PSD permit actions, including permit rescissions.[6] Thus, a decision to rescind a PSD permit is a ''final permit decision'' under 40 CFR 124.15. As a result, under 40 CFR 124.19, a decision to rescind a permit under 40 CFR 52.21(w) is subject to review by the EPA's Environmental Appeals Board. After this appeal procedure is exhausted, a permit rescission determination may, under CAA 307(b)(1), be subject to judicial review in the United States Court of Appeals for the appropriate circuit.

IV. Proposed Revisions

These proposed revisions are intended to provide greater flexibility and clarity for improved

[1] In addition, the major NA NSR rules that apply in Indian country can be found at 40 CFR part 49.

[2] The rescission regulation at 40 CFR 52.21(w) is intended to be a delegable authority. The use of the term ''Administrator'' in our regulations is not intended to impede delegation. For example, for federally-issued permits, since the EPA Regional offices issue the permits in their jurisdictions, rescission authority is typically delegated—usually to either an EPA Regional Administrator or Division Director.

[3] August 7, 1980, 45 FR 52676.

[4] The Supreme Court determined that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or a modification thereof) required to obtain a PSD permit. *UARG* v. *EPA,* 134 S. Ct. 2427 (2014). In accordance with the Supreme Court decision, on April 10, 2015, the D.C. Circuit issued an amended judgment vacating portions of the particular provisions of the EPA's regulations implementing the EPA's PSD and Title V GHG Tailoring Rule. On August 19, 2015, the EPA amended its PSD regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated.

[5] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2) (January 31, 2014). *https://www.epa.gov/sites/production/files/2015-07/documents/extend14.pdf.*

[6] 40 CFR 124.15(a) uses the term ''terminate,'' which is synonymous with a rescission of a permit.

implementation of the permit rescission provision. The specific proposed changes are explained in this section, and we are requesting comment on all aspects of this proposal.

A. Removal of Date Restriction

In this action, the EPA proposes to remove the date restriction of July 30, 1987, from the current 40 CFR 52.21(w) provision. This approach is consistent with our recent rule to authorize rescission of specific types of permits issued after July 30, 1987, in response to a decision by the Supreme Court regarding GHGs. If the EPA finalizes this proposed revision, rescission authority would extend to PSD permits issued after this date when the applicant shows that the requirements of 40 CFR 52.21 ''would not apply to the source or modification.'' In addition, the specific language in paragraphs (w)(2) and (w)(3) that the EPA added in 2015 to accommodate the rescission of certain types of GHG PSD permits would no longer be required, so we are concurrently proposing in this action to delete the GHG permit rescission language adopted in the 2015 rulemaking.

As explained in the ''Background'' section of this preamble, the creation of the original rescission provision was aimed at addressing a specific need with regard to responding to the D.C. Circuit Court decision in *Alabama Power.*[7] In 1987, the EPA recognized another circumstance in which rescission of permits may be justified—the change of the PM indicator to PM_{10}. In 2015, the EPA identified an additional need to extend the rescission authority beyond its original scope after the Supreme Court decision regarding GHGs. Thus, over the years, the EPA has periodically found a need to expand the rescission provision through a regulatory action beyond its original scope as new circumstances have arisen. These and other experiences since 1980 have shown that there is a periodic need to utilize PSD permit rescission authority. We would expect this pattern to continue in the event of additional court decisions that narrow the scope of sources required to obtain a PSD permit. Where a source obtained a PSD permit in reliance on the EPA regulations that a court subsequently determined to be unnecessary or inappropriate, the EPA would expect to conclude that 40 CFR 52.21 ''would not apply to the source or modification.'' Furthermore, the EPA recognizes there could be circumstances not previously considered by the EPA that may lead a source to request a rescission of their permit and a permit reviewing authority to grant the request.

The EPA is not proposing to change the criteria under which an owner or operator may qualify for rescission of an NSR permit. Requests for permit rescission are very case-specific and require an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be shown that the requirements of 40 CFR 52.21 ''would not apply to the source or modification.''

Thus, we are proposing to eliminate the date restriction so that the EPA—and other permitting authorities that implement 40 CFR 52.21(w)—may in the future consider, on a case-by-case basis, whether a source that requests a permit rescission is eligible for rescission of its permit. The regulatory change we are proposing is limited in nature, and the EPA continues to believe that rescission is appropriate only in limited circumstances. This is because the EPA views the role of the NSR program to authorize the construction and initial operation of a source or a modification and, assuming the source was constructed as originally permitted, there should be very few cases in which the original authorization should be rescinded.

B. Discretion of the Permitting Reviewing Authority

While we are proposing to retain the criteria under which a rescission is authorized, we are also proposing to clarify that the rescission of a permit requires an exercise of discretion by the permit reviewing authority. In this action, the EPA proposes to revise 40 CFR 51.21(w)(3) to make it clear that the provision does not create a mandatory duty on the Administrator to grant a rescission request.

The 1980 preamble speaks of the EPA needing ''adequate information with which to make a sound decision'' to rescind a permit. It also states that it ''will have the expertise and objectivity necessary to check adequately whether the permittee has applied the intricate applicability rules correctly.'' August 7, 1980; 45 FR 52682. Thus, the responsible authority at the permitting agency has always had the authority to grant or deny a rescission request based on an analysis of the request for a permit rescission and a determination of whether it is appropriate to grant or deny the request to rescind the permit. The EPA believes that it is appropriate to view the existing 40 CFR 52.21(w)(3) provision as a whole, including the last phrase ''. . . if the application shows that this section would not apply to the source or modification.'' We believe that the second phrase conditions the first phrase (''The Administrator shall grant an application for rescission'') on the fact that an adequate demonstration must be made by the permit applicant.

Thus, the EPA is proposing to replace the word ''shall'' with the word ''may'' in this provision, without making any other revision to 40 CFR 52.21(w)(3). This revision is intended to make clear that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 ''would not apply to the source or modification.'' The EPA does not believe this changes the meaning or intent of the existing provision, but rather clarifies the approvability of the request by the Administrator.

C. Incorrect Cross Reference

We are proposing to correct the first paragraph of (w), which has an incorrect cross reference. Paragraph (w)(1) currently references 40 CFR 52.21 paragraph (s), but 40 CFR 52.21(s) pertains to environmental impact statements and does not address the expiration of a permit.

We are therefore proposing to revise the reference in paragraph (w)(1) to refer to paragraph (r), which addresses permit expiration. 40 CFR 52.21(r)(2)

D. Rescission Authority for NA NSR Permits in Indian Country

This action also proposes to add a provision to 40 CFR 49.172 to provide rescission authority for major NA NSR permits in Indian country. The EPA proposes that the provision added to 40 CFR 49.172 would be similar to the provision at 40 CFR 52.21(w) and would reflect the public notice requirements included in that rule. The EPA believes it is appropriate to allow rescission of NA NSR permits in Indian country in limited, case-specific circumstances for the same reasons it is appropriate to allow rescission of PSD permits in narrow circumstances.

Creating a rescission provision in 40 CFR part 49 for major NA NSR permits in Indian country would ensure that all federal programs for major source permitting have rescission authority. PSD permits issued to sources in Indian country are federal permits and consequently subject to 40 CFR 52.21, so they would be subject to the same revisions to 40 CFR 52.21 that are being proposed in this action.

[7] *Alabama Power Company* v. *Costle,* 606 F.2d 1068 (D.C. Cir. 1979), modified, 636 F.2d 323 (D.C. Cir. 1979).

E. Rescission Authority for Other Air Permitting Programs

In the case of sources in the Outer Continental Shelf (OCS), the EPA's OCS air regulations at 40 CFR 55 establish the applicable requirements, which include federal air pollution preconstruction permit requirements. 40 CFR part 55 refers to rescinding a preconstruction permit issued to an OCS source and incorporates by reference 40 CFR 52.21. Thus, any regulatory revisions to 40 CFR 52.21(w) would automatically apply to applicable permit requirements incorporated in part 55. *See* 40 CFR 55.6(b)(5) and 55.13(d). As a result, the EPA does not see a need to revise the Part 55 permitting regulations.

While the EPA's regulations for SIP-approved programs in 40 CFR 51.165 and 51.166 do not include provisions for permit rescissions, we have previously stated that we would approve such provisions if states were to adopt them.[8] In addition, this rule is not intended to alter minor source construction permit requirements that may apply in the place of major NSR permit conditions that are no longer applicable to a source modification.

Consequently, we are proposing that the rules on rescinding preconstruction permits would only reside in the federal major NSR program rules at 40 CFR parts 49 and 52 (and, by extension, part 55 as noted previously). The EPA has previously explained that other permit reviewing authorities are free to adopt our rescission rule provisions or propose their own and request approval by the EPA.

F. Public Notice

We note that a forthcoming EPA rule has proposed to amend the second sentence of paragraph (w)(4) of 40 CFR 52.21 to remove the mandatory newspaper notice requirement and to require electronic noticing of rescission determinations. *See* December 29, 2015; 80 FR 81234. We are not taking comment on these separately proposed revisions to paragraph (w)(4) of 40 CFR 52.21 in this rule proposal, and we direct the reader to that separate rulemaking for further information with regard to the noticing of permit rescissions. In this action, the EPA is not proposing to revise 40 CFR 52.21(w)(4) in the permit rescission provision.

V. Implementation

Upon promulgating this action, the rule would become effective within 30 days for permit reviewing authorities that implement the federal program rules at 40 CFR parts 49 and 52. This includes the EPA Regions and other permit reviewing authorities that are delegated authority by the EPA to issue PSD permits on behalf of the EPA (via a delegation agreement) and permit reviewing authorities that have their own PSD rules approved by the EPA in a SIP and the SIP incorporates by reference 40 CFR 52.21(w) and automatically updates when the federal rules are amended. Since this action is not amending 40 CFR part 51, there are no implementation requirements for permit reviewing authorities that implement the part 51 regulations through an approved SIP.

VI. Environmental Justice Considerations

We do not believe that these proposed revisions and additions to the rescission of federal major NSR permits would have any effect on environmental justice communities.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0003 for the PSD and NA NSR permit programs. We believe that the burden associated with rescinding federal NSR permits is already accounted for under the approved information collection requests.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments, and none of these governments would qualify as a small entity. Other types of small entities are not directly subject to the requirements of this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded federal mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Specifically, these proposed revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this

[8] *See* August 7, 1980; 45 FR 52686 and 52688.

action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment.

VIII. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

List of Subjects

40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: May 27, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

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

Subpart C—General Federal Implementation Plan Provisions

■ 2. Section 49.172 is amended by adding paragraph (f) to read as follows:

§ 49.172 Final permit issuance and administrative and judicial review.

* * * * *

(f) *Can my permit be rescinded?*

(1) Any permit issued under this section or a prior version of this section shall remain in effect until it is rescinded under this paragraph.

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(3) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(3) The reviewing authority may grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the reviewing authority rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission determination in accordance with one or more of the following methods:

(i) The reviewing authority may mail or email a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.

(ii) The reviewing authority may post the notice on its Web site.

(iii) The reviewing authority may publish the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a Tribal newspaper or newsletter.

(iv) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, Tribal environmental offices, community centers or other gathering places in the community.

(v) The reviewing authority may employ other means of notification as appropriate.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

■ 4. Section 52.21 is amended by revising paragraphs (w)(1) through (3) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(w) * * *

(1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r) of this section or is rescinded under this paragraph.

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in § 52.21 paragraph (w)(3) may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator may grant an application for rescission if the application shows that this section would not apply to the source or modification.

* * * * *

[FR Doc. 2016–13303 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA–HQ–OAR–2016–0186; FRL–9947–56–OAR]

RIN 2060–AS96

Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to remove the affirmative defense provisions for emergencies found in the regulations for state and federal operating permit programs. These provisions establish an affirmative defense that sources can assert in civil enforcement cases when noncompliance with certain emission limitations in operating permits occurs because of qualifying ''emergency'' circumstances. These provisions, which have never been required elements of state operating permit programs, are being removed because they are inconsistent with the enforcement structure of the Clean Air Act (CAA) and recent court decisions from the U.S. Court of Appeals for the D.C. Circuit. The removal of these provisions is consistent with other recent EPA actions involving affirmative defenses and would harmonize the enforcement and implementation of emission limitations across different CAA programs. The EPA is also taking comment on various implementation consequences relating to the proposed removal of the emergency affirmative defense provisions.

DATES:

Comments. Comments must be received on or before August 15, 2016.

Public Hearing: If anyone contacts the EPA requesting a public hearing on or before June 29, 2016, the EPA will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0186, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For general information, please contact Mr. Matthew Spangler, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division (C504–05), Research Triangle Park, NC 27711; telephone number: (919) 541–0327; email address: *spangler.matthew@epa.gov.* To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division (C504–01), Research Triangle Park, NC 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How is this Federal Register notice organized?

The information presented in this preamble is organized as follows:

B. Does this action apply to me?

Entities potentially affected by this proposed rulemaking include federal, state, local and tribal air pollution control agencies that administer title V operating permit programs [1] and owners and operators of emissions sources in all industry groups who hold or apply for title V operating permits.

C. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI

Do not submit CBI to the EPA through *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 the 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 submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. How can I find information about a possible public hearing?

If anyone contacts the EPA requesting a public hearing on or before June 29, 2016, the EPA will hold a hearing. If requested, further details concerning a public hearing for this proposed rule will be published in a subsequent **Federal Register** document. For updates and additional information on a public hearing, please check the EPA's Web page at *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.*

E. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.*

II. Overview of Action

The EPA has promulgated permitting regulations for the operation of major and certain other sources of air pollutants under title V of the CAA. These regulations are codified in 40 CFR parts 70 and 71, which contain the requirements for state operating permit programs and the federal operating

[1] This preamble makes frequent use of the term ''state,'' usually meaning the state air pollution control agency that serves as the permitting authority. The use of the term ''state'' also applies to local and tribal air pollution control agencies, where applicable.

permit program, respectively. These regulations currently contain identical provisions setting forth an affirmative defense to enforcement actions brought for noncompliance with technology-based emission limitations under specific ''emergency'' circumstances. *See* 40 CFR 70.6(g) and 71.6(g).

In this action, the EPA is proposing to remove the emergency affirmative defense provisions in 40 CFR 70.6(g) and 71.6(g) because they are inconsistent with the EPA's current interpretation of the CAA's enforcement structure and recent court decisions from the U.S. Court of Appeals for the D.C. Circuit. These provisions have never been required elements of state operating permit programs. The removal of these provisions is consistent with other recent EPA actions involving affirmative defenses and would help harmonize the enforcement and implementation of emission limitations across different CAA programs.

If the EPA takes final action to remove these provisions from 40 CFR 70.6(g), it may be necessary for any states that have adopted similar affirmative defense provisions into their part 70 operating permit programs to revise their program regulations to remove these provisions. In addition, the EPA expects that these states would coordinate revisions of individual operating permits that contain similar provisions.

III. Background

A. Regulatory History of 40 CFR 70.6(g) and 71.6(g)

In 1990, Congress amended the CAA and established, among other things, title V of the CAA, which contains a national operating permit program for certain stationary sources of air pollution. *See* CAA sections 501–503, Public Law 101–549 (1990) (codified at 42 U.S.C. 7661–7661b). Shortly thereafter, and pursuant to CAA section 502(b), the EPA promulgated regulations implementing title V of the CAA. The first set of regulations, finalized in 1992 and codified at 40 CFR part 70 (the part 70 regulations), governs state operating permit programs and provides for states to develop and submit to the EPA programs for issuing operating permits for major and certain other stationary sources of air pollution.[2] Pursuant to CAA section 502(d)(3), the EPA promulgated a second set of regulations in 1996, found at 40 CFR part 71 (the part 71 regulations), which outlines the federal operating permit program.[3] Both sets of regulations contain identical affirmative defense provisions, which are addressed by this action.

Title V of the CAA does not contain any provisions concerning an affirmative defense mechanism for emergencies. When the EPA first proposed its part 70 regulations in 1991, the agency did not include any such provisions.[4] However, the EPA received comments specifically requesting that the part 70 regulations make some provision for ''emergencies'' or ''upsets'' caused by the failure of emission control equipment. In promulgating the final part 70 regulations for state operating permit programs, the EPA included § 70.6(g), which contains an affirmative defense for ''emergencies.'' [5] When the EPA promulgated its part 71 regulations in 1996, it adopted an identical provision in § 71.6(g), in order to maintain consistency between the state and federal operating permit programs.[6] The text of sections 70.6(g) and 71.6(g) has not changed since initially promulgated.

The title V emergency provisions establish an affirmative defense. A stationary source of air pollution can assert this affirmative defense in an enforcement case to avoid liability for noncompliance with technology-based emission limits contained in the source's title V permit. In order to use this affirmative defense and avoid liability, the source must demonstrate that any excess emissions occurred as the result of an ''emergency,'' as defined in the regulations, and make a number of other demonstrations specified in the regulations. *See* 40 CFR 70.6(g) and 71.6(g). These title V affirmative defense provisions apply in addition to, and independently from, any emergency or upset provisions contained in other applicable CAA requirements.

Sections 70.6(g) and 70.4(b)(16) form the basis for similar affirmative defense provisions contained in state operating permit programs and for similar provisions contained in individual state-issued operating permits. Section 71.6(g) provides the authority to include this emergency provision in operating permits issued by the EPA or by states with delegated authority under part 71.

Such emergency affirmative defense provisions are not required program elements. States have never been obligated to include the § 70.6(g) affirmative defense provision in their part 70 operating permit programs; instead, the provision has always been discretionary.[7] Similarly, although the emergency affirmative defense provision is located within the ''Permit Content'' section of the part 70 and part 71 regulations, the EPA does not consider the provision to be a required permit term.[8] Thus, the EPA considers the emergency provision to be a discretionary element of both state permitting programs as well as individual operating permits.

B. Subsequent Legal and Regulatory History Supporting This Action

The EPA has considered the most appropriate ways to account for excess emissions during different modes of source operation, such as startup and shutdown, and emissions during emergencies, upsets, and malfunctions for more than 40 years. The EPA's policies regarding the emergency affirmative defense provisions in its part 70 and 71 regulations have been shaped by a number of factors, including the structure of the CAA, federal court decisions, experience with similar provisions in other EPA programs, and recommendations from stakeholders. This section summarizes some of the more relevant and recent legal, regulatory, and policy considerations informing the EPA's current policy on affirmative defense provisions, including the D.C. Circuit's opinion in *NRDC* v. *EPA* and the EPA's recent

[2] Operating Permit Program, Final Rule, 57 FR 32250 (July 21, 1992).

[3] Federal Operating Permits Program, Final Rule, 61 FR 34202 (July 1, 1996).

[4] Operating Permit Program, Proposed Rule, 56 FR 21712 (May 10, 1991).

[5] Operating Permit Program, Final Rule, 57 FR 32279. The EPA explained that the provision was intended to provide operational flexibility, and was modeled on a similar National Pollutant Discharge Elimination System (NPDES) permit provision in 40 CFR 122.41. *Id.*

[6] Federal Operating Permits Program, Final Rule, 61 FR 34219 (July 1, 1996).

[7] Operating Permits Program and Federal Operating Permits Program, Proposed Rule [Title V Supplemental Proposal], 60 FR 45530, 45558 (August 31, 1995) (''At the outset, EPA wants to make clear that the part 70 rule does *not* require that States adopt the emergency defense. A State may include such a defense in its part 70 program to the extent it finds appropriate, although it may not adopt an emergency defense less stringent than that set forth at section 70.6(g). . . . [T]he Act in sections 116 and 506(a) authorizes States to establish additional or more stringent air pollution control or permitting requirements. Consistent with that, States may decide to provide an emergency defense that is narrower in scope or more stringent in application than § 70.6(g) or no defense at all.'').

[8] *See* State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, Final Action [SSM SIP Call], 80 FR 33839, 33924 (June 12, 2015) (''[A]s part of normal permitting process, the EPA encourages permitting authorities to consider the discretionary nature of the emergency provisions when determining whether to continue to include permit terms modeled on those provisions in operating permits that the permitting authorities are issuing in the first instance or renewing'').

experience with affirmative defenses for startup, shutdown, and malfunction (SSM) events in State Implementation Plans (SIPs).

1. D.C. Circuit Opinion in *NRDC* v. *EPA*

In the 2014 *NRDC* v. *EPA* [9] case, the United States Court of Appeals for the D.C. Circuit vacated an affirmative defense provision applicable to malfunction events. In 2010, the EPA included an affirmative defense within its National Emission Standards for Hazardous Air Pollutants (NESHAP) for Portland cement facilities, promulgated under CAA section 112.[10] This provision created an affirmative defense that sources could assert in civil enforcement proceedings when violations of emission limitations occurred because of qualifying unavoidable malfunctions. The D.C. Circuit held that this affirmative defense provision exceeded the EPA's statutory authority and that only the courts have the authority to decide whether to assess penalties for violations in civil suits. As the court explained:

> By its terms, Section 304(a) clearly vests authority over private suits in the *courts,* not EPA. As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are ''appropriate.'' By contrast, EPA's ability to determine whether penalties should be assessed for Clean Air Act violations extends only to administrative penalties, not to civil penalties imposed by a court. . . . [U]nder this statute, deciding whether penalties are ''appropriate'' in a given private civil suit is a job for the courts, not for EPA.'' [11]

The D.C. Circuit therefore concluded that the EPA lacked the authority to create an affirmative defense in private civil suits that would purport to alter the jurisdiction of the court to assess civil penalties for violations. Although this case was based on EPA regulations promulgated under CAA section 112, the court's holding was not based on section 112, but rather on sections 304(a) and 113(e)(1). Therefore, and as discussed further in Section IV of this document, the EPA interprets the decision to be relevant to all similar affirmative defense provisions, such as those found in part 70 and part 71, that may interfere with the authority of courts to assess penalties or to impose other remedies authorized in CAA section 113(b) in civil enforcement suits. This proposed rulemaking seeks to ensure that the EPA's part 70 and part 71 regulations are consistent with the enforcement structure of the CAA in accordance with the reasoning of the *NRDC* v. *EPA* decision.[12]

2. SSM SIP Call

The EPA has also reconsidered affirmative defense provisions similar to those involved in the *NRDC* v. *EPA* case in other recent regulatory actions. On June 15, 2015, the EPA issued a ''SIP Call'' (the SSM SIP Call) finding that certain SIP provisions in 36 states are substantially inadequate to meet CAA requirements.[13] Many of the deficient SIP provisions at issue in the SSM SIP call are affirmative defense type provisions, and some of them are analogous to the emergency affirmative defense in part 70 and part 71. Although the agency's SSM policy for SIP provisions is not directly at issue in this proposal, certain aspects of the SSM SIP Call are especially relevant and are discussed in this subsection.

After the EPA initially proposed the SSM SIP Call,[14] the D.C. Circuit issued its opinion in *NRDC* v. *EPA.* That decision, which concerned the legal basis for an affirmative defense provision in the EPA's own regulations, caused the EPA to reconsider the legal basis for any affirmative defense provisions contained in SIPs.[15] The EPA concluded that the logic of the court in *NRDC* v. *EPA* extends beyond CAA section 112 to affirmative defense provisions contained in SIPs. Therefore, the EPA clarified and revised its interpretation of CAA requirements with respect to affirmative defense provisions for SSM events. The agency explained that ''the enforcement structure of the CAA, embodied in section 113 and section 304, precludes any affirmative defense provisions that would operate to limit a court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action. These provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain or what forms of remedy they purport to limit or eliminate.'' [16] The EPA explained that ''[a]ffirmative defense provisions by their nature purport to limit or eliminate the authority of federal courts to determine liability or to impose remedies through factual considerations that differ from, or are contrary to, the explicit grants of authority in section 113(b) and section 113(e).'' [17] The EPA's interpretation of the CAA's enforcement structure and the *NRDC* v. *EPA* decision, as set forth in the final SSM SIP Call, is relevant to the current rulemaking. Section IV of this document further discusses this interpretation in the context of the part 70 and part 71 emergency provisions.

Following this interpretation, the EPA directed states to remove specifically identified provisions containing affirmative defenses from their SIPs. Some of these SSM provisions were similar to the emergency provisions in the EPA's part 70 and part 71 regulations. In the final SSM SIP Call, the EPA indicated that provisions modeled after the §§ 70.6(g) and 71.6(g) emergency affirmative defense provisions—including provisions that were more narrowly defined—were no longer consistent with the EPA's interpretation of the CAA and could not be included in SIPs.[18] For example, the EPA found that an Arkansas SIP provision establishing an affirmative defense for emergencies, which may have been modeled after the EPA's title V regulations, was substantially inadequate to meet CAA requirements.[19] The EPA also discussed the potential conflict between the SSM policy applicable to SIP provisions and the part 70 and part 71 emergency provisions, but noted that it was not taking action to revise the title V

[9] 749 F.3d 1055 (D.C. Cir. 2014).

[10] National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants, 75 FR 54993 (September 9, 2010).

[11] *NRDC* v. *EPA,* 749 F.3d 1055, 1063 (D.C. Cir. 2014).

[12] In 2008, the D.C. Circuit issued a decision in *Sierra Club* v. *Johnson,* 551 F.3d 1019, vacating the EPA's regulations that exempted sources under certain circumstances from emissions standards during periods of SSM. The EPA maintains that the part 70 and part 71 emergency affirmative defense provisions are just that—affirmative defenses to enforcement actions—not exemptions from otherwise applicable emissions limitations. Such affirmative defense provisions are called into question by *NRDC* v. *EPA.* However, to the extent that the title V emergency affirmative defense could be considered in some respects to function like an exemption from otherwise applicable emissions limitations, such an exemption would be incompatible with the CAA and *Sierra Club* v. *Johnson.* This is an alternative basis for proposing to remove the part 70 and part 71 emergency affirmative defense provisions, as discussed further in Section IV.C of this document.

[13] SSM SIP Call, 80 FR 33839 (June 12, 2015).

[14] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, Proposed Rule, 78 FR 12459 (February 22, 2013).

[15] *See* State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Supplemental Proposal To Address Affirmative Defense Provisions in States Included in the Petition for Rulemaking and in Additional States, Supplemental notice of proposed rulemaking [SSM SIP Call Supplemental Proposal], 79 FR 55919, 55929 (September 17, 2014).

[16] SSM SIP Call, 80 FR 33851 (June 12, 2015).

[17] *Id.* at 33852.

[18] *Id.* at 33924.

[19] *Id.* at 33967; *see also* SSM SIP Call Supplemental Proposal, 79 FR 55942 and 55943.

regulations in the SSM SIP Call rulemaking.[20] In the final SSM SIP Call, however, the EPA indicated that it was considering whether such changes may be necessary and how best to make such changes.

3. Related Actions in Other CAA Program Areas

Since 2014, the EPA has removed or omitted affirmative defense provisions in numerous regulations throughout other CAA program areas following the *NRDC* v. *EPA* case. Specifically, in newly issued and revised New Source Performance Standards (NSPS), emission guidelines for existing sources, and NESHAP regulations, the EPA has either omitted new affirmative defense provisions or removed existing affirmative defense provisions.[21] This proposed rulemaking for the part 70 and part 71 regulations is thus consistent with these related efforts in other CAA program areas and ensures that title V operating permits do not contain additional affirmative defenses that could interfere with the EPA's efforts to remove these impermissible provisions from specific underlying applicable requirements.

IV. Proposed Changes to Part 70 and Part 71 Regulations

A. Purpose of This Proposed Rulemaking

This proposed rulemaking is responsive to a number of concerns and related actions, including those discussed in Section III of this document. The EPA considers this proposed rulemaking important to ensure that the EPA's title V regulations are consistent with the enforcement structure envisioned by Congress in the 1990 CAA amendments. This action is intended to respond to the reasoning of the D.C. Circuit's recent opinion in *NRDC* v. *EPA,* which the EPA interprets to extend to the affirmative defense provisions in the part 70 and part 71 regulations. This proposed rule also follows from similar regulatory actions in other CAA program areas, including the recent SSM SIP Call and various NSPS and NESHAP regulations. The EPA considers the proposed removal of the emergency affirmative defense provisions from the title V regulations necessary to maintain a consistent interpretation of the CAA throughout different CAA programs, including section 110 SIPs, section 111 NSPS and existing source guidelines, and section 112 NESHAPs.

Finally, this proposed action follows from the EPA's stated intentions to revisit the emergency affirmative defense provisions promulgated in 1992 and seeks to provide clarity in response to stakeholder concerns.[22] The EPA initially sought to clarify the scope of the emergency provisions over the course of multiple actions in 1995 and 1996. However, the EPA ultimately indicated that it would reevaluate the part 70 and part 71 emergency affirmative defense provisions—including whether these provisions may need to be eliminated—in a subsequent rulemaking.[23] The EPA again discussed the title V emergency provisions in the SSM SIP Call, where the agency acknowledged the potential conflict between the SSM policy applicable to SIP provisions and the part 70 and part 71 emergency provisions, but indicated that it would potentially make changes to the title V affirmative defense provisions in a subsequent rulemaking.[24] As contemplated in the prior title V rulemakings and in the more recent SSM SIP Call, the EPA is now considering the appropriate changes to parts 70 and 71 and proposing to remove the title V emergency affirmative defenses provisions.

B. Proposed Action: Removal of 40 CFR 70.6(g) and 71.6(g)

The EPA is proposing to remove the emergency provisions located at 40 CFR 70.6(g) and 71.6(g). The agency has not identified any other viable option for reconciling these affirmative defense provisions with the enforcement structure of the CAA, in accordance with the reasoning of the *NRDC* v. *EPA* decision. The implications of this proposed removal on the federal operating permit program, state operating permit programs, and on individual sources subject to title V operating permits are discussed in Section V of this document.

C. Legal Justification for Proposed Action

This action is proposed pursuant to CAA sections 502(b) and 502(d)(3), 42 U.S.C. 7661a(b) & (d)(3), which direct the Administrator of the EPA to promulgate regulations establishing state operating permit programs and give the Administrator authority to establish a federal operating permit program.

The EPA proposes to remove the affirmative defense provisions from the part 70 and 71 regulations in order to ensure that the federal and state title V operating permit programs operate within the bounds established by

[20] SSM SIP Call, 80 FR 33924 (June 12, 2015).

[21] *See, e.g.,* National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants; Final Rule, 80 FR 44771 (July 27, 2015); National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule, 80 FR 72789 (November 20, 2015); Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Proposed Rule, 80 FR 3018, 3025 (January 21, 2015).

[22] In addition to comments received on prior regulatory actions, the EPA has received input from stakeholders as recent as 2006. The Clean Air Act Advisory Committee (CAAAC), chartered under the Federal Advisory Committee Act, was established to advise the EPA on issues related to the 1990 CAA Amendments. In 2006, a Task Force formed by the CAAAC issued its Final Report: Title V Implementation Experience. *See* Title V Task Force, *Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience* (April 2006), *available at http://www.epa.gov/sites/production/files/2014-10/documents/title5_taskforce_finalreport20060405.pdf.* Although the Task Force did not agree on how broadly the title V emergency affirmative defense should be applied, all eighteen members of the Task Force unanimously recommended the following: ''Title V permits should be clear as to which limits are subject to the part 70 emergency defense (*e.g.,* under the current rule, technology based limits).'' *Id.* at 144. By way of response, the proposed action to remove these provisions would essentially moot these concerns about clarity on the applicability of these provisions.

[23] *See* Federal Operating Permits Program, Proposed Rule, 60 FR 20804, 20816 (April 27, 1995) (''The EPA is reevaluating the provisions in parts 70 and 71 relating to the emergency defense in light of concerns identified in legal challenges to the part 70 rule. The EPA may propose revisions to the part 70 and part 71 sections providing for the emergency defense before EPA would include such defense in any part 71 permits.''); Title V Supplemental Proposal, 60 FR 45560 (''The EPA is reluctant to retain a generally applicable emergency defense without completing further review of the appropriateness of such a defense for the different Federal technology based standards in light of the concerns with such a defense raised in the CWA cases.''); Federal Operating Permits Program, Final Rule, 61 FR 34219 (''As a result of concerns identified in legal challenges to part 70, the Agency, in the August 1995 supplemental proposal, solicited comment on the need for, scope and terms of an emergency affirmative defense provision. The Agency is reviewing those comments, but has not yet made a decision on whether or not to modify *or remove* this additional affirmative defense provision from part 70.'' (emphasis added)).

[24] *See* SSM SIP Call, 80 FR 33924 (''Those regulations [40 CFR 70.6(g) and 71.6(g)], which are applicable to title V operating permits, may only be changed through appropriate rulemaking to revise parts 70 and 71. Further, any existing permits that contain such emergency provisions may only be changed through established permitting procedures. The EPA is considering whether to make changes to 40 CFR part 70 and 40 CFR part 71, and if so, how best to make those changes. In any such action, EPA would also intend to address the timing of any changes to existing title V operating permits. Until that time, as part of normal permitting process, the EPA encourages permitting authorities to consider the discretionary nature of the emergency provisions when determining whether to continue to include permit terms modeled on those provisions in operating permits that the permitting authorities are issuing in the first instance or renewing.'').

Congress in the 1990 CAA Amendments. Regarding these boundaries, the D.C. Circuit's opinion in *NRDC* v. *EPA* is instructive as to the enforcement structure envisioned by Congress, as well as the role of affirmative defense provisions within the EPA's regulations implementing the CAA. As discussed in Section III.B.1 of this document, the court in *NRDC* v. *EPA* determined that an affirmative defense provision promulgated by the EPA for the Portland cement industry under CAA section 112 exceeded the agency's statutory authority. In doing so, the D.C. Circuit based its holding on CAA sections 304(a) and 113(e)(1).

CAA section 304(a) grants ''any person'' the right to ''commence a civil action . . . against any person . . . who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of . . . an emission standard or limitation'' under the CAA. 42 U.S.C. 7604(a). Section 304(a) also provides that ''[t]he [federal] district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation . . . and to apply any appropriate civil penalties.'' *Id.* CAA section 113(e)(1) establishes a number of factors that courts must consider when determining the amount of any penalties assessed in civil actions under section 304(a). *See* 42 U.S.C. 7413(e)(1).

The D.C. Circuit indicated that these statutory provisions precluded the EPA from promulgating affirmative defense provisions that a source could use in civil enforcement suits. The court did not remand the regulation to the EPA for better explanation of the legal basis for an affirmative defense; the court instead vacated the affirmative defense and indicated that there could be no valid legal basis for such a provision because it contradicted fundamental requirements of the CAA concerning the authority of courts in judicial enforcement of CAA requirements. As the court explained:

> By its terms, Section 304(a) clearly vests authority over private suits in the *courts,* not EPA. As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are ''appropriate.'' By contrast, EPA's ability to determine whether penalties should be assessed for Clean Air Act violations extends only to administrative penalties, not to civil penalties imposed by a court. . . . [U]nder this statute, deciding whether penalties are ''appropriate'' in a given private civil suit is a job for the courts, not for EPA.'' [25]

The court also noted that ''EPA cannot rely on its gap-filling authority to supplement the Clean Air Act's provisions when Congress has not left the agency a gap to fill.'' [26]

The D.C. Circuit's holding in *NRDC* v. *EPA* is especially pertinent here.[27] Like the Portland cement NESHAP at issue in the *NRDC* v. *EPA* case, the provisions at issue in this proposal are also regulations promulgated by the EPA to implement programs under the CAA. The affirmative defense for malfunctions in the Portland cement NESHAP and the affirmative defense for emergencies in the EPA's part 70 and part 71 regulations are functionally similar provisions that operate in essentially identical ways to establish affirmative defenses in civil enforcement actions. Moreover, the EPA believes that the reasoning of the court's decision in *NRDC* v. *EPA* applies more broadly than to the specific facts of the case for several reasons. The EPA notes that the court's decision did not turn upon the specific provisions of CAA section 112. Although the court only evaluated the legal validity of an affirmative defense provision created by the EPA in conjunction with specific standards applicable to manufacturers of Portland cement, the court based its decision upon the provisions of sections 113 and 304 that pertain to enforcement of CAA requirements more broadly, including to emission limits in title V permits. Sections 113 and 304 pertain to administrative and judicial enforcement generally and are in no way limited to enforcement of emission limitations promulgated by the EPA under section 112. Thus, the EPA does not think that the mere fact that the court only addressed the legality of an affirmative defense provision in this particular context means that the court's interpretation of sections 113 and 304 does not also apply more broadly. To the contrary, the EPA sees no reason why the logic of the court concerning sections 113 and 304 would not apply to the title V emergency affirmative defense provisions, as well.

In light of the court's decision, the EPA now interprets the enforcement structure of the CAA, embodied in section 113 and section 304, to preclude affirmative defense provisions that would operate to limit a court's authority or discretion to determine the appropriate remedy in an enforcement action. CAA section 304(a) grants the federal district courts the jurisdiction to determine liability and to impose penalties in enforcement suits brought by citizens. Similarly, section 113(b) provides courts with explicit jurisdiction to determine liability and to impose remedies of various kinds, including injunctive relief, compliance orders, and monetary penalties, in judicial enforcement proceedings. These grants of jurisdiction come directly from Congress, and the EPA is not authorized to alter or eliminate this authority under the CAA or any other law. With respect to monetary penalties, CAA section 113(e) explicitly includes the factors that courts and the EPA are required to consider in the event of judicial or administrative enforcement for violations of CAA requirements, including title V permit provisions. Because Congress has already given federal courts the authority to determine what monetary penalties are appropriate in the event of judicial enforcement for a violation of a title V permit provision, neither the EPA nor states can alter or eliminate that authority by superimposing restrictions on the authority and discretion granted by Congress to the courts. Affirmative defense provisions by their nature purport to limit or eliminate the authority of federal courts to determine liability or to impose remedies through factual considerations that differ from, or are contrary to, the explicit grants of authority in section 113(b) and section 113(e). Therefore, these provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain, or what forms of remedy they purport to limit or eliminate. This is true for regulations promulgated under CAA sections 111 and 112, SIP provisions approved by the EPA, and regulations promulgated under title V of the CAA. Thus, just as the EPA revisited affirmative defenses in SIP provisions in light of the *NRDC* v. *EPA* opinion, the EPA is reevaluating its interpretation of the CAA relative to the emergency affirmative defense provisions contained in its part 70 and part 71 regulations, and is proposing to remove those provisions because they are not consistent with the CAA's enforcement structure.

Since the 2014 *NRDC* v. *EPA* decision, and in order to ensure consistency with the CAA's enforcement structure, the EPA has been omitting new affirmative defense provisions and removing existing

[25] *NRDC* v. *EPA,* 749 F.3d 1055, 1063 (D.C. Cir. 2014).

[26] *Id.* at 1064.

[27] The EPA's interpretation of the *NRDC* v. *EPA* case as it affects the affirmative defense provisions in parts 70 and 71 is similar to the interpretation of the case as articulated in the SSM SIP Call. More information on the EPA's interpretation of the *NRDC* v. *EPA* ruling can be found in the Final SSM SIP Call and the August 2014 Supplemental Proposal. *See* SSM SIP Call, 80 FR 33851; SSM SIP Call Supplemental Proposal, 79 FR 55929.

affirmative defense provisions throughout many CAA program areas that establish emission limitations contained in title V permits. However, the title V emergency affirmative defense provisions apply regardless of whether there is an affirmative defense also found in the underlying applicable requirements. *See* 40 CFR 70.6(g)(5) and 71.6(g)(5). As a result, sources could seek to assert this affirmative defense in title V enforcement cases for noncompliance with emission limitations derived from applicable requirements that do *not* otherwise contain such an affirmative defense for emergencies. The continued existence of the title V emergency affirmative defense provisions thus contradicts and compromises the EPA's on-going efforts to ensure that underlying regulations are applied consistently with the CAA.

The EPA maintains that the part 70 and part 71 emergency affirmative defense provisions are affirmative defenses to enforcement actions and are not ''exemptions'' from otherwise applicable emissions limitations. However, as an alternative but additional justification, to the extent that the emergency affirmative defense provisions in part 70 and part 71 could be interpreted to establish an exemption or exclusion from emission limits (rather than merely an affirmative defense to penalties in the event of a violation), these provisions would still run contrary to the CAA's requirements and require removal. As previously noted,[28] under *Sierra Club* v. *Johnson,*[29] the CAA requires that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise. Therefore, even if characterized as an exemption or exclusion from otherwise applicable limits, the emergency affirmative defense provisions would, nonetheless, run afoul of the CAA and *Sierra Club* v. *Johnson,* and should, on that alternative basis, be removed.

V. Implementation

A. Implementing These Changes in Part 70 State Operating Permit Programs

This section discusses the actions that the EPA anticipates state, local, and tribal permitting authorities[30] would need to take (if this proposed rule is finalized in substantially the same form) in order to ensure that their operating permit programs are consistent with the proposed revisions to the EPA's part 70 regulations and the CAA's enforcement structure. The EPA welcomes comments on how best to address the implementation consequences of the proposed removal of 40 CFR 70.6(g).

1. Programs That Do Not Contain Emergency Affirmative Defense Provisions

As discussed in Section III.A of this document, the section 70.6(g) emergency provision has never been a required element of part 70 operating permit programs. For states that have not adopted the section 70.6(g) emergency provision, or any similar affirmative defense provision, into their part 70 operating permit programs, no further action would be required to comply with this rule as proposed. However, we expect that as a result of this rulemaking, it may be necessary for states that have adopted an affirmative defense in their part 70 programs to take the actions described in the following subsections.

2. Programs That Contain Emergency Affirmative Defense Provisions

The EPA's existing part 70 regulations provide for state program revisions if part 70 is revised and the EPA determines that such conforming changes are necessary. *See* 40 CFR 70.4(a) and 70.4(i). Therefore, as a result of this proposed regulatory action to remove 40 CFR 70.6(g) and 71.6(g), state operating permit programs that contain an emergency affirmative defense may have to take appropriate actions to remain consistent with the CAA and the EPA's part 70 regulations. As discussed in more detail in the following subsections, the EPA is requesting comment on whether revisions to certain approved state programs may be necessary if the EPA removes 40 CFR 70.6(g) and 71.6(g).

a. Scope of Program Revisions That May Be Necessary if the Rule Is Finalized as Proposed

Affirmative defense provisions included within a state's part 70 (title V) program regulations—including provisions that are narrower in scope or more stringent than 40 CFR 70.6(g)—will generally implicate the same concerns that prompted the EPA to propose removing 70.6(g) and 71.6(g) from the agency's regulations. The EPA expects that state programs containing provisions that mirror the exact language of 70.6(g) would need to be revised if this proposed rule is finalized, as would state programs that have provisions that do not exactly mirror the language of 40 CFR 70.6(g), but nonetheless provide for title V affirmative defenses.[31] In any case, the EPA invites comment on whether it may be necessary for states to revise programs containing any provisions that (1) purport to establish an affirmative defense to enforcement actions[32] and (2) are included within the state's part 70 (title V) program regulations. Anytime the phrases ''affirmative defense'' or ''emergency affirmative defense'' are used within this section, these phrases are intended to refer to all such provisions meeting these criteria. These criteria are intended to encompass provisions that initially would have been approved by the EPA as consistent with 40 CFR 70.6(g) and 70.4(b)(16). This action would not directly affect any affirmative defense provisions arising under other CAA applicable requirements, or state-only provisions outside of each state's approved part 70 operating permit programs.

The EPA has begun to compile a tentative list of affirmative defense provisions within state programs that may eventually need to be removed. The EPA is including this list in the docket for this proposed rulemaking (EPA–HQ–OAR–2016–0186) for informational purposes only; this list is not an official determination as to the adequacy or inadequacy of any program provisions. The EPA seeks comment on whether there are additional title V affirmative defense provisions in state regulations or statutes that we have not yet identified, and whether any such provisions would or would not remain appropriate as part of a state's approved title V program if this proposed rule is finalized.

b. Form of Program Revisions

Because the EPA believes that a large number of part 70 programs contain provisions resembling those that the agency proposes to eliminate, the EPA anticipates that it will be necessary for states to initiate conforming revisions to remove any affirmative defense provisions from their approved title V

[28] *See* footnote 12.

[29] 551 F.3d 1019 (D.C. Cir. 2008).

[30] As noted in footnote 1, the term ''state'' as used throughout this preamble refers to all state, local and tribal permitting authorities that administer approved part 70 programs.

[31] For example, affirmative defense provisions that refer to ''upsets'' or ''malfunctions'' rather than ''emergencies'' would still implicate the same concerns.

[32] Additionally, any state program provisions based off of 70.6(g) that purport to establish an ''exemption'' or ''exclusion'' to emission limitations (rather than, or in addition to, an affirmative defense for noncompliance) during emergencies, upsets, or malfunctions would also likely need to be removed. To the extent that an emergency defense is characterized as an exemption, this would run afoul of the CAA requirement that emission limitations must apply continuously and cannot contain exemptions. *See Sierra Club* v. *Johnson,* 551 F.3d 1019 (D.C. Cir. 2008); SSM SIP Call, 80 FR 33852.

operating permit programs if the EPA removes 40 CFR 70.6(g). The EPA seeks comment on this approach and on other possible approaches to ensure that state programs are consistent with the CAA and the EPA's part 70 regulations. However, the EPA does not anticipate that it would be appropriate for states to retain affirmative defense provisions within their approved part 70 programs. For example, if a state decided, in lieu of a program revision, to exercise its discretion to omit or remove affirmative defense provisions from all future title V operating permits, the state's approved part 70 program would still contain regulations inconsistent with the EPA's part 70 regulations and the CAA. Further, if an emergency provision remained in a state's approved program, a source could potentially attempt to invoke the provision as an affirmative defense during an enforcement proceeding, notwithstanding its absence from the source's individual title V permit. This result could undermine the enforcement of certain permit limitations and would be inconsistent with the enforcement structure of the CAA.

Although the EPA expects that most states would elect to remove the emergency affirmative defense provisions from their part 70 program regulations, states could nonetheless choose to retain such affirmative defense provisions within their permitting regulations as state-only requirements in certain circumstances. In that case, states would have to ensure and make clear to the EPA that any remaining affirmative defense provisions are only available for alleged noncompliance with permit requirements arising solely from state law. Ideally, this would involve an amendment to state regulations to explicitly clarify the limited applicability of any remaining affirmative defense provisions; such a clarifying amendment could also effectively serve as an appropriate revision to the state's part 70 program. The EPA solicits comment on whether and to what extent it would be appropriate for states to retain state-only affirmative defense provisions if this proposed rule is finalized.

Finally, states may also choose to remove any other provisions that reference 40 CFR 70.6(g) or similar state affirmative defense provisions in order to ensure clarity. These could include, but are not limited to, state regulations that incorporate by reference 40 CFR 70.6(g), as well as any associated definitions, recordkeeping, or reporting requirements relating to the affirmative defense provisions affected by this rulemaking. States may also wish to retain a portion of the emergency provisions, such as the definition of ''emergency'' or certain reporting requirements, for purposes of supporting other regulations that do not involve an affirmative defense. This could be appropriate as long as any remaining provisions could not be interpreted to provide an affirmative defense to federally applicable requirements.

c. Procedure, Timing and Content of Program Revisions

If this proposed rule is finalized, the EPA expects that it would be necessary for any states with approved part 70 operating permit programs that contain emergency affirmative defense provisions to remove any such provisions and submit program revisions to the EPA within 12 months after the final rule's effective date. For many programs, the EPA does not anticipate that additional state legislative authority will be required to enact these revisions. Therefore, the EPA believes that 12 months will be ample time for many states to make such a straightforward and narrow program revision. However, the EPA is considering whether it may be appropriate to provide individual states up to 24 months to submit program revisions if a state demonstrates that additional legislative authority is necessary to enact the program revisions.

If this proposed rule is finalized, the EPA expects that state program revisions submitted to the agency should include a redline version of the specific changes made to the state's part 70 regulations to remove any emergency affirmative defense provisions. States may, but need *not,* include as part of their program revision submittals any other unrelated revisions to state program regulations.[33] Each state should also include a brief statement of the legal authority that authorized this removal, which could take various forms depending on the specific circumstances of each state. Finally, to address how the program revisions would be implemented with respect to individual permits, each state should also include a schedule for the planned removal of these provisions from individual title V operating permits, as well as a description of the mechanism(s) that the state plans to use to remove these existing provisions. Further discussion of how these program revisions should be implemented in individual permits is presented in Section V.A.3 of this document.

The EPA is specifically requesting comment on these program revision time frames and procedures from permitting authorities whose approved part 70 programs contain affirmative defense provisions. The EPA solicits additional comments from states with title V program provisions that may also be contained within SIPs as to any additional revisions that may be necessary if this rule is finalized.

3. Effect of This Rule on Current and Future State-Issued Operating Permits

The eventual finalization of this rule would not have an automatic impact on sources currently operating under a title V permit, and any minimal resource burden to revise permits would likely be spread over many years. After a state makes any necessary revisions to its title V program, the EPA expects that revisions to operating permits to remove emergency affirmative defense provisions would generally occur in the ordinary course of business as the state issues new permits or reviews and revises existing permits. The options presented in the following subsections would afford states with the maximum flexibility to implement these changes while ensuring predictability for sources operating under title V permits.

a. Form of Permit Changes

In order to implement program revisions that may be necessary if this rule is finalized as proposed, it may be necessary for states to remove title V emergency affirmative defense provisions that are currently included in any state-issued permits.[34] Alternatively, states may choose to allow sources to retain affirmative defense provisions in their permits as state-only provisions. Any such remaining affirmative defense provisions must be clearly labeled within each permit as not applicable for federal law purposes to ensure that they are not available in enforcement actions for noncompliance with any federally-

[33] The EPA intends that any narrow program revisions that may be necessary if this rule is finalized could be expeditiously processed, whether submitted alone or with other program revisions.

[34] It is possible that individual operating permits may contain other provisions establishing affirmative defenses that are derived from other applicable requirements. As previously noted, this proposed rulemaking will not have any effect on affirmative defense provisions promulgated under any CAA requirements other than 40 CFR 70.6(g) and 71.6(g). However, the source of such affirmative defense provisions should be clearly stated in each individual operating permit, to avoid confusion about the scope of such provisions.

enforceable emission limitations, as required by 40 CFR 70.6(b)(2).

b. Mechanisms and Timing of Permit Changes

The EPA anticipates that states would have the flexibility to remove emergency provisions from title V permits through a number of different existing mechanisms, either through changes to individual permits or perhaps to multiple permits through more streamlined processes. As previously noted, if the proposed action is finalized, any necessary program revision submittals should reflect the planned schedule and mechanism for these permit changes. The EPA expects that states will follow the guidelines discussed in this preamble, but will consider other plans for revising title V permits that would not cause undue delay.

First, states could require that permit applications address the removal of emergency provisions during the next periodic permit renewal, permit modification, or permit reopening, including those that occur as the result of other rulemakings. States using these mechanisms should ensure that these changes occur at the first possible occasion; in other words, the first situation in which the permitting authority must act on an individual permit after state program revisions are approved by the EPA. Moreover, because states have never been required by federal law to include these provisions in state-issued title V permits, the EPA also encourages states to exercise their discretion to cease including emergency affirmative defense provisions as early as practicable. In many cases, there will be no reason for states to wait for the EPA to take final action on this proposal to begin implementing this suggestion.[35]

Additionally, sources may apply for a permit modification from their permitting authority at any time. The EPA anticipates that the removal of an emergency affirmative defense would not trigger the significant modification procedures under 40 CFR 70.7(e)(4), and—depending on the regulations in each state's approved title V program—could be implemented using minor modification procedures. Finally, depending on the unique structure of each state's operating permit program, some states may also be able to remove these provisions from multiple existing permits in a single action, via mechanisms such as general permits or permits-by-rule. The EPA is requesting comment on how states could use existing permitting options to remove emergency affirmative defense provisions from title V permits in a more streamlined and expeditious manner.

Overall, the EPA believes that addressing the omission or removal of emergency affirmative defense provisions from permits according to the existing state program mechanisms described in this subsection affords states sufficient flexibility to implement these changes and provides certainty to facilities operating under title V permits. Under the approaches currently being considered, the EPA anticipates that the removal of affirmative defense provisions from permits should generally occur in the ordinary course of business and should require essentially no additional burden on states or sources. The timing for these changes may coincide with similar changes to operating permits based on revised SIP provisions following the SSM SIP Call or changes to other applicable requirements, and it may be convenient and efficient for states to make all necessary changes to title V permits at the same time.

B. Implementing These Changes in the Part 71 Federal Operating Permit Program

Although the title V operating permit program is typically implemented by state and local permitting authorities through EPA-approved part 70 programs, in certain circumstances the EPA has assumed direct permitting authority over sources through its part 71 program. The EPA administers the part 71 federal program in most areas of Indian country (however, one tribe—the Southern Ute Tribe—has an approved part 70 program, and another—the Navajo Nation—has been delegated part 71 implementation authority),[36] on the Outer Continental Shelf (where there is no state permitting authority), as well as for specific sources where the EPA has determined that a state has not adequately implemented its part 70 program or satisfied an EPA objection to a permit.

In some cases where the EPA administers its part 71 program, the EPA has included in its federally-issued operating permits the emergency affirmative defense provision found in 40 CFR 71.6(g). If 40 CFR 71.6(g) is removed, the federal (including delegated) program rules would no longer include regulatory authority for incorporating this emergency affirmative defense in permits. Therefore, in order to ensure that part 71 programs are implemented consistent with the proposed revisions to the part 71 regulations, the EPA or delegated permitting authority should remove emergency affirmative defense provisions that are currently included in title V permits at the next permit action following the effective date of the final rule. Because the EPA has always considered the emergency provisions to be discretionary permit terms, the EPA has omitted emergency affirmative defense provisions from part 71 permits that it has issued since the D.C. Circuit's 2014 *NRDC* v. *EPA* decision. The EPA plans to continue to exercise its discretion to not include emergency affirmative defense provisions in future EPA-issued operating permits.

C. Effect on Sources Potentially Subject to Enforcement Proceedings

The legal rights and obligations of individual sources potentially subject to enforcement proceedings would not be adversely affected by the removal of emergency affirmative defense provisions from their title V permits.[37] The absence of an affirmative defense provision in a source's title V permit does not mean that all exceedances of emission limitations in a title V permit will automatically be subject to enforcement or automatically be subject to imposition of particular remedies. Pursuant to the CAA, all parties with authority to bring an enforcement action to enforce title V permit provisions (*i.e.,* the state, the EPA, or any parties who qualify under the citizen suit provision of CAA section 304) have enforcement discretion that they may exercise as they deem appropriate in any given circumstances. For example, if the excess emissions caused by an emergency occurred despite proper operation of the facility, and despite the permittee taking all reasonable steps to minimize excess emissions, then these parties may decide that no enforcement action is warranted. In the event that any party decides that an enforcement action is warranted, then it has enforcement discretion with respect to what remedies to seek from the court for the violation (*e.g.,* injunctive relief,

[35] Of course, if currently-approved state program regulations require that this provision be included within individual title V operating permits, a state may not be able to exercise this discretion until program revisions are completed.

[36] The EPA has delegated a portion of its part 71 permitting authority to the Navajo Nation EPA (NNEPA) through a delegation agreement, such that NNEPA assumes the responsibility for specific aspects of program administration under the part 71 regulations, including the authority to issue part 71 operating permits to sources.

[37] The removal of these provisions from individual operating permits has similar implications to sources as the removal of the SSM provisions subject to the SSM SIP Call. *See* SSM SIP Call, 80 FR 33852.

compliance order, monetary penalties, or all of the above), as well as the type of injunctive relief and/or amount of monetary penalties sought.[38]

Further, courts have the discretion under section 113 to decline to impose penalties or injunctive relief in appropriate cases. In the event of an enforcement action for an exceedance of an emission limit in a title V permit, a source can elect to assert any common law or statutory defenses that it determines are supported, based upon the facts and circumstances surrounding the alleged violation. Under sections 304(a) and 113(b), courts have authority to impose injunctive relief, issue compliance orders, assess monetary penalties or fees and award any other appropriate relief. Under section 113(e), courts are required to consider the enumerated factors when assessing monetary penalties, including the source's compliance history, good faith efforts to comply the duration of the violation, and ''such other factors as justice may require.'' If the exceedance of the emission limitation occurs due to an emergency, the source retains the ability to defend itself in an enforcement action and to oppose the imposition of particular remedies or to seek the reduction or elimination of monetary penalties, based on the specific facts and circumstances of the emergency event. Thus, elimination of an emergency affirmative defense provision that purported to take away the statutory jurisdiction of the court to exercise its authority to impose remedies does not disarm sources in potential enforcement actions. Sources would retain all of the equitable arguments they previously could have made; they must simply make such arguments to the reviewing court as envisioned by Congress in section 113(b) and section 113(e). Congress vested the courts with the authority to judge how best to weigh the evidence in an enforcement action and determine appropriate remedies.

The eventual removal of such impermissible emergency affirmative defense provisions from state operating permit programs and individual title V permits will likely be necessary to preserve the enforcement structure of the CAA, to preserve the authority of courts to adjudicate questions of liability and remedies in judicial enforcement actions, and to preserve the potential for enforcement by states, the EPA, and other parties under the citizen suit provision as an effective deterrent to violations. In turn, this deterrent encourages sources to be properly designed, maintained, and operated and, in the event of violation of permitted emission limitations, to take appropriate action to mitigate the impacts of the violation. In this way, as intended by the existing enforcement structure of the CAA, sources can mitigate the potential for enforcement actions against them and the remedies that courts may impose upon them in such enforcement actions, based upon the facts and circumstances of the event.

[38] The EPA notes that only the state and the EPA have authority to seek criminal penalties for knowing and intentional violation of CAA requirements. The EPA has this explicit authority under section 113(c).

VI. Environmental Justice Considerations

The EPA believes the human health or environmental risk addressed by this proposed action would not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it would not adversely affect the level of protection provided to human health or the environment. This action simply proposes to remove emergency affirmative defense provisions from the EPA's operating permit program regulations. If the proposed rule is finalized, it may also be necessary for state, local and tribal permitting authorities to remove similar affirmative defense provisions from program regulations and from individual title V operating permits. None of these changes would alter the obligations of sources to comply with the emission limits and other standards contained within title V operating permits. However, this proposed rulemaking could encourage sources to comply with the terms of their operating permits at all times to the maximum extent practicable. This could potentially result in improved air quality for communities living near sources of air pollution as well as the broader population. Thus, this proposed rulemaking will not adversely affect the level of protection to human health or the environment for any populations.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0243 (for part 70 state operating permit programs) and 2060–0336 (for part 71 federal operating permit program). In this action, the EPA is proposing to remove certain provisions from the EPA's regulations, which if finalized could result in the removal of similar provisions from state, local, and tribal operating permit programs and individual permits. Consequently, states could eventually be required to submit program revisions to the EPA outlining any necessary changes to their regulations and their plans to remove provisions from individual permits. However, this proposed action will not involve any requests for information, recordkeeping or reporting requirements, or other requirements that would constitute an information collection under the PRA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local, and tribal governments, and none of these governments would qualify as a small entity. Other types of small entities, including stationary sources of air pollution, are not directly subject to the requirements of this action.

D. Unfunded Mandates Reform Act (URMA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. One tribal government (the Southern Ute Indian Tribe) currently administers an approved part 70 operating permit program, and one tribal government (the Navajo Nation) currently administers a part 71 operating permit program pursuant to a delegation agreement with the EPA. These tribal governments may be required to take actions if this proposed rule is finalized, including program revisions (for part 70 programs) and eventual permit revisions, but these actions will not require substantial compliance costs. The EPA solicits comment from affected tribal governments on the implications of this proposed rulemaking.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. The results of this evaluation are contained in Section VI of this document titled, ''Environmental Justice Considerations.''

VIII. Statutory Authority

The statutory authority for this proposed action is provided in CAA sections 502(b) and 502(d)(3), 42 U.S.C. 7661a(b) & (d)(3), which direct the Administrator of the EPA to promulgate regulations establishing state operating permit programs and give the Administrator the authority to establish a federal operating permit program. Additionally, the Administrator determines that this action is subject to the provisions of CAA section 307(d), which establish procedural requirements specific to rulemaking under the CAA. CAA section 307(d)(1)(V) provides that the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7607(d)(1)(V).

List of Subjects

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 3, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

§ 70.6 [Amended]

■ 2. In § 70.6, remove paragraph (g).

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

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

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

§ 71.6 [Amended]

■ 4. In § 71.6, remove paragraph (g).

[FR Doc. 2016–14104 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 114
Tuesday, June 14, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc No. AMS–SC–16–0043; SC16–033–1]

Notice of Request for Renewal of a Recordkeeping Burden

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request for renewal a recordkeeping burden for the information collection for the Export Fruit Acts covering exports of apples and grapes.

DATES: Comments on this notice are due by August 15, 2016 to be assured of consideration.

ADDITIONAL INFORMATION: Contact Andrew Hatch, Chief, Program Services Branch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC, 20250–0237; Telephone (202) 720–6862 or Email: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on complying with this notice by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

Comments: Comments should reference the document number and the date and page number of this issue of the **Federal Register**, and be mailed to the Docket Clerk, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Washington, DC 20250–0237; Fax: (202) 720–8938); or submitted through the Internet at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Fruit Regulations—Export Apple Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35).

OMB Number: 0581–0143.

Expiration Date of Approval: August 31, 2016.

Type of Request: Request for Renewal of a Recordkeeping Burden.

Abstract: Fresh apples and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599) (Acts), which are found respectively at 7 CFR parts 33 and 35. Both Acts were designed to promote foreign trade in the export of apples, grapes and plums grown in the United States; to protect the reputation of the American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. The Acts have been in effect since 1933 (apples) and 1960 (grapes). Currently, plums are not regulated under the Export Grape and Plum Act.

The Secretary of Agriculture is authorized to oversee the implementation of the Acts and issue regulations regarding that activity. Regulations issued under the Acts cover exports of fresh apples and grapes grown in the United States and shipped to foreign destinations, with the exception of grapes shipped to Canada or Mexico and apples in bulk bins shipped to Canada. Certain limited quantity provisions may exempt some shipments from this information collection. Regulations issued under the Acts (7 CFR 33.11 for apples, and § 35.12 for grapes) require that the U.S. Department of Agriculture (USDA) officially inspect and certify that each export shipment of fresh apples and grapes is in compliance with quality and shipping requirements effective under the Acts.

The information collection requirements in this request are essential to carry out the intent and administration of the Acts. The currently approved collection under OMB No. 0581–0143 authorizes the use of an Export Form Certificate. Federal or Federal-State Inspection Program (FSIP) inspectors use the Export Form Certificate (FV–207) to certify inspection of the shipment for exports bound for non-Canadian destinations. The completed FV–207 is issued to the shipper. The shipper provides the carrier with the completed certificate to verify compliance with the Acts. Under the current regulations issued under the Acts, the carrier is required to maintain the certificates for no less than three (3) years. The information collection requirements in this request impose only the minimum burden necessary to effectively administer the Acts. The information collection burden for this action is primarily in the form of recordkeeping; the certificates are not filed with USDA.

USDA intends to update the text of the FV–207 to expand its scope to include inspection certificates for export shipments bound for Canadian destinations and rename it FV–205. Shipper and carriers do not complete the FV–207; they are only required to maintain the completed FV–207 record. USDA proposes a decrease to the time required to complete this information collection from 15 minutes per response to 5 minutes per response to complete the related recordkeeping actions of the shipper delivering a copy of the certificate to the carrier and the carrier keeping the certificate on file for not less than 3 years.

In the last renewal of the collection in 2013, there were inaccurate calculations related to the burden. The last renewal of the collection in 2013 reported that 102 respondents (68 shippers and 15 carriers for exported apples, and 14 shippers and 5 carriers for exported grapes) used FV–207 for an estimated one response per respondent. This suggested that there were only 102 FV–207 certificates issued. However, USDA's Foreign Agricultural Service estimates that, for the five-year period 2011–2015, the average number of export apple and grape shipments requiring inspection per year was 42,326 for apples and 10,462 for grapes, for a total five-year average of 52,788 certificates per year that would need to be maintained. Current industry data indicates a decrease in the recordkeepers from 102 to 94, as there is a reduction in the estimated number

of export apple shippers (from 68 to 60) but no changes in the estimated number of export grape shippers (14), or carriers of export apples (15) and grapes (5). In this renewal of the collection in 2016, USDA will update the calculation to reflect an estimated 564 responses per recordkeeper for apples, which is approximately the 42,326 certificates divided by the 75 apple shippers and carriers, and an estimated 550 responses per recordkeeper for grapes, which is approximately the 10,462 certificates divided by the 19 grape shippers and carriers. USDA calculates the estimated total annual burden on respondents would change from the inaccurate 25 hours to the more accurate 4381 hours estimate.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to *average 0.083 hours per response.*

Respondents (Recordkeepers): Apple and grape export shippers and carriers.

Estimated Number of Recordkeepers: 94 (75 shippers and carriers of exported apples and 19 shippers and carriers of exported grapes).

Estimated Total Annual Responses: 52,788.

Estimated Number of Responses per Recordkeeper: 564 for apples and 550 for grapes.

Estimated Total Annual Burden on Recordkeepers: 4381 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. All comments received will be available for public inspection at the street address in the ''Comment'' section and can be viewed at: *www.regulations.gov.*

Dated: June 8, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14007 Filed 6–13–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0037]

Notice of Request for Extension of Approval of an Information Collection; Importation of Live Swine, Pork and Pork Products, and Swine Semen From the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of live swine, pork and pork products, and swine semen from the European Union.

DATES: We will consider all comments that we receive on or before August 15, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0037.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0037, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0037* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the importation of live swine, pork and pork products, and swine semen from the European Union, contact Dr. Lynette Williams, Senior Staff Veterinarian, Animal Products, NIES, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737–1236; (301) 851–3300. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Live Swine, Pork and Pork Products, and Swine Semen from the European Union.

OMB Control Number: 0579–0218.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States.

The regulations in title 9 of the Code of Federal Regulations (9 CFR), part 94, prohibit or restrict the importation of specified animals and animal products to prevent the introduction of diseases such as classical swine fever (CSF), rinderpest, foot-and-mouth disease, swine vesicular disease, and African swine fever. Among other things, part 94 lists the requirements for the importation of pork and pork products and live swine where these diseases exist. Section 94.31 lists the requirements for the importation of pork, pork products, and breeding swine from the European Union (''the APHIS-defined European CSF region''). Section 98.38 lists the requirements for the importation of swine semen from the APHIS-defined European CSF region.

These regulations require information collection activities, such as a certificate for pork and pork products, breeding swine, and swine semen; application for import or in-transit permit; and declaration of importation.

The activities above were previously approved by the Office of Management and Budget (OMB) under collections 0579–0218 and 0579–0265. In our last extension of approval, we announced that we were combining the two collections and retiring 0579–0265. When we combined the collections, we did not accurately adjust the estimated burden. In addition, we have increased the estimates of burden to reflect the increased consumer demand for pork

and pork products and to account for the return of the declaration of importation to APHIS from U.S. Customs and Border Protection. We have adjusted the estimates of burden accordingly.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Foreign government animal health officials.

Estimated annual number of respondents: 21.

Estimated annual number of responses per respondent: 20,951.

Estimated annual number of responses: 439,976.

Estimated total annual burden on respondents: 440,374 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 8th day of June 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–14079 Filed 6–13–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection: Comment Request—Professional Standards Training Tracker Tool

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for assisting state agencies to record, track and manage the required training hours in four major areas (Nutrition, Operations, Administration, Communications and Marketing) to meet the requirements of the Healthy Hunger Free Kids Act (HHFKA) of 2010 Professional Standards Rule. The HHFKA (section 306) requires Professional Standards for state and local school district nutrition professionals. In addition to hiring standards, mandatory annual training will be required for all individuals involved in preparing school meals. To meet the training requirements and assist in keeping track of training courses, FNS is developing a web-based application tool with a SQL-server database which will be made available to local educational agencies and school food authorities through the FNS public Web site. While training requirements are mandatory, using the USDA Tracking Tool is voluntary. School nutrition professionals can use any method to track and manage their trainings. These resources will facilitate compliance with HHFKA requirements and will be provided at no cost to the state, district, or individuals.

DATES: Written comments must be received on or before August 15, 2016.

ADDRESSES: 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, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Kaushalya Heendeniya, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 630, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Kaushalya Heendeniya at 703–305–2549 or via email to *kaushalya.heendeniya1@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kaushalya Heendeniya at 703–305–0037.

SUPPLEMENTARY INFORMATION:

Title: Professional Standards Training Tracker Tool.

Form Number: 0584—NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: The Healthy Hunger Free Kids Act of 2010 (section 306) requires Professional Standards for state and local school district nutrition professionals. In addition to hiring standards, mandatory annual training will be required for all individuals involved in preparing school meals. To meet the training requirements and assist in keeping track of training and training courses, FNS is developing a web-based application tool with a SQL-server database which will be made available to local educational agencies and school food authorities through the FNS public Web site, with a login authentication. These resources will facilitate compliance with HHFKA requirements and will be provided at no cost to the state, district, or individuals. In addition, there will be a mobile friendly version of this Professional Standards Training Tracking Tool application to ensure easy usage and accessibility across mobile devices. The application will be compatible with all mobile operating systems (iOS, Android, and Windows).

The user will be able to create a user profile with the following information:

- School District/Address
- School Name/Address
- Individual Name—Contact Information/Email address
- Title of Individual or Role in school nutrition program

- Hiring Date

The user will be logging in the following information:

- Key Area
- Training Topic
- Learning Objective
- Training Title
- Training Hours/Minutes
- Date of Training
- Provider or Organization offering training, including state, local or national
- Level of Training by employee position (*e.g.* employee, manager, etc.)

The user will have the ability to enter multiple names for one specific training without having to repeatedly enter training information. Certificates of completion can be printed. The tool will also provide the user the ability to export and save results in multiple file formats, including PDF (.pdf), Excel and Word 2000 or higher (.docx). It will have a user-centered, simple, intuitive interface. Streamlined and intuitive navigation will be offered for easy access to all functionality.

Affected Public: Individual/Households and State, Local, and Tribal Government. Respondent groups include local educational agencies, school food authorities, and school nutrition professionals.

Estimated Number of Respondents: The total estimated number of respondents is 10,006. This includes 6 State agency personnel and 10,000 school nutrition professionals who voluntarily choose to utilize this tracking tool. All respondents will be offered a 60 minute training webinar.

Estimated Number of Responses per Respondent: Total estimated number of responses per respondent across the entire collection is six. The estimated number of responses per respondent for the tracking tool is five. The tracking tool users will be first required to create their user profile which will be saved for future use. It is estimated that the user will be updating and managing their records on a quarterly basis. The estimated number of responses per respondent for the training webinar is one.

Estimated Total Annual Responses: 60,036.

Estimated Time per Response: The estimated time per response across the entire collection is approximately 16 minutes (0.27 hours). For the training tracking tool, the estimated time of response varies from five to ten minutes depending on familiarity of the tool and the amount of reports created with an average estimated time of 7.5 minutes (0.125 hours) for all participants. The training webinar of 60 minutes (1 hour) will be available for all participants.

Estimated Total Annual Burden on Respondents: 16,259.75 hours (rounded to 16,260 hours). See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated # respondent	Responses annually per respondent	Total annual responses (col. b × c)	Estimated avg. # of hours per response	Estimated total hours (col. d × e)
Reporting Burden for State, Local, and Tribal Govt					
State agency Personnel	6	5	30	0.125	3.75
Training Webinar	6	1	6	1	6
Subtotal for State, Local, and Tribal Government	6	6	36	0.27	9.75
Reporting Burden for Individuals/Households					
School Nutrition Professionals	10,000	5	50,000	0.125	6,250
Training Webinar	10,000	1	10,000	1	10,000
Subtotal for Individuals/Households	10,000	6	60,000	0.27	16,250
Total Reporting Burden	10,006		60,036		16,259.75

Dated: June 2, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–14008 Filed 6–13–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Hoosier National Forest, Forest Service, USDA.

ACTION: Notice of proposed new fee site.

SUMMARY: The Hoosier National Forest is proposing to charge a fee at Saddle Lake Recreation Area Campground. This includes a $5 fee at Saddle Lake Campground per site per night year round. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. The fee is proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements of the campground.

An analysis of the nearby state campground with similar amenities shows that the proposed fee is reasonable and typical of similar sites in the area.

DATES: Comments will be accepted through December 31, 2016. New fees would begin approximately April 2017.

ADDRESSES: Michael Chaveas, Forest Supervisor, Hoosier National Forest, 811 Constitution Ave., Bedford, IN 47121.

FOR FURTHER INFORMATION CONTACT: Nancy Myers, Outdoor Recreation Planner, 812–547–9241. Information about the proposed fee can also be found on the Hoosier National Forest Web site: *http://www.fs.usda.gov/hoosier.*

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, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. People wanting reserve these cabins would need to do so through the National Recreation Reservation Service, at *www.recreation.gov* or by calling 1–877–444–6777 when it becomes available.

Dated: June 8, 2016.

Michael Chaveas,

Forest Supervisor.

[FR Doc. 2016–13992 Filed 6–13–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest (NF) Resource Advisory Committee (RAC) will meet in Walker Minnesota. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/chippewa.*

DATES: The meeting will be held on Thursday, July 14, 2016, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Walker Ranger District, Main Conference Room, 201 Minnesota Avenue East, Walker, Minnesota.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chippewa NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Todd Tisler, RAC Coordinator, by phone at 218–335–8629 or via email at *ttisler@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Introduce new RAC committee members,

2. Review RAC members' roles and responsibilities, and

3. Develop project priorities.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 27, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Todd Tisler, RAC Coordinator, Chippewa NF Supervisor's Office, 200 Ash Avenue Northwest, Cass Lake, Minnesota 56633; by email to *ttisler@fs.fed.us* or via facsimile to 218–335–8637.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: June 7, 2016.

Darla Lenz,

Forest Supervisor.

[FR Doc. 2016–13985 Filed 6–13–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Application Deadlines and Requirements for Section 313A Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes Loan Program for Fiscal Year (FY) 2016

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the application window, requirements and funding for up to $750 million of loan funds available for Fiscal Year (FY) 2016 under the Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes Program (the 313A Program) authorized under the Rural Electrification Act of 1936, as amended, and related terms. Under the 313A Program, the Federal Financing Bank (FFB) will make loans to the selected applicant(s) and RUS will guarantee the applicant(s)'s repayment of the loans to FFB. Selected applicants may use the proceeds of loan funds made available under the 313A Program to make loans to borrowers for electrification or telecommunications purposes, or to refinance bonds or notes previously issued by applicants for such purposes. The proceeds of the guaranteed bonds and notes are not to be used by applicants to directly or indirectly fund projects for the generation of electricity.

DATES: Completed applications must be received by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) on Friday, July 15.

ADDRESSES: Applicants are required to submit one original and two copies of their loan applications to the U.S. Department of Agriculture, Rural Utilities Service, Electric Program, ATTN: Amy McWilliams, Management Analyst, 1400 Independence Avenue SW., STOP 1568, Room 0226–S, Washington, DC 20250–1568.

FOR FURTHER INFORMATION CONTACT: For further information contact Amy McWilliams, Management Analyst, 1400 Independence Avenue SW., STOP 1568, Room 0226–S, Washington, DC 20250–1568. Telephone: (202) 205–8663; email: *amy.mcwilliams@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service, USDA.

Funding Opportunity Title: Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes for Fiscal Year (FY) 2016.

Announcement Type: Guarantees for Bonds and Notes.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.850

Due Date for Applications: Applications must be received by RUS by 5:00 p.m. Eastern Daylight Time (EDT) on June 15, 2016.

Items in Supplementary Information

File a Complaint, Persons With Disabilities

I. Funding Opportunity Description

A. Purpose of the 313A Program

The purpose of the 313A Program is to make guaranteed loans to selected applicants (each referred to as ''Guaranteed Lender'' in this NOSA and in the Program Regulations) that are to be used (i) to make loans for electrification or telecommunications purposes eligible for assistance under the RE Act (defined herein) and regulations for the 313A Program located at 7 CFR part 1720 (also referred to as the ''Program Regulations'' in this NOSA), or (ii) to refinance bonds or notes previously issued by the Guaranteed Lender for such purposes. The proceeds of the guaranteed bonds and notes are not to be used by the Guaranteed Lender to directly or indirectly fund projects for the generation of electricity.

B. Statutory Authority

The 313A Program is authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1) (the RE Act) and is implemented by regulations located at 7 CFR part 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

C. Definition of Terms

The definitions applicable to this NOSA are published at 7 CFR § 1720.3.

D. Application Awards

RUS will review and evaluate applications received in response to this NOSA based on the regulations at 7 CFR § 1720.7, and as provided in this NOSA.

II. Award Information

Type of Awards: Guaranteed Loans.

Fiscal Year Funds: FY 2016.

Available Funds: $750 million.

Award Amounts: RUS anticipates making multiple approvals under this NOSA. The number and amount of awards under this NOSA will depend on the number of eligible applications and the amount of funds requested. Loans will only be made on an amortized basis.

Application Date: Applications must be received by RUS by no later than 5:00 p.m. EDT on June 15, 2016.

Award Date: Awards will be made on or before September 30, 2016.

Schedule of Loan Repayment: Amortization Method (level debt service).

III. Eligibility Information

A. Eligible Applicants

1. *To be eligible to participate in the 313A Program, a Guaranteed Lender must be:*

a. A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis; and

b. Able to demonstrate to the Administrator that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

2. *To be eligible to receive a guarantee, a Guaranteed Lender's bond must meet the following criteria:*

a. The Guaranteed Lender must furnish the Administrator with a certified list of the principal balances of eligible loans outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, including any previously issued guaranteed bonds outstanding;

b. The guaranteed bonds to be issued by the Guaranteed Lender would receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee; and

c. A lending institution's status as an eligible applicant does not assure that the Administrator will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Administrator from declining to issue a guarantee.

B. Other Eligibility Requirements

Applications will only be accepted from lenders that serve rural areas defined in 7 CFR § 1710.2(a) as (i) Any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants; and (ii) Any area within a service area of a borrower for which a borrower has an outstanding loan as of June 18, 2008, made under titles I through V of the Rural Electrification Act of 1936 (7 U.S.C. 901–950bb). For initial loans to a borrower made after June 18, 2008, the ''rural'' character of an area is determined at the time of the initial loan to furnish or improve service in the area.

IV. Fiscal Year 2016 Application and Submission Information

A. Applications

All applications must be prepared and submitted in accordance with this NOSA and 7 CFR § 1720.6 (Application Process). To ensure the proper preparation of applications, applicants should carefully read this NOSA and 7 CFR part 1720 (available online at *http://www.ecfr.gov/cgi-bin/text-idx?SID=9295e45c9a0f6a857d800fbec5dde2fb&mc=true&node=pt7.11.1720&rgn=div5*).

B. Content and Form of Submission

In addition to the required application specified in 7 CFR § 1720.6, all applicants must submit the following additional required documents and materials:

1. *Form AD–1047, Certification Regarding Debarment, Suspension and Other Responsibility Matters Primary Covered Transactions.* This form contains certain certifications relating to debarment and suspension, convictions, criminal charges, and the termination of public transactions (See 2 CFR part 417, and 7 CFR § 1710.123). This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms;*

2. *Restrictions on Lobbying.* Applicants must comply with the requirements with respect to restrictions on lobbying activities. (See 2 CFR part 418, and 7 CFR § 1710.125). This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

3. *Uniform Relocation Act assurance statement.* Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. (See 7 CFR § 1710.124.) This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

4. *Federal debt delinquency requirements.* This report indicates whether or not the applicants are delinquent on any Federal debt (See 7 CFR § 1710.126 and 7 CFR § 1710.501(a)(13)). This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

5. *RUS Form 266, Compliance Assurance.* Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR parts 15 and 15b and 45 CFR part 90. This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

6. *Articles of incorporation and bylaws:* See 7 CFR § 1710.501(a)(14). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act;

7. *Form AD 3030, Representations Regarding Felony Conviction and Tax Delinquency Status for Corporation Applications.* Applicants are required to complete this form if they are a corporation. This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms;* and

8. *Form AD 3031, Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.* Required as a condition to RUS making a loan commitment. This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms.*

C. Supplemental Documents for Submission

1. *Cash flow projections and assumptions:* Each applicant must include five-year pro-forma cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR § 1720.6(4)).

2. *Pending litigation statement:* A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant.

V. Application Review Information

A. Application Evaluation

1. *Administrator Review.* Each application will be reviewed by the Administrator to determine whether it is eligible under 7 CFR § 1720.5, the information required under 7 CFR § 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Administrator can at any time reject an application that fails to meet these requirements.

a. Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b).

2. *Decisions by the Administrator.* The Administrator will approve or deny applications in a timely manner as such applications are received; provided, however, that in order to facilitate competitive evaluation of applications, the Administrator may from time to time defer a decision until more than one application is pending. The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount less than that requested.

B. Independent Assessment

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without regard to the guarantee.

VI. Issuance of the Guarantee

The requirements under this section must be met by the applicant prior to the endorsement of a guarantee by the Administrator (See 7 CFR 1720.8).

VII. Guarantee Agreement

Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on a semi-annual basis, a guarantee fee equal to 15 basis points (0.15 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

VIII. Reporting Requirements

Guaranteed Lenders are required to comply with the financial reporting requirements and pledged collateral review and certification requirements set forth in 7 CFR 1720.12.

IX. Award Administration Information

Award Notices

RUS will send a commitment letter to an applicant once the loan is approved. Applicants must accept and commit to all terms and conditions of the loan which are requested by RUS and FFB as follows:

1. *Compliance conditions.* In addition to the standard conditions placed on the section 313A Program or conditions requested by the Agency to ensure loan security and statutory compliance, applicants must comply with the following conditions:

a. Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

b. The pledged collateral shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Securities) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Securities that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles, (ii) cannot be comprised of more than 30% of bonds or notes from generation and transmission borrowers or (iii) cannot have more than 5% of notes and bonds be from any one particular borrower.

c. The Guaranteed Lender will be required to place a lien on the pledged collateral in favor of RUS (as secured party) at the time that the pledged collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days to reject and require the substitution of any Pledged Collateral that the Guaranteed Lender deposits as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

d. Applicants must certify to the RUS, the portion of their Eligible Loan portfolio that is:

(1) Refinanced RUS debt;

(2) Debt of borrowers for whom both RUS and the applicants have outstanding loans; and

(3) Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

2. *Compliance with Federal Laws.* Applicants must comply with all applicable Federal laws and regulations.

a. This obligation is subject to the provisions contained in the Consolidated Appropriations Act, 2016, Public Law 114–113, Division A, Title VII, Sections 745 and 746, as amended and/or subsequently enacted for USDA agencies and offices regarding corporate felony convictions and corporate federal tax delinquencies.

b. The Chairman or the Board President authorized by your organization to execute the loan documents must execute, date, and return the loan commitment letter and the Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (Form AD–3031) to RUS by September 30, 2016; otherwise, the commitment will be void.

c. Additional conditions may be instituted for future obligations.

X. National Environmental Policy Act Certification

For any proceeds to be used to refinance bonds and notes previously issued by the Guaranteed Lender for the RE Act purposes that are not obligated with specific projects, RUS has determined that these financial actions will not individually or cumulatively have a significant effect on the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR parts 1500–1508. However, for any new projects funded under the 313A Program, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

XI. Other Information and Requirements

Applications must contain all of the required elements of this NOSA and all standard requirements as required by 7 CFR part 1720. Additional supporting data or documents may be required by RUS depending on the individual application or financial conditions. All applicants must comply with all Federal Laws and Regulations.

XII. Agency Contacts

A. Web site: http://www.rd.usda.gov/programs-services/all-programs/electric-programs.

B. Phone: 202–205–8663.

C. Fax: (202) 720–1401 or (202) 205–1264.

D. Email: amy.mcwilliams@wdc.usda.gov.

E. Main point of contact: Amy McWilliams, Management Analyst, 1400 Independence Avenue SW., STOP 1568, Room 0226–S, Washington, DC 20250–1568.

XIII. USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027. This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Authority: 7 U.S.C. 940c–1.

Dated: April 22, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–14009 Filed 6–13–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain preserved mushrooms from India for the period February 1, 2015, through January 31, 2016.

DATES: *Effective Date:* June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Terre Keaton Stefanova, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2016, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain preserved mushrooms from India for the period of February 1, 2015, through January 31, 2016.[1]

On February 29, 2016, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Department received a timely request from Monterey Mushrooms, Inc., a petitioner and domestic interested party in this proceeding, to conduct an administrative review of the sales of Agro Dutch Foods Limited (Agro Dutch Industries Limited) (Agro Dutch); Himalya International Ltd. (Himalya); Hindustan Lever Ltd. (formerly Ponds India, Ltd.) (Hindustan); Transchem, Ltd. (Transchem); and Weikfield Foods Pvt. Ltd. (Weikfield). The petitioner was the only party to request this administrative review.

On April 7, 2016, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to Agro Dutch, Himalya, Hindustan, Transchem, and Weikfield.[2]

On May 13, 2016, the petitioner timely withdrew its request for a review of Agro Dutch, Himalya, Hindustan, Transchem, and Weikfield.[3]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 5712 (February 3, 2016).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324 (April 7, 2016).

[3] *See* petitioner's letter, ''17th Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms form India—Petitioner's

Continued

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The petitioner timely withdrew its review request for all companies before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, we are rescinding in its entirety the administrative review of the antidumping duty order on certain preserved mushrooms from India covering the period February 1, 2015, through January 31, 2016.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only 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 may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/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.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: June 8, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–14061 Filed 6–13–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on aluminum extrusions from the People's Republic of China (PRC).[1] The period of review (POR) is May 1, 2014 through April 30, 2015. These preliminary results cover 175 companies for which an administrative review was initiated.[2] The Department selected the following companies as mandatory respondents: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (collectively, Jangho) and Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Ltd. (collectively, Guang Ya Group); Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton Aluminum Company Ltd. (collectively, Zhongya); and Xinya Aluminum & Stainless Steel Product Co., Ltd. (Xinya) (collectively, Guang Ya Group/Zhongya/Xinya).[3] The Department preliminarily determines that Jangho and Guang Ya Group/Zhongya/Xinya failed to cooperate by not acting to the best of their abilities to fully comply with the Department's requests for information, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a) and 776(b) of the Tariff Act of 1930, as amended (the Act). We also preliminarily determine that two companies, Xin Wei Aluminum Company Limited (Xin Wei) and Permasteelisa Hong Kong Limited, had no shipments. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Deborah Scott, Mark Flessner or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2657, (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the *Order* [4] is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[5]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff

Withdrawal of Requests for Review,'' dated May 13, 2016.

[1] The Department initiated this review on July 1, 2015. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 37588 (July 1, 2015) (*Initiation Notice*).

[2] *Id.,* 80 FR at 37590–37593.

[3] In prior segments of this proceeding, the Department found that Guang Ya Group, Zhongya, and Xinya were affiliated with each other and should be treated as a single entity. *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12,* 79 FR 96 (January 2, 2014) (*2010–2012 Final Results*); *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 78784 (December 31, 2014) (*2012–2013 Final Results*); and *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 75060 (December 1, 2015) (*2013–2014 Final Results*).

[4] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) (*Order*).

[5] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2014–2015,'' dated concurrently with this notice (Preliminary Decision Memorandum) for a complete description of the scope of the *Order.*

Schedule of the United States (HTSUS): 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Tolling of Deadline of Preliminary Results of Review

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days.[6]

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), based on timely withdrawal of the requests for review, we are partially rescinding this administrative review with respect to 129 companies named in the *Initiation Notice*.[7] *See* Appendix II for a full list of these companies.[8]

Separate Rates

In the *Initiation Notice,* we informed parties of the opportunity to request a separate rate.[9] In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assigned a single weighted-average dumping margin. It is the Department's policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies that wanted to be considered for a separate rate in this review were required to timely file a separate-rate application or a separate-rate certification to demonstrate their eligibility for a separate rate. Separate-rate applications and separate-rate certifications were due to the Department within 30 calendar days of the publication of the *Initiation Notice.*

In this review, 21 companies for which a review was requested and which remain under review did not submit separate-rate information to rebut the presumption that they are subject to government control.[10] These companies are: Belton (Asia) Development Ltd.; Classic & Contemporary Inc.; Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Ever Extend Ent. Ltd.; Fenghua Metal Product Factory; FookShing Metal & Plastic Co. Ltd.; Foshan Golden Source Aluminum Products Co., Ltd.; Global Point Technology (Far East) Limited; Gold Mountain International Development Limited; Golden Dragon Precise Copper Tube Group, Inc.; Hebei Xusen Wire Mesh Products Co., Ltd.; Jackson Travel Products Co., Ltd.; New Zhongya Aluminum Factory; Shanghai Automobile Air-Conditioner Accessories Co., Ltd.; Southwest Aluminum (Group) Co., Ltd.; Suzhou NewHongJi Precision Part Co., Ltd.; Union Aluminum (SIP) Co.; Whirlpool Canada L.P.; Whirlpool Microwave Products Development Ltd.; and Xin Wei Aluminum Co. As further discussed in the Preliminary Decision Memorandum,[11] we preliminarily determine that these entities have not demonstrated that they operate free from government control and thus are not eligible for a separate rate.

Two additional companies that remain under review, Atlas Integrated Manufacturing Ltd. (Atlas) and Genimex Shanghai, Ltd. (Genimex), submitted separate-rate applications, but, as further discussed in the Preliminary Decision Memorandum, we preliminarily determine that these companies are not eligible for a separate rate.

In addition, nine companies still under review submitted separate-rate applications or separate-rate

[6] *See* Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,''' dated January 27, 2016.

[7] *See Initiation Notice,* 80 FR at 37590–37593.

[8] *See also* the Preliminary Decision Memorandum for further details.

[9] *Id.,* 80 FR at 37589–37590.

[10] One company, Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya), was determined to have been succeeded by Guangdong Zhongya Aluminum Company Limited (Guangdong Zhongya) in a changed circumstances review. *See Aluminum Extrusions From the People's Republic of China: Final Results of Changed Circumstances Review,* 77 FR 54900 (September 6, 2012). Thus, despite the fact that a review was initiated of New Zhongya, it is not being included among these 21 companies because its successor in interest, Guangdong Zhongya, is part of the Guang Ya Group/Zhongya/Xinya single entity.

[11] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2014–2015,'' dated concurrently with this notice.

certifications and, where applicable, responses to supplemental questionnaires which provide sufficient information to preliminarily determine that they are entitled to a separate rate. These nine companies are: Allied Maker Limited; Birchwoods (Lin'an) Leisure Products Co., Ltd.; Changzhou Changzheng Evaporator Co., Ltd.; Dongguan Aoda Aluminum Co., Ltd.; JMA (HK) Company Limited; Kam Kiu Aluminium Products Sdn. Bhd.; Metaltek Group Co., Ltd.; Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; and Tianjin Jinmao Import & Export Corp., Ltd. A full discussion of the basis for granting these companies a separate rate can be found in the Preliminary Decision Memorandum.

Rate for Non-Examined Companies Which Are Eligible for a Separate Rate

The statute and the Department's regulations do not address the establishment of the rate applied to individual respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which we did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act notes a preference that we are not to calculate an all-others rate using rates for individually-examined respondents which are zero, *de minimis,* or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis,* or based entirely on facts available, the Department may use ''any reasonable method'' for assigning a rate to non-examined respondents.

In previous cases, the Department has determined that a reasonable method to use when the rates for respondents selected for individual examination are zero, *de minimis,* or based entirely on facts available is to assign non-examined respondents the average of the most recently-determined weighted-average dumping margins that are not zero, *de minimis,* or based entirely on facts available.[12] These rates may be from the investigation, a prior administrative review, or a new shipper review.

For these preliminary results, the rates we determined for the mandatory respondents were either zero, *de minimis,* or based entirely on facts available. Therefore, we preliminarily determine to apply a margin (that is not zero, *de minimis,* or based entirely on facts available) from the most recently-completed segment in this proceeding to the non-examined separate-rate companies. This determination is consistent with precedent[13] and the most reasonable method to determine the separate rate in the instant review. Pursuant to this method, we are preliminarily assigning the margin of 86.01 percent, the sole margin calculated in the immediately-preceding segment of this proceeding for the mandatory respondent and applied to the non-examined separate-rate respondents,[14] to the non-examined separate-rate respondents in the instant review.

Preliminary Determination of No Shipments

Two companies for which a review was requested and remain under review, Xin Wei and Permasteelisa Hong Kong Limited, timely submitted certifications indicating that they had no exports, sales, shipments, or entries of subject merchandise during the POR.[15] Consistent with our practice, the Department requested that CBP conduct a query on potential shipments made by Xin Wei and Permasteelisa Hong Kong Limited during the POR; CBP provided no evidence that contradicted either Xin Wei's or Permasteelisa Hong Kong Limited's claims of no shipments. Based on Xin Wei's and Permasteelisa Hong Kong Limited's no-shipment certifications and our analysis of the CBP information, we preliminarily determine that neither Xin Wei nor Permasteelisa Hong Kong Limited had shipments during the POR. However, consistent with our practice in NME cases, the Department is not rescinding this review, in part, but intends to complete the review with respect to Xin Wei and Permasteelisa Hong Kong Limited and issue appropriate instructions to CBP based on the final results of the review.[16]

Application of Adverse Facts Available

Pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act, the Department preliminarily finds that the use of facts otherwise available is warranted with respect to Jangho. On May 5, 2016, Jangho submitted a letter to the Department in which it announced its withdrawal from active participation as a mandatory respondent in the instant administrative review.[17] By withdrawing from participation in this proceeding, Jangho withheld necessary information requested by the Department and therefore significantly impeded the proceeding. Furthermore, some of the information Jangho did provide prior to its withdrawal from this proceeding was not in the form and manner requested, and Jangho's withdrawal precludes verification of the information it did provide.

The Department also preliminarily finds that the use of facts otherwise available is warranted with respect to Guang Ya Group/Zhongya/Xinya in accordance with sections 776(a)(2)(A) and (C) of the Act. On November 23, 2015, Zhongya submitted a letter to the Department stating that it would not be responding to the Department's questionnaires.[18] In addition, on November 25, 2015, Guang Ya Group submitted a letter informing the Department that it was withdrawing from participation in this review.[19] As a result, Guang Ya Group/Zhongya/

[12] *See Narrow Woven Ribbons With Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 22578 (April 18, 2016) and accompanying Issues and Decision Memorandum at Comment 1; *see also Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16.

[13] *Id.* This is also consistent with the Department's determination in prior segments of this proceeding. *See 2010–2012 Final Results,* 79 FR at 99 and *2012–2013 Final Results,* 79 FR at 78786. *See also Yangzhou Bestpak Gifts & Crafts Co., Ltd.* v. *United States,* 716 F.3d 1370, 1374 (Fed. Cir. 2013) (recognizing and affirmatively discussing the Department's normal methodology for calculating a separate rate).

[14] *See 2013–2014 Final Results,* 80 FR at 75063.

[15] *See* Letter from Xin Wei to the Department, ''Aluminum Extrusions from the People's Republic of China: Certification of No Sales, Shipments, or Entries,'' dated July 22, 2015 and Letter from Permasteelisa Hong Kong Limited and Permasteelisa South China Factory, ''Aluminum Extrusions From the People's Republic of China: Notice of No Sales,'' dated July 28, 2015. While the Department issued standard no-shipment port inquiries for Xin Wei and Permasteelisa Hong Kong Limited, we did not do so with regard to Permasteelisa South China Factory because Permasteelisa South China Factory was not granted separate rate status in a prior segment of this proceeding. *See, e.g., 2013–2014 Final Results,* 80 FR at 75063, footnote 30.

[16] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

[17] *See* Letter from Jangho to the Department, ''2014–2015 Administrative Review of Aluminum Extrusions from the People's Republic of China,'' dated May 5, 2016.

[18] *See* Letter from Zhongya Aluminum Company Limited, Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminum (HK) Holding Limited, and Karlton Aluminum Company Ltd. to the Department, ''Aluminum Extrusions from China: Antidumping (AD) And Countervailing Duty (CVD) Questionnaires,'' dated November 23, 2015.

[19] *See* Letter from Guang Ya Group to the Department, dated November 25, 2015.

Xinya withheld information that was requested by the Department and thus significantly impeded the proceeding.

Further, pursuant to section 776(b) of the Act, the Department preliminarily determines that both Jangho and Guang Ya Group/Zhongya/Xinya failed to cooperate by not acting to the best of their abilities to comply with the Department's requests for information, and, thus, an adverse inference is warranted.

Because the Department preliminarily determines that Jangho and Guang Ya Group/Zhongya/Xinya failed to cooperate by not acting to the best of their abilities to comply with requests for information, we have determined that they are not eligible for a separate rate.[20] Regarding Jangho, the Department preliminarily finds that the record contains numerous deficiencies because Jangho did not respond to a supplemental questionnaire issued by the Department; therefore, the record does not contain the information necessary to make a separate rate determination. Guang Ya Group/Zhongya/Xinya, on the other hand, failed to provide a response to the Department's antidumping questionnaire at all. As such, separate rates are not warranted for Jangho or Guang Ya Group/Zhonya/Xinya.

PRC-Wide Entity

As the Department preliminarily determines, based on AFA, that Jangho and Guang Ya Group/Zhongya/Xinya are not eligible for a separate rate, we determine that both companies are part of the PRC-wide entity.

In addition, 21 companies still subject to these preliminary results (listed above) are not eligible for separate-rate status because they did not submit separate-rate applications or certifications. Two additional companies still under review, Atlas and Genimex, submitted separate-rate applications that did not demonstrate eligibility for a separate rate. As a result, the Department preliminarily finds these 23 companies are also part of the PRC-wide entity.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[21] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate from the previous administrative review (*i.e.,* 33.28 percent) is not subject to change.[22]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, parties can obtain a complete version of the Preliminary Decision Memorandum on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Adjustments for Countervailable Subsidies

Because no mandatory respondent established eligibility for an adjustment under section 777A(f) of the Act for countervailable domestic subsidies, for these preliminary results, the Department did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for the separate-rate recipients.

Pursuant to section 772(c)(1)(C) of the Act, the Department made an adjustment for countervailable export subsidies for the separate-rate recipients. Specifically, we adjusted the assigned separate rate by deducting the simple average of the countervailable export subsidies determined for the individually-examined respondents in the 2013 (*i.e.,* most recently completed) countervailing duty administrative review.[23]

For the PRC-wide entity, since the entity is not currently under review, its rate is not subject to change.[24]

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the 2014–2015 POR:

Exporter	Weighted-average dumping margin (percent)	Margin adjusted for liquidation and cash deposit purposes (percent)
Allied Maker Limited	86.01	85.94
Birchwoods (Lin'an) Leisure Products Co., Ltd.	86.01	85.94
Changzhou Changzheng Evaporator Co., Ltd.	86.01	85.94
Dongguan Aoda Aluminum Co., Ltd.	86.01	85.94
JMA (HK) Company Limited	86.01	85.94
Kam Kiu Aluminium Products Sdn Bhd[25]	86.01	85.94

[20] *See* section 776(b) of the Act.

[21] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013) (*Conditional Review of NME Entity Notice*).

[22] *See 2013–2014 Final Results,* 80 FR at 75063.

[23] *See Aluminum Extrusions From the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013,* 80 FR 77325 (December 14, 2015) and *Aluminum Extrusions From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2013,* 81 FR 15238 (March 22, 2016), as corrected in *Aluminum Extrusions from the People's Republic of China: Notice of Correction to Amended Final Results of Countervailing Duty Administrative Review; 2013,* 81 FR 31227 (May 18, 2016). *See also* Preliminary Decision Memorandum for the calculation of the countervailable export subsidies deducted from the assigned separate rate.

[24] *See Conditional Review of NME Entity Notice,* 78 FR at 65970. As the rate for the PRC-wide entity is not subject to change in the instant review, the adjusted margin we are applying to the PRC-wide entity in the instant review, 33.18 percent, is net of the countervailable domestic and export subsidies determined in the *2012–2013 Final Results. See 2012–2013 Final Results,* 79 FR at 78787; *see also 2013–2014 Final Results,* 80 FR at 75063, footnote 27.

Exporter	Weighted-average dumping margin (percent)	Margin adjusted for liquidation and cash deposit purposes (percent)
Metaltek Group Co., Ltd.	86.01	85.94
Tianjin Jinmao Import & Export Corp., Ltd.	86.01	85.94

Additionally, the Department preliminarily determines that the following companies are part of the PRC-wide entity: Jangho (which includes Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd.); Guang Ya Group/Zhongya/Xinya (which includes Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Ltd.; Guangdong Zhongya Aluminium Company Limited; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; and Xinya Aluminum & Stainless Steel Product Co., Ltd.); Atlas Integrated Manufacturing Ltd.; Belton (Asia) Development Ltd.; Classic & Contemporary Inc.; Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Ever Extend Ent. Ltd.; Fenghua Metal Product Factory; FookShing Metal & Plastic Co. Ltd.; Foshan Golden Source Aluminum Products Co., Ltd.; Genimex Shanghai, Ltd.; Global Point Technology (Far East) Limited; Gold Mountain International Development Limited; Golden Dragon Precise Copper Tube Group, Inc.; Hebei Xusen Wire Mesh Products Co., Ltd.; Jackson Travel Products Co., Ltd.; New Zhongya Aluminum Factory; Shanghai Automobile Air-Conditioner Accessories Co., Ltd.; Southwest Aluminum (Group) Co., Ltd.; Suzhou NewHongJi Precision Part Co., Ltd.; Union Aluminum (SIP) Co.; Whirlpool Canada L.P.; Whirlpool Microwave Products Development Ltd.; and Xin Wei Aluminum Co. The rate previously established for the PRC-wide entity in the previous administrative review is 33.28 percent.[26]

[25] Although the Department initiated a review for both Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. and Kam Kiu Aluminium Products Sdn Bhd, it is apparent from the company's separate-rate application that Kam Kiu Aluminium Products Sdn Bhd is the exporter and Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. is a producer only; thus, Kam Kiu Aluminium Products Sdn Bhd is the appropriate party to grant the separate rate status.

[26] *See 2013–2014 Final Results,* 80 FR at 75063.

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[27] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs are filed.[28] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[29] Parties submitting briefs should do so pursuant to the Department's electronic filing requirements.

Any interested party may request a hearing within 30 days of publication of this notice.[30] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[31]

Unless extended, the Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[32] The Department intends to issue assessment instructions to CBP 15 days after publication of the final results of this review.

We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate. Additionally, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the PRC-wide rate.[33]

For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). We will instruct CBP accordingly.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties, when imposed, will apply to all shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) If the companies preliminarily determined to be eligible for a separate rate receive a separate rate in the final results of this administrative review, their cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review, as adjusted for domestic and export subsidies (except, if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for any previously investigated or reviewed PRC and non-PRC exporters that are not under review in this segment of the proceeding but that received a separate rate in the most recently completed segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise that have not been found

[27] *See* 19 CFR 351.309(c)(1)(ii).

[28] *See* 19 CFR 351.309(d)(1)–(2).

[29] *See* 19 CFR 351.309(c)(2) and (d)(2).

[30] *See* 19 CFR 351.310(c).

[31] *See* 19 CFR 351.310(d).

[32] *See* 19 CFR 351.212(b)(1).

[33] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity, which is 33.18 percent; [34] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing notice of these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 6, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Respondent Selection
4. Rescission of Administrative Review in Part
5. Scope of the Order
6. Affiliation and Collapsing
7. Preliminary Determination of No Shipments
8. Non-Market Economy Country
9. Separate Rates
10. Separate-Rate Recipients
11. Preliminary Determination of Rate for Non-Examined Separate-Rate Recipients
12. The PRC-Wide Entity
13. Application of Facts Available and Use of Adverse Inference
14. Adjustments for Countervailable Subsidies
15. Conclusion

Appendix II—Companies for Which This Administrative Review Is Being Rescinded

1. Acro Import and Export Co.
2. Activa International Inc.
3. Alnan Aluminium Co., Ltd.
4. Aluminicaste Fundicion de Mexico
5. Bracalente Metal Products (Suzhou) Co., Ltd.
6. Changshu Changsheng Aluminium Products Co., Ltd.
7. Changzhou Tenglong Auto Parts Co., Ltd.
8. China Zhongwang Holdings, Ltd.
9. Chiping One Stop Industrial & Trade Co., Ltd.
10. Clear Sky Inc.
11. Cosco (J.M.) Aluminium Co., Ltd.
12. Dongguan Dazhan Metal Co., Ltd.
13. Dragonluxe Limited
14. Dynamic Technologies China Ltd.
15. Dynabright Int'l Group (HK) Limited
16. First Union Property Limited
17. Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone
18. Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.
19. Foshan Jinlan Aluminum Co., Ltd.
20. Foshan JMA Aluminum Company Limited
21. Foshan Sanshui Fenglu Aluminium Co., Ltd.
22. Foshan Shunde Aoneng Electrical Appliances Co., Ltd.
23. Foshan Yong Li Jian Aluminum Co., Ltd.
24. Fujian Sanchuan Aluminum Co., Ltd.
25. Global PMX Dongguan Co., Ltd.
26. Gran Cabrio Capital Pte. Ltd.
27. Gree Electric Appliances
28. GT88 Capital Pte. Ltd.
29. Guangdong Hao Mei Aluminium Co., Ltd.
30. Guangdong Jianmei Aluminum Profile Company Limited
31. Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.
32. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
33. Guangdong Weiye Aluminum Factory Co., Ltd.
34. Guangdong Whirlpool Electrical Appliances Co., Ltd.
35. Guangdong Xingfa Aluminium Co., Ltd.
36. Guangdong Xin Wei Aluminum Products Co., Ltd.
37. Guangdong Yonglijian Aluminum Co., Ltd.
38. Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.
39. Hangzhou Xingyi Metal Products Co., Ltd.
40. Hanwood Enterprises Limited
41. Hanyung Alcoba Co., Ltd.
42. Hanyung Alcobis Co., Ltd.
43. Hanyung Metal (Suzhou) Co., Ltd.
44. Hao Mei Aluminum Co., Ltd.
45. Hao Mei Aluminum International Co., Ltd.
46. Henan New Kelong Electrical Appliances Co., Ltd.
47. Hong Kong Gree Electric Appliances Sales Limited
48. Honsense Development Company
49. Hui Mei Gao Aluminum Foshan Co., Ltd.
50. IDEX Dinglee Technology (Tianjin) Co., Ltd.
51. IDEX Technology Suzhou Co., Ltd.
52. IDEX Health
53. Innovative Aluminium (Hong Kong) Limited
54. iSource Asia
55. Jiangmen Qunxing Hardware Diecasting Co., Ltd.
56. Jiangsu Changfa Refrigeration Co., Ltd.
57. Jiangyin Trust International Inc.
58. Jiangyin Xinhong Doors and Windows Co., Ltd.
59. Jiaxing Jackson Travel Products Co., Ltd.
60. Jiaxing Taixin Metal Products Co., Ltd.
61. Jiuyan Co., Ltd.
62. Justhere Co., Ltd.
63. Kanal Precision Aluminum Product Co., Ltd.
64. Kromet International, Inc.
65. Kunshan Giant Light Metal Technology Co., Ltd.
66. Liaoning Zhongwang Group Co., Ltd.
67. Liaoyang Zhongwang Aluminum Profile Co., Ltd.
68. Longkou Donghai Trade Co., Ltd.
69. Metaltek Metal Industry Co., Ltd.
70. Midea Air Conditioning Equipment Co., Ltd.
71. Midea International Training Co., Ltd./ Midea International Trading Co., Ltd.
72. Miland Luck Limited
73. Nanhai Textiles Import & Export Co., Ltd.
74. New Asia Aluminum & Stainless Steel Product Co., Ltd.
75. Nidec Sankyo (Zhejang) Corporation
76. Nidec Sankyo Singapore Pte. Ltd.
77. Ningbo Coaster International Co., Ltd.
78. Ningbo Hi Tech Reliable Manufacturing Company
79. Ningbo Ivy Daily Commodity Co., Ltd.
80. Ningbo Yili Import and Export Co., Ltd.
81. North China Aluminum Co., Ltd.
82. North Fenghua Aluminum Ltd.
83. Northern States Metals
84. PanAsia Aluminium (China) Limited
85. Pengcheng Aluminum Enterprise Inc.
86. Pingguo Aluminum Company Limited
87. Pingguo Asia Aluminum Co., Ltd.
88. Popular Plastics Co., Ltd.
89. Press Metal International Ltd.
90. Samuel, Son & Co., Ltd.
91. Sanchuan Aluminum Co., Ltd.
92. Shangdong Huasheng Pesticide Machinery Co.
93. Shangdong Nanshan Aluminum Co., Ltd.
94. Shanghai Canghai Aluminum Tube Packaging Co., Ltd.
95. Shanghai Dongsheng Metal
96. Shanghai Shen Hang Imp & Exp Co., Ltd.
97. Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.
98. Shenyang Yuanda Aluminium Industry Engineering Co., Ltd.
99. Shenzhen Hudson Technology Development Co.
100. Shenzhen Jiuyuan Co., Ltd.
101. Sihui Shi Guo Yao Aluminum Co., Ltd.
102. Sincere Profit Limited
103. Skyline Exhibit Systems (Shanghai) Co., Ltd.
104. Suzhou JRP Import & Export Co., Ltd.
105. TAI–AO Aluminium (Taishan) Co., Ltd.
106. Taizhou Lifeng Manufacturing Co., Ltd.
107. Taizhou United Imp. & Exp. Co., Ltd.
108. tenKsolar (Shanghai) Co., Ltd.
109. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
110. Tianjin Ruixin Electric Heat Transmission Technology, Ltd.
111. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
112. Tiazhou Lifeng Manufacturing Corporation/Taizhou Lifeng Manufacturing Corporation, Ltd.

[34] *See 2012–2013 Final Results,* 79 FR at 78787. This rate is adjusted for export and domestic subsidies, as appropriate.

113. Top-Wok Metal Co., Ltd.
114. Traffic Brick Network, LLC
115. Union Industry (Asia) Co., Ltd.
116. USA Worldwide Door Components (PINGHU) Co., Ltd.
117. Wenzhou Shengbo Decoration & Hardware
118. Whirlpool (Guangdong)
119. WTI Building Products, Ltd.
120. Zahoqing China Square Industry Limited/Zhaoqing China Square Industry Limited
121. Zhaoqing Asia Aluminum Factory Company Ltd.
122. Zhaoqing China Square Industrial Ltd.
123. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
124. Zhejiang Yongkang Listar Aluminium Industry Co., Ltd.
125. Zhejiang Zhengte Group Co., Ltd.
126. Zhenjiang Xinlong Group Co., Ltd.
127. Zhongshan Daya Hardware Co., Ltd.
128. Zhongshan Gold Mountain Aluminium Factory Ltd.
129. Zhuhai Runxingtai Electrical Equipment Co., Ltd.

[FR Doc. 2016–14046 Filed 6–13–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 8, 2016, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC'') covering the period May 1, 2014 through April 31, 2015.[1] This review covers one PRC exporter, Tianjin Magnesium International, Co., Ltd. (''TMI'') and Tianjin Magnesium Metal, Co., Ltd. (''TMM'') (collectively ''TMI/TMM''). The Department gave interested parties an opportunity to comment on the *Preliminary Results,* but we received no comments. Hence, these final results are unchanged from the *Preliminary Results,* and we continue to find that TMI/TMM did not have reviewable entries during the period of review (''POR'').

DATES: *Effective Date:* June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Shanah Lee or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6386 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2016, the Department published the *Preliminary Results* of the instant review, preliminarily finding that TMI/TMM did not have any reviewable entries during the POR.[2] We invited interested parties to comment on the *Preliminary Results.*[3] We received no comments from interested parties.

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off–specification pure'' magnesium).

''Off–specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Final Determination of No Shipments

As explained in the *Preliminary Results,* the Department found that TMI/TMM did not have reviewable entries during the POR.[4] Also in the *Preliminary Results,* the Department stated that consistent with its refinement to its assessment practice in non-market economy (''NME'') cases, it is appropriate not to rescind the review in this circumstance but, rather, to complete the review with respect to TMI/TMM and to issue appropriate instructions to Customs and Border Protection (''CBP'') based on the final results of the review.[5]

After issuing the *Preliminary Results,* the Department received no comments from interested parties, nor has it received any information that would cause it to revisit its preliminary results. Therefore, for these final results, the Department continues to find that TMI/TMM did not have any reviewable entries during the POR.

Assessment Rates

The Department determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the

[1] *See Pure Magnesium From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 6504 (February 8, 2016) (''*Preliminary Results*'').

[2] *Id.,* at 6505–6506.

[3] *Id.,* at 6506.

[4] *Id.,* at 6505–6506.

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement*'') and the ''Assessment Rates'' section, below.

final results of this review.[6] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Additionally, consistent with the Department's refinement to its assessment practice in NME cases, because the Department determined that TMI/TMM had no shipments of subject merchandise during the POR, any suspended entries that entered under TMI/TMM's antidumping duty case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of the administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For TMI/TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI/TMM in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent; [8] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–14059 Filed 6–13–16; 8:45 am]

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[6] *See* 19 CFR 351.212(b).

[7] *See Assessment Practice Refinement,* 76 FR 65694.

[8] *See Pure Magnesium From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–864]

Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Notice of Correction to Final Affirmative Determination; Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION: On June 2, 2016, the Department of Commerce (the Department) published the *Final Determination* on certain corrosion-resistant steel products from India.[1] In the *Final Determination* the Department inadvertently omitted its final analysis of critical circumstances. Pursuant to 19 CFR 351.206(c)(2)(i), the Department preliminarily determined that critical circumstances did not exist [2] and received no comments on this issue. Based on the examination of the shipping data placed on the record by the mandatory respondents after the *Preliminary Determination*,[3] we examined whether the increase in imports was massive by comparing shipments over the period of July 2014 through February 2015, with the period March 2015 through October 2015 for the mandatory respondents.[4] Because the *Preliminary Determination* was published November 6 (the beginning of November), we used data through October in determining critical circumstances for the mandatory respondents. For all other producers and exporters, our critical circumstances determination continues to be based on data through August, the latest month for which GTA data is on the record, and is thus unchanged from the *Preliminary Determination.* The Department continues to find that critical circumstances do not exist for the mandatory respondents, or for all other producers and exporters.

This correction to the *Final Determination* is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: June 8, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–14072 Filed 6–13–16; 8:45 am]

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[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination,* 81 FR 35323 (June 2, 2016*) (Final Determination).*

[2] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances,* 80 FR 68504 (November 5, 2015).

[3] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Preliminary Affirmative Determination,* 80 FR 68854 (November 6, 2015) (*Preliminary Determination*).

[4] *See* the November 16, 2015, quantity and value shipment data for October 2015 from the mandatory respondents.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–952]

Narrow Woven Ribbon With Woven Selvedge From the People's Republic of China: Preliminary Results of Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 14, 2016.

SUMMARY: The Department of Commerce (''Department'') is conducting an

administrative review of the antidumping duty order on narrow woven ribbons with woven selvedge (''woven ribbons'') from the People's Republic of China (''PRC'') for the period of review (''POR'') September 1, 2014, through August 31, 2015. This review covers one PRC company Yama Ribbons Co., Ltd., (''Yama Ribbons'').[1] The Department preliminarily finds that Yama Ribbons did not have reviewable transactions during the POR.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are narrow woven ribbons with woven selvedge. The merchandise subject to the order is classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under HTSUS subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[2]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act''). For a full description of the methodology underlying our conclusions, *see* Preliminary Results Decision Memorandum. This memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Results Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Results Decision Memorandum and the electronic versions of the Preliminary Results Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that Yama Ribbons did not have reviewable transactions during the POR.

Disclosure and Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically using ACCESS, within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days after the due date for case briefs, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the argument not to exceed five pages, and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties, who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. Electronically filed case briefs/written comments and hearing requests must be received successfully in their entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[3] Hearing requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those issues raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the time and date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[4] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Pursuant to the Department's practice in NME cases, if we continue to determine that Yama Ribbons had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate of 247.26 percent. For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(2)(C) of the Act: (1) For exports of merchandise made by Yama Ribbons of merchandise it did not produce, the cash deposit rate is the PRC-wide rate of 247.26 percent, as stated in the Order; [5] (2) for previously investigated or reviewed PRC and non-PRC exporters which are not under review in this segment of the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 69193 (November 09, 2015) (''*Initiation Notice*''). The Department determined in the underlying investigation that merchandise produced and exported by Yama Ribbons is excluded from the antidumping duty order. *See also Notice of Antidumping Duty Orders: Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632 (September 1, 2010), as amended in *Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982 (September 17, 2010) (''*Order*''). However, merchandise which Yama exports but did not produce remains subject to the antidumping duty order on narrow woven ribbons with woven selvedge.

[2] For a complete description of the scope of the order, please see ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance (''Preliminary Decision Memorandum''), dated concurrently with this notice.

[3] *See* 19 CFR 351.310(c).

[4] *See* 19 CFR 351.212(b)(1).

[5] *See Order* at 75 FR 53632.

proceeding but which have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate the cash deposit rate will be the PRC-wide rate of 247.26 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: June 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Results Decision Memorandum

[FR Doc. 2016–14048 Filed 6–13–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 4, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC). The period of review (POR) is November 1, 2013, through October 31, 2014. For the final results, we continue to find that certain companies covered by this review made sales of subject merchandise at less than normal value.

DATES: *Effective Date:* June 14, 2016

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Bryan Hansen, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–3683, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, the Department published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from the PRC.[1] We received case and rebuttal briefs with respect to the *Preliminary Results*. As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to a closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of this review moved to April 8, 2016.[2] Subsequently, we fully extended the time for completing the final results of this administrative review to June 7, 2016.[3] At the request of interested parties, we held a hearing on April 20, 2016. We conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4] The written description is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *http://access.trade.gov*. The Issues and Decision Memorandum is also available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance Web site at *http://enforcement.trade.gov/frn/index.html*.

Final Determination of No Shipments

We preliminarily found that Danyang City Ou Di Ma Tools Co., Ltd., Danyang Tsunda Diamond Tools Co., Ltd., Hangzhou Kingburg Import & Export Co., Ltd., Qingdao Hyosung Diamond Tools Co., Ltd., Qingdao Shinhan Diamond Industrial Co., Ltd., and Shanghai Starcraft Tools Co., Ltd., which have been eligible for separate rates in previous segments of the proceeding and are subject to this review, did not have any reviewable entries of subject merchandise during the POR.[5] After the *Preliminary Results,*

[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 75854 (December 4, 2015) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum for the Record from Acting Assistant Secretary Ron Lorenzen entitled ''Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas''' dated January 27, 2016.

[3] *See* Memorandum to Associate Deputy Assistant Secretary Gary Taverman entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review'' dated March 23, 2016, and Memorandum to Deputy Assistant Secretary Christian Marsh entitled ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Full Extension of Deadline for Final Results of Antidumping Duty Administrative Review'' dated May 18, 2016.

[4] *See* Memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled ''Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China'' dated June 7, 2016, (Issues and Decision Memorandum) and hereby adopted by this notice, at 4–5.

[5] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 3–4.

we received no comments or additional information with respect to these six companies. Therefore, for the final results, we continue to find that these six companies did not have any reviewable entries of subject merchandise during the POR. Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

Final Affiliation and Single Entity Determination

For the final results, we continue to find that Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Sawing Co., Ltd., are affiliated, pursuant to sections 771(33)(A) and (F) of the Act. Additionally, under 19 CFR 351.401(f)(1)–(2), we continue to find that these companies should be considered a single entity (collectively known as the Jiangsu Fengtai Single Entity).[6]

Changes Since the Preliminary Results

Based on our analysis of comments received, we made revisions that have changed the results for certain companies, including the valuation of certain factors of production and the PRC-wide rate. Additionally, we made calculation programming changes for the final results. For further details on the changes we made for these final results, *see* the company-specific analysis memoranda, the Issues and Decision Memorandum, and the final surrogate value memorandum, dated concurrently with this notice. Moreover, on May 11, 2016, in *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 13–00168, the Court of International Trade affirmed a remand redetermination in which the Department determined it appropriate to reinstate the antidumping duty order on diamond sawblades from the PRC, in part, with respect to certain parts of the ATM Single Entity for which the Department previously had revoked the order, in part.[7] Accordingly, the Department reinstated the order on diamond sawblades from the PRC, in part, with respect to these companies.[8] As a result, all companies that the Department has found to constitute the ATM Single Entity are subject to this administrative review.[9]

Final Results of the Review

As a result of this administrative review, we determine that the following weighted-average dumping margins exist for the period November 1, 2013, through October 31, 2014:

Company	Margin (percent)
Bosun Tools Co., Ltd	29.76
Chengdu Huifeng Diamond Tools Co., Ltd	29.76
Danyang Huachang Diamond Tools Manufacturing Co., Ltd	29.76
Danyang NYCL Tools Manufacturing Co., Ltd	29.76
Danyang Weiwang Tools Manufacturing Co., Ltd	29.76
Guilin Tebon Superhard Material Co., Ltd	29.76
Hangzhou Deer King Industrial and Trading Co., Ltd	29.76
Hong Kong Hao Xin International Group Limited	29.76
Huzhou Gu's Import & Export Co., Ltd	29.76
Jiangsu Fengtai Single Entity[10]	61.48
Jiangsu Huachang Tools Manufacturing Co., Ltd	29.76
Jiangsu Inter-China Group Corporation[11]	29.76
Jiangsu Youhe Tool Manufacturer Co., Ltd	29.76
Orient Gain International Limited	29.76
Pantos Logistics (HK) Company Limited	29.76
Qingyuan Shangtai Diamond Tools Co., Ltd	29.76
Quanzhou Zhongzhi Diamond Tool Co., Ltd	29.76
Rizhao Hein Saw Co., Ltd	29.76
Saint-Gobain Abrasives (Shanghai) Co., Ltd	29.76
Shanghai Jingquan Industrial Trade Co., Ltd	29.76
Weihai Xiangguang Mechanical Industrial Co., Ltd	21.67
Wuhan Wanbang Laser Diamond Tools Co	29.76
Xiamen ZL Diamond Technology Co., Ltd	29.76
Zhejiang Wanli Tools Group Co., Ltd	29.76

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[12] For customers or importers of the Jiangsu Fengtai Single Entity and Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai) for which we do not have entered values, we calculated customer-/importer-specific antidumping duty assessment amounts based on the ratio of the total amount of dumping duties calculated for the examined sales of subject merchandise to the total sales quantity of those same sales.[13] For a customer or importer of Weihai for which we received entered-value information, we have calculated a customer/importer-specific antidumping duty assessment rate based on customer-/importer-specific *ad valorem* rates in accordance with 19 CFR 351.212(b)(1).

For all non-selected respondents that received a separate rate, we will instruct CBP to apply an antidumping duty assessment rate of 29.76 percent[14] to all entries of subject merchandise that entered the United States during the POR. For all other companies, with the exception of the ATM Single Entity, we will instruct CBP to apply the antidumping duty assessment rate of the PRC-wide entity, 82.05 percent, to all entries of subject merchandise exported by these companies.[15]

[6] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 4–6 for more details.

[7] The ATM Single Entity is comprised of Advanced Technology & Materials Co., Ltd., AT&M International Trading Co., Ltd., Beijing Gang Yan Diamond Products Co., Cliff International Ltd., and HXF Saw Co., Ltd. Concerning partial revocation of the antidumping duty order on diamond sawblades from the PRC, *see Certain Frozen Warmwater Shrimp From the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders,* 78 FR 18958 (March 28, 2013); *Diamond Sawblades Manufacturer's Coalition* v. *United States,* Consol. Court No. 13–00168, Slip Op. 16–48 (CIT May 11, 2016).

[8] *See Diamond Sawblades And Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination Under Section 129 of the Uruguay Round Agreements Act and Reinstatement of Order, In Part,* 81 FR 36519 (June 7, 2016).

[9] *Id.* To the extent they do not demonstrate eligibility for a separate rate and no party has requested a review of the PRC-wide entity, there is no conditional review of the PRC-wide entity. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), and *Preliminary Results,* 80 FR at 75854.

[10] For the final results, we continue to treat Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Sawing Co., Ltd., as a single entity. *See Preliminary Results,* 80 FR at 75854–55, and accompanying Preliminary Decision Memorandum at 4–6 for details.

[11] *See Preliminary Results,* 80 FR at 75855 n.15 for the name variation of this company.

[12] *See* 19 CFR 351.212(b)(1).

[13] *Id.*

[14] *See* Issues and Decision Memorandum at 5–6.

[15] *See Initiation Notice,* 79 FR at 76957 (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.''). Companies that are subject to this administrative review that are considered to be part of the PRC-wide entity are Central Iron and Steel Research Institute Group, China Iron and Steel Research Institute Group, Danyang Aurui Hardware Products Co., Ltd., Danyang Dida Diamond Tools Manufacturing Co., Ltd., Electrolux Construction

For entries that were not reported in the U.S. sales databases submitted by an exporter individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, for the six companies that we determined had no reviewable entries of the subject merchandise in this review period, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be the rate established in these final results of review for each exporter as listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

[FR Doc. 2016–14047 Filed 6–13–16; 8:45 am]

BILLING CODE 3510–DS–P

Products (Xiamen) Co., Ltd., Fujian Quanzhou Wanlong Stone Co., Ltd., Hebei Jikai Industrial Group Co., Ltd., Huachang Diamond Tools Manufacturing Co., Ltd., Hua Da Superabrasive Tools Technology Co., Ltd., Jiangsu Fengyu Tools Co., Ltd., Jiangyin Likn Industry Co., Ltd., Protech Diamond Tools, Pujiang Talent Diamond Tools Co., Ltd., Quanzhou Shuangyang Diamond Tools Co., Ltd., Shanghai Deda Industry & Trading Co., Ltd., Shanghai Robtol Tool Manufacturing Co., Ltd., Shijiazhuang Global New Century Tools Co., Ltd., Sichuan Huili Tools Co., Task Tools & Abrasives, Wanli Tools Group, Wuxi Lianhua Superhard Material Tools Co., Ltd., Zhejiang Tea Import & Export Co., Ltd., Zhejiang Wanda Import and Export Co., Zhejiang Wanda Tools Group Corp., and Zhejiang Wanli Super-hard Materials Co., Ltd. Additionally, the ATM Single Entity (*i.e.,* Advanced Technology & Materials Co., Ltd., AT&M International Trading Co., Ltd., Beijing Gang Yan Diamond Products Co., Cliff International Ltd., and HXF Saw Co., Ltd.) is part of the PRC-wide entity. *See* Issues and Decision Memorandum at 7 and 8 for more information concerning the ATM Single Entity as part of the PRC-wide entity and the effect of the Department's remand redetermination in *Diamond Sawblades Manufacturer's Coalition* v. *United States,* Consol. Court No. 13–00168, Slip Op. 16–48 (CIT May 11, 2016), which implicates entries of diamond sawblades from the PRC from the ATM Single Entity. A preliminary injunction issued by the Court of International Trade in *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 13–00168, currently enjoins us from lifting suspension of liquidation for entries of subject merchandise produced and/or exported by the ATM Single Entity to the extent that such entries were made on or after March 22, 2013. *See* CBP Message Number 5238306 dated August 26, 2015, which is available at *http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/20287.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD776

Endangered Species; File No. 19281

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Dr. Isaac Wirgin, New York University School of Medicine, Department of Environmental Medicine, 57 Old Forge Road, Tuxedo, NY 10987, has been issued a permit to import and take early life stages of endangered, captive shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Rosa L. González, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On May 18, 2015, notice was published in the **Federal Register** (80 FR 28236) of a request for a permit to import and conduct research on shortnose sturgeon early life stages had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

In directed studies with endangered shortnose sturgeon early life stages, researchers will define the toxicities of varying concentrations of industrial contaminants, such as polychlorinated biphenyl (PCB) and Dioxin (2,3,7,8-TCDD). Shortnose sturgeon fertilized embryos are authorized to be imported by CITES I permit from the Acadian Sturgeon and Caviar, Inc., New

Brunswick, Canada, to the NOAA Howard Marine Sciences Laboratory in Highlands, New Jersey, where the controlled research will take place. The laboratory tests will be conducted both singly and in combination with 10 temperature regimes and varying levels of dissolved oxygen, representing environmental stresses. Surviving progeny will be euthanized after tests are completed each year. In subsequent years of the five-year permit, the Permit Holder will evaluate the toxic effects and sensitivities of shortnose sturgeon to other contaminants.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 8, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–13969 Filed 6–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE122

Marine Mammal Stock Assessment Reports

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

ACTION: Notice of availability; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has considered public comments for revisions of the 2015 marine mammal stock assessment reports (SARs).

ADDRESSES: Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: *http://www.nmfs.noaa.gov/pr/sars/.*

A list of references cited in this notice is available at *www.regulations.gov* (search for docket NOAA–NMFS–2015–0108) or upon request.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov;* Marcia Muto, Alaska Fisheries Science Center, 206–526–4026, *Marcia.Muto@noaa.gov;* Peter Corkeron, Northeast Fisheries Science Center, 508–495–2191, *Peter.Corkeron@noaa.gov;* or Jim Carretta, Southwest Fisheries Science Center, 858–546–7171, *Jim.Carretta@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare SARs for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal (PBR) level, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

NMFS updated SARs for 2015, and the revised reports were made available for public review and comment for 90 days (80 FR 58705, September 20, 2015). NMFS received comments on the draft SARs and has revised the reports as necessary. This notice announces the availability of the final 2015 reports for the 108 stocks that are currently finalized. These reports are available on NMFS's Web site (see **ADDRESSES**).

Comments and Responses

NMFS received letters containing comments on the draft 2015 SARs from the Marine Mammal Commission (Commission); five non-governmental organizations (The Humane Society of the United States (HSUS), Center for Biological Diversity (CBD), Whale and Dolphin Conservation (WDC), Turtle Island Restoration Network (TIRN), and the Hawaii Longline Association (HLA)); and one individual. Responses to substantive comments are below; comments on actions not related to the SARs are not included below. Comments suggesting editorial or minor clarifying changes were incorporated in the reports, but they are not included in the summary of comments and responses. In some cases, NMFS's responses state that comments would be considered or incorporated in future revisions of the SARs rather than being incorporated into the final 2015 SARs.

Comments on National Issues

Comment 1: The SAR administrative process must be improved; it is confusing, inefficient, and produces final SARs that are not based upon the best available scientific information. Because of the inefficient process used to produce SARs, the draft SARs fail to rely upon the best available data (*i.e.,* the most current data that it is practicable to use), contrary to the MMPA. For example, the draft 2015 SAR only reports data collected through the year 2013, even though 2014 data are readily available. We appreciate that it is not practicable to incorporate into SARs the absolute most recently collected data; nevertheless, there is no credible justification to continue the present two-year delay in the use of information.

Response: The marine mammal SARs are based upon the best available scientific information, and NMFS strives to update the SARs with as timely data as possible. In order to develop annual mortality and serious injury estimates, we do our best to ensure all records are accurately accounted for in that year. In some cases, this is contingent on such things as bycatch analysis, data entry, and assessment of available data to make determinations of severity of injury, confirmation of species based on morphological and/or molecular samples collected, etc. Additionally, the SARs incorporate injury determinations that have been assessed pursuant to the NMFS 2012 Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals (NMFS Policy Directive PD 02–038 and NMFS Instruction 02–038–01) which requires several phases of review by the SRGs. Reporting on incomplete annual mortality and serious injury estimates could result in underestimating actual levels. The MMPA requires us to report mean annual mortality and serious injury estimates, and we try to ensure that we are accounting for all available data before we summarize those data. With respect to abundance, in some cases we provide census rather than abundance estimates and the accounting process to obtain the minimum number alive requires two years of sightings to get a stable count, after which the data are analyzed and entered into the SAR

in the third year. All animals are not seen every year; waiting two years assures that greater than 90% of the animals still alive will be included in the count. As a result of the review and revision process, data used for these determinations typically lag two years behind the year of the SAR.

Comment 2: Unlike mortality and serious injury estimates for small cetaceans, where extra time may be needed to obtain fishing effort and to expand observed takes to obtain fleet-wide estimates, for large cetaceans mortality estimates are direct minimum counts based on discovery of carcasses and any necropsies are generally completed promptly. There is no need to delay reporting by two years as has been common in the SARs.

Response: Large whale mortality reports, like all interactions, go through the review and publication process outlined in the NMFS 2012 Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals. NMFS produces annual marine mammal serious injury and mortality reports, which involves a clear process for review and publication. The serious injury and mortality data contained in the SARs come from these reports once they have been fully vetted. Therefore, the mortality data reported in the SARs are subject to the same delay outlined in the response to Comment 1.

Comment 3: There are grossly outdated estimates of abundance for many stocks. The most recently proposed revision of NMFS's Guidelines for Assessing Marine Mammal Stocks (GAMMS) provided recommendations for addressing aging data by precautionarily reducing the Minimum Population Estimate (Nmin) annually (and consequently the PBR), until such time as new abundance data can be obtained. For stocks with outdated estimates this was often not done. NMFS's regional offices should follow the GAMMS in these cases and downwardly revise the PBRs for these stocks.

Response: NMFS recently finalized revisions to the GAMMS (available at *http://www.nmfs.noaa.gov/pr/sars/pdf/gamms2016.pdf*). Regarding outdated abundance estimates, we did not finalize the proposed approach recommended by the GAMMS workshop participants. Rather, we will be further analyzing this issue, as the challenge of outdated abundance estimates continues and the problems resulting from stocks with ''undetermined'' PBR persists. Should we contemplate changes to the guidelines regarding this topic in the future, we will solicit public review and comment in a separate action.

Comment 4: There is an unacceptably high percentage of stocks with ''undetermined'' or ''unknown'' PBR levels.

Response: NMFS acknowledges this. Currently, the GAMMS direct that for stocks with abundance data greater than eight years old, PBR be considered ''undetermined.'' See response to Comment 3.

Comment 5: With regard to status as ''strategic'' or ''non-strategic,'' it would seem prudent to declare stocks with unknown or undetermined PBRs as ''strategic'' unless there is clear and compelling evidence that there are no fishery interactions (*i.e.,* data exist that there are none as opposed to a lack of data). Such an approach would be consistent with the overall purposes of the MMPA.

Response: NMFS appreciates this recommendation. However, such designations must follow the statutory definition of ''strategic'': Human-caused mortality exceeds PBR; the best available science shows the stock is declining and likely to be listed as threatened under the ESA within the foreseeable future; or that is currently listed as threatened or endangered under the ESA or is designated as depleted (MMPA section 3).

Comment 6: The GAMMS recommend that peer-reviewed literature should be a primary source of information. In most regions there appears to be great reliance on gray literature (*e.g.,* NMFS Tech Memos) and on unpublished manuscripts (*e.g.,* results of studies stated to be ''in prep'') and even personal communications; this needs to be corrected. By not making such literature available for review by the public, the public cannot adequately comment on whether such literature constitutes the best available science.

Response: The SARs are to be based on the best available science. The use of unpublished reports and data within SARs is discouraged. NMFS strives to use peer-reviewed data as the basis for SARs. NMFS often relies on science that has been assessed through the NMFS Science Center's internal expert review process and/or has been subjected to other external expert review to ensure that information is not only high quality but is available for management decisions in a timely fashion. NMFS may rely on the SRGs to provide independent expert reviews of particular components of new science to be incorporated into the SARs to ensure that these components constitute the best available scientific information. Likewise, upon SRG review of these components and the draft SARs themselves, NMFS considers the SRG review of the draft SARs to constitute peer review and to meet the requirements of the OMB Peer Review Bulletin and the Information Quality Act. NMFS is undertaking an effort to remove references to unpublished manuscripts and personal communications from the SARs, and aims to fully implement this effort with the 2016 final SARs.

Comment 7: The Commission recommends that NMFS specify the criteria that it intends to use to assess the appropriateness of its estimates of carcass recovery and cryptic mortality rates, and that it include in its stock assessment survey and research plans the collection of those data that are needed to estimate total mortality for all stocks. The Commission suggests discussion of collaborative opportunities in conjunction with the joint SRG meeting in February 2016.

Response: We agree that there is a need to better understand and estimate undetected marine mammal mortalities and serious injuries, and a need to evaluate the use of correction factors for marine mammal mortality estimates. The issue of cryptic mortality was discussed at the February 2016 joint SRG Meeting. NMFS looks forward to working with the Commission and the SRGs on this issue.

Comments on Atlantic Regional Reports

Comment 8: In the North Atlantic right whale report, Table 1 documenting mortality appears to lack accounting for several mortalities. For example, a male calf that was killed in a vessel strike in Maine in July 2010 does not appear to have been included. Further, there was an abandoned calf in the Southeastern U.S. in March 2011, and, that same month right whale #1308 was killed by a ship strike, thereby orphaning her newborn calf. At the very least, this latter death of a documented right whale mother with calf should also assume the young, dependent calf died as well and its death added to the total for that year.

Response: The right whale calf killed in July 2010 is included in Table 1 as a vessel strike mortality and has since been identified as #3901. We do not include abandoned calves if the mother is not known to have been killed or injured by human impact. The abandonment could be the result of poor maternal care. The calf of right whale #1308 is included in the Table 1 as a serious injury due to vessel strike according to the NMFS 2012 Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine

Mammals (Category L8 = dependent calf of a dead or seriously injured mother).

Comment 9: The Commission, HSUS, CBD, and WDC recommend that multiple mortalities and/or serious injuries to several North Atlantic right whales (including #1151, 1311, 2160, 2460, 2660, 3111, 3302, [3308], 3692, and 3945) should be included in Table 2 of the SAR.

Response: The following is a summary statement about each case. Cases were reviewed by NMFS Northeast Fisheries Science Center (NEFSC) staff and determinations made by NEFSC staff were later reviewed by experienced staff at all other Fisheries Science Centers, per the NMFS Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals. NMFS staff look for evidence of significant health decline post event. We do not currently have a method to address sublethal effects or more subtle/slow health decline. Therefore, none of the recommended cases were incorporated into Table 2 of the SAR.

- Whale #1151. This whale was seen free of gear and with a calf in the Bay of Fundy on 28 August 2009 and was resighted soon after with two wraps of line around her rostrum and body. All entangling gear was removed on 4 September 2009. Following disentanglement, she appeared to be swimming normally and, although she showed signs of compromise typical of females completing their calving and nursing cycle, NMFS determined the entanglement had not caused serious injury. However, she was still in a compromised condition in 2011 and had declined further when seen for the last time in June 2012. The Commission believes this case warrants a conservative redetermination that the 2009 entanglement did result in a serious injury.
- *Response:* NMFS reviewers considered any health changes post-disentanglement to be representative of normal inter-year fluctuations and comparable to the overall health of the population during the time frame in question.
- Whale #2460. This whale was last seen in May 2012 in compromised health and with severe entanglement-related scars and wounds on her peduncle, additional entanglement scars on her head, and lesions on her back but without attached gear. The Commission is concerned that the observed entanglement injuries significantly compromised her heath and potential survival, and believes that a conservative injury assessment would warrant listing the scars and wounds observed in 2012 as indicative of a serious injury.
- *Response:* The animal's injuries are showing evidence of healing; the health status of this whale is comparable to the overall health of the non-injured population during the time frame in question.
- The 2007 calf of #2460. This calf was euthanized in January 2009 when it stranded in North Carolina. The spine of this animal was grossly misaligned and this followed the documentation of deep entanglement marks on the calf at age 8 months. Researchers at the scene speculated that the spine deformity resulted from an entanglement. This animal's death should be prorated as a serious injury resulting from entanglement, much as the agency did for the serious injury in the table dated 7/18/2009.
- *Response:* The injury that led to the demise of this calf was acquired in 2007, so this event is counted as an entanglement mortality for that year, which does not fall within the time frame of this report (2009–2013).
- Calf of Whale #2660. The table notes that this whale was missing her dependent calf at the time of her 2011 sighting when seriously injured and in deplorable physical condition; why is the calf not also counted as a mortality?
- *Response:* This calf, now #4160, has been resighted in good health.
- Whale #3111. This whale is listed in the table as a pro-rated serious injury. Since the animal was last seen alive when badly entangled, it seems that this should be considered entirely fishery-related.
- *Response:* This whale has been resighted in much improved condition; he appears to be gear free, but this is not yet confirmed. This event is similar to #2029's entanglement. We will continue to prorate his injury as L10 (0.75) until he is either confirmed gear free or shows signs of significant health decline.
- Whale #3398. This whale was seen in July 2012 with extensive entanglement wounds on his peduncle and fluke insertion and additional scars on his mouth and left flipper, and possibly around his blowhole. Resightings suggest these wounds appear to have compromised his health for more than two years, raising the possibility of suffering from chronic effects from the 2012 entanglement. The Commission believes that the record justifies a conservative determination of serious injury for this individual.
- *Response:* NMFS reviewers determined that this comment pertains to whale #3308 (not #3398 as identified in the comment). NMFS agrees that the lesions have increased; however, the animal's injuries are healing and its skin condition is comparable to the overall population.
- Whale #3946. This whale was affected by two separate entanglement events. In December 2012 she was gear-free, but with severe entanglement wounds on her peduncle and flukes, and possible additional scars on her head. She was resighted later carrying lines from a new entanglement and showing signs that her condition had declined—she appeared thinner and had developed lesions on her body. When last seen in May 2014 she was confirmed to be free of gear. Given that these wounds appear to have compromised her health for more than two years, a serious injury determination would be an appropriate and conservative assessment for this individual.
- *Response:* The injuries are showing evidence of healing; the health status of this whale is comparable to the overall health of the non-injured population during the time frame in question.
- Whale #3692. This whale, accompanied by a calf, was observed in March 2013 off South Carolina with a fresh propeller injury on her right fluke. When she was last sighted in April 2014 her condition was poor; her fluke had fallen off, blisters and lesions had formed at several points on her body and head, and she appeared to be thin. Given the decline in her condition following the propeller wound, this case should be considered a serious injury.
- *Response:* The animal's injuries are showing evidence of healing. Its health status is comparable to the overall health of the non-injured population during the time frame in question.
- Whale #2160. This animal was seen gear-free in April 2013 with severe scars and a large open wound on his tail stock apparently from an entanglement. He also had rake marks, skin lesions, and poor skin color behind the blowhole, suggesting poor condition; he has not been resighted. Given the severe nature of his wounds and compromised condition, this case should be considered a serious injury.
- *Response:* This whale has since been resighted. The injuries are showing evidence of healing; the health status of this whale is comparable to the overall health of the non-injured population during the time frame in question.
- Whale #3302. This individual is not listed in the table, but has not been seen since the last sighting on November 11, 2011 when seriously entangled. This case should be at least a pro-rated serious injury. At what point, when no longer being sighted, will NMFS

consider it dead and pro-rate the death as fishery-related?

• *Response:* This whale is included in the table as a serious injury due to entanglement, which is given the same score as ''dead.'' NMFS will not presume the whale is dead until its death is confirmed and the animal is removed from the population. The initial entanglement date is 4/22/11.

• Unk Whale. A right whale hit by a vessel on 12/7/2012 is pro-rated as an injury at 0.52. Please explain the basis for this very precise pro-ration.

• *Response:* The basis for the proration values is explained in the NMFS Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals (NMFS Instruction 02–038–01). The vessel strike event described fits two categories: L6b—a vessel less than 65 feet traveling at greater than 10 knots (prorated as 0.20 serious injury), and L11—confirmed laceration of unknown depth, includes observation of blood in water (prorated as 0.52 serious injury). When more than one criteria applies to an event, we apply the greater value.

• Whale #1311. This animal was found dead on 8/11/2013. Video taken at the time shows the whale floating with line entering its mouth and associated wrapping wounds around its head. It was last seen alive in April 2013 with no signs of entanglement.

• *Response:* The carcass of this whale was not necropsied; thus, it does not currently meet the criteria for determining human interaction mortalities. Without a necropsy, we could not determine if the cause of death was due to entanglement or possible vessel strike.

Comment 10: The Commission is concerned that the long-finned pilot whale SAR does not sufficiently explain the extent to which abundance may be underestimated. The Commission recommends that NMFS consider whether further analysis of past surveys could clarify: (1) The proportions of the long-finned pilot whale stock using waters near the Gulf Stream off the U.S. northeast coast and Canada, and (2) the extent to which the new population estimate is negatively biased and the new PBR is set too low.

Response: NMFS recognizes that the current abundance estimate is likely biased low. Therefore, we are conducting additional analyses to develop more appropriate abundance estimates for both long- and short-finned pilot whales.

Comment 11: The Status of Stock section of the short-finned pilot whale—Western North Atlantic Stock assessment report did not state that the average annual human-caused M/SI is below the PBR; this conclusion had been included in previous reports for this stock. There is no new statement in the 2015 SAR to describe current M/SI totals relative to PBR. The Commission recommends that the deleted sentence be replaced by one stating that the point estimate for average annual human-caused M/SI does not exceed the stock's PBR, but it is roughly equal to the PBR and clearly greater than 10 percent of the PBR. Given the possibility that fishery-related M/SI is above PBR, the Commission recommends further that the western North Atlantic short-finned pilot whale stock be categorized as ''strategic.''

Response: We have reinstated the sentence indicating the 2009–2013 mean annual human-caused M/SI does not exceed PBR, as this is still the case. While there is no ''new'' statement, the SAR continues to state: ''Total U.S. fishery-related mortality and serious injury attributed to short-finned pilot whales exceeds 10% of the calculated PBR.'' Following the GAMMS, PBR calculations already include a precautionary approach that accounts for uncertainty, and we have compared the five-year mean annual M/SI to PBR. Designating stocks that fluctuate around PBR from year to year as strategic is a larger issue that we plan to raise with the Scientific Review Groups.

Comment 12: Most stocks of cetaceans in the Gulf of Mexico are either known or likely to have been adversely affected by the 2010 Deepwater Horizon (DWH) oil spill. Following the spill, data were collected on many of these stocks as part of the Natural Resource Damage Assessment (NRDA) process, but those data are not yet available to be used in stock assessments. The Commission recommends that NMFS make every effort to publish and release all survey and related data it has on Gulf of Mexico cetacean stocks as soon as the NRDA process is complete, and, where appropriate, conduct new surveys to enable assessments of the extent to which abundances of the Gulf of Mexico cetacean stocks have changed in recent years.

Response: The DWH litigation is recently completed; as NRDA data become available, we will continue to publish and incorporate these data into the SARs as appropriate.

Comment 13: In some cases (*e.g.,* Jacksonville estuarine stock, many of the Bay, Sound, and Estuary (BSE) stocks of bottlenose dolphins in the Gulf of Mexico) the most recent estimates of abundance are around 20 years old. Many of these same stocks with outdated abundance estimates have been recently subjected to unusual mortality events (UMEs). The lack of usable stock abundance data for so many of the bottlenose dolphin stocks is unacceptable and highly risk prone, and must be remedied on a priority basis for future SARs.

Response: NMFS acknowledges that the abundance estimates of many of the BSE stocks of bottlenose dolphins are outdated. NMFS will collect data in 2016 to update abundance estimates for Galveston Bay, Texas and Timbalier-Terrebonne Bays, Louisiana bottlenose dolphin stocks. As resources continue to be limited, NMFS has developed a Threat Assessment Priority Scoring System for prioritizing research on common bottlenose dolphin stocks (see Phillips and Rosel 2014).

Comment 14: Tracking stock status is often confounded by differences in survey area or methodology. For example, the best estimate for the Southern North Carolina Estuarine System stock of bottlenose dolphins declined from 1,614 in the 2012 SAR to 188 in the 2013 SAR, which was the result of using a 2006 mark-recapture survey in the 2013 SAR whereas the 2012 SAR used an aerial line-transect study. The abundance is now considered ''unknown'' because all of the surveys on which estimates were made are now more than eight years old. The agency must take a more careful look at its survey intervals and design to assure comparability in range, seasons, effort, methodology, and other factors that are compounding the ability to more precisely define population estimates and to provide trend data, as required by the MMPA.

Response: NMFS has standardized its survey methodology for large-scale aerial and ship surveys within the Atlantic, and following the 2016 ship surveys, we should be able to begin analyzing trends. Large-scale surveys within the Gulf of Mexico are also standardized, and with additional data collection, trend analysis should be possible. NMFS convened a workshop and prepared a technical memorandum to create a ''standard'' approach to photo-ID capture-mark-recapture techniques for estimating abundance of bay, sound, and estuary populations of bottlenose dolphins along the East Coast and Gulf of Mexico (Rosel *et al.* 2011). While progress is being made, at present resource constraints limit the NMFS Southeast Fisheries Science Center's (SEFSC) ability to analyze trends for the stocks for which there are data. Because the SEFSC marine mammal data collection program is generally supported through collaborations with other Federal agencies, research

priorities (including areas surveyed) are balanced between the data needs of NMFS and our external partners.

Comment 15: NMFS should prioritize observer coverage for fisheries that have self-reported takes but where observer coverage is either entirely lacking, occurring intermittently, or at such low levels that updated and reliable estimates of fishery-related mortality are not possible. Stock assessments cannot meaningfully report the statutorily required information on status and threats to marine mammals until and unless observer coverage is increased in fisheries with self-reported mortalities, evidence of strandings occurring at elevated rates that coincide with the greatest effort by the fishery, or where observer coverage has documented takes that may or may not have been incorporated in the SARs.

Response: NMFS' observer programs fulfill a wide range of requirements under MMPA, ESA, and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Observer programs serve a wide range of purposes under these three statutes, including, but not limited to:

- Providing information on commercial catches to inform fishery stock assessments and management (*e.g.,* setting of annual catch limits).
- Accounting for total catches in some fisheries, and discards in other fisheries, to support the monitoring of fishery-, vessel-, or sector-specific catches of managed species.
- Monitoring fishery-related mortality and serious injury of marine mammals.
- Monitoring incidental take limits of species that are listed under the ESA.
- Collecting biological samples (*e.g.,* otoliths, gonads, size data, genetic data for species identification purposes) to support stock assessment processes.
- Supporting innovative bycatch reduction and avoidance programs.
- Helping to promote the safety of human life at sea.

Each NMFS region administers an observer program to address programmatic mandates under the MMPA, ESA, and MSA. The data collected by these observer programs support the management and conservation of fisheries, protected resources, and marine ecosystems throughout the United States' exclusive economic zone. Given the wide array of needs and limited resources, NMFS prioritizes observer coverage based on a number of factors. MMPA section 118(d)(4) specifies that the highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or threatened species under the ESA; the second highest priority shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks; and the third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain. NMFS uses this guidance when allocating funding to observe fisheries with little or no current observer coverage. For example, in 2012 and 2013, NMFS observed the Southeast Alaska drift gillnet fishery, which had not been previously observed but was potentially interacting with ESA-listed humpback whales and a strategic stock of harbor porpoise (*i.e.,* the highest and second highest priorties for observer coverage noted in the MMPA).

Comment 16: In the North Atlantic right whale report's section on Population Size, the phrase ''known to be alive'' should be changed to ''presumed to be alive,'' which is the wording used by the author of the 2011 Right Whale Report Cards from which this number was taken. At the end of this section, the sentence: ''For example, the minimum number alive for 2002 was calculated to be 313 from a 15 June 2006 data set and revised to 325 using the 30 May 2007 data set'' has been in this SAR since 2008 and seems stale.

Response: This number is not taken from the Report Card; the Nmin value for right whales reported within the SAR includes only animals known to be alive because they were either seen during the reference year or seen both before and after the reference year. (Hence, there is no presumption of life.) The count of animals known to be alive is updated every year. Animals not seen for three or more years may be added back if they are shown to be alive in a subsequent year. The example given regarding the 2006 versus 2007 data makes this point.

Comment 17: In the ''Current and Maximum Net Productivity Rates'' section of the North Atlantic right whale report, the information in the third paragraph is outdated regarding calving rates through 1992. More recent data on intervals are available from the right whale catalog, and are presented annually at right whale consortium meetings. For example, since the paper cited in the draft SAR for that information (Knowlton *et al.* 1994), there are data indicating the calving interval improved, but in more recent years has returned to lengthy or even increasing intervals. Later in the section the draft SAR cites the high proportion of juveniles in the population as of publications dated 1998 and 2001 (Hamilton *et al.* 1998, Best *et al.* 2001). While this may still be true, is there no more current information?

Response: This SAR has been amended to include the ''production/Nmin,'' which is a better description of average productivity than calving interval. As a point of clarification, the draft SAR states on page 7: ''An analysis of the age structure of this population suggests that it contains a smaller proportion of juvenile whales than expected (Hamilton *et al.* 1998; Best *et al.* 2001), which may reflect lowered recruitment and/or high juvenile mortality.''

Comment 18: The North Atlantic right whale report's Background section acknowledges the large number of right whale carcasses documented but not necropsied to determine likely cause of death. We believe NMFS must undertake an effort through modelling to apportion mortalities among categories such as unknown, vessel strike, or entanglement based on historic proportions of deaths from necropsied animals. It should be possible to assign a proportional cause of death to the number of carcasses that were not retrieved/necropsied. Our records show that at least seven carcasses were not retrieved between 2009–2013.

Response: We agree that this work would be valuable. In the future we intend to use a statistically-based estimate of fishing mortality. It is more complex than assigning a simple proportion to discovered carcasses, and we will use mark recapture data to attribute causation to latent mortality as well as attribute mortality causes to discovered carcasses unable to receive a proper necropsy.

Comment 19: The North Atlantic right whale report's Fishery-Related Serious Injury and Mortality section cites Van der Hoop *et al.* (2012) as indicating that take reduction measures may not be working adequately to reduce mortality from entanglements and additional measures need to be taken. A more recent publication by NMFSs authors reaching the same conclusion (Pace et al. 2014) should also be included.

Response: The Pace *et al.* (2014) reference was added to the SAR.

Comment 20: In the Gulf of Maine humpback whale SAR, NMFS relies on maps and other information based almost solely on shipboards surveys. NMFS should reconsider this approach and, as it does with North Atlantic right whales, also rely on catalog data to glean information on distribution and similar vital characterizations of the

population. In addition, NMFS is relying on outdated information about stock structure and use of winter habitats in the Caribbean, as Stevick and colleagues (2015) have provided more recent insight from genetic and other data that indicate that more than one stock appears to be using the eastern Caribbean. NMFS also cites Barco *et al.* (2002) that suggests that the mid-Atlantic may represent a supplemental winter feeding area for humpback whales. There is photographic evidence of their increasing presence and winter use of the waters between New York and Delaware Bay in spring, summer, and fall, some of which shows site fidelity within and between seasons, with at least one quarter of the photographically identified animals in a database matched to the Gulf of Maine stock. This information should be considered in updating the SAR. The Virginia Marine Science Museum has also documented sightings and responded to stranded animals in significant numbers in the Chesapeake Bay region since this 2002 citation.

Response: The SAR's map is consistent with maps in other SARs in which the abundance estimate is derived from a line-transect survey (including both aerial and shipboard effort). The humpback whale SAR uses the best estimate available and has frequently used line-transect surveys in the past; the estimates derived from the 2008 and 2011 surveys are reported in the SAR.

The Gulf of Maine stock of humpback whales is somewhere on the order of 20% of a larger breeding population, and constitutes a cluster of feeding aggregations that shows some site fidelity to the Gulf of Maine. Although a single Gulf of Maine animal was killed in the Bequia indigenous hunt (within the eastern Caribbean), overwhelming evidence exists to show the Gulf of Maine stock uses the western Caribbean as a breeding ground along with four to five other feeding aggregations. The bulk of the animals within the eastern Caribbean show no site fidelity to the Gulf of Maine. The other facts cited within the comment are mostly anecdotal and have not been adjusted for search effort.

Comment 21: In the Gulf of Maine humpback whale SAR, NMFS omits new information that was recently considered in its global status review on humpback whales. The Population Size section does not provide data from MONAH (the international study titled ''More North Atlantic Humpbacks'') surveys, although these were cited in the recent NMFS global status review for the species (Bettridge *et al.* 2015). NMFS also omits consideration that the Robbins (2007) study also supports low reproductive rates in the species, not solely low calf survival. This should be included so as not to leave readers with the idea that the only data available are outside confidence intervals.

Response: The population of humpback whales surveyed through the MONAH study comprises more than the humpback whales that feed in the Gulf of Maine, therefore it is not appropriate to use the MONAH abundance estimate for the abundance estimate for the Gulf of Maine stock. We modified the SAR language with regard to confidence intervals and noted that Robbins (2007) found reproductive rates to be highly variable.

Comment 22: The Gulf of Maine humpback whale SAR's statement that the apparent calf survival rate is 0.664 as an ''intermediate'' value between two studies appears incorrect. In fact, it appears ''low'' as compared to other areas and not just ''intermediate,'' as the recent status review itself stated that this value ''is low compared to other areas and annually variable.''

Response: As stated above (see response to Comment 20), the West Indies population unit has been proposed by NMFS as a DPS as a result of the ESA global status review of humpback whales. This proposed DPS is not directly relevant to the MMPA Gulf of Maine stock. Metapopulation segments commonly have (or are usually expected to have) different demographic patterns if those populations are not growing; thus it would be common for different segments to have differing mortality rates and subsequent productivity rates. Hence, we cannot presume that integrated population statistics reflect that of individual segments. We removed the word ''intermediate.''

Comment 23: The Gulf of Maine humpback whale SAR underestimates the level of mortality for this stock; more recent literature is available and should be used. Reference is made to the likelihood that undocumented entanglements are occurring. We note that Van der Hoop *et al.* (2013) found that between 1970–2009, cause of death was not undetermined for nearly 60 percent of humpback whale carcasses in the Northwest Atlantic due to decomposition, an inaccessible carcass, or where no necropsy data were provided to indicate cause of death. Similar results were found by Laist *et al.* (2014). Volgenau (1995) is cited for the source of entanglements through 1992. Johnson et al. (2005) found 40 percent of humpback whale entanglements were in trap/pot gear and 50 percent were in gillnet. While even these data are now a decade old, they at least reference gear types involved in humpback entanglements in U.S. waters, not just in Canada.

Response: It was an oversight that the Johnson et al. (2005) paper was not included in the draft SAR; it has been included in the final SAR. However, one should be skeptical of estimating gear-specific entanglement rates based on a very small sample size and when one would suspect different levels of detectability among gear types doing harm. In stock assessments for which there is not a statistical model for estimating fisheries interactions, NMFS has consistently maintained the policy that without unambiguous evidence that a stranding was due to human interaction, such strandings will not be attributed to a human cause.

Comment 24: In the Gulf of Maine humpback whale SAR, the following cases of dead or seriously injured humpbacks are missing and should be added to Table 2:

- Laist *et al.* (2014) note a dead humpback whale that was attributed to a vessel strike on 7/27/2009 inside the NY seasonal management area.
- *Response:* This carcass was battered against a jetty. A necropsy revealed broken bones, but the animal was so severely decomposed it could not be determined if the fractures were pre- or post-mortem.
- On 6/3/2011 a humpback whale on Jeffreys Ledge was disentangled but noted to be ''quite thin and body posture was hunched,'' according to record notes on the NMFS and Center for Coastal Studies Large Whale Disentanglement Network Web site. This animal was noted to be the 2009 calf of the humpback whale known as ''Lavalier'' and has apparently not been seen since that incident.
- *Response:* This animal has been named ''Flyball'' and has been resighted in good health.
- On 3/11/2012, this same Web site noted that a humpback whale had become entangled in gillnet gear off Cape Hatteras, North Carolina and broke free with ''some amount of top line and webbing anchored somewhere at the forward end of the whale.'' This should be considered for pro-rating as a serious injury.
- *Response:* This event was observed by a trained Northeast Fisheries Observer Program observer. The whale was released with a small section of netting draped over a fluke edge (which corresponds to large whale injury category L3 in the NMFS Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals,

NMFS Instruction 02–038–01) that it was likely to shed.

• The Web site notes a humpback whale disentangled but apparently seriously injured on 4/12/2012. The site states ''the overall condition of the whale (~30 feet long) seemed poor, indicating that it had been entangled significantly longer than the few days since first report. Line across the back had become ingrown and line around the flukes had left numerous scars, some of which were resolving while others were not. The whale was quite thin and, in aerial shots, the widest girth of the whale was at the skull. There were patches of whale lice scattered across its body.'' This appears to fit within the definition of a serious injury and should, at the very least, be pro-rated as such.

• *Response:* This humpback whale has an entanglement date of 4/7/2012; it was entangled for fewer than five days and the Center for Coastal Studies Web site also states that ''the condition of the whale seems somewhat poor (thin with patches of whale lice) but it is not clear if this is part of a seasonal effect or related to its entanglement.'' This whale was entangled again on 4/13/2012 and again disentangled.

• On 1/6/2013, a humpback whale was noted off Virginia Beach with significant line wrapped around its flukes and it was not able to be disentangled. This should be considered a serious injury.

• *Response:* The entanglement configuration shifted, indicating it was not constricting. The final configuration is a non-constricting loop at the fluke insertion which meets our L3 criterion (NMFS Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals, NMFS Instruction 02–038–01) and is therefore considered a non-serious injury.

Comment 25: In the Gulf of Maine, humpback whale SAR information has been omitted from the Status of Stock section. This section cites the recent NMFS global status review, which included evaluation of the status of *this* stock. The status review states ''There are insufficient data to reliably determine current population trends for humpback whales in the North Atlantic overall.'' Rather than acknowledging this in the draft SAR, NMFS retains the assertion that ''[a]lthough recent estimates of abundance indicate a stable or growing humpback whale population, the stock *may be below OSP [Optimum Sustainable Population]* in the U.S. Atlantic EEZ'' (emphasis added). Indeed, the status review found that the population trend was likely flat and the population had not met goals stipulated in its recovery plan for a sustained growth rate. Given the failure to achieve its recovery plan goals for minimum population and sustained growth rate, and the annual losses due to entanglement and vessel strikes that far exceed the stock's PBR, it seems clear that the stock *is* below OSP, rather than the NMFS assertion that they ''may'' be below OSP.

Response: This comment blurs statements about two proposed DPSs under the ESA (West Indies and Cape Verde Islands/Northwest Africa) with those about the Gulf of Maine MMPA stock, which is a small segment within one of these proposed DPSs. With regard to the phrase ''may be below . . .,'' scientists nearly always include a caveat for uncertainty in any declaration. We cannot make a conclusive statement with respect to whether a stock is within the OSP range without having conducted an OSP analysis. A population at carrying capacity, when harvested above its current level of productivity (which is quite low for mammals) will show a decline (until productivity increases). A population at OSP will show an increase if harvested (killed) at per capita rates lower than productivity (until productivity declines due to resource scarcity). Theoretically, a population of humpback whales could be at OSP in perpetuity while human-caused mortality removed all the excess; thus, the trend in abundance would be flat, but it remains at OSP.

Comment 26: For the Western North Atlantic stock of long-finnned pilot whale, it is our understanding that a survey will be conducted in the summer of 2016 that may provide better data of abundance, given the discrepancy between the more recent survey and an outdated earlier survey—each of which covered a different extent of the range. Until that time, given margins of error, fishery-related mortality appears to be at or possibly over the PBR. We are hopeful that NMFS will resolve the discrepancies in methodology and/or areas surveyed to resolve widely discrepant estimates such as this one.

Response: NMFS agrees; the 2016 survey, as well as the abundance analyses underway on surveys through 2014, should provide improved abundance estimates for long-finned pilot whales within this area.

Comment 27: NMFS should include within the Western North Atlantic harbor and gray seal SARs a brief mention of high levels of animals observed entangled in fishing-related debris, largely from actively fished gear. The final SARs for both of these species should contain some language and analysis reflecting that a notable percentage of seals in the Gulf of Maine haulouts are seen entangled in fishery-related gear that may result in serious injury.

Response: The gray seal SAR currently contains the language, ''analysis of bycatch rates from fisheries observer program records likely greatly under-represents sub-lethal fishery interactions. Photographic analysis of gray seals at haulout sites on Cape Cod, Massachusetts revealed 5–8% of seals exhibited signs of entanglement (Sette *et al.* 2009).'' Both harbor and gray seal SARs now emphasize the fact that entanglement is an issue with both species, though we have found it less prevalent in harbor seals.

Comment 28: Regarding the Gulf of Mexico Bryde's whale, we are concerned about the level of ship strikes, which are estimated to be 0.2 per year, well above the PBR of 0.03. It also concerns us that two of the stranded animals are considered to be a part of the unusual mortality event (UME) resulting from the Deepwater Horizon oil spill, which has continued to affect bottlenose dolphins and may be having effects on this stock. Given the need to include the most recent information, NMFS should include a note that in April 2015, NMFS made a positive 90-day finding on a petition to list this population as ''endangered'' under the Endangered Species Act.

Response: To clarify, the April 2015 finding was that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. Accordingly, NMFS initiated a review of the status of this species to determine if the petitioned action is warranted. NMFS had added text to the SAR noting the positive 90-day finding on the petition (80 FR 18343, April 6, 2015) and our ongoing status review.

Comment 29: Mortality for the Gulf of Mexico eastern coastal stock of common bottlenose dolphins cannot be quantified because fisheries known to interact with the stock (including a wide variety of Category II and III fisheries) are not subject to observer coverage and/or the dataset from the observer program is out of sync with the five-year analytical time period used in this SAR. NMFS must either reconsider its observer coverage levels and placement in order to provide timely data for the SARs or it must re-prioritize analysis so that take data and mortality estimates can be incorporated in a timely manner.

Response: NMFS agrees that observer coverage and the resulting M/SI data collected through observer programs is essential to assessing marine mammal

stocks. Category II fisheries are subject to observer coverage pursuant to the requirements for Category I and II fisheries in 50 CFR 229.4. Given limited funding, NMFS cannot realistically observe all fisheries that may pose a risk to marine mammals. Anticipating this, the MMPA provides guidance for prioritizing observer coverage with the first priority being commercial fisheries that kill or seriously injure ESA-listed marine mammals, the second priority being strategic stocks, and the third priority being those stocks for which M/SI incidental to commercial fishing is uncertain. NMFS continues to work internally to prioritize funding for observing fisheries across the U.S. given multiple mandates and requirements.

In the 2015 SARs, NMFS provided marine mammal bycatch from the shrimp trawl fishery, which had not been estimated previously. The first bycatch estimate covered 2007–2011 because those were the data available at the time analysis began. The GAMMS suggest: ''If mortality and serious injury estimates are available for more than one year, a decision will have to be made about how many years of data should be used to estimate annual mortality. There is an obvious trade-off between using the most relevant information (the most recent data) versus using more information (pooling across a number of years) to increase precision and reduce small-sample bias. It is not appropriate to state specific guidance directing which years of data should be used, because the case-specific choice depends upon the quality and quantity of data. Accordingly, mortality estimates could be averaged over as many years as necessary to achieve statistically unbiased estimation with a coefficient of variation (CV) of less than or equal to 0.3. Generally, estimates include the most recent five years for which data have been analyzed, as this accounts for inter-annual variability. However, information more than five years old can be used if it is the most appropriate information available in a particular case'' (NMFS 2016). NMFS is currently evaluating the appropriate time interval to produce estimates for this fishery and will update the SARs accordingly.

Comment 30: Similar to the Eastern Gulf of Mexico stock, data on Northern Gulf of Mexico bottlenose dolphin takes in the shrimp trawl fishery were discarded due to a dyssynchrony in the analytical period with the five-year average in the SAR. Given the low level of observer coverage and the CV, it is possible that this stock is being taken at a level that is around 50 percent of PBR, which would make this fishery a Category I fishery and result in higher priority for observer coverage. We recommend that NMFS re-evaluate observer placement and assure that the level of coverage is sufficient to accurately document and assess fishery impacts.

Response: The information was not discarded and is still provided in the SAR (*i.e.*, the 2007–2011 mortality estimate of 21 for the commercial shrimp trawl fishery). Currently, there is only one shrimp trawl bycatch estimate and it is for 2007–2011. The estimate does not fit in the standard five-year time frame that is reported in this SAR (*i.e.*, 2009–2013). The 2007–2011 estimate was not included in the minimum total mean annual human-caused mortality and serious injury for the stock during 2009–2013 (0.4). Additionally, with so many unobserved fisheries (menhaden, crab traps, hook and line, gillnet), any mortality estimate is likely an underestimate. The PBR of the stock is 60 but the true fishery-related mortality and serious injury for 2009–2013 is not known. However, it is clearly stated in the SAR that the mortality estimate is, at a minimum, greater than 10% of the PBR. This is the only definitive statement NMFS can make given current information. NMFS agrees that it is possible that the fishery-related mortality and serious injury could be as much as 50% of PBR. However, given limited fishery observer resources, there are a number of factors that affect observer coverage prioritization. See response to Comment 29.

Comment 31: For the Northern North Carolina Estuarine stock of bottlenose dolphins, data and text regarding the mid-Atlantic coastal gillnet fishery in Table 2 of the draft SAR only go through 2011, although this SAR should have data at least through 2013. A footnote in Table 3 of the draft SAR states that ''[m]ortality analyses that use observer data are updated every three years. The next update is scheduled for 2015 and will include mortality estimates for years 2012–2014.'' It is not clear why a mortality estimate is only provided every three years when it can be done annually for other stocks.

Response: The observed mortality data for the mid-Atlantic coastal gillnet fishery was updated through 2011 because it is only updated every three years for Atlantic coastal bottlenose dolphin stocks. The decision to update the gillnet mortality estimates every three years was reviewed by the Atlantic Scientific Research Group in 2008 after the NEFSC provided a presentation showing the challenges associated with estimating annual mortality with any degree of confidence under a scenario of continued decline in observed interactions. At that time, it was considered an appropriate timeframe for updating observed bycatch mortality for the Atlantic stocks given the very low frequency and inter-annual variability of observed takes (average is less than one observed take per year). Although several of the factors that led to this decision in 2008 still exist today (*i.e.*, mean observed takes less than one per year, status quo levels of observer coverage, and large number of strata due to complexity of stock identification), it became apparent during the 2013 Bottlenose Dolphin Take Reduction Team meeting that the Northern North Carolina Estuarine System stock mortality and serious injury estimate is likely exceeding its PBR. As a result, NMFS plans to re-evaluate the schedule and methods for updating future observed mortality rates and estimates for Atlantic stocks observed interacting with mid-Atlantic coastal gillnet fisheries.

Comments on Pacific Regional Reports

Comment 32: Very few Pacific stocks (only four stocks of cetaceans and two stocks) were updated in the draft 2015 SARs. NMFS states ''. . . all others will be reprinted as they appear in the 2014 Pacific Region Stock Assessment Reports (Carretta *et al.* 2015).'' If these stocks were reviewed and NMFS determined no update was warranted, NMFS should provide reviewers and other members of the public with information that NMFS has, in fact, complied with MMPA mandates for reviewing and/or revising stock assessments for strategic stocks and not simply neglected to review them.

Response: NMFS reviews all SARs annually for potential revision. New data on human-caused mortality and serious injury are published annually, even if they do not appear in revised SARs. Reports may not necessarily be revised every year for strategic stocks, unless new information will result in a status change for that stock or species.

Comment 33: NMFS's draft SARs largely address information only through 2013 and contain no updates of large baleen whale stocks within this iteration of the draft SARs. More recent data on increasing numbers of large whale mortalities from ship strikes and entanglements should be considered in the draft SARs. Additionally, when animals involved in these interactions cannot be identified to species, pro-rating to species seems warranted to better understand and quantify anthropogenic impacts on stocks that

may be ESA-listed. We encourage NMFS to undertake this effort.

Response: NMFS is working on methods to prorate human-caused injury and mortality of unidentified whale cases to species along the U.S. west coast. These proration methods will be applied to respective SARs following peer review and publication.

Comment 34: While we understand that California sea lions are not considered a strategic stock, there has been elevated mortality in this species as part of an on-going UME. This UME was mentioned in the 2014 SAR (updated as of June 2015), although the pup counts are no more recent than 2011 and thus do not reflect possible impacts on productivity and population trends. Population data and updates on the impact of the UME must be included in the next iteration of SARs for 2016, since the ongoing UME and high levels of pup mortality constitute ''significant new information'' triggering the MMPA's requirement to conduct a stock assessment.

Response: NMFS did not revise the SAR for California sea lions in 2015. The 2014 SAR addressed the UME, but this did not result in a change in the stock's status under the MMPA.

Comment 35: Population data are provided for the Southern Resident stock of killer whales through 2014; NMFS should use more recent data in stock assessments for other species/stocks wherever possible.

Response: NMFS utilizes the most recent population data available at the time the draft reports are prepared. In the case of the draft 2015 Southern Resident killer whale report, population size data from 2014 is utilized, because it was available at the time the draft report was prepared. This is not the case for all stocks in all years, where direct enumeration of the stock's size is less straightforward.

Comment 36: Given the status of insular false killer whales, we strongly encourage NMFS to prioritize observers on fisheries such as the short line and kaka line fisheries in which there is either anecdotal report of evidence of injury consistent with fishery interaction as is mentioned in the SAR.

Response: Given resource and other constraints, NMFS does not currently have plans to observe state-managed fisheries in Hawaii, but will continue to work with the Hawaii Department of Land and Natural Resources as available resources allow to improve data collection in these fisheries.

Comment 37: The draft SAR discusses overlap in distribution of insular and pelagic stocks of false killer whales and takes within the overlap zone. We generally support the method of prorating takes to one or the other stock in the overlap zone, as we do the apportioning of observed takes of ''blackfish'' as either false killer whales or short-finned pilot whales.

Response: NMFS will continue to prorate takes of false killer whales among potentially affected stocks and takes of blackfish to species when stock or species-identity of the take is unknown.

Comment 38: The draft SAR indicates a decline in population of the Main Hawaiian Islands (MHI) Insular stock of false killer whales from 138 to 92 since the last report. However, the discussion in the section of the draft SAR still cites only literature from 2010 that documented apparent declines from 1989–2007, and provided the results of a Population Viability Analysis that calculated an average rate of decline of nine percent per year. This change in the abundance estimate for this stock since the last SAR estimate is a far greater decline than predicted. The final SAR should contain some discussion of this apparent decline or provide a stronger caveat for why this estimate may not be reliable.

Response: The apparent decline from 138 to 92 noted by the commenter is in the minimum abundance (Nmin), not the total population abundance. Nmin declined for MHI insular false killer whales in the 2015 SAR. Nmin for MHI insular false killer whales is determined based on the number of distinctive individuals seen between 2011 and 2014 and is not corrected for the level of effort or other factors that might have resulted in a lower total count for that period. Analysis of MHI insular false killer whale abundance and trend is ongoing and will be presented in a future SAR.

Comment 39: With regard to the pelagic stock of false killer whales, the PBR remains approximately the same as the prior SAR estimate; however, this draft SAR notes that 2014 takes subsequent to the time period covered in the SAR (2009–2013) were ''the highest recorded since 2003'' although overall bycatch estimates were not available as of the time the SAR was drafted. Even without inclusion of 2014's excessive mortality and serious injury, the takes for this stock are acknowledged to exceed the PBR for the period 2009–2013 although NMFS states that additional monitoring is required before concluding that the take reduction plan for the stock had failed to meet statutory mandates.

Response: NMFS has not yet completed mortality and serious injury estimates for 2014 and provides the information on observed takes only for context on our decision to retain the five-year look-back in the computation of M/SI for comparison to PBR. NMFS is evaluating the effectiveness of the False Killer Whale Take Reduction Plan (FKWTRP) in accordance with the monitoring strategy that was developed in consultation with the False Killer Whale Take Reduction Team.

Comment 40: The reports of M/SI for the California stock of northern fur seal (Table 1) have an apparent inconsistency that is unexplained. Table 1 in the prior SAR provided information on observed mortality for the years 2007–2011. The observed mortality and serious injury for 2011 is said to be 1. However, in Table 1 in the current draft SAR, the observed fishery-related mortality and serious injury listed for 2011 (providing data for 2009–2013), lists observed mortality for the year 2011 as 2. Revised text explaining the table states that ''[t]wo of the fishery-related deaths (one in an unidentified fishing net in February 2009 and one in trawl gear in April 2011) were also assigned to the Eastern Pacific stock of northern fur seals.'' However, this does not make it clear why the 2009 mortality remained unchanged but the 2011 mortality increased.

Response: Data on human-caused M/SI is derived from many sources, including stranding networks, rehabilitation centers, independent researchers, and observer programs. Occasionally, additional human-caused mortality and serious injury records are incorporated into subsequent reports as databases are reviewed or cases are reassessed. In this case, the change regarding the serious injury record was made and reflected in the draft 2015 SAR but had no effect on the strategic status of the stock.

Comment 41: The assumed net productivity of the California/Oregon/Washington stock of sperm whales inappropriately ignores at least five peer-reviewed estimates of sperm whale growth rates, all of which fall in the range of 0.6% to 0.96% per year. Also, the conclusion that this stock is stable or increasing has no solid evidentiary support. The Moore and Barlow (2014) population estimate for the stock does not achieve the SAR's stated goal of improving the precision of population estimates. Estimates of fishery related mortality of the stock from derelict gear calculated from strandings appear to be ten to twenty times too low, once unobserved mortality and recovery rates are corrected for.

Response: NMFS did not revise the sperm whale SAR in 2015 and responded to similar comments on the

2014 sperm whale SAR in the **Federal Register** on August 20, 2015 (80 FR 50599; see response to Comment 21).

Comment 42: The Moore and Barlow (2014) analysis of the California/Oregon/Washington stock of sperm whales appears to lack the statistical power to detect trends in the population, which elevates risks to cetaceans.

Response: See response to Comment 41. NMFS will consider and address this comment when we next review this SAR in the future.

Comment 43: The HLA encourages NMFS to make additional improvements to the draft 2015 false killer whale SAR, by eliminating the five-year look-back period for the false killer whale SAR, and reporting only data generated after the FKWTRP regulations became effective. For example, the draft 2015 SAR should report M/SI values based on 2013 and 2014 data, and the data prior to 2013 should no longer be used because it is no longer part of the best available scientific information.

Response: The GAMMS (NMFS 2005) suggest that if there have been significant changes in fishery operations that are expected to affect take rates, such as the 2013 implementation of the FKWTRP, the guidelines recommend using only the years since regulations were implemented. However, recent studies (Carretta and Moore 2014) have demonstrated that estimates from a single year of data are biased when take events are rare, as with false killer whales in the Hawaii-based longline fisheries. Further, although the estimated M/SI of false killer whales within the U.S. Economic Exclusion Zone (EEZ) around Hawaii during 2013 (4.1) is below the PBR (9.3), this estimate is within the range of past, pre-take reduction plan (TRP) estimates, so there is not yet sufficient information to determine whether take rates in the fishery have decreased as a result of the TRP. Further take rates from 2014 are among the highest recorded, suggesting TRP measures may not be effective, and the change in fishery operation may not be significant enough to warrant abandoning the five-year averaging period. For these reasons, the strategic status for this stock has been evaluated relative to the most recent five years of estimated mortality and serious injury.

Comment 44: For a decade, NMFS has reported a M/SI rate for the deep-set fishery that far exceeds PBR for the Hawaii pelagic false killer whale stock (''Pelagic Stock''). However, the best available information suggests that the number of false killer whales in the Hawaii EEZ has not declined during the same time that the supposedly unsustainable M/SI rate was occurring. HLA disagrees with the M/SI levels reported in the draft SAR and with NMFS' conclusion that the vast majority of all fishery interactions with the Pelagic Stock cause injuries that ''will likely result in mortality.'' If that were the case, then after a decade or more of allegedly unsustainable levels of take, there would be some evidence of a declining Pelagic Stock abundance. No such evidence exists. The draft SAR should expressly recognize this discrepancy, and NMFS should revisit the manner in which it determines M/SI for false killer whale interactions.

Response: This comment has been addressed previously (see 78 FR 19446, April 1, 2013, comments 45 and 51; 79 FR 49053, August 18, 2014, comment 26; and 80 FR 50599, August 20, 2015, comment 34). The comment and included footnote contend that the stock abundance has not declined (as opposed to prior year comments that indicated the stock was increasing) in over a decade and attributes this persistence of false killer whales despite high levels of fishery mortality to NMFS' improper assessment of the severity of injuries resulting from fisheries interactions, improper assessment of population abundance and trend, or both. Assessment of injury severity under the NMFS 2012 serious injury policy has been discussed in numerous previous comment responses and is based on the best available science on whether a cetacean is likely to survive a particular type of injury. Further study of false killer whales would certainly better inform the assigned outcomes; but, until better data becomes available, the standard established in the NMFS 2012 policy on distinguishing serious from non-serious injuries will stand.

Further, assessments of pelagic false killer whale population trend are inappropriate, as the entire stock range is unknown, but certainly extends beyond the Hawaii EEZ, such that the available abundance estimates do not reflect true population size. A robust assessment of population trend would require assessment of environmental variables that influence false killer whale distribution and the proportion of the population represented within the survey area during each survey period. Finally, many years of unsustainable take does not automatically lead to the conclusion that the population is declining. PBR was designed to provide a benchmark, in the face of uncertainty about marine mammal populations, below which human-caused mortalities would not reduce the population beyond its OSP size, which is defined as the abundance where there is ''the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.'' The benchmark does not consider whether a population is declining, as this is very hard to prove, particularly for population abundance estimates with low precision.

Comment 45: HLA incorporates by reference its more specific comments on the draft 2014 SAR related to the 2010 Hawaiian Islands Cetacean Ecosystem and Assessment Survey (HICEAS) and the assumptions made by NMFS based upon the data from that survey. In addition, HLA emphasizes its repeated requests that NMFS publicly disclose information regarding the acoustic data acquired in the 2010 HICEAS survey. Substantial acoustic data was acquired during that survey, but NMFS still has not provided any meaningful analysis of that data or, for example, any basic indication of how many false killer whale vocalizations have been identified in the acoustic data. The acoustic data from the 2010 HICEAS survey contains information directly relevant to false killer whale abundance, and it must be analyzed by NMFS and reported in the false killer whale SAR, which must be based on the best available scientific information.

Response: Analysis of the acoustic data is a labor intensive and time-consuming process, particularly as automated methods for detection, classification, and localization are still improving. There were many changes in array hardware during the survey, further complicating streamlined analyses of these data. Portions of the data have been analyzed to verify species identification, assess sub-group spatial arrangements, or other factors. A full-scale analyses of this dataset for abundance is likely not appropriate, though NMFS is further evaluating this in light of planning for upcoming HICEAS surveys.

Comment 46: The draft SAR assigns a recovery factor of 0.5 to the Pelagic Stock of false killer whales, which is the value typically assigned to depleted or threatened stocks, or stocks of unknown status, with a mortality estimate CV of 0.3 or less. However, the Pelagic Stock is not depleted or threatened, nor is its status unknown. Since NMFS began estimating Hawaii false killer whale abundance in 2000, as more data have been obtained, more whales have been observed and the population estimates have increased from 121 in 2000 (a recognized underestimate for all false killer whales in the EEZ) to 268 in 2005,

484 in 2007, 1,503 in 2013, and 1,540 at present. Similarly, the incidence of fishery interactions with the Pelagic Stock has not decreased, nor has the rate of false killer whale depredation of fishing lines decreased (if anything, it has increased). All of the available data contradict any hypothesis that false killer whales in the Hawaii EEZ are decreasing. This status should be accurately reflected with a recovery factor that is greater than 0.5 (*i.e.*, closer to 1.0 than to 0.5).

Response: This comment has been addressed previously (see 80 FR 50599, August 20, 2015, comment 36). Reanalysis of existing datsets to derive more precise estimates does not consititute an increase in population size. There are two EEZ-wide estimates of abundance and the current status of pelagic false killer whales is unknown. This population may be reduced given fishing pressures within and outside of the EEZ over several decades. The status of Hawaii pelagic false killer whales is considered unknown because there are no trend data available to evaluate whether the population is increasing, stable, or declining. The recovery factor for Hawaii pelagic false killer whales will remain 0.5, as indicated, for a stock with a CV for the mortality and serious injury rate estimate that is less than or equal to 0.30.

Comment 47: HLA appreciates that NMFS has now acknowledged that the range of the MHI insular false killer whale stock (''Insular Stock'') should be modified, based upon the best available scientific information. Although the range reported in the draft 2015 SAR is still overbroad (*i.e.*, it encompasses areas where no Insular Stock animals have been observed), it is a much more accurate representation of the Insular Stock's range than has been reported in previous SARs.

Response: NMFS reassessed the stock range of all three stocks of false killer whales in Hawaii based on all data available. NMFS will consider future stock boundary revisions if new data become available that indicate the revised stock boundary should be reconsidered.

Comment 48: As with past draft SARs, the draft 2015 SAR attributes M/SI by the deep-set fishery to the Insular Stock. For at least the following two reasons, these attributions are inappropriate and contrary to the best available scientific information. First, there has never been a confirmed interaction between the deep-set fishery and an animal from the Insular Stock. Although there is anecdotal evidence of Insular Stock interactions with nearshore shortline fisheries and other small-scale fishing operations, none of these are documented or reliably reported and none implicate the Hawaii-based longline fisheries, which have been excluded from nearshore fishing grounds for many years.

Second, as NMFS recognizes in the draft 2015 SAR, the range for the Insular Stock is, appropriately, much smaller than was previously assumed by NMFS. When this new range is taken into account, along with the TRP-based year-round closure of the area to the north of the MHI, there is only a very, very small area in which longline fishing may overlap with the assumed range of the Insular Stock. No false killer whale interaction by the deep-set fishery has ever occurred in this area. It is therefore incorrect, and contrary to the best available information, to state that the deep-set fishery, as currently regulated, is ''interacting with'' the Insular Stock.

Response: The commenter is correct that using the new MHI insular false killer whale stock range and the longline exclusion area required under the FKWTRP, there is little overlap between the MHI insular stock and the longline fishery. However, there are still small areas of overlap and fishing effort in this area is non-zero. It is rare that the stock-identity of a hooked or entangled whale can be determined, and as such NMFS follows the GAMMS and apportions those takes of unknown stock to all stocks within the fishing area. NMFS has carried out this apportionment based on the distribution of fishing effort in areas of overlap between stocks and the fishery.

Comment 49: The substantial revision to the minimum population estimate for the Insular Stock is unexplained, and NMFS' assumption that the Insular Stock has declined is speculative.

Response: NMFS makes no assumption that MHI insular stock abundance has declined in the last year (see response to Comment 38). The minimum estimate reflects the number of individuals enumerated during the stated period and may reflect not only changes in actual population abundance, but also changes in encounter rates due to survey location or animal distribution.

Comment 50: The proration assumptions used in the draft 2015 SAR do not reflect the best available scientific information. The 2015 draft SAR, like previous SARs, continues to allocate additional false killer whale interactions to the fisheries in a manner that lacks a rational basis. HLA incorporates by reference its objections to NMFS's attributions for ''blackfish'' interactions and for interactions in which no injury determination has been made. In addition, NMFS's new method for allocating false killer whale interactions within the EEZ is not appropriate for interactions that occur with the shallow-set fishery, which has 100% observer coverage. All shallow-set fishery interactions should be attributed based only on the location of the interaction because those interactions are not extrapolated.

Response: False killer whale bycatch proration reflects the best available information on the species and injury status of cetaceans observed hooked or entangled in the longline fishery. First, NMFS prorates injuries with a status of ''cannot be determined'' (CBD) according to the ratio of known serious and non-serious injuries. To treat all CBD cases as non-serious would be a clear under-representation of total M/SI within the fishery. This proration is supported within the GAMMS, judged by NMFS, and supported by external peer-review, as the best approach for appropriately accounting for injuries whose injury status cannot be determined based on the information provided by the observer. Second, when a species code of ''unidentified blackfish'' has been assigned to an interaction by the NMFS Pacific Islands Regional Office Observer Program, the Program has determined that the species identity is either false killer whale or short-finned pilot whale. This species assignment is much more specific than ''unidentified cetacean'' (there are 52 cetacean species). Because the species identity is known within two possible candidates, NMFS has used all other interactions with those two species to develop a proration model for assigning these blackfish interactions to be false killer whales or short-finned pilot whales. All available interaction data inform the proration scheme. Cetacean interactions with a species identity of ''unidentified cetacean'' are not currently prorated to any specific species and are therefore not included in any assessment of mortality and serious injury.

NMFS appreciates that the explanation for the proration of shallow-set fishery interactions was not entirely clear within the draft SAR and has updated the language to be more explicit about the treatment of interactions within that fishery. Shallow-set fishery interactions have not been extrapolated or prorated among regions. Shallow-set fishery interactions are only prorated among stocks if the take occurred within an overlap zone.

Comments on Alaska Regional Reports

Comment 51: Among its comments on the draft 2014 SARs, the Commission

recommended that NMFS: (1) ''provide an update on the status of the development of a statewide program for monitoring subsistence hunting and harvests,'' and (2) ''[adjust] the language in the SARs . . . to reflect these efforts and address the concerns about [the] shortcoming[s]'' with regard to reporting subsistence harvests. The Commission recognizes and appreciates the corresponding updates made by NMFS to the draft 2015 SARs for ringed, ribbon, and bearded seals, and encourages NMFS to continue to provide updated information wherever it is available, even if only for a limited number of villages or a subset of years. In addition, the Commission recommends that NMFS pursue the funding necessary for more comprehensive surveys of native harvests of marine mammals. The Commission is open to providing what support it can to NMFS' survey efforts and to helping address the lack of funding for such a program.

Response: NMFS recently conducted a protected species science program review of the Alaska Fisheries Science Center (AFSC). The review generated several recommendations. Recommendation 1.6 directs NMFS to pursue support for bycatch and harvest monitoring in particularly risky fisheries or regions. The AFSC response notes that monitoring harvest levels is currently unfunded, and while resources are limited the AFSC will work with the NMFS Alaska Regional Office to develop a joint list of priorities for understanding harvest levels so both entities can solicit additional resources and coordinate to achieve this objective. We welcome the opportunity to collaborate with other organizations, including the Commission, who might have funding to support this critical information need.

Comment 52: In the draft 2014 SAR for the North Pacific stock of right whales, NMFS has removed the following statement at the end of the PBR section: ''Regardless of the PBR level, because this species is listed under the Endangered Species Act and no negligible impact determination has been made, no human-caused takes of this population are authorized; PBR for this stock is 0.'' Elsewhere the report states that the eastern stock of North Pacific right whales ''is currently the most endangered stock of large whales in the world for which an abundance estimate is available.'' In addition, NMFS acknowledges that, given documented threats to North Atlantic right whales, North Pacific right whales are at risk of entanglement in fishing gear and ship strike, and that because of limited information on the population, and limited stranding program coverage in Alaska, these risks cannot be easily quantified. The calculated PBR of 0.05 for this stock suggests that the population could sustain one take in twenty years. However, only one-third of the population of approximately 30 individuals is female; therefore, the loss of just one female would have serious consequences for population recovery. Given the status of the population, the risks it faces, and the extreme uncertainty about the magnitude of those risks, the Commission recommends that NMFS replace the statement above with a statement that recognizes that the stock cannot sustain any losses and therefore PBR should be set at zero.

Response: Pursuant to section 117 of the MMPA, NMFS has included an estimate of the stock's PBR in the SAR. However, this calculated PBR is considered unreliable because the stock's population dynamics do not conform to underlying assumptions about the population growth model for marine mammals in the PBR equation. Therefore, we will add the following sentence to the end of the PBR section in the final 2015 North Pacific right whale SAR: ''However, because the North Pacific right whale population is far below historical levels and considered to include less than 30 mature females, the calculated value for PBR is considered unreliable.''

Comment 53: We disagree with the draft SARs change of PBR for the North Pacific right whale from 0 to 0.05, which would be the equivalent to one take every 20 years because there is no take from this population that will allow the stock to reach its OSP. The low abundance in and of itself may inhibit recovery. One example is that Pacific right whales rarely have epibiotic barnacles, possibly because the barnacles have declined at the same time as the whales; and, thus, the whales have now lost protection that barnacles offered from killer whale attacks. The low estimated minimum abundance (25.7) for this population dictates that there is no take level that will not negatively affect recovery; thus, PBR ought to be zero until the population increases to a point where the Allee effect is weak or non-existent. NMFS' reliance on a purely quantitative definition of PBR leads to illogical results because PBR will essentially never be calculated to be zero unless the minimum population estimate is zero. NMFS recognized as much in the 2014 SAR when it assigned a PBR of 0, irrespective of the result of the calculation, because the species is listed under the ESA, no negligible impact determination has been made, and no human-caused takes of this population were authorized. And NMFS's treatment of PBR for North Pacific right whales is entirely inconsistent with its approach for North Atlantic right whales, which were assigned a PBR of 0 when the minimum population estimate was 345 individuals, because of the significant threat of extinction facing the population.

Response: See response to Comment 52.

Comment 54: In general, the SARs' estimation of animals being killed or seriously injured in commercial fisheries is inadequate, and it is misleading to assume no serious injury of mortality occurs where a fishery has not been observed. The Alaska SRG noted that the federally-managed fisheries generally provide estimates of marine mammal takes but that state-managed nearshore fisheries, ''especially those using gillnets, operate in areas used by large numbers of marine mammals and use gear types known to catch mammals, turtles, and seabirds worldwide.'' The SRG notes that more than half of the state-managed Category II fisheries that were to be observed through the Alaska Marine Mammal Observer Program have not been observed at all. It is vital that NMFS meet its obligations to provide updated information on fisheries interacting with the estimated level of mortality and serious injury to which stocks are subjected by commercial fisheries.

Response: NMFS acknowledges the need to provide updated estimations of marine mammal M/SI for fisheries that interact with marine mammals. While many federal fisheries in Alaska are regularly observed, with marine mammal M/SI data collected, the agency does not have sufficient resources to fully monitor all Alaska state-managed salmon gillnet fisheries. With the implementation of the 1994 amendments to the MMPA, the process for classifying commercial fisheries under the annual List of Fisheries was revised to take into account each marine mammal stock's PBR level relative to a fishery's M/SI from each marine mammal stock. NMFS has maintained in the two decades since then that observer data is the most reliable source of M/SI estimates. Although some anecdotal information on marine mammal M/SI does come from stranding and fishermen's self-reports, that information is not considered as comprehensive or statistically reliable as observer data.

With implementation of section 118 of the MMPA amendments in 1994, eight Alaska state-managed salmon gillnet fisheries were classified as Category II fisheries (per 50 CFR 229.2), despite a lack of observer data on incidental M/SI or in some cases even anecdotal take reports, to allow for future collection of statistically reliable M/SI data. This action was based on the understanding that gillnets are known to incidentally catch marine mammals in the rest of the United States and throughout the world. Of those eight fisheries, five fisheries have been observed, once each for a two-year period (although the Southeast Alaska salmon drift gillnet fishery has been observed in only a portion of its range to date). The remaining three unobserved fisheries from that original list of eight are the Bristol Bay salmon set and drift gillnet fisheries and the Alaska Peninsula salmon set gillnet fishery. Three other salmon gillnet fisheries were observed prior to 1994 and have not been observed again. NMFS acknowledges that this level of coverage since the 1994 MMPA amendments does not adequately meet the need for robust, timely M/SI estimates that the section 118 framework for fishery-marine mammal interactions requires. If a fishery has previously been observed, but is not currently observed, the estimates derived from available observer data are considered the best available until they can be updated. If a fishery has never been observed, the level of marine mammal M/SI is considered unknown. The agency does not assume that the level of M/SI is zero if a fishery is not observed. Where necessary, we will clarify this in the Alaska SARs.

As additional resources become available, NMFS will seek to provide more robust observer coverage of the state-managed Category II gillnet fisheries in Alaska, including gillnet fisheries that have never been observed, as well as to update existing M/SI estimates. However, NMFS is reviewing ways to assess the marine mammal M/SI in these fisheries in a more economical manner.

Comment 55: While we applaud the recent research into harbor porpoises in Southeast Alaska, it appears that too little data collection has occurred to prevent undetected population declines. We request with urgency that: (1) NMFS redefine the SE AK harbor porpoise stock into two stocks—one at Glacier Bay/Icy Strait and one near Wrangell and Zarembo Islands, and (2) require observer coverage in the salmon and Pacific herring fisheries, which may be contributing to the decline in the Wrangell and Zarembo stock. The draft SARs note that Dahlheim et al. (2015) suggest that these areas may represent different subpopulations and incidental takes from commercial fisheries are concerning. In this situation, the benefit of the doubt should go to conservation of the marine mammals. We note that Chairman Lowry of the SRG stated that harbor porpoise are at the top of the SRG's list of concerns. We hope that the final SARs can address this concern by identifying two separate stocks of harbor porpoise in Southeast Alaska.

Response: There are two key issues: Available data and process. Prior to developing the draft 2015 SAR for Southeast Alaska harbor porpoise, Alaska Fisheries Sceince Center (AFSC)'s Marine Mammal Laboratory (MML) staff discussed available information on Southeast Alaska harbor porpoise groups with experts on harbor porpoise on the west coast and in Alaska. The group of experts discussed multiple lines of evidence that might support at least two separate stocks, and they identified additional supporting studies, including genetics and satellite tagging, which would be useful in making this determination. NMFS is supporting such studies as resources are available. In the meantime, NMFS used information provided in Dahlheim et al. (2015) to calculate an Nmin and putative PBR level for the harbor porpoise group in the Wrangell and Zarembo Islands area of the inside waters of Southeast Alaska in the draft 2015 SARs and will be using information in Dahlheim et al. (2015) to calculate an Nmin and putative PBR level for the concentrations of harbor porpoise in the northern and southern regions of the inside waters of Southeast Alaska in the draft 2016 SARs. NMFS will evaluate whether these harbor porpoise groups should be considered ''prospective stocks'' in future SARs and will continue to review new information on harbor porpoise to assess whether formal designation of multiple stocks in Southeast Alaska is appropriate.

Identification of a new stock is considered a major change to a SAR and should be proposed in a draft SAR so it has the benefit of being reviewed by the SRG and the public. NMFS does not make a change like this in a final SAR but will consider making this change in a future draft SAR for this stock if the available data support such a change.

Further, Category II fisheries, including many of the Alaska state-managed gillnet fisheries, are already subject to observer coverage. See response to Comment 29 regarding prioritizing observer coverage and funding.

Comment 56: NMFS updated the assessment for humpback whale, Central North Pacific stock, based on an unpublished multi-strata model (Wade *et al.,* in review) that, to our knowledge, is not publicly available and thus cannot be commented upon effectively. Peer-reviewed literature should be a primary source of information for SARs.

Response: Since Wade *et al.* (in review) has not been published, we have removed the updated population estimates (based on this paper) from the final 2015 Central North Pacific and Western North Pacific humpback whale SARs.

Comment 57: NMFS has declared a large whale UME because of elevated strandings since May 2015. Through December 1, 2015, there have been 45 large whales stranded, at least eleven of which were fin whales (as of mid-August). The SARs should reflect updated information on the extent of the strandings in order to provide relevant context for the information reported in the SARs.

Response: We will add information about the Large Whale UME in the western Gulf of Alaska to the draft 2016 Northeast Pacific fin whale, Central North Pacific humpback whale, and Western North Pacific humpback whale SARs.

Comment 58: The SARs should incorporate known data about spatial and temporal overlap of bowhead whales and Alaska fisheries in order to approximate areas and times of highest risk of entanglements that may go unobserved or unreported. The draft SAR notes a couple of incidents of historical entanglements of bowhead whales in commercial fisheries in Alaska, but should be updated to acknowledge the spatial overlap of certain fisheries with this stock, per Citta *et al.* (2014).

Response: NMFS has updated the Fisheries Information section of the final 2015 Western Arctic bowhead whale SAR to incorporate a reference to Citta et al.'s (2014) findings on the stock's spatial and temporal overlap with commercial pot fisheries in the Bering Sea.

Comment 59: The discussion of habitat concerns for bowhead whale should be updated to recognize the work of Blackwell et al. (2015), which showed that bowhead whales exhibit different behavioral responses depending on noise thresholds when in proximity to seismic operations. Calling rates first increase when the initial airgun pulses are detected, then decrease rapidly when airgun sounds exceed a threshold.

Response: NMFS has updated the Habitat Concerns section of the final 2015 Western Arctic bowhead whale SAR with a reference to Blackwell et al.'s (2015) study.

Dated: June 9, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–14015 Filed 6–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; reopening of application window for Advisory Committee nominations.

SUMMARY: Through this Notice, the National Telecommunications and Information Administration (NTIA) is reopening an application window for nominations to the Commerce Spectrum Management Advisory Committee (CSMAC). On March 29, 2016, NTIA published a Notice seeking nominations to the CSMAC with a deadline of May 13, 2016. In reopening this application window, NTIA seeks to expand the pool of applicants and best ensure the composition of the committee reflects balanced points of view.

DATES: Applications must be postmarked or electronically transmitted to the address below on or before June 24, 2016.

ADDRESSES: Persons may submit applications to David J. Reed, Designated Federal Officer, by email to *dreed@ntia.doc.gov* or by U.S. mail or commercial delivery service to Office of Spectrum Management, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: David J. Reed at (202) 482–5955 or *dreed@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: The CSMAC was established and chartered by the Department of Commerce under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and pursuant to Section 105(b) of the National Telecommunications and Information Administration Organization Act, as amended, 47 U.S.C. 904(b). The Department of Commerce re-chartered the CSMAC on March 3, 2015, for a two-year period. More information about the CSMAC may be found at *http://www.ntia.doc.gov/category/csmac.*

On March 29, 2016, NTIA published a Notice in the **Federal Register** seeking nominations for appointment to the CSMAC. *See* Commerce Spectrum Management Advisory Committee; Call for Applications, 81 FR 17446 (March 29, 2016), *available at http://www.ntia.doc.gov/files/ntia/publications/fr_csmac_applications_call_03292016.pdf.* The original application deadline was May 13, 2016.

Through this Notice, NTIA is reopening the application window for 10 days to expand the pool of applicants and best ensure the composition of the committee reflects balanced points of view (*e.g.,* past professional or academic accomplishments, industry sector representation, and educational background). All other requirements for appointment to the CSMAC appear in the **SUPPLEMENTARY INFORMATION** section of the March 29, 2016, Notice.

Dated: June 8, 2016.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2016–13971 Filed 6–13–16; 8:45 am]

BILLING CODE 3510–10–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0099, Process for a Swap Execution Facility or Designated Contract Market To Make a Swap Available To Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. This notice solicits comments on the process for a designated contract market (DCM) or a swap execution facility (SEF) to make a swap available to trade and therefore subject to the trade execution requirement pursuant to the Commodity Exchange Act (''CEA''). This process imposes rule filing requirements on a DCM or a SEF that wishes to submit a swap as available to trade.

DATES: Comments must be submitted on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by ''Renewal of Collection Pertaining to Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade'' by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *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.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Roger Smith, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5344; email: *rsmith@cftc.gov*, and refer to OMB Control No. 3038–0099.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade (OMB Control No. 3038–0099). This is a request for extension of a currently approved information collection.

Abstract: The collection of information is needed to help determine which swaps should be subject to the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act pursuant to Section 723 of

the Dodd-Frank Wall Street Reform and Consumer Protection Act. A SEF or DCM that submits a determination that a swap is available to trade must address at least one of several factors to demonstrate that the swap is suitable for trading pursuant to the trade execution requirement. The Commission uses the collection of information to facilitate the application of the trade execution requirement and the requirements associated with methods of execution under parts 37 and 38 of the Commission's regulations. With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

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 you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

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 Information Collection Request 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.

Burden Statement: Sections 37.10 and 38.12 of the Commission's regulations result in information collection requirements within the meaning of the PRA. This regulation permits a SEF or DCM to submit a determination that a swap is available to trade to the Commission via filing procedures set forth in part 40 of the Commission's regulations. The Commission estimates the burden of reviewing the prescribed factors and data to make a determination for this collection to be 16 hours per response.

Respondents/Affected Entities: SEFs, DCMs.

Estimated number of respondents: 5.[2]

Estimated total annual burden on respondents: 80 hours.

Frequency of collection: On occasion.

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

Dated: June 9, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–14029 Filed 6–13–16; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] The CFTC had estimated 50 respondents, *i.e.,* registered entities, that would file determinations with the CFTC. 78 FR 33618. The CFTC is revising this estimated number of respondents based on the number of determinations that have been filed since the effective date of the rule. In the fall of 2013, four SEFs and one DCM self-certified rules, pursuant to § 40.6 filing procedures, based upon each SEF's or DCM's respective determinations that certain credit default swaps (''CDS'') and interest rate swap contracts (''IRS'') were made available to trade.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2016–0030]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Generic Information Collection Plan for the Office of Intergovernmental Affairs Outreach Activities.''

DATES: Written comments are encouraged and must be received on or before July 14, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. *Please note that comments submitted after the comment period will not be accepted.* In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for the Office of Intergovernmental Affairs Outreach Activities.

OMB Control Number: 3170–0041.

Type of Review: Extension without change of a currently approve collection.

Affected Public: State, local, or Tribal governments.

Estimated Number of Annual Respondents: 400.

Estimated Total Annual Burden Hours: 3,200.

Abstract: The Office of Intergovernmental Affairs (IGA) at the Bureau requests OMB's approval for an extension without change this generic information collection plan (GICP) in order to collect information from State, local, and tribal governments. These governments interact closely with

consumers and are critical partners in promoting transparency and competition in the consumer financial products marketplace, eliminating unfair and unlawfully discriminatory practices, and enforcing consumer financial laws. The outreach activities performed by IGA will collect low-burden, non-generalizable information through this GICP on trends in consumer financial markets, enforcement actions, regulatory and supervisory issues, and consumer needs at the State, local, and tribal levels. Most of this information will be in the form of government representatives providing impressions and overviews of their activities. Information will be collected on an occasional and voluntary basis from State, local, and tribal governments and from their respective trade associations.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on March 28, 2016 (81 FR 17146). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 8, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–14024 Filed 6–13–16; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2016–0031]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Truth in Savings (Regulation DD) 12 CFR 1030.''

DATES: Written comments are encouraged and must be received on or before August 15, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Truth in Savings (Regulation DD) 12 CFR 1030.

OMB Control Number: 3170–0004.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector (non-credit union depository institutions).

Estimated Number of Respondents: 129.

Estimated Total Annual Burden Hours: 573,008.

Abstract: Consumers rely on the disclosures required by The Truth in Savings Act (TISA) and Regulation DD to facilitate informed decision-making regarding deposit accounts offered at depository institutions. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of the deposit accounts offered. Federal agencies and private litigants use the records to ascertain whether accurate and complete disclosures of depository accounts have been provided to consumers. This information also provides the primary evidence of law violations in TISA enforcement actions brought by the Bureau. Without the Regulation DD recordkeeping requirement, the Bureau's ability to enforce TISA would be significantly impaired.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 7, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–14025 Filed 6–13–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–0019]

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff, G–1, Technology and Business Architecture Integration Directorate, Army Library Program, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Deputy Chief of Staff, G–1, Technology and Business Architecture Integration Directorate, Army Library Program announces a proposed public

information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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 August 15, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Deputy Chief of Staff, G–1, Technology and Business Architecture Integration Directorate, ATTN: DAPE–TBL, 300 Army Pentagon, Washington, DC 20310–0300; or call Army Library Program at 703–695–5401.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Library Borrowers'/Users' Profile Files; General Library Information System Registration Form DA Form 7745; OMB Control Number: 0702–XXXX.

Needs and Uses: The information collection requirement is necessary to identify individuals authorized to borrow library materials from Army libraries; to ensure that all Army library property is returned and individual's account is cleared, and to provide librarian useful information for selecting, ordering, and meeting user requirements; to comply with the Children's Internet Protection Act and to provide authentication for borrowed electronic resources (for example, e-books, e-journals).

Affected Public: Individuals or Households and Federal Government.

Annual Burden Hours: 9,750.

Number of Respondents: 39,000.

Responses per Respondent: 1.

Annual Responses: 39,000.

Average Burden per Response: 15 minutes.

Frequency: One Time.

Respondents are Army Family members, Army retirees, DoD civilians, DoD Contractors and authorized DoD personnel who register at Army installation's Morale, Welfare and Recreation (MWR) libraries or other Army libraries in order to check out print, audio-visual, and/or electronic materials. Army MWR libraries collect name, address, phone number, DoD ID number, rank, date of birth, and email address in order to identify individuals authorized to borrow library materials, to ensure that all library property is returned, and the individual's account is cleared. As there are over 500,000 registered borrowers/users in the MWR General Library Information System (GLIS), several identifiers are needed to match the record with the person requesting service. During registration, library borrowers agree to be responsible for replacement or reimbursement for lost or damaged materials borrowed by themselves or authorized Family members using DA Form 7745. If the responsible party does not replace or reimburse the library, AR 735–17 authorizes the library to collect the cost of the item. For service members, the Defense Finance and Accounting Services (DFAS) requires at least the last four numbers of the social security number to collect the debt. Other Army libraries collect less types of personal information for the borrower/user profile such as no SSN or no DoD ID.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13979 Filed 6–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2013–OS–0059]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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 August 15, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on

any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Assistant Secretary of Defense (Program Support), ATTN: Donna Livingston, 3500 Defense Pentagon, Room 3C152, Washington, DC 30301–3500, or call at 703 692–3032.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Qualification to Possess Firearms or Ammunition; OMB Control Number 0704–0461.

Needs and Uses: The information collection requirement is necessary to obtain written acknowledgement by the contract company and its individual Private Security Contractor (PSC) personnel, after investigation of background of PSC personnel by the contractor, verifying that such personnel are not prohibited under U.S. law (18 U.S.C. 922) to possess firearms or ammunition.

Affected Public: Business or other for profit.

Annual Burden Hours: 2,344.

Number of Respondents: 125.

Responses per Respondent: 75.

Annual Responses: 9,375.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Respondents are contract companies and their respective individual Private Security Contractor personnel who must verify that they are not prohibited under U.S. law from possessing firearms. A signed statement is included as part of the arming authorization packet. If the validation is not included in the arming authorization package, individuals reviewing the package and approving the arming authorization cannot be readily assured of the qualifications of the individual requesting arming authorization. Establishing that contractors providing armed security are qualified is essential to insure capable force protection is provided to meet national security imperatives.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13970 Filed 6–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0073]

Proposed Collection; Comment Request

AGENCY: Office of the General Counsel, Standards of Conduct Office, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the General Counsel, Standards of Conduct Office, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and 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 August 15, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the General Counsel, ATTN: Standards of Conduct Office (Mr. Green), 1600 Defense Pentagon, Suite 3E783, Washington, DC 20301–1600.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Post Government Employment Advice Opinion Request; DD Form 2945; OMB Control Number 0704–0467.

Needs and Uses: The information collection requirement is necessary to obtain minimal information on which to base an opinion about post Government employment of select former and departing DoD employees seeking to work for Defense Contractors within two years after leaving DoD. The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to render an advisory opinion to the employee requesting the opinion. *The National Defense Authorization of Act for Fiscal Year 2008,* Public Law 110–181, section 847, requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expect to receive compensation from a DoD Contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

Affected Public: Individuals or households.

Annual Burden Hours: 250.

Number of Respondents: 250.

Responses per Respondent: 1.

Annual Responses: 250.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, section 847, requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expects to receive compensation from a DoD contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to provide an

opinion to the employee on the applicability of post-Government employment restrictions. The information requested is employment-related and identifying information about the person requesting the opinion.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13958 Filed 6–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0128]

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 July 14, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Science, Mathematics and Research for Transformation (SMART) Program Documents; DD Forms X716, X717, X718, X719, X720, X721, X723, X724, X725, X728, X729, and X731; OMB Control Number 0704–0466.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 4,300.

Responses per Respondent: 8.5.

Annual Responses: 5,875.

Average Burden per Response: 25.5 hours.

Annual Burden Hours: 30,200.

Needs and Uses: The information collection requirement is a statutory and functional necessity to administer the SMART scholarship program. The SMART Program requires a competitive application process. All awardees must be U.S. citizens at the time of application, 18 years or older as of 1 August, 2015, able to participate in summer internships at DoD laboratories, willing to accept post-graduation employment with the DoD, be a current college student in good standing with a minimum GPA of 3.0 on a 4.0 scale (as calculated by the SMART application), pursuing an undergraduate or graduate degree in one of the 19 program funded disciplines, and eligible to obtain and maintain a secret level clearance.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13951 Filed 6–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, U.S. Army Corps of Engineers

Notice of Additional Public Meeting—Draft Environmental Impact Statement for the Lower Yellowstone Intake Diversion Dam Fish Passage Project, Dawson County, Montana

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In response to public request, a third public meeting is scheduled for the Draft Environmental Impact Statement for the Lower Yellowstone Intake Diversion Dam Fish Passage Project. The notice of availability and two public meetings published in the **Federal Register** on June 3, 2016 (81 FR 35754). This third public meeting will be held on Thursday, June 30, 2016, from 5:30 p.m. to 9:00 p.m., at the Lincoln Center, 415 N. 30th Street in Billings, MT. The meeting will begin with an open house at 5:30 p.m., followed by a formal presentation at 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Vanosdall, U.S. Army Corps of Engineers, 1616 Capitol Ave, Omaha, NE 68102, or *tiffany.k.vanosdall@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–13883 Filed 6–13–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Notice of Public Meeting To Inform the Human Reliability Program

AGENCY: Office of Environment, Health, Safety and Security, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy, Office of Corporate Security Strategy, Analysis and Special Operations, will conduct an Open Meeting June 28–30, 2016, to discuss best practices and recommendations for program improvement that will potentially assist in the revision to 10 CFR part 712 Human Reliability Program.

The agenda items to be considered include:

—Reliability Criteria and Monitoring
—Designation of HRP positions and methodology
—Administration and Appeals
—Best Practices for Program Implementation

DATES: The meeting will take place June 28–30, 2016, from 8:30 a.m. to 4:00 p.m. The meeting will consist of several working groups, and all groups will meet together from 1:00 p.m. to 4:00 p.m. on June 30.

Requests to attend the public meeting must be received no later than June 21, 2016. If a request to attend the public meeting is not received by June 21, 2016, attendance at the public meeting will not be permitted. Written comments may still be provided no later than July 8, 2016.'' Please note that due

to security considerations, two valid, government issued photo identifications must be presented to gain entrance. It is recommended that attendees arrive no later than 30 minutes ahead of the scheduled meeting for the security screening process.

ADDRESSES: The New Hope Center, 602 Scarboro Rd, Oak Ridge, TN 37830 Requests to attend the public meeting should be provided to The Department of Energy, Office of Corporate Security Strategy, Analysis and Special Operations, *ITPMO@hq.doe.gov*. SUBJECT LINE: HRP REQUEST TO ATTEND PUBLIC MEETING.

Written comments should be mailed to The Human Reliability Program, AU 1.2, 1000 Independence Ave. SW., 20585. Electronic submission is preferred, and comments can be sent to *ITPMO@hq.doe.gov* SUBJECT LINE: HRP COMMENTS.

FOR FURTHER INFORMATION CONTACT: Requests for further information should be sent to *ITPMO@hq.doe.gov* with subject line ''HRP'' or Regina Griego Cano at (202) 586–7079. Members of the public will be permitted to speak at the conclusion of the public meeting as time allows. If you wish to speak at the public meeting, you must provide a copy of your written remarks no later than June 23, 2016, to *ITPMO@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: 10 CFR part 712 establishes the policies and procedures for a Human Reliability Program (HRP) in the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA). The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. DOE is providing an opportunity for public input into the HRP and DOE regulations implementing the HRP at 10 CFR part 712.

Issued in Washington, DC, on June 7, 2016.

Regina Griego Cano,

Program Manager, Human Reliability Program (Policy), Office of Corporate Security Strategy, Analysis and Special Operations, Office of Environment, Health, Safety and Security, Department of Energy.

[FR Doc. 2016–14019 Filed 6–13–16; 8:45 am]

BILLING CODE 6450–01–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: EC16–130–000.
Applicants: Nevada Power Company, Sierra Pacific Power Company, South Point Energy Center, LLC.
Description: Joint Application of Nevada Power Company, et al. for Approval Under Section 203 of the Federal Power Act.
Filed Date: 6/7/16.
Accession Number: 20160607–5230.
Comments Due: 5 p.m. ET 6/28/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–113–000.
Applicants: Mariah del Norte LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Mariah del Norte LLC.
Filed Date: 6/7/16.
Accession Number: 20160607–5236.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: EG16–114–000.
Applicants: Kingman Wind Energy I, LLC.
Description: Notification of Self-Certification of Exempt Wholesale Generator Status of Kingman Wind Energy I, LLC.
Filed Date: 6/8/16.
Accession Number: 20160608–5104.
Comments Due: 5 p.m. ET 6/29/16.
Docket Numbers: EG16–115–000.
Applicants: Kingman Wind Energy II, LLC.
Description: Notification of Self-Certification of Exempt Wholesale Generator Status of Kingman Wind Energy II, LLC.
Filed Date: 6/8/16.
Accession Number: 20160608–5106.
Comments Due: 5 p.m. ET 6/29/16.

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

Docket Numbers: ER16–425–002.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO compliance effective date notification re: Scarcity Pricing to be effective 6/21/2016.
Filed Date: 6/7/16.
Accession Number: 20160607–5199.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: ER16–1509–001.
Applicants: New Wave Energy Corp.
Description: Tariff Amendment: Amended Market Based Rate Tariff of New Wave Energy Corporation to be effective 6/27/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5039.
Comments Due: 5 p.m. ET 6/29/16.
Docket Numbers: ER16–1894–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notices of Cancellation LGIA Alta Wind Alta Q153 & Alta Q97 Projects to be effective 8/8/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5075.
Comments Due: 5 p.m. ET 6/29/16.
Docket Numbers: ER16–1895–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: First Revised Service Agreement No. 3876; Queue Position Y1–069/AA1–056 to be effective 5/10/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5131.
Comments Due: 5 p.m. ET 6/29/16.
Docket Numbers: ER16–1896–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Section 205(d) Rate Filing: 2016–06–08_SA 2922 Ameren Illinois-IMEA Mascoutah CA (Hillgard) to be effective 5/9/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5147.
Comments Due: 5 p.m. ET 6/29/16.

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

Docket Numbers: ES16–36–000.
Applicants: Indianapolis Power & Light Company.
Description: Application of Indianapolis Power & Light Company under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Short-Term Debt Instruments.
Filed Date: 6/7/16.
Accession Number: 20160607–5228.
Comments Due: 5 p.m. ET 6/28/16.

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: June 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13980 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RA16–1–000]

Tektronix, Inc.; Notice of Filing

Take notice that, on May 20, 2016, Tektronix, Inc. (Tektronix) filed a Petition for Review of Denial of Adjustment Request, pursuant to section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 7194(b), and section 385.1004 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 385.1004. Tektronix's petition requests review of the April 20, 2016 Decision and Order issued in Case Number EXC–16–007 by the Department of Energy's Office of Hearings and Appeals. In addition, Tektronix is concurrently requesting a hearing in accordance with section 385.1006 of the Commission's Rules of Practice and Procedure, 18 CFR 385.1006.

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

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

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

Comment Date: 5:00 p.m. Eastern Time on June 29, 2016.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13974 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–7–000]

Commission Information Collection Activities (FERC Form 6–Q); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC Form 6–Q (Quarterly Financial Report of Oil Pipeline Companies) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (81 FR 19166, 4/4/2016) requesting public comments. The Commission received no comments on the FERC Form 6–Q and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by July 14, 2016.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0206, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC16–7–000, by either of the following methods:

- e*Filing at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC Form 6–Q, Quarterly Financial Report of Oil Pipeline Companies.[1]

OMB Control No.: 1902–0206.

Type of Request: Three-year extension of the FERC Form 6–Q information collection requirements with no changes to the current reporting requirements.

Abstract: Under the Interstate Commerce Act (ICA),[2] the Commission is authorized and empowered to make investigations and to collect and record data to the extent FERC may consider to be necessary or useful for the purpose of carrying out the provisions of the ICA. FERC must ensure just and reasonable rates for transportation of crude oil and petroleum products by pipelines in interstate commerce.

The Commission uses the information collected by FERC Form 6–Q to carry out its responsibilities in implementing the statutory provisions of the ICA to include the authority to prescribe rules and regulations concerning accounts, records, and memoranda, as necessary or appropriate. Financial accounting and reporting provides necessary

[1] The renewal request in this IC docket is for the current FERC Form 6–Q, with no change to the reporting requirements. The FERC Form 6–Q is also part of the Forms Refresh effort (started in Docket No. AD15–11), which is a separate activity.

[2] 49 U.S.C. part 1, section 20, 54 Stat. 916.

information concerning a company's past performance and its future prospects. Without reliable financial statements prepared in accordance with the Commission's Uniform System of Accounts and related regulations, the Commission would be unable to accurately determine the costs that relate to a particular time period, service, or line of business.

The Commission uses data from the FERC Form 6–Q to assist in:

1. Implementation of its financial audits and programs,

2. continuous review of the financial condition of regulated companies,

3. assessment of energy markets,

4. rate proceedings and economic analyses, and

5. research for use in litigation.

Financial information reported on the quarterly FERC Form 6–Q provides FERC, as well as customers, investors and others, an important tool to help identify emerging trends and issues affecting jurisdictional entities within the energy industry. It also provides timely disclosures of the impacts that new accounting standards, or changes in existing standards, have on jurisdictional entities, as well as the economic effects of significant transactions, events, and circumstances. The reporting of this information by jurisdictional entities assists the Commission in its analysis of profitability, efficiency, risk, and in its overall monitoring.

Type of Respondents: Oil pipelines.

Estimate of Annual Burden: [3] The Commission estimates the annual public reporting burden for the information collection as:

FERC Form 6–Q: Quarterly Financial Report of Oil Companies

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [4]	Total annual burden hours & total annual cost	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
175	3	525	150 $10,800	78,750 $5,670,000	$32,400

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13975 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2816–048]

North Hartland, LLC—New Hampshire, North Hartland, LLC—Vermont; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On May 25, 2016, North Hartland, LLC—New Hampshire (transferor) and North Hartland, LLC—Vermont (transferee) filed an application for the transfer of license of the North Hartland Project No. 2816. The project is located at the existing U.S. Army Corps of Engineers' North Hartland Dam on the Ottauquechee River in Windsor County, Vermont.

The applicants seek Commission approval to transfer the license for the North Hartland Project from the transferor to the transferee. This transfer of license reflects an internal corporate reorganization. The transferor will be merged into newly created transferee.

Applicants Contact: Mr. Andrew Locke, Messalonskee Stream Hydro, LLC, c/o Essex Hydro Assets, 55 Union Street, 4th Floor, Boston, MA 02108, Phone: 617–367–0032, Email: *alocke@essexhydro.com*.

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov*.

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2816–048.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13972 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] The estimates for cost per response are derived using the 2015 FERC average salary plus benefits of $149,489/year (or $72.00/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 16, 2016, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **NOTE**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1028TH—MEETING, REGULAR MEETING

[June 16, 2016, 10:00 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD16–1–000	Agency Administrative Matters.
A–2	AD16–7–000	Customer Matters, Reliability, Security and Market Operations.
	ELECTRIC	
E–1	RM16–1–000	Reactive Power Requirements for Non-Synchronous Generation.
E–2	RM15–24–000	Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators.
E–3	RM16–15–000	Regulations Implementing FAST Act Section 61003–Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information.
E–4	RM15–25–000	Availability of Certain North American Electric Reliability Corporation Databases to the Commission.
E–5	EL16–61–000	Midcontinent Independent System Operator, Inc.
E–6	EL16–48–000	NextEra Energy Power Marketing, LLC and Northeast Energy Associates, a Limited Partnership v. ISO New England Inc.
E–7	RM01–8–000	Filing Requirements for Electric Utility Service Agreements.
	RM10–12–000	Electricity Market Transparency Provisions of Section 220 of the Federal Power Act.
	RM12–3–000	Revisions to Electric Quarterly Report Filing Process.
	ER02–2001–000	Electric Quarterly Reports.
E–8	EL16–55–000	Interconnect Solar Development LLC.
	QF11–204–002.	
	QF11–205–002.	
E–9	ER16–1443–000	NRG Power Midwest, LP.
	EL16–72–000.	
E–10	OA16–1–000	Arizona Public Service Company.
E–11	OMITTED.	
E–12	ER12–2302–004	Midwest Independent Transmission System Operator, Inc.
E–13	ER16–644–000	Entergy Arkansas, Inc.
E–14	ER16–1041–000	ISO New England Inc.
E–15	ER15–2239–002	NextEra Energy Transmission West, LLC.
E–16	EL16–39–000	Tri-State Generation and Transmission Association, Inc.
E–17	EL14–94–001	PJM Interconnection, L.L.C.
	ER16–1291–000	
	(Not Consolidated).	
E–18	OMITTED.	
E–19	ER16–209–001	Southwest Power Pool, Inc.
E–20	ER15–623–006	PJM Interconnection, L.L.C.
	ER15–623–007.	
	ER15–623–008.	
	EL15–29–004.	
	EL15–80–001	Advanced Energy Management Alliance Coalition v. PJM Interconnection, L.L.C.
	GAS	
G–1	RP12–479–001	ANR Storage Company.
	HYDRO	
H–1	P–12486–008	Twin Lakes Canal Company.
H–2	P–2082–027	PacifiCorp.
H–3	P–8722–018	David O. Harde.
H–4	P–2146–195	Alabama Power Company.

1028TH—MEETING, REGULAR MEETING—Continued

[June 16, 2016, 10:00 a.m.]

Item No.	Docket No.	Company
	CERTIFICATES	
C–1	CP15–552–000	Northern Natural Gas Company.
C–2	CP16–70–000	Impulsora Pipeline, LLC.
C–3	CP15–29–001	Transcontinental Gas Pipe Line Company, LLC.
	CP15–482–001	Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.
C–4	CP14–509–003	Paiute Pipeline Company.
	RP16–212–001.	

Dated: June 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar.

The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2016–14145 Filed 6–10–16; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket No.
Golden Fields Solar I, LLC ..	EG16–62–000
Live Oak Solar, LLC	EG16–63–000
White Pine Solar, LLC	EG16–64–000
White Oak Solar, LLC	EG16–65–000
Brady Wind, LLC	EG16–66–000
Brady Wind II, LLC	EG16–67–000
Alta Windpower Development, LLC.	EG16–68–000
Roswell Solar, LLC	EG16–69–000
Chaves Country Solar, LLC	EG16–70–000
Hidalog Wind Farm LLC	EG16–71–000
Jericho Rise Wind Farm LLC	EG16–72–000
Ninnescah Wind Energy, LLC.	EG16–74–000
Antelope Big Sky Ranch LLC	EG16–75–000
Copper Mountain Solar 4, LLC.	EG16–76–000
MS Solar 3, LLC	EG16–77–000
MS Solar 2, LLC	EG16–78–000

Take notice that during the month of May 2016, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: June 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13981 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–65–000]

Northampton Generating Company, L.P.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 3, 2016, the Commission issued an order in Docket No. EL16–65–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Northampton Generating Company, L.P.'s reactive power rates. *Northampton Generating Co.,* 155 FERC 61,242 (2016).

The refund effective date in Docket No. EL16–65–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: June 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13960 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2576–168]

FirstLight Hydro Generating Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

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

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2576–168.

c. *Date Filed:* March 4, 2016.

d. *Applicant:* FirstLight Hydro Generating Company.

e. *Name of Project:* Housatonic River Hydroelectric Project.

f. *Location:* The Shepaug Development (Lake Lillinonah) in Litchfield County, Connecticut.

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

h. *Applicant Contact:* Howard Person, Plant Manager, 143 West Street, Suite E, New Milford, CT 06776, (860) 350–3617.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: July 8, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/*

ecomment.asp. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2576–168.

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

k. *Description of Request:* FirstLight Hydro Generating Company proposes to permit the expansion of West Cove Marina from the existing 25 boat slips to a total of 136 boat slips distributed across 8 docks, as well as construction of a new gasoline dock to replace the existing gasoline dock. Although the majority of the site has been previously developed, minor earthwork would be performed to install the 8 concrete pads for connecting the docks to shore.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13977 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5073–095]

Benton Falls Associates, New York LP; Benton Falls Associates, Maine LP; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On May 25, 2016, Benton Falls Associates, New York LP (transferor) and Benton Falls Associates, Maine LP (transferee) filed an application for the transfer of license of the Benton Falls Project No. 5073. The project is located on the Sebasticook River in Kennebec County, Maine.

The applicants seek Commission approval to transfer the license for the Benton Falls Project from the transferor to the transferee. This transfer of license reflects an internal corporate reorganization. The transferor will be merged into newly created transferee.

Applicants Contact: Mr. Andrew Locke, Messalonskee Stream Hydro, LLC, c/o Essex Hydro Assets, 55 Union Street, 4th Floor, Boston, MA 02108, Phone: 617–367–0032, Email: *alocke@essexhydro.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–5073–095.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13973 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2474–051]

Erie Boulevard Hydropower, L.P.; Notice of Application for Amendment of License Modifying Flashboard System and Flow Discharge Location under Article 405, and Soliciting Comments, Motions To Intervene and Protests

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

a. *Application Type:* Amendment of License.

b. *Project No:* 2474–051.

c. *Date Filed:* May 18, 2016.

d. *Applicant:* Erie Boulevard Hydropower, L.P. (licensee).

e. *Name of Project:* Oswego River Project.

f. *Location:* The Oswego River Project is located on the Oswego River near the towns of Fulton, Minetto, and Oswego, in Oswego County, New York. The project consists of 3 developments, Fulton, Minetto, and Varick in upstream to downstream order.

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

h. *Applicant Contact:* Mr. Danial Daoust, Erie Boulevard, L.P., Brookfield Renewable Energy Group, 33 West First St., Fulton, NY 13069, 315–596–6131.

i. *FERC Contact:* Mr. Mark Pawlowski 202–502–6052, *mark.pawlowski@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 23, 2016.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2474–051) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee requests approval to reverse the direction of the stepped flashboard system at the Oswego River Project's Varick development and install a trip flashboard section on the eastern side of the dam adjacent to Leto Island. The licensee maintains the stepped flashboard system so that the tallest 36-inch flashboard section is located on the eastern side of the dam adjacent to Leto Island while stepping down in height to the shortest 10-inch flashboard section located on the western side of the dam adjacent to the existing sluice gate and state head gates. The licensee proposes to reverse the direction of the stepped flashboard by moving the tallest flashboard section to the western side of the dam adjacent to the existing sluice gate and state head gates and stepping down in height in an easterly direction toward Leto Island.

Under article 405, the licensee is required to maintain seasonal bypassed reach minimum flows ranging from 200 cubic feet per second (cfs) between June 1 and September 15 to 800 cfs during the springtime walleye spawning season. The remainder of the year the licensee is required to maintain a 400 cfs minimum flow. The proposed trip flashboard would be installed on the dam adjacent to Leto Island and be designed to discharge a minimum flow of 200 cfs at the lowest allowable impoundment elevation at the Varick development. The first 200 cfs of the minimum flow requirements of article 405 would continue to be discharged through the existing sluice gate.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS''; ''PROTESTS'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13976 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: ER16–1871–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: Amended LGIA RE Astoria LLC, RE Astoria 2 LLC—Revised Added Facilities Rate to be effective 4/11/2016.

Filed Date: 6/3/16.

Accession Number: 20160603–5120.

Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1872–000.

Applicants: Marshall Solar, LLC.

Description: Baseline eTariff Filing: Marshall Solar, LLC Application for Market-Based Rates to be effective 8/2/2016.

Filed Date: 6/3/16.

Accession Number: 20160603–5124.

Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1873–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: GIA & Distribution Service Agreement Desert Water Agency Whitewater Project to be effective 6/1/2016.

Filed Date: 6/3/16.
Accession Number: 20160603–5135.
Comments Due: 5 p.m. ET 6/24/16.
Docket Numbers: ER16–1874–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: Revisions to Financial Statements Reporting Requirements under the FAP to be effective 8/5/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5150.
Comments Due: 5 p.m. ET 6/24/16.
Docket Numbers: ER16–1875–000.
Applicants: Hydro Renewable Energy Inc.
Description: Baseline eTariff Filing: Hydro Renewables MBR Tariff Filing to be effective 8/2/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5154.
Comments Due: 5 p.m. ET 6/24/16.
Docket Numbers: ER16–1876–000.
Applicants: PacifiCorp.
Description: Section 205(d) Rate Filing: Lower Valley Energy ? Ancillary Services Agreement to be effective 8/3/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5167.
Comments Due: 5 p.m. ET 6/24/16.
Docket Numbers: ER16–1877–000.
Applicants: Arizona Public Service Company.
Description: Section 205(d) Rate Filing: FERC Electric Tariff Volume 5 Revision to be effective 8/3/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5204.
Comments Due: 5 p.m. ET 6/24/16.
Docket Numbers: ER16–1878–000.
Applicants: Ringer Hill Wind, LLC.
Description: Baseline eTariff Filing: Ringer Hill Wind, LLC FERC Electric Tariff, Original Baseline to be effective 9/16/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5221.
Comments Due: 5 p.m. ET 6/24/16.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD16–7–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Six NERC Glossary Definitions and Request for Shortened Response Period and Expedited Action.
Filed Date: 6/3/16.
Accession Number: 20160602–5480.
Comments Due: 5 p.m. ET 6/17/16.
Docket Numbers: RD16–7–000.
Applicants: North American Electric Reliability Corporation.
Description: Errata to the Petition of the North American Electric Reliability Corporation for Approval of Six NERC Glossary Definitions and Request for Shortened Response Period and Expedited Action.
Filed Date: 6/3/16.
Accession Number: 20160603–5203.
Comments Due: 5 p.m. ET 6/17/16.

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: June 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13959 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0341; FRL–9947–17–OAR]

Notice of Availability of the Environmental Protection Agency's Two Updated Chapters in the EPA Air Pollution Control Cost Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability (NOA).

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that two chapters of the EPA Air Pollution Control Cost Manual (Control Cost Manual) have been finalized and are available to the public. These chapters, titled ''Chapter 1—Selective Non-Catalytic Reduction'' and ''Chapter 2—Selective Catalytic Reduction'' are components of ''Section 4—Nitrogen Oxide Controls'' and incorporate comments received on draft versions made available in a Notice of Data Availability (NODA) published on June 12, 2015. A response to comment (RTC) document summarizing comments and agency responses is available for each chapter. In addition, cost calculation information is provided electronically for each chapter enabling estimation of costs for installing and operating NOx control measures. The final chapters, RTC and cost calculation documents are available at *https://www3.epa.gov/ttn/ecas/cost_manual.html.* In addition, all public comments received by the agency are available in the docket for this Notice of Availability (EPA–HQ–OAR–2015–0341).

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions on the EPA Air Pollution Control Cost Manual update, contact Larry Sorrels, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, C439–02, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; telephone number: (919) 541–5041; fax number: (919) 541–0839; email address: *sorrels.larry@epa.gov.*

Information Available From This Notice

The EPA Air Pollution Control Cost Manual provides guidance for the development of accurate and consistent costs for air pollution control devices. The Control Cost Manual focuses on point source and stationary area source air pollution controls for volatile organic compounds, particulate matter, oxides of nitrogen (NO_X), and certain acid gases (primarily sulfur dioxide and hydrochloric acid). The EPA is currently updating the Control Cost Manual. This update will be the Seventh Edition and is required under the authority of the 2014 Consolidated Appropriations Act.

The Control Cost Manual contains individual chapters on control

measures, including data and equations to aid users in estimating capital costs for installation and annual costs for operation and maintenance of these measures. The Control Cost Manual is used by the EPA for estimating the impacts of rulemakings, and serves as a basis for sources to estimate costs of controls that are Best Available Control Technology under the New Source Review Permitting Program and Best Available Retrofit Technology under the Regional Haze Program and for other programs.

The two Control Cost Manual chapters that have been revised include ''Chapter 1—Selective Non-Catalytic Reduction'' and ''Chapter 2—Selective Catalytic Reduction.'' These two chapters are the first two chapters to be released for the Seventh Edition of the Control Cost Manual and replace the Selective Non-Catalytic Reduction and Selective Catalytic Reduction chapters in the current Control Cost Manual Sixth Edition. A response to comment (RTC) document summarizing comments and agency responses is available for each chapter. In addition, cost calculation information is provided electronically for each chapter enabling estimation of costs for installing and operating NOx control measures. The final chapters, RTC and cost calculation documents are available at *https://www3.epa.gov/ttn/ecas/cost_manual.html.* In addition, all public comments received by the agency are available in the docket for this Notice of Availability (EPA–HQ–OAR–2015–0341).

The Control Cost Manual was last updated in 2003. The development of the Control Cost Manual Seventh Edition is in response to the Consolidated Appropriations Act of 2014, which requested that the EPA begin development of a seventh edition of the Control Cost Manual.

Dated: June 8, 2016.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–14042 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0265; FRL–9947–64–OAR]

EPA's Review of the Waste Isolation Pilot Plant's Biennial Environmental Compliance Report for the Period 2012 to 2014

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has completed its review of the Department of Energy's (DOE) most recent Biennial Environmental Compliance Report (BECR) for the Waste Isolation Pilot Project (WIPP), covering the period April 1, 2012 through March 31, 2014. Section 9(a)(2) of the WIPP Land Withdrawal Act requires the DOE to submit documentation to the EPA of the WIPP's continued compliance with designated federal laws pertaining to public health and safety or the environment. The Secretary of Energy was notified that the EPA had completed its review via a letter from EPA Administrator Gina McCarthy dated June 3, 2016.

FOR FURTHER INFORMATION CONTACT: Nick Stone, WIPP Project Officer, Mail Code 6PD–O, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202. Nick Stone may be reached by telephone at (214) 665–7226.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0265; FRL–9947–64–OAR. Docket materials are publicly available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center 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 Air and Radiation Docket is (202) 566–1742. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.regulations.gov.*

II. Background

The EPA conducted this review under the authority of Section 9 of the WIPP Land Withdrawal Act (WIPP LWA, Pub. L. Nos. 102–579 and 104–201). Section 9(a)(1) of the WIPP LWA requires that, as of the date of the enactment of the WIPP LWA, the DOE shall comply with respect to the WIPP with (1) regulations for the management and storage of radioactive waste (40 CFR part 191, subpart A); (2) the Clean Air Act; (3) the Solid Waste Disposal Act; (4) the Safe Drinking Water Act; (5) the Toxic Substances Control Act; (6) the Comprehensive Environmental Response, Compensation, and Liability Act; and (7) all other applicable Federal laws pertaining to public health and safety or the environment. Section 9(a)(2) of the WIPP LWA requires the DOE biennially to submit to the EPA documentation of continued compliance with the laws, regulations, and permit requirements set forth in Section 9(a)(1).

As outlined in the EPA's letter to the Secretary of Energy, the Agency has been able to conclude its review of the WIPP BECR for the reporting period, April 1, 2012 through March 31, 2014 based on receipt of all cumulative documentation from DOE and the Settlement Agreement between the State of New Mexico and the Department. EPA will consider the DOE's compliance with the Settlement Agreement as part of its review of the Department's compliance for the next reporting period, from April 1, 2014 to March 31, 2016, and subsequent reporting periods as appropriate. The Agency will continue its oversight of the WIPP and continue to work cooperatively with the DOE, the State of New Mexico and the public to ensure that the WIPP is protective of human health and the environment. All relevant information related to this review—including this notice and the letter to the Secretary of Energy—are available online via the WIPP news Web site (*https://www.epa.gov/radiation/wipp-news*) and the aforementioned docket on regulations.gov (EPA–HQ–OAR–2016–0265).

This determination is not in any way related to, or a part of, the EPA's certification and recertification decisions regarding whether the WIPP complies with the Agency's disposal

regulations for transuranic radioactive waste at 40 CFR part 191.

Dated: June 3, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–14095 Filed 6–13–16; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0814; FRL–9946–13]

Pesticides; Draft Guidance for Pesticide Registrants on the Determination of Minor Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR Notice) entitled ''Determination of Minor Use under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 2(ll).'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This draft PR Notice would update section 5 of PR Notice 97–2 and provide guidance to the registrant as to how the EPA determines a ''minor use.'' EPA seeks to identify and encourage the registration of pesticides for minor uses to protect communities from harmful pests. This draft PR Notice revises the method used by EPA for evaluating ''sufficient economic incentive'' under FIFRA. The draft PR Notice explains how qualitative information may be used to inform the quantitative analysis, interpret the results, and clarifies that the most recent United States Department of Agriculture (USDA) Census of Agriculture is the appropriate source for data on acreage in the United States to establish a minor use under the acreage definition in FIFRA 2(ll)(1).

DATES: Comments must be received on or before August 15, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0814, 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.
- *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: Derek Berwald, Biological and Economic Analysis Division, MC 7503P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8115; email address: *berwald.derek@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 responsible for the initial or continuing registration of pesticides. Entities that register pesticides with EPA's Office of Pesticide Programs typically fall under the North American Industry Classification System (NAICS) Code 325300—Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing. This action may also be of interest to persons using pesticides on sites that may be considered ''minor'' including persons engaged in crop and livestock production, and persons engaged in pest control in residential, commercial, and municipal areas including control of public health pests, and to the public in general. Since many entities may be interested, 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* 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.*

C. How can I get copies of this document and other related information?

A copy of the draft PR Notice is available in the docket under docket identification (ID) number EPA–HQ–OPP–2015–0814.

II. What guidance does this PR notice provide?

FIFRA defines a minor use of a pesticide as either (1) a use on a crop grown on 300,000 acres or less in the United States or (2) a use that lacks sufficient economic incentive to seek or maintain a registration but has private or social value. This draft PR Notice provides guidance to the registrant concerning the method used to determine if a use site is a ''minor use'' as defined by FIFRA 2(ll). In particular, the draft PR Notice describes the method for determining if the use ''does not provide sufficient economic incentive.'' To date, EPA's interpretation of *economic* minor use in section 2(ll)(2) has been shaped by guidance provided in PR Notice 97–2. However, the approach outlined in PR Notice 97–2 ignores critical factors that influence the incentives for registration.

This draft PR Notice describes the revised approach to evaluate ''sufficient economic incentive'' which addresses these factors. It explicitly considers (1) the difference in time between incurring costs of generating data for registration and obtaining revenue from product sales, (2) the multiple years over which revenue is generated, and (3) the costs of producing and distributing the product. The draft PR Notice provides suggestions about the data that can be used to conduct the analysis. Finally, the draft PR Notice explains how qualitative information may be used to inform the quantitative analysis and interpret the results. It also clarifies that the most recent USDA Census of Agriculture is the appropriate source for data on acreage in the United States to establish a minor use under the acreage definition in FIFRA section 2(ll)(1).

Registrants will typically seek to demonstrate a site is a minor use in the context of requesting an extension of the

exclusive use period for data submitted in support of a registration under FIFRA section 3(c)(1)(F)(ii) or a new exclusive use period for data submitted to support a registration under FIFRA section 3(c)(1)(F)(vi). These clauses are intended to provide incentives to registrants to obtain registrations for uses that might otherwise go unfulfilled because they offer low returns because of low demand.

The information collection activities associated with the activities described in this PR Notice are already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The corresponding Information Collection Request (ICR) document for the Application for New and Amended Pesticide Registration has been assigned EPA ICR number 0277.16 and is approved OMB control number 2070–0060.

III. Do PR Notices contain binding requirements?

The PR Notice about the determination of a minor use is intended to provide guidance to EPA personnel and decision-makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 31, 2016.

Jack E. Housenger,

Director, Office of Pesticide Programs.

[FR Doc. 2016–14037 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, June 16, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes for May 19, 2016

Draft Advisory Opinion 2016–05: Huckabee for President, Inc.

Proposed Statement of Policy Regarding the Public Disclosure of Closed Enforcement Files

Other Rulemaking

REG 2016–02: Draft Interim Final Rules and Explanation and Justification: Civil Money Penalty Inflation Adjustments

Proposed Revisions to Forms 3, 3P, 3X, 6 and Instructions

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–14077 Filed 6–10–16; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–16–16AQM; Docket No. CDC–2016–0052]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts 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. This notice invites comment on the Presidential Youth Fitness Program (PYFP) Evaluation. The Evaluation will be conducted in approximately 11 middle schools implementing the PYFP and 11 match comparison schools and will focus on both process and outcome measures.

DATES: Written comments must be received on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0052 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

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.

Proposed Project

Presidential Youth Fitness Program Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is well documented that obesity and a lack of physical activity (PA) among children and adolescents are current public health problems in the United States. Because school-aged children spend more than half of their waking hours in school and engage in 20%–30% of their total PA at school, schools are ideal settings for reaching a diverse cross-section of children with interventions to increase PA, including those children experiencing health disparities. This is particularly important in middle school, where research shows lower levels of physical activity when compared with younger students.

Evidence shows that multicomponent school-based physical education (PE) programs are effective at improving children's health and academic outcomes. Along with these improvements, school-based PE should provide fitness assessments, development of personal fitness plans, and improved cognitive understanding about the importance of PA and a healthy lifestyle. The Presidential Youth Fitness Program (PYFP) incorporates each of these factors. To replace normative-referenced fitness measures (*i.e.,* the President's Challenge Youth Fitness Test), the PYFP has adopted a criterion-based assessment, using the FitnessGram® fitness measurement system, which compares each student's measurements to a set of standards for fitness and health. Each student can determine where he or she falls in relation to the standard and establish a goal for reaching or exceeding it. The PYFP also adds fitness education to PE, provides professional development for PE teachers, and includes a recognition system for students who achieve Healthy Fitness Zone standards.

In 2013, the Presidential Youth Fitness Program began its first round of funding to elementary, middle and high school PE teachers who applied to the program. A second round of funding began in 2014 and a third in 2015. Each participating school receives support to implement the PYFP for three years. The resources provided to PE teachers include: Professional development training, awards for student recognition of fitness achievements, access to a professional learning community and access to FitnessGram® fitness assessment software. For the schools selected to receive PYFP support, the requirements include: (1) Information Technology (IT) manager and PE teacher participation in the FitnessGram® software training, (2) PE teacher participation in PYFP professional development training, (3) conducting FitnessGram® assessments according to the training, (4) recognizing student achievement in fitness and physical activity, (5) confirming continued participation in the program at the end of Years 1 and 2, and (6) participating in evaluation activities. The PYFP is designed to supplement the traditional PE course and support physical education (PE) teachers in laying the foundation for students to lead an active life.

CDC plans to conduct the first rigorous evaluation of the PYFP. The evaluation will assess the impact of the program on student, PE teacher and school level outcomes (outcome evaluation) as well as barriers and facilitators to program implementation (process evaluation). Evaluation activities will take place in 11 schools implementing the PYFP and 11 match comparison schools, contributing a total of 82 sixth grade PE classes. Information collection will be conducted in 6 PYFP and 6 match comparison schools in Spring 2017 and 5 PYFP and 5 match comparison schools in Fall 2017. The PYFP schools recruited to participate in the PYFP Evaluation will be identified from a list of schools receiving Round 2 or Round 3 PYFP funding and meeting the following inclusion criteria: (1) Middle school with a sixth grade, (2) sixth grade enrollment of 150 or higher, (3) 50% or more of students receiving free or reduced lunch, and (4) documented completion of PYFP professional development training. Comparison schools will be matched based on criteria 1–3 above as well as location to ensure similar PE policies and standards. The process and outcome evaluation will involve data collection activities with four respondent groups: (1) Students, (2) PE teachers, (3) parents, and (4) school administrators.

The specific aims of the outcome evaluation are to examine how the PYFP impacts student fitness and physical activity, particularly how the program impacts student: (1) Fitness knowledge and health knowledge, (2) attitudes toward physical activity, (3) motivation to be physically active, (4) physical activity levels, and (5) fitness. Surveys to be conducted at all schools include the: (1) Paper-based PYFP Student Survey, (2) online PYFP PE Teacher Survey, and (3) online PYFP School Administrator Survey. There are minor differences in the survey instruments depending on whether the school is a PYFP participant or a non-PYFP school. The outcome evaluation will also determine the changes made as a result of the PYFP such as changes at the school level (*e.g.,* improved PE and physical activity policies and practices, increased parent awareness of school PE and physical activity) and changes in PE teaching practices (*e.g.,* integration of fitness education, increased use of fitness assessment tools and improved practices for fitness testing).

The outcome evaluation will include fitness assessments with approximately 2,460 students as part of the standard PE program (1,230 PYFP sixth grade students and 1,230 non-PYFP sixth grade students). Fitness assessments will be conducted at both the beginning and end of the semester using FitnessGram®'s pacer and body composition assessments. Finally, a subset of 6 PYFP and 6 match comparison schools will assess students' physical activity levels by collecting student accelerometry data. Accelerometry will be conducted in a subset of 25 PYFP and 25 non-PYFP classes to capture data from approximately 500 students (250 students from PYFP schools and 250 students from match comparison schools). Accelerometry data collection will involve wearing the device for a week at the beginning and a week at the end of semester and noting hours of wear time and class schedule.

Information collection for the process evaluation will be conducted only in the 11 PYFP schools. The aims of the process evaluation are to describe how PYFP resources were used by teachers and schools, the strategies used by

teachers and schools to integrate fitness education and student recognition of fitness achievement into the schools, and barriers and facilitators relevant to PYFP implementation. All PYFP schools will complete cost and time use worksheets. In addition, focus groups with PE teachers, students, and parents will be conducted in a subset of 6 PYFP schools. Focus groups will take place on school grounds during or outside of the school day, depending on availability of a given respondent group.

The information collected for the PYFP evaluation will allow the CDC and partners to assess the impact of the PYFP compared with a traditional PE curriculum and gather information critical for program improvement.

OMB approval is requested for two years. Participation in the PYFP Evaluation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Numner of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
6th grade students in PYFP Schools.	FitnessGram® Data Collection Form	615	2	15/60	308
	Accelerometry Log	125	2	30/60	125
	Student Survey (PYFP Schools)	615	1	15/60	154
	Student Focus Group Moderator Guide	30	1	1	30
PE teachers in PYFP Schools.	PE Teacher Survey (PYFP Schools)	22	1	25/60	9
	PE Teacher Focus Group Moderator Guide	12	1	1	12
	PYFP Time Use Worksheet	6	1	30/60	3
School administrators in PYFP Schools.	School Administrator Survey (PYFP Schools)	6	1	20/60	2
	PYFP Cost Worksheet	6	1	1	6
Parents of 6th graders enrolled in PE at PYFP Schools.	Parent Focus Group Moderator Guide	30	1	1	30
6th grade students in non-PYFP Schools.	FitnessGram® Data Collection Form	615	2	15/60	308
	Accelerometry Log	125	2	30/60	125
	Student Survey (non-PYFP Schools)	615	1	15/60	154
PE teachers in non-PYFP Schools.	PE Teacher Survey (non-PYFP Schools)	22	1	20/60	8
School Administrators in non-PYFP Schools.	School Administrator Survey (non-PYFP Schools).	6	1	20/60	2
Total					1,276

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. 2016–14016 Filed 6–13–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Councils or Committees; Delegation of Authority

Notice is hereby given that pursuant to section 222 of the Public Health Service Act [42 U.S.C. 217a], as amended, I have delegated to the Director, Centers for Disease Control and Prevention (CDC), authority to appoint temporary members to the National Institute for Occupational Safety and Health's Safety and Occupational Health Study Section (SOHSS).

These authorities shall be exercised under the Department's existing delegation of authority and policy on regulations. This authority must also be exercised in accordance with the Department's established policies, procedures, guidelines and regulations and with all other pertinent issuances.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, CDC, or other CDC officials which involve the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: June 7, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–13995 Filed 6–13–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16AOW; Docket No. CDC–2016–0050]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: 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. This notice invites comment on the CDC I-Catalyst program. The I-Catalyst program is intended to help CDC employees get their ideas out of the starting blocks and down the track through a discovery,

ideation, and prototyping process. The expected result is that CDC staff will be empowered to implement innovative strategies and solutions that create value for a set of beneficiaries.

DATES: Written comments must be received on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0050 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

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.

Proposed Project

CDC I-Catalyst Program—New—Office of the Associate Director for Science, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC Office of Technology and Innovation (OTI) within Office of the Associate Director for Science (OADS) fosters innovative science and promotes the testing and implementation of innovative ideas that improve CDC's ability to have public health impact. To arm CDC staff with an expanded skill-set and tools to evaluate and translate their insights and ideas into solutions, CDC developed an experiential innovation curriculum called I-Catalyst. The program was created with the belief that innovation should be customer driven, be based on user research, and is something people at all levels of an organization can engage in.

The goal of the I-Catalyst program is to help CDC employees test and explore their ideas through a discovery, ideation, and prototyping process. I-Catalyst offers a process for defining problems and developing strategies to solutions that will help improve the quality and efficiency of innovation efforts and, as a result, overall performance. Through the I-Catalyst Program, teams work to define and articulate their problem space to find effective solutions. Participating teams will go through a hypothesis-testing, scientific method of discovery to gather important insights and identify issues associated with their projects. Teams are forced ''out of the classroom'' to conduct interviews, study customer/stakeholder needs, collect feedback, and find partnership opportunities. It is expected that participants will leave the program with the ability to evaluate and translate their insights into solutions.

The I-Catalyst program provides CDC staff with real-world, hands-on entrepreneurship training. Through I-Catalyst CDC staff make hypothesis about how the world works, and then test them by getting out of the building and talking to customers and/or stakeholders. Only conversations with potential customers/stakeholders can provide the facts from which hypotheses are proven or disproven about whether a solution (whether a product, process, etc.) creates value for the intended beneficiaries. Participants have to go out into the world and learn by doing. The process will engage customers/stakeholders in a process that will identify what they most value and need and what their top barriers and pain points are, and source solutions that will have high levels of efficacy and user acceptability.

I-Catalyst combines in-class lectures with out-of-class learning and interactions with various customers/stakeholders. This curriculum requires full participation from the entire team. The program guides teams and individuals through a series of workshops that helps participants articulate a problem, create evidence-based plan for assessment, and conduct unstructured interviews with customers/stakeholders. Ongoing technical assistance and support from a cadre of experts is provided to teams as they define the problem, map their operational model, and identify and interact with customers/stakeholders. Each team member must commit to in-depth preparation, attendance at the lectures and workshops, and at least 15 additional hours per week for customer discovery.

Teams will be spending a significant amount of time in between each of the lectures outside the class talking to customers. Each week teams will conduct a minimum of five customer interviews with individuals who represent different segments of customers/stakeholders whom they expect will gain value through their solution or will benefit from value streams that are being produced by their solution (in terms of social and/or environmental impact). The types of customers or stakeholders teams'

interview will be specific to the proposed solution and context. For example, teams may interview government employees if the solution is intended to improve how government employees do their work. On the other hand, teams may interview individuals who work industry and businesses if the teams determines that they are the intended beneficiaries.

Using a generic information collection plan, this data collection covers qualitative information to be obtained through on-site, unstructured interviews with individuals who represent the customers or stakeholders CDC teams are attempting to serve or benefit. CDC anticipates conducting I-Catalyst with three cohorts of teams over the next two years. With each I-Catalyst cohort teams will interview their customers/stakeholders for an average of 30 minutes. Each team will interview approximately 50 respondents. With 8–10 teams participating in each of the three I-Catalyst training cohorts, approximately 1,500 respondents will be interviewed. Of these, approximately 40% of individuals will be internal CDC/ATSDR staff and 60% will be external partners, stakeholders, or customers. Data to be collected includes information regarding what they most value and need and their top barriers and pain points.

CDC expects that teams participating in the I-Catalyst will be empowered to implement innovative strategies and solutions that create value for a set of beneficiaries. The ultimate goal of the I-Catalyst program is to give CDC staff skills to successfully transfer knowledge into value-based solutions that benefit society and broaden the agency's impact.

Participation in the I-Catalyst interviews is completely voluntary. A three-year approval is requested. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Cohort 1: External Partners, Stakeholders, or Customers.	Forms will not be used	500	1	1	500
Cohort 2: External Partners, Stakeholders, or Customers.	Forms will not be used	500	1	1	500
Cohort 3: External Partners, Stakeholders, or Customers.	Forms will not be used	500	1	1	500
Total					1,500

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. 2016–13982 Filed 6–13–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERICES

Administration for Children and Families

Proposed Information Collection Activity: Comment Request

Proposed Projects

Title: National Study of Title IV–E Child Welfare Waiver Demonstrations.

OMB No.: New Collection.

Description: The National Study of the Title IV–E Child Welfare Waiver Demonstrations is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services and involves the conduct of a cross-site study of jurisdictions (referred to as waiver jurisdictions) approved to operate demonstrations authorized by section 1130 of the Social Security Act, as amended by the Child and Family Services Improvement and Innovation Act, Public Law 112–34. The demonstrations involve waivers of certain provisions of the foster care program authorized by title IV–E of the Social Security Act. Child welfare agencies in waiver jurisdictions are operating demonstrations to implement a variety of programs and interventions that serve children and families in an effort to improve their safety, permanency, and well-being. Each waiver jurisdiction is required to conduct a third-party evaluation of its demonstration.

The National Study will examine the extent to which safety, permanency, and well-being outcomes have improved for children and families; the characteristics of waiver jurisdictions where improvements in outcomes have occurred; expenditure patterns and the types of activities for which waiver jurisdictions have increased funding; and the extent to which waiver jurisdictions have experienced practice and systems-level changes. The National Study uses a mixed-method approach to examine 25 waiver jurisdictions (including 23 states, the District of Columbia and one tribal government) with Terms and Conditions approved in Federal Fiscal years 2012, 2013, and 2014. Proposed data collection methods are two topically-focused telephone surveys: (a) A telephone survey of waiver jurisdiction representatives and evaluators who are focused on measuring well-being, and (b) a second telephone survey of waiver jurisdiction representatives and evaluators that is focused on understanding practice and systems-level changes within child welfare service systems. Also proposed is a Web-based survey of waiver jurisdiction representatives and evaluators that will look more broadly at the implementation of waiver demonstrations and corresponding changes in child welfare policy, practice, and financing. Data collected through these instruments will be used by the Children's Bureau to gain an understanding of the jurisdictions' collective experience with implementing their demonstrations.

Respondents: The respondents to the Web-based survey will be a purposive sample of an estimated 250 waiver jurisdiction representatives and evaluators drawn from the 25 waiver jurisdictions with waiver demonstration

projects (Arkansas, Arizona, Colorado, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Port Gamble S'Klallam Tribe, Rhode Island, Tennessee, Texas, Utah, Washington, Washington DC, West Virginia, Wisconsin). The Web-based survey will be administered once during the National Study. The respondents to the Well-Being telephone survey will be a purposive sample of 60 respondents identified from up to 12 waiver jurisdictions who are involved with the assessment of child and family well-being in their waiver jurisdictions. The Well-Being telephone survey will be administered once during the National Study. The respondents to the Practice and Systems-Level Change telephone survey will be a purposive sample of 60 respondents identified from up to 12 waiver jurisdictions who are knowledgeable about practice, policy, and organizational changes in their respective waiver jurisdictions. The Practice and Systems-Level Change telephone survey will be administered once during the National Study.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Web-Based Survey	250	1	0.33	82.5
Telephone Survey: Well-Being	60	1	1	60
Telephone Survey: Practice and Systems-Level Change	60	1	1	60
Estimated Total Annual Burden Hours				202.5

In compliance with the requirements of section 506(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 collected 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 Planning, Research and Evaluation, 330 C St. 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. 2016–13999 Filed 6–13–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Arthritis Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on July 12, 2016, from 7:30 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *AAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss biologics license application 761024, for ABP 501, a proposed biosimilar to AbbVie Inc.'s HUMIRA (adalimumab), submitted by Amgen, Inc. The proposed indications (uses) for this product are: (1) Reducing signs and symptoms, inducing major clinical response, inhibiting the progression of structural damage, and improving physical function in adult patients with moderately to severely active rheumatoid arthritis (alone or in combination with methotrexate or other non-biologic disease-modifying anti-rheumatic drugs (DMARDs)); (2) reducing signs and symptoms of moderately to severely active polyarticular juvenile idiopathic arthritis in patients 4 years of age and older (alone or in combination with methotrexate); (3) reducing signs and symptoms, inhibiting the progression of structural damage, and improving physical function in adult patients with active psoriatic arthritis (alone or in combination with non-biologic DMARDs); (4) reducing signs and

symptoms in adult patients with active ankylosing spondylitis; (5) reducing signs and symptoms and inducing and maintaining clinical remission in adult patients with moderately to severely active Crohn's disease who have had an inadequate response to conventional therapy (ABP 501 would be indicated for reducing signs and symptoms and inducing clinical remission in these patients if they have also lost response to or are intolerant to infliximab); (6) inducing and sustaining clinical remission in adult patients with moderately to severely active ulcerative colitis who have had an inadequate response to immunosuppressants such as corticosteroids, azathioprine or 6-mercaptopurine (6–MP) (the effectiveness of ABP–501 would not be established in patients who have lost response to or were intolerant to TNF blockers); and (7) treatment of adult patients with moderate to severe chronic plaque psoriasis who are candidates for systemic therapy or phototherapy, and when other systemic therapies are medically less appropriate (only to be administered to patients who will be closely monitored and have regular follow-up visits with a physician).

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 June 27, 2016. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 3 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 17, 2016. 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 June 20, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Hee Choi at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 9, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–14017 Filed 6–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1273]

Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment.'' This draft guidance provides recommendations to industry for designing a nonclinical development program to support approval of drugs to treat osteoporosis. This guidance also discusses the nonclinical development of biopharmaceuticals (*e.g.,* recombinant proteins and monoclonal antibodies).

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 on 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 August 15, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–1273 for ''Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential

Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Gemma Kuijpers, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5374, Silver Spring, MD 20993–0002, 301–796–1243.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment.'' This draft guidance provides recommendations to industry for designing a nonclinical development program to support approval of drugs to treat osteoporosis. In addition to the pharmacology and toxicology studies required to support development of a new drug or biologic, long-term nonclinical studies to evaluate effects on bone quality in adequate animal models and including bone-specific pharmacologic and toxicologic endpoints are needed.

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 current thinking of FDA on nonclinical evaluation of drugs intended for the treatment of osteoporosis. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13988 Filed 6–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health IT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces updated dates for meetings of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). These meetings are open to the public.

Name of Committee: Health IT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the Health IT Policy Committee.

2016 Meeting Dates and Times

- May 17, 2016, from 9:00 a.m. to 3:00 p.m./Eastern Time
  - This will be an in-person meeting at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008
- June 8, 2016, from 9:30 a.m. to 12:00 p.m./Eastern Time
  - This will be a virtual meeting
- June 23, 2016, from 9:00 a.m. to 3:00 p.m./Eastern Time
  - This will be an in-person meeting at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202
- July 27, 2016 from 10:00 a.m. to 1:00 p.m./Eastern Time (replacing the formerly announced July 13 and August 7 meetings)
  - This will be a virtual meeting

For meeting locations, web conference information, and the most up-to-date information, please visit the calendar on the ONC Web site, *http://www.healthit.gov/FACAS/calendar.*

Contact Person: Michelle Consolazio, email: *michelle.consolazio@hhs.gov.* Please email Michelle Consolazio for the most current information about meetings. 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.

Agenda: The committee will hear reports from its workgroups/task forces

and updates from ONC and other federal agencies. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://www.healthit.gov/facas/health-it-standards-committee.*

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 prior to the meeting date. Oral comments from the public will be scheduled prior to the lunch break and at the conclusion of each meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing wireless access or access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Michelle Consolazio at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: June 2, 2016.

Michelle Consolazio,

FACA Program Director, Office of Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2016–13997 Filed 6–13–16; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health IT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces updated dates for meetings of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). These meeting will be open to the public.

Name of Committee: Health IT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

2016 Meeting Dates and Times

- May 17, 2016, from 9:00 a.m. to 3:00 p.m./Eastern Time
  - This will be an in-person meeting at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008
- June 8, 2016, from 10:00 a.m. to 1:00 p.m./Eastern Time (replacing the June 7, 2016 meeting)
  - This will be a virtual meeting
- June 23, 2016, from 9:00 a.m. to 3:00 p.m./Eastern Time
  - This will be an in-person meeting at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202
- July 27, 2016 from 9:30 a.m. to 1:00 p.m./Eastern Time (replacing the formerly announced July 12 and August 9 meetings)
  - This will be a virtual meeting

For meeting locations, web conference information, and the most up-to-date information, please visit the calendar on the ONC Web site, *http://www.healthit.gov/FACAS/calendar*

Contact Person: Michelle Consolazio, email: *michelle.consolazio@hhs.gov.* Please email Michelle Consolazio for the most current information about meetings. 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.

Agenda: The committee will hear reports from its workgroups/task forces and updates from ONC and other federal agencies. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://www.healthit.gov/FACAS/health-it-policy-committee.*

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 prior to the meeting date. Oral comments from the public will be scheduled prior to the lunch break and at the conclusion of each meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing wireless access or access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Michelle Consolazio at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: June 1, 2016.

Michelle Consolazio,

FACA Program Director, Office of Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2016–13998 Filed 6–13–16; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Urban Indian Health Programs; Urban Indian Education and Research Organization Cooperative Agreement Program Announcement Type: New and Competing Continuation Funding Announcement Number: HHS–2016–IHS–UIHP3–0001; Catalog of Federal Domestic Assistance Number: 93.193

Key Dates

Application Deadline Date: August 18, 2016.

Review Date: August 22, 2016–August 26, 2016.

Earliest Anticipated Start Date: September 15, 2016.

Proof of Non-Profit Status Due Date: August 18, 2016.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications for the Urban Indian Organization Education and Research Cooperative Agreement Program. This program is authorized under the Snyder Act, 25 U.S.C. 13, and Section 301(a) of the Public Health Service Act, 42 U.S.C. 241(a). This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.193.

Background

The Office of Urban Indian Health Programs (OUIHP) oversees the implementation of the Indian Health Care Improvement Act (IHCIA) provisions for making health services more accessible to urban Indians. Pursuant to those authorities, the IHS enters into contracts and grants with urban Indian organizations for the provision of health care and referral services for urban Indians residing in the urban centers. Those services may include (1) alcohol and substance abuse prevention, treatment, rehabilitation and education; (2) mental health needs and assessments; (3) health promotion and disease prevention services; and (4) immunization services. The cooperative agreement provides services and advocacy for urban Indian organizations (UIOs) that include the following four core activities: (1) Public policy; (2) research and data; (3) training and technical assistance; (4) education, public relations and marketing.

Purpose

The purpose of this IHS cooperative agreement is to fund a national urban Indian organization to act as an education and research partner for OUIHP and urban Indian organizations funded under the IHCIA.

Pre-Conference Grant Requirements

The awardee is required to comply with the ''HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications,'' dated December 16, 2013 (''Policy''), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at *http://www.hhs.gov/grants/contracts/contract-policies-regulations/conference-spending/.*

The awardee is required to:

Provide a separate detailed budget justification and narrative for each conference anticipated. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audiovisual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other (explain in detail and cost breakdown). For additional questions please contact Shannon Beyale at (301) 945–3657 or email her at *Shannon.Beyale@ihs.gov.*

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year (FY) 2016 is approximately $800,000. Individual award amounts are anticipated to be between $500,000 and $800,000. The amount of funding available for competing and continuation awards issued under this announcement are subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One award will be issued under this program announcement.

Project Period

The project period is for three years and will run consecutively from September 15, 2016 to September 14, 2019.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

In addition to the usual monitoring and technical assistance provided under the cooperative agreement, the IHS/OUIHP responsibilities shall include:

(1) Assurance of the availability of the services of experienced staff to participate in the planning and development of all phases of this cooperative agreement;

(2) Working closely with the IHS Public Affairs Office regarding dissemination of publications completed under the cooperative agreement and cooperating on the referral of inquiries and request for technical assistance, publications and other information;

(3) Participation in, including the planning of, any meetings conducted as part of project activities;

(4) Assistance in establishing Federal interagency and state contacts necessary for the successful completion of tasks and activities identified in the approved scope of work;

(5) Identification of other awardees and organizations with whom the awardee will be asked to develop cooperative and collaborative relationships; and

(6) Assisting the awardee to establish, review and update priorities for activities conducted under the auspices of the cooperative agreement.

(7) Assisting the awardee to determine which issues will be addressed during the project period, the sequence in which they will be addressed, what approaches and strategies will be used to address them, and how relevant information will be transmitted to specified target audiences and used to enhance project activities and advance the program.

B. Grantee Cooperative Agreement Award Activities

Requirements and obligations of the cooperative agreement recipient shall include:

(1) Work collaboratively with the urban Indian organizations funded under the IHCIA;

(2) Respond in a flexible manner to collaborating on occasional short-term projects, in addition to long-term and on-going efforts;

(3) Work closely with the Federal project officer when hiring new key project staff and planning/implementing new activities;

(4) Consult with the Federal project officer before scheduling any meetings, including project advisory/steering committee meetings, that pertain to the scope of work and at which the project officer's attendance would be appropriate;

(5) Provide the Federal project officer with the opportunity to review, provide advisory input, and approve at the program level, any publications, audiovisuals and other materials produced, as well as meetings/conferences planned under the auspices of this cooperative agreement (such review should start as part of concept development and include review of drafts and final products);

(6) Provide the Federal project officer with an electronic copy of, or electronic access to, each product developed under the auspices of this project;

(7) Participate in the implementation of awardee performance measures, including the collection of information and administrative data as designated by the OUIHP;

(8) Ensure that all products developed or produced, either partially or in full, under the auspices of this cooperative agreement are fully accessible and available for free to members of the public;

(9) Identify IHS/OUIHP as a funding sponsor on written products and during meetings and conferences relevant to cooperative agreement activities;

(10) Acknowledge IHS/OUIHP has uncontested access to any and all data generated under this cooperative agreement, and agree to provide royalty-free, nonexclusive, and irrevocable license for the government to reproduce, publish, or otherwise use any products derived from activities conducted under this cooperative agreement; and

(11) Comply with relevant Office of Management and Budget (OMB) circular provisions regarding lobbying, any applicable lobbying restrictions provided under other law and any applicable restriction on the use of appropriated funds for lobbying activities.

III. Eligibility Information

1. Eligibility

The applicant must demonstrate a national non-profit organization with demonstrated experience working with IHCIA Title V-funded urban Indian health programs. The applicant must provide proof of non-profit status, *e.g.*, 501(c)(3).

Competition is open to a national urban Indian organization that has demonstrated experience working with IHCIA Title V-funded urban Indian health programs.

Current OUIHP grantees are eligible to apply for this new and competing continuation funding under this announcement and must demonstrate that they have complied with previous terms and conditions of the OUIHP grant in order to receive funding under this announcement.

NOTE: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS by obtaining documentation confirming delivery (*i.e.*, FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/dgm/funding/*.

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single-spaced and not exceed five pages).
- Project Narrative (must be single-spaced and not exceed 50 pages).
  - Background information on the organization.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Letter of Support from Organization's Board of Directors.
- 501(c)(3) Certificate.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG–Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Copy of current approved Organizational Chart.
- Documentation of current OMB audit, as required by 45 CFR part 75, subpart F, or other required financial audit.

Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- Face sheets from audit reports. These can be found on the FAC

Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database*.

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 50 pages and must: Be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly address and answer all questions listed under the narrative and place them under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they shall not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant's activities and accomplishments prior to this cooperative agreement award. If the narrative exceeds the page limit, only the first 50 pages will be reviewed. The 50-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report.

Part A: Program Information (35 Pages)

Section 1: Needs

This section should help reviewers understand the UIOs that will be served by the proposed project.

Summarize the overall need for assistance: (1) The target population and its unmet health needs; and (2) socio-cultural determinants of health and health disparities impacting the urban Indian population or communities served and unmet. Demographic data should be used and cited whenever possible to support the information provided.

For each Project Area, in addition to the specific components below, address: (1) Relevant barriers that the project hopes to overcome; (2) the administrative infrastructure to provide the four program requirements: Public policy, research and data, structured training and technical assistance for UIOs and education, public relations and marketing of UIOs; and (3) the previous planning activities the applicant has completed and if the applicant has identified or will establish best-practices or evidence-based practices relative to these services.

Core Activities

1. Public Policy

i. Summarize the public policy opportunities and challenges of UIOs in the implementation of the various laws including, but not limited to, the following:

1. Public Law 111–148, The Patient Protection and Affordable Care Act of March 21, 2010; House of Representatives 4872, the Health Care and Education Reconciliation Act of March 23, 2010; and

2. The Indian Health Care Improvement Reauthorization and Extension Act of 2009 (IHCIA).

ii. Describe the need for education on the IHS Policy on Conferring with Urban Indian Organizations (IHCIA, 25 U.S.C. 1660d).

2. Research and Data

i. Describe the need to collect and analyze health disparities data, morbidity and mortality data, and urban Indian health services costs data in order to reduce urban Indian health disparities and identify, improve, evaluate, and document UIOs through practice-based and evidence-based best practices.

3. Structured Training and Technical Assistance for UIOs

Describe the need for training and technical assistance to support:

i. UIO Leaders.

ii. UIO Board of Directors: Executive roles and responsibilities.

iii. UIO Staff: *i.e.,* clinical staff, administration, business office, health information technology (IT), behavioral health.

Further describe the need for training and technical assistance to support urban Indian organization administration in the following areas:

i. Enhance Revenue and Third Party Billing;

ii. Implement the Payment Systems Reform;

iii. Meet Government Performance and Results Act (GPRA)/Government Performance and Results Modernization Act (GPRAMA) Performance Measure Targets;

iv. International Classification of Diseases (ICD)–10 Planning and Implementation of Medicare Access and CHIP Reauthorization Act (MACRA);

v. Electronic Health Records/Meaningful Use; and

vi. Incentives and Penalties.

4. Education, Public Relations and Marketing of UIOs

i. Summarize the need to market the urban Indian organizations through development of national, regional and local marketing strategies and campaigns.

ii. Describe the need for enhanced communication among local private and non-profit health care entities.

iii. Summarize the need to enhance communication, interaction and coordination on policy and health care reform activities by initiating and maintaining partnerships and collaborative relationships with other urban Indian organizations, national Indian organizations, key state and local health entities, and education and public safety networks.

Part B: Program Planning and Evaluation (10 Pages)

Section 1: Program Plans—Project Goals and Objectives, Methodology, Work Plan, Resolution of Challenges, and Impact

Goals and Objectives

Applicant should:

1. State the goals for the proposed project. For project goals, which should be national in scope, describe the desired short and long-term outcomes in cooperation with the IHS.

2. Provide at least five goals for each of the four core activities. These goals are broad statements that establish the overall direction for, and focus of, a project. They serve as the foundation for developing project objectives.

Applicant should provide at least one specific, achievable, measurable, time-framed outcome objective for each proposed project goal. Outcome objectives are specific statements of positive change to be effected in order to achieve the goals of the project. That is, outcome objectives are measurable steps, or stepping stones, for reaching goals. They form the basis for monitoring progress toward achieving project goals and setting targets for accountability. Collectively, the proposed outcome objectives should frame the set of national outcomes that the applicant wants to achieve in meeting project goals.

Methodology

Propose methods that will be used to meet each of the previously-described program requirements and expectations

in this funding opportunity announcement. As appropriate, include development of effective tools and strategies for ongoing staff training, outreach, collaborations, clear communication, and information sharing/dissemination with efforts to involve urban Indian organization staff and patients, Tribal, Federal, state, and local entities.

1. Describe proposed approaches and activities for achieving project goals and objectives, as outlined in Part A. Program Information Needs. In particular, applicants should demonstrate that the proposed methodological approaches are national in scope and contribute to increased capacity within the urban Indian health system.

2. Describe the specific activities necessary to carry out each methodological approach. Applicants should take into consideration the logic, technical soundness, feasibility, creativity and innovativeness, potential utility, and national applicability of the activities it proposes.

3. The description of the project methodology should cover budget period September 1, 2016 through August 31, 2017.

4. Develop a systematic diagram that links anticipated outcomes with the project's activities/processes and theoretical assumptions. It should include the following basic components: Goal, resources/inputs, activities, outputs, outcomes, impacts, and timelines. The system diagram should be included as part of the application appendix.

5. Evidence should be provided that the approaches and activities can reasonably be expected to be effective.

Work Plan

1. Develop and include a Work Plan that describes the sequence of specific activities and steps that will be used to carry out each proposed methodological approach. Explicitly describe who will conduct each activity, as well as when, where, and how each activity will be carried out.

2. A detailed time line of proposed project activities should be developed by the applicant, and attached as an appendix. The time line should link activities to project objectives and should cover the three years of the project period.

3. Describe an efficient and effective plan for managing the project, including its personnel and resources.

4. Describe an effective plan for monitoring and tracking project activities.

Resolution of Challenges

Discuss challenges, including both opportunities and barriers that are likely to be encountered in designing and implementing the activities described in the Description of Methodology and Work Plan sections, as well as approaches that will be used to address such challenges.

Impact

This section of the Project Narrative discusses the proposed project's national impact, how the applicant plans to engage UIO, and how project activities will yield benefits for UIO.

1. Explain how the proposed project's products and results will have a national scope and applicability.

2. Provide an inclusive description of the target audiences as well as proposed strategies for reaching these audiences.

3. Describe how and to what extent the proposed project activities will directly improve leadership within the urban Indian health organizations being targeted, and contribute to improved health status among urban Indians. The applicant should include a description of how it intends to mobilize its audiences to learn from and actually use the materials, products and resources it has developed to address the four program requirements identified in Part A.—Program Information Needs.

Section 2: Program Evaluation

Evaluation and self-assessment have vital importance for quality improvement and assessing the value-added contribution of urban Indian education and research investments. Consequently, cooperative agreement projects are expected to incorporate a carefully designed and well-planned evaluation protocol capable of demonstrating and documenting measurable progress toward reaching the project's stated goals through achievement of the project's measurable objectives. The evaluation protocol should be based on a clear rationale relating the identified needs of the target population with project goals, award activities, and the evaluation measures. Whenever possible, the measurements of progress toward goals should focus on outcomes and results over which the project has some degree of influence, rather than on intermediate measures such as process or outputs.

Instructions

1. Provide a well-conceived and logical plan for assessing the achievement of the project's process and outcome objectives and for evaluating changes in the specific problems and contributing factors. The evaluation plan should focus primarily on outcomes over which the project has influence and that have the capacity to produce meaningful data on an annual basis.

2. Develop at least two (2) performance measures by which it will track its progress over time. A performance measure is a quantifiable indicator of progress and achievement that includes outcome, output, input, efficiency, and explanatory indicators. It can measure such domains as productivity, effectiveness, quality and timeliness (Government Accounting Standards Board, *http://www.seagov.org/aboutpmg/performance_measurement.shtml*).

Part C: Program Report (5 Pages)

Section 1: Describe major accomplishments over the last 12 months.

Please identify and describe significant program achievements for each of the four core activities. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 12 months.

Please identify and summarize recent major activities of the work done during the project period for each of the four core activities.

B. *Budget Narrative:* This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative. Budget should match the scope of work described in the project narrative. The budget narrative should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact *Grants.gov* Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If

problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), *before* submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, they must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact *Grants.gov* Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to fifteen working days.
- Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this funding announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGM will download the application from *Grants.gov* and provide necessary copies to the appropriate agency officials. Neither the DGM nor the OUIHP will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an

additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 50 page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 70 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (35 Points)

1. The target population and its unmet health needs are described and documented;

2. Socio-cultural determinants of health and health disparities impacting the urban Indian population or communities served are identified and described;

3. Demographic data is used and cited to support the information provided;

4. Relevant barriers that the project hopes to overcome are discussed;

5. Describe how the applicant determined it has the administrative infrastructure to provide the four program requirements: Public policy, research and data, structured training and technical assistance for UIOs, and education, public relations and marketing of UIOs; and

6. Explain previous planning activities the applicant has completed and if the applicant has identified or established best-practices or evidence-based practices relative to each of the four program requirements.

Public Policy

A. Applicant summarized the public policy opportunities and challenges of UIOs of the various laws including: Public Law 111–148, The Patient Protection and Affordable Care Act of March 21, 2010; House of Representatives 4872, the Health Care and Education Reconciliation Act of March 23, 2010; and the Indian Health Care Improvement Reauthorization and Extension Act of 2009.

B. Applicant summarized the need for education on the IHS policy on conferring with UIOs.

Research and Data

Applicant described the need to collect and analyze health disparities data, morbidity and mortality data, and urban Indian health services costs data in order to reduce urban Indian health disparities and identify, improve, evaluate, and document UIOs through practice-based and Evidence-based best practices.

Structured Training and Technical Assistance for UIOs

Applicant described the need for training and technical assistance to support:

A. UIO Leaders;

B. UIO Board of Directors: Executive roles and responsibilities; and

C. UIO Staff: *i.e.,* clinical staff, administration, business office, health IT, behavioral health.

Applicant further described the need for training and technical assistance to support urban Indian organization administration in the following areas:

A. Enhance Revenue and Third Party Billing;

B. Implement the Payment Systems Reform;

C. Meet GPRA/GPRAMA Performance Measure Targets;

D. ICD–10 Planning and Implementation of MACRA;

E. Electronic Health Records/ Meaningful Use; and

F. Incentives and Penalties.

Education, Public Relations and Marketing of UIOs

A. Applicant summarized the need to market the UIOs through development of national, regional and local marketing strategies and campaigns.

B. Applicant described the need for enhanced communication among local private and non-profit health care entities.

C. Applicant summarized the need to enhance communication, interaction and coordination on policy and health care reform activities by initiating and maintaining partnerships and collaborative relationships with other UIOs, national Indian organizations, key state and local health entities, and education and public safety networks.

B. Project Objective(s), Work Plan and Approach (25 Points)

Program Plans—Project Goals and Objectives, Methodology, Work Plan, Resolution of Challenges, and Impact

Goals and Objectives

Applicant stated the goals for each program requirement. Project goals were national in scope and described the desired short and long-term outcomes in cooperation with the IHS. At least five goals for each of the four core activities were provided.

Applicant provided at least one specific, achievable, measurable, time-framed outcome objective for each proposed project goal. The proposed outcome objectives framed the set of national outcomes the applicant wanted to achieve in meeting project goals.

Methodology

Applicant described methods that will be used to meet each of the three project areas requirements and expectations in this funding opportunity announcement. Applicant also addressed development of effective tools and strategies for ongoing staff training, outreach, collaborations, clear communication, and information sharing/dissemination with efforts to involve urban Indian organization staff and patients, Tribal, Federal, state and local entities.

A. Applicant described proposed approaches and activities for achieving project goals and objectives, as outlined in Part A. Program Information Needs. Applicant demonstrated that the proposed methodological approaches were national in scope and contributes to increased capacity within the urban Indian health system.

B. Applicant described the specific activities necessary to carry out each methodological approach. Applicants took into consideration the logic, technical soundness, feasibility, creativity and innovativeness, potential utility, and national applicability of the activities it proposed.

C. The description of the project methodology covered September 1, 2016 through August 31, 2017.

D. Applicant developed a systematic diagram that linked anticipated outcomes with the project's activities/ processes and theoretical assumptions. It included the following basic

components: Goal, resources/inputs, activities, outputs, outcomes, impacts and timelines. The system diagram was included as part of the application appendix.

E. Applicant provided evidence that the approaches and activities can reasonably be expected to be effective.

Work Plan

A. A work plan was included that described the sequence of specific activities and steps that will be used to carry out each proposed methodological approach. The applicant explicitly described who will conduct each activity, as well as when, where, and how each activity will be carried out.

B. A detailed time line of proposed project activities was developed and included in the appendix. The time line linked activities to project objectives and covered the three years of the project period.

C. The applicant described an efficient and effective plan for managing the project, including its personnel and resources.

D. The applicant described an effective plan for monitoring and tracking project activities.

Resolution of Challenges

The applicant discussed challenges, including both opportunities and barriers, that are likely to be encountered in designing and implementing the activities described in the Description of Methodology and Work Plan sections, as well as approaches that will be used to address such challenges.

Impact

A. The applicant explained how the proposed project's products and results will have a national scope and applicability.

B. The applicant provided an inclusive description of its national target audiences as well as proposed strategies for reaching these audiences.

C. The applicant described how and to what extent the proposed project activities will directly improve leadership with the urban Indian health organizations being targeted, and contribute to improved health status among urban Indians. The applicant included a description of how it intends to mobilize its audiences to learn from and actually use the materials, products and resources it has developed to address the four program requirements identified in A.—Program Information needs.

C. Program Evaluation (15 Points)

1. The applicant provided a well-conceived and logical plan for assessing the achievement of the project's process and outcome objectives and for evaluating changes in the specific problems and contributing factors. The evaluation plan focused primarily on outcomes over which the project has influence and that have the capacity to produce meaningful data on an annual basis.

2. The applicant developed at least two (2) performance measures by which it will track its progress over time. The performance measures are quantifiable indicators of progress and achievement that includes outcome, output, input, efficiency, and explanatory indicators. The performance measures can be measured by domains including productivity, effectiveness, quality and timeliness.

D. Organizational Capabilities, Key Personnel and Qualifications (10 Points)

The applicant identified its credibility including how long and why the organization exists, accomplishments and impact, size and characteristics of its constituency, its funding sources and their positive comments on the organization's work, and results of internal and external evaluations of the programs. Included a listing of the current board of directors (the listing of board members includes their status as an urban Indian, professions, education degrees, and board appointment terms.)

Discussed the organization's administrative capacity including:

A. OMB circular administrative requirements for non-profit organizations;

B. Fiscal; and

C. Human resources policies and procedures and audit reporting.

Key Personnel and Qualifications

A. Identified current staff and new staff education, experience, skills, and knowledge; materials published; and previous work of a similar nature.

B. Described data collection strategy to collect, analyze and track data to measure process and impact/outcomes with UIOs, Tribes, national Indian organizations and States and explain how the data will be used to inform program development and service delivery.

E. Categorical Budget and Budget Justification (15 Points)

The applicant was specific and provided an itemized categorical budget and a clear succinct budget narrative justification to support the scope of work described in the project narrative. Did not exceed five pages.

Multi-Year Project Requirements

Projects requiring a second and third year must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

Additional Documents Can Be Uploaded as Appendix Items in *Grants.gov*

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the

Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 70, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved'', but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2016 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS grants management official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75, subpart F.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at *http://www.dpm.psc.gov.* It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Post Conference Grant Reporting

The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, and Section 119 of the Continuing Appropriations Act, 2014; *Office of Management and Budget Memorandum M–12–12:* All HHS/IHS awards containing grants funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for ''Conference X'', must be reported in final detailed actual costs *within 15 days of the completion of the conference.* Cost categories to address should be: *(1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audiovisual, (5) Speakers*

Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *http://www.ihs.gov/dgm/policytopics/*.

E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of Federal Financial Assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/.*

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html;* and *http://www.hhs.gov/civil-rights/index.html.* Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html.* Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html* or call 1–800–368–1019 or TDD 1–800–537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53.*

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following Web site: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf,* and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW., Washington, DC 20201.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery,or gratutity violations potentially affecting the award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mailstop: 09E70, Rockville, Maryland 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Phone: (301) 443–5204, Fax: (301) 594–0899, Email: *Robert.Tarwater@ihs.gov*.

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW., Cohen Building, Room 5527, Washington, DC 20201, URL: *http://oig.hhs.gov/fraud/reportfraud/index.asp*, (Include ''Mandatory Grant Disclosures'' in subject line) Fax: (202) 205–0604, (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies

described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Sherriann Moore, Acting Director, Office of Urban Indian Health Programs, 5600 Fishers Lane, Mail Stop: 08E65C, Rockville, MD 20857, Phone: (301) 443–1044, Fax: (301) 443–4794, Email: *Sherriann.Moore@ihs.gov*, Or Shannon Beyale, Health Information Specialist, Office of Urban Indian Health Programs, 5600 Fishers Lane, Mail Stop: 08E65C, Rockville, MD 20857, Phone: (301) 945–3657, Fax: (301) 443–4794, Email: *Shannon.Beyale@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Donald Gooding, Senior Grant Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–5204, Fax: (301) 594–0899, Email: *Donald.Gooding@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: May 7, 2016.

Elizabeth Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–14043 Filed 6–13–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

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

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

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

Date: June 16–17, 2016.

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

Agenda: To review and evaluate grant applications.

Place: Wyndham Grande Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: William Benzing, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov*.

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

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

Date: June 20–21, 2016.

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

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

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

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

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

Dated: June 8, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13931 Filed 6–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0445]

Limited Purpose Cooperative Research and Development Agreement—UAS Research With the University of Massachusetts Amherst

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a cooperative research and development agreement (CRADA) with several companies to evaluate small unmanned aircraft systems (SUAS) and their airborne sensors, to determine their potential for use in a maritime environment by a first responder and DHS operational components. The Coast Guard will conduct flight testing and evaluation of SUAS under a wide variety of simulated but realistic and relevant real-world maritime operational scenarios, such as law enforcement, search and rescue, and maritime environmental response. While the Coast Guard is currently considering partnering with the University of Massachusetts Amherst, it solicits public comment on the possible participation of other parties in the proposed CRADA, and the nature of that participation. The Coast Guard also invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider submitting proposals for consideration in similar CRADAs.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before July 14, 2016.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before July 14, 2016.

ADDRESSES: Submit comments using one of the listed methods, and see **SUPPLEMENTARY INFORMATION** for more information on public comments.

- *Online—http://www.regulations.gov* following Web site instructions.
- *Fax*—202–493–2251.

• *Mail* or *hand deliver*—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. Hours for hand delivery are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–366–9329).

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact Dr. Andrew Niccolai, Project Official, Aviation Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2670, email *Andrew.M.Niccolai@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, toll free 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on this notice. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

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

Comments should be marked with docket number USCG–2016–0445 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ × 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following the Web site's instructions. You can also view the docket at the Docket Management Facility (see the mailing address under **ADDRESSES**) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Discussion

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

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

Under the proposed CRADA, the Coast Guard's Research and Development Center (R&DC) will collaborate with one or more non-Federal participants. Together, the R&DC and the non-Federal participants will evaluate SUAS and their airborne sensors to determine their potential for use in a maritime environment by a first responder and DHS operational components.

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

(1) The R&D Center will define the objectives of the evaluation to be conducted during this CRADA in a series of Assessment Plans that will guide the execution of simulated but realistic and relevant real-world maritime operational scenarios that will determine the sUAS' ability to contribute to USCGC's mission effectiveness in the areas of: (A) Counter GPS Jamming/Spoofing for sUAS; (B) Sense & Avoid Systems for UAS; (C) UAS Traffic Monitoring Systems; and (D) NUSTAR standards for airworthiness certifications;

(2) Provide the SUAS test range, test range support, facilities, and all approvals required for a 5 day demonstration under the CRADA;

(3) Conduct the privacy threshold analysis required for the demonstration;

(4) Conduct the privacy impact assessment required for the demonstration;

(5) Coordinate any required spectrum approval for the SUAS;

(6) Coordinate and receive any required interim flight clearance for the demonstration;

(7) Provide any required airspace coordination and de-confliction for the demonstration test plan;

(8) Collect and analyze demonstration test plan data; and

(9) Develop a demonstration final report documenting the methodologies, findings, conclusions, and recommendations of this CRADA work.

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

(1) Provide the faculty, students, and professional researchers with the required competencies, skill sets, and laboratory facilities to collaborate on these topic areas;

(2) Provide technically mature, flight proven sUAS, their fully-integrated sensors, and sUAS operators. Those operators shall operate the sUAS;

(3) Supply access to wind tunnels, engineering/manufacturing laboratories, and modeling and simulation software to meet evaluation objectives in determining sUAS mission effectiveness; and

(4) Provide personnel to collect data, analyze the data, and then compile the results in a series of collaborative reports.

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

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

(2) How well they address the following criteria:

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

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

Currently, the Coast Guard is considering the University of Massachusetts Amherst for participation in this CRADA, because the University of Massachusetts Amherst has demonstrated the ability to operate

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

SUAS in a maritime environment. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology demonstration effort. The goal of this CRADA is to identify and investigate the potential of the SUAS and their airborne sensors to determine their potential use in a maritime environment by the first responder and the DHS operational components. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S.

This notice is issued under the authority of 5 U.S.C. 552(a) and 15 U.S.C. 3710(a).

Dated: June 2, 2016.

Dennis C. Evans,

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

[FR Doc. 2016–14073 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0446]

Cooperative Research and Development Agreement: Diesel Outboard Engine Development

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

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

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before July 14, 2016.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before July 14, 2016.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact LT Keely Higbie, Project Official, Surface Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2815, email *Keely.J.Higbie@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Comments should be marked with docket number USCG–2016–0446 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) How well they address the following criteria:

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

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

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

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

Dated: June 2, 2016.

Dennis C. Evans,

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

[FR Doc. 2016–14074 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0444]

Cooperative Research and Development Agreement: Laser Eye Protection

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a Cooperative Research and Development Agreement (CRADA) with Metamaterials Technologies USA Inc. to evaluate and test the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with LEP technology. The Coast Guard Research and Development Center (RDC) will obtain materials from Metamaterials Technologies USA Inc. to test the performance, reliability, suitability, and effectiveness of their product as laser protective eyewear. While the Coast Guard is currently considering partnering with Metamaterials Technologies USA Inc., the agency is soliciting public comment on the possible nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential non-Federal participants to propose similar CRADAs.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before June 24, 2016.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before June 24, 2016.

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

Information for more information on public comments.

- *Online—http://www.regulations.gov* following Web site instructions.
- *Fax*—202–493–2251.
- *Mail or hand deliver*—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. Hours for hand delivery are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–366–9329).

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact LT Dillon Sapp, Project Official, Aviation Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2893, email *dillon.r.sapp@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Comments should be marked with docket number USCG–2016–0444 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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

Discussion

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

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

Under the proposed CRADA, the R&D Center will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will collect information/data for performance, reliability, maintenance requirements, and other data on LEP.

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

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

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

(3) Prepare the test platform for laser testing;

(4) Provide laboratory equipment and personnel to complete the testing phases;

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

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

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

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

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

(3) Provide for shipment and delivery required for testing under this CRADA;

(4) Provide technical oversight, technical equipment, and materials provided for testing under this CRADA; and

(5) Provide/pay for travel and other associated personnel costs and other required expenses for the Non-federal participant's personnel.

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

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

(2) How well they address the following criteria:

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

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

Currently, the Coast Guard is considering Metamaterials Technologies USA Inc. for participation in this CRADA. This consideration is based on the fact that Metamaterials Technologies USA Inc. has demonstrated its technical ability as the developer and manufacturer of laser protective materials. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

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

Dated: June 2, 2016.

Dennis C. Evans,

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

[FR Doc. 2016–14038 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

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

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0105]

Agency Information Collection Activities: Application To Use the Automated Commercial Environment (ACE)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension and revision of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Use the Automated Commercial Environment (ACE). CBP is proposing that this information collection be extended with a change to the burden hours resulting from the addition of a new application for brokers, importers, sureties, attorneys and other parties to establish an ACE Portal account to file protests. There are no proposed changes to the existing ACE Portal application for imported merchandise. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 15, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application to Use the Automated Commercial Environment (ACE).

OMB Number: 1651–0105.

Abstract: As of July 23, 2016, the Automated Commercial Environment (ACE) will be the sole CBP-authorized electronic data interchange (EDI) system for processing electronic entry and entry summary filings of certain entry types. Pursuant to Executive Order 13659, a deadline of December 31, 2016, was established for participating Federal agencies to have capabilities, agreements, and other requirements in place to utilize the International Trade Data System (ITDS) and supporting systems, such as ACE, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export. *See* 79 FR 10655 (February 25, 2014). ACE supports government agencies and the trade community with border-related missions with respect to moving goods across the border efficiently and securely. Once ACE is fully implemented, all related CBP trade functions and the trade community will be supported from a single common user interface.

In order to establish an ACE Portal account, participants submit information such as their name, their employer identification number (EIN) or social security number, and if applicable, a statement certifying their capability to connect to the internet. This information is submitted through the ACE Secure Data Portal which is accessible at: *http://www.cbp.gov/trade/automated*.

CBP is proposing to add the capability of electronically filing protests to ACE. A protest is a procedure whereby a private party may administratively challenge a CBP decision regarding imported merchandise and certain other CBP decisions. Trade members wishing to establish a protest filer account will need to submit the following data elements:

1. Organization Information
   a. Protest Filer Number (EIN, SSN, or CBP Assigned Number)
   b. Organization Name
   c. Organization Type
   d. End of Fiscal Year (month and day)
   e. Mailing Address
2. ACE Account Owner Information
   a. Name
   b. Date of Birth
   c. Email Address
   d. Telephone Number
   e. Fax Number (optional)
   f. Account Owner address if different from Company Address
3. Filing Notification Point of Contact
   a. Name
   b. Email address

Current Actions: CBP is proposing that this information collection be extended with a change to the burden hours resulting from the addition of a new application for protest filers to establish an ACE Portal account. There are no proposed changes to the existing ACE Portal application, or changes to the burden hours, for other ACE accounts.

Type of Review: Extension (with change).

Affected Public: Businesses.

Application to ACE (Import)

Estimated Number of Respondents: 21,100.

Estimated Number of Total Annual Responses: 21,100.

Estimated Time per Response: .33 hours.

Estimated Total Annual Burden Hours: 6,963.

Application to ACE (Export)

Estimated Number of Respondents: 9,000.

Estimated Number of Total Annual Responses: 9,000.

Estimated Time per Response: .066 hours.

Estimated Total Annual Burden Hours: 594.

Application to ACE (Protest)

Estimated Number of Respondents: 3,750.

Estimated Number of Total Annual Responses: 3,750.

Estimated Time per Response: .066 hours.

Estimated Total Annual Burden Hours: 248.

Dated: June 9, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–14003 Filed 6–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0014]

Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration for Free Entry of Unaccompanied Articles (Form 3299). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 14, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal**

Register (81 FR 9870) on February 26, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651–0014.

Form Number: Form 3299.

Abstract: 19 U.S.C. 1498 provides that when personal and household effects enter the United States but do not accompany the owner or importer on his/her arrival in the country, a declaration is made on CBP Form 3299, Declaration for Free Entry of Unaccompanied Articles. The information on this form is needed to support a claim for duty-free entry for these effects. This form is provided for by 19 CFR 148.6, 148.52, 148.53 and 148.77. CBP Form 3299 is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%203299.pdf.*

Current Actions: This submission is being made to extend the expiration date with no changes to the burden hours or to CBP Form 3299.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 112,500.

Dated: June 9, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–14001 Filed 6–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0023]

Agency Information Collection Activities: Request for Information

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Request for Information (CBP Form 28). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 14, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 18866) on April 1, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Request for Information.

OMB Number: 1651–0023.

Form Number: CBP Form 28.

Abstract: Under 19 U.S.C. 1500 and 1401a, Customs and Border Protection (CBP) is responsible for appraising imported merchandise by ascertaining its value; classifying the merchandise under the tariff schedule; and assessing a rate and amount of duty to be paid. On occasions when the invoice or other documentation does not provide sufficient information for appraisement or classification, CBP may request additional information through the use of CBP Form 28, *Request for Information.* This form is sent by CBP personnel to importers, or their agents, requesting additional information. CBP Form 28 is provided for by 19 CFR 151.11. A copy of this form and instructions are available at *http://forms.cbp.gov/pdf/CBP_Form_28.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 60,000.

Dated: June 9, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–14002 Filed 6–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5933–N–01]

Notice of Neighborhood Stabilization Program; Changes to Closeout Requirements Related to Program Income

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice describes changes to closeout requirements applied to and additional regulations waived for grantees receiving grants under the three rounds of funding under the Neighborhood Stabilization Program who are also grantees under the Community Development Block Grant (CDBG) program.

DATES: *Effective Date:* June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7286, Washington, DC 20410; telephone number 202–708–3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Neighborhood Stabilization Program (NSP) was established by Division B, Title III of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008), for the purpose of stabilizing communities that have suffered from foreclosures and abandonment. As established by HERA, NSP provided grants to all states and selected local governments on a formula basis. The American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5, approved February 17, 2009) authorized additional NSP grants to be awarded to states, local governments, nonprofits and a consortium of nonprofit entities, but on a competitive basis. The Recovery Act also authorized funding for national and local technical assistance providers to support NSP grantees. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd- Frank Act) (Pub. L. 111–203, approved July 21, 2010) authorized a third round of Neighborhood Stabilization grants to all states and select local governments on a formula basis.

The purpose of the funds awarded under the three rounds of NSP is to target the stabilization of neighborhoods negatively affected by properties that have been foreclosed upon and abandoned. The notice, Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants, published October 19, 2010 (75 FR 64322) (''Unified NSP Notice''), provides further background for these programs, the program principles, and the objectives and outcomes of the NSP program. The Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture (Closeout Notice), published November 27, 2012 (77 FR 70799), amended the Unified Notice by adding grant closeout and related provisions. In addition, the Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009, 74 FR 21377 (May 7, 2009), as amended by subsequent notices (''NSP2 NOFA''), includes requirements specific to the competitive round of funding under the Recovery Act.

II. This Notice

The primary purpose of this notice is to revise requirements set forth in the amended Unified NSP Notice and the Closeout Notice to revise the treatment of program income for all three rounds of NSP by allowing NSP program income received by a CDBG recipient to be transferred by the recipient from the NSP program to the CDBG program. After the transfer is carried out, any transferred program income will be subject to the CDBG program income regulations. Following publication of this notice, HUD will update the issued NSP closeout instructions (Notice CPD 14–02) to conform the instructions for consideration of program income during and after closeout of NSP grants.

The Closeout Notice generally required that with the exception of de minimis amounts received after grant closeout, program income generated by NSP-assisted activities must continue to be used for NSP uses. In attempting to implement this requirement, HUD has become aware that it is, in many instances, administratively unworkable for NSP grantees and difficult for HUD to oversee effectively. For NSP grantees that are generating a substantial amount of program income, the requirement to use this program income prior to drawing additional funds from the grant's line of credit is also impeding their ability to completely expend their NSP grant funds. Further, some grantees no longer have an adequate pool of NSP-eligible foreclosed or abandoned properties in their target areas although they do have other needs that CDBG funding could be used to address. On HUD's part, with dwindling administrative resources remaining from those provided for the NSP program, the inability to achieve the criteria for grant closeout for these grantees creates a looming oversight issue.

Several NSP grantees have asked that HUD reconsider the NSP program income requirements and allow the same flexibility for the NSP program income as is currently allowed for the CDBG Disaster Recovery (CDBG–DR) grants under Public Law 113–2. These requirements allow a grantee to transfer CDBG–DR program income received prior to grant closeout to the recipient's CDBG program. HUD agrees that this solution addresses the issues identified above and so this notice will provide the same flexibility to any NSP grantee that is also a CDBG grantee (entitlement or state) with an open formula entitlement grant or a unit of general local government (UGLG) recipient of a CDBG grant from a state. HUD will not allow transfer of NSP program income to the CDBG program if the transfer will result in the NSP grantee failing to meet the statutory NSP 25 percent set-aside requirement for low-income housing. To prevent such a failure, the grantee must obtain HUD approval by notifying HUD in writing prior to a transfer of program income from NSP to CDBG to permit HUD's review of compliance with the NSP 25 percent requirement. HUD will notify the grantee of any possible issues. Based on the data available, HUD anticipates that issues of this sort will be uncommon.

Since this notice applies to grantees receiving grants under any of the three rounds of NSP funding, the terms NSP1, NSP2 or NSP3 are used to describe each of the three funding rounds. When referring to the grants, grantees, assisted activities, and implementation rules under HERA, this notice will use the term ''NSP1.'' When referring to the grants, grantees, assisted activities, and implementation rules under the

Recovery Act, this notice will use the term ''NSP2.'' When referring to the grants, grantees, assisted activities, and implementation rules under the Dodd-Frank Act, this notice will use the term ''NSP3.'' Collectively, the grants, grantees, assisted activities, and implementation rules under these three rounds of funding are referred to as NSP. NSP is a component of the CDBG program, authorized under the Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5301 *et seq.*).

III. Authority To Provide Alternative Requirements and Grant Regulatory Waivers

HERA appropriated $3.92 billion for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the funds are to be treated as CDBG funds. HERA, the Recovery Act, and the Dodd-Frank Act authorize the Secretary of HUD to specify alternative requirements to any provision under Title I of the HCD Act except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. Any alternative requirements must be in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting for NSP1 or facilitating the NSP2 or NSP3 use of grant funds. The CDBG requirements will apply to NSP funds except where this or other published notices supersede or amend such requirements.

This Notice amends an existing alternative requirement by allowing an NSP grantee that is also a CDBG formula grantee or a State CDBG UGLG grant recipient to transfer NSP program income to the CDBG program rather than limiting the use of such program income to NSP purposes before, at, and after grant closeout. Except as described in this notice and previous notices governing NSP, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570, subpart I, for states or, for CDBG entitlement communities, including those at 24 CFR part 570, subparts A, C, D, J, K, and O, as appropriate, apply to the use of these funds. The State of Hawaii was allocated funds and will be subject to part 570, subpart I, as modified by this notice.

IV. Alternative Requirements and Regulatory Waivers

1. Section N of the Unified NSP Notice and section N of Appendix I of the NSP2 NOFA is amended to add a new subparagraph 4, as follows:

''4. An NSP grantee may transfer NSP program income at any time before, at the time of, or after closeout to its annual CDBG program, or, if it is an UGLG that is also a State CDBG grant recipient, to its State CDBG program. In addition, a State grantee may transfer NSP program income before or at closeout to any annual CDBG-funded activities carried out by a UGLG or Indian tribe within the State. Program income generated by an NSP-assisted activity and received by a CDBG grantee, or received and retained by a CDBG subgrantee, after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. Transferred NSP program income will become CDBG program income upon receipt in the Integrated Disbursement and Information System (IDIS). Prior to carrying out a transfer, the grantee must notify HUD in writing of the amount of program income on hand to be transferred, the grant number and activity number associated with the NSP activity that generated the program income, and the name of the CDBG program grantee (or subgrantee, if appropriate) to which the funds will transfer. On receipt of a notification, HUD will review NSP grant information reported in the Disaster Recovery Grant Reporting System (DRGR) for the applicable grant to ensure the grantee is in compliance with the requirement at paragraph E.2.e of the Unified Notice, 75 FR 64331, for NSP1 and NSP3 grantees, and Appendix I of the NSP2 NOFA for NSP2 grantees, and only approve the transfer if use of NSP funds remaining after the transfer will comply with this requirement. After HUD approval, if NSP program income funds have already been receipted in DRGR, the grantee must first revise the DRGR submission to subtract the amounts receipted there prior to receipting any transferred amounts in IDIS. Subsequent to transfer, all transferred program income must be treated (documented, receipted in IDIS, used, and reported on) in accordance with CDBG program requirements. Any NSP program income that is not receipted in IDIS will retain its NSP characteristics and requirements in accordance with published notices governing NSP.''

2. Section Y(c)(3)(i) of the Unified NSP Notice is amended to read as follows:

''Any NSP program income on deposit in financial institutions at the time the closeout agreement is signed and any NSP program income currently held by subrecipients or consortium members, together with the amounts of any NSP program income that have been transferred to the CDBG program of the grantee or a specified UGLG recipient prior to execution of the closeout agreement.''

3. Under the ''Background'' subheading in section Z of the Unified NSP Notice, the *Program Income* paragraphs are amended to read as follows:

''*Program Income.* NSP program income received before, at the time of, or after closeout may be transferred to an annual CDBG program as provided in section N and transferred funds will become CDBG program income upon receipt in IDIS (such receipt in IDIS will be subsequent to edits to remove receipt of the funds in DRGR, if such receipt was already entered). Upon transfer, CDBG program income will be subject to all CDBG statutory and regulatory requirements for program income.

''Any NSP program income not transferred to CDBG shall, subject to the de minimis exception provided for in section Y, continue to be used in accordance with NSP requirements. The un-transferred funds will retain NSP characteristics and be subject to NSP requirements so the additional flexibility created by the legislation for the creation of financing mechanisms, development of new housing, operation of land banks, and service of families up to 120 percent of Area Median Income (AMI), will remain in place. However, HUD notes that continued acquisition of new land bank property after closeout with NSP program income could undermine the urgency of finding uses for the properties already acquired. Grantees will be required to allocate 25 percent of NSP program income to housing for families with less than 50 percent of AMI when the amount of annual program income received by a grantee is sufficient to make application of this requirement reasonable. After grant closeout, former NSP grantees that are CDBG entitlements or State governments will report at least annually as provided for by HUD, initially in DRGR and later in an enhanced IDIS, on the receipt and use of NSP program income, and the disposition of land-banked properties. These grantees must also include NSP program income in the annual CDBG Action Plan or substantial amendment in accordance with CDBG requirements. All former NSP grantees, including nonprofits and nonentitlement units of general local government receiving funds directly from HUD, must report at least annually in a form acceptable to the Secretary regarding enforcement of any NSP continuing affordability restrictions. Reporting will continue over the course of the minimum period

of affordability set forth in HOME program standards at 24 CFR 92.252 (e) and 92.254(a)(4).

''Finally, most program income will be received by CDBG entitlement cities and counties, and by states, which have systems and procedures to manage NSP revenues, which are treated in most respects like CDBG revenues. However, non-profit consortium members in NSP2 grant consortia that receive revenues generated by NSP projects will not have access to the state and municipal CDBG tracking systems. Further, the CDBG regulation and Office of Management and Budget (OMB) circular implemented at 24 CFR 84.24(e) or 2 CFR 200.307(f), as applicable, do not require that non-profit grantees continue to treat revenues generated from use of NSP funds and received after grant closeout as federal funds unless HUD regulations or the terms and conditions of the award provide otherwise. Thus, for NSP2 grantees that are not direct formula CDBG grantees (non-profits and non-entitlement local governments, including those that are part of a consortium), HUD is requiring that revenues generated by projects funded before closeout but received within 5 years after grant closeout must be used for NSP-eligible activities and meet NSP benefit requirements, but no other federal requirements would apply. With the exception of income earned from the sale of NSP-assisted real property or loans, any income earned by such post-closeout use of funds would not be governed by any NSP requirements and would be miscellaneous revenues, although HUD encourages such grantees to apply NSP principles to subsequent uses of the funds.''

4. The paragraphs in section Z under the ''Requirements'' subheading are amended to read as follows:

''Requirements

''1. *Program Income.* Gross revenues received by NSP grantees after closeout will be governed by the following requirements:

''a.i. After notifying HUD in writing and receiving prior written approval, the grantee may receipt the amounts to IDIS (after first revising any DRGR entries related to the funds) and add them to the grantee's CDBG program income receipts and all relevant CDBG program income requirements shall then apply. HUD will approve a transfer unless the transfer would result in non-compliance with the requirement at 75 FR 64331, paragraph E.2.e based on the use of the NSP funds that would remain after transfer.

''a.ii. If the amounts are not receipted in IDIS, annual amounts of program income in excess of $25,000 shall be used in accordance with all NSP requirements for eligible NSP properties, uses, and activities, including new construction, financing mechanisms, and management and disposition of land bank property.

''b. If annual NSP program income does not exceed $25,000, the funds shall be used for general administrative costs related to ensuring continued affordability of NSP units or added to the grantee's CDBG program income receipts and the CDBG requirements at 24 CFR 570.500(a)(4) shall apply, which may exclude such amounts from the definition of program income.

''c. NSP program income may provide benefit to individuals and families with incomes up to 120 percent of AMI as permitted in NSP under section II.E;

''d. If a grantee's annual NSP program income exceeds $250,000 (after any transfer of program income to CDBG), 25 percent of the program income shall be used to house individuals or families below 50 percent of AMI; in instances in which a grantee's annual NSP program income does not exceed $250,000, the requirements of paragraph II.E.2.e do not apply.

''e. NSP2 grantees that are not CDBG entitlement communities or States must use post-closeout revenues generated from NSP-assisted activities funded before closeout for NSP purposes. If the grantee does not have another ongoing grant received directly from HUD at the time of closeout, then in accordance with 24 CFR 570.504(b)(5), income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by NSP or CDBG rules, except that such income shall be used for activities that meet one of the national objectives in 24 CFR 570.208 and the eligibility requirements described in section 105 of the HCD Act. The provisions of 24 CFR 570.504(b)(5) are waived to limit its application to income received within 5 years of grant closeout. Any income received 5 years after grant closeout, as well as program income from funds outlaid after the date of the closeout agreement may be used without restriction. Such grantees are encouraged to use such funds in accordance with the principles above.

''f. States may continue to act directly to implement NSP activities post-closeout.

''g. HUD will provide direction to grantees by the date of closeout on procedures for reporting and tracking NSP program income revenues. Tracking will continue in DRGR until IDIS enhancements to allow NSP property registry and program income tracking are developed and released.''

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for grants made under NSP are as follows: 14.218; 14.225; and 14.228.

Paperwork Reduction Act

HUD has approval from OMB for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB approval is under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 1–800–877–8339.

Dated: May 16, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2016–14062 Filed 6–13–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX.16.CG00.GDQ03.00]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Yukon-Kuskokwim Delta Berry Outlook.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments are considered, we must receive them on or before August 15, 2016.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028–NEW, Yukon-Kuskokwim Delta Berry Outlook' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Nicole Herman-Mercer, Social Scientist, at (303) 236–5031 or *nhmercer@usgs.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Yukon-Kuskokwim (YK) Delta Berry Outlook is a data and observer driven ecological monitoring and modeling framework that forecasts changes in berry habitat and abundance with climate and environmental change. In order to create a monitoring protocol and modeling framework we will solicit local knowledge of berry distribution and abundance from members of Yukon-Kuskokwim communities. Participants from the communities will take part in a survey that asks yes or no questions about the timing, abundance, and distribution of three types of berries that are important in their communities. Personally Identifiable Information (PII) will be limited to four elements: Names, phone numbers, emails, and the name of the village they reside in. This PII will be collected in order to communicate project results and solicit feedback on the project itself for evaluation purposes. Statistical analysis will be performed on the survey responses in order to ascertain if a consensus exists among participants within villages and among villages. The survey results will be one source of information used to create a model forecasting changes in Tribal food sources.

The USGS mission is to serve the Nation by providing reliable scientific information to describe and understand the Earth. This project will collect information from individuals to better understand the abundance, distribution, and variability of berry resources in the Yukon-Kuskokwim Delta region of Alaska. The people of the YK delta rely on wild berries for a substantial part of their diet and hold information about the long term distribution and abundance of berries that is useful for understanding current and future changes to berry habitat due to climate change impacts that will effect both human and wildlife populations of the Yukon Delta region and the Yukon Delta National Wildlife Refuge.

II. Data

OMB Control Number: 1028—NEW.

Title: Yukon-Kuskokwim Delta Berry Outlook.

Type of Request: New information collection.

Affected Public: Individuals; Tribal members that reside in the villages of Chevak, Hooper Bay, Kotlik, and Emmonak, Alaska.

Respondent's Obligation: None, participation is voluntary.

Frequency of Collection: One-time.

Estimated Annual Number of Respondents: Forty.

Estimated Total Number of Annual Responses: Forty.

Estimated Time per Response: One hour.

Estimated Annual Burden Hours: Forty hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: None.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Kenna Butler,

Acting Branch Chief, National Research Program—Central Branch.

[FR Doc. 2016–14033 Filed 6–13–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/A0A501010.999900 253G]

Proclaiming Certain Lands as Reservation for the Bay Mills Indian Community

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 2.00 acres, more or less, an addition to the reservation of the Bay Mills Indian Community of Michigan on March 31, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS–4642–MIB, 1849 C Street NW., Washington, DC 20240, telephone: (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), for the land described below. The land was proclaimed to be part of the Bay Mills Indian Reservation of the Bay Mills Indian Community of Michigan, County of Chippewa and State of Michigan.

Bay Mills Indian Reservation

Legal description containing 2.00 acres, more or less.

A parcel of land located in the Northwest ¼ of the Northeast ¼ of Section 19, Township 47 North, Range 3 West, Bay Mills Township, Chippewa County, Michigan, more particularly described as commencing at the North ¼ Corner of said Section 19; thence S87°32′28″ E. along the North line of said Section 19 a distance of 200.00 feet to the POINT OF BEGINNING; thence continuing S87°32′28″ E. along said

North line a distance of 255.10 feet; thence S02°27′32″ W. a distance of 341.51 feet; thence N87°32′28″ W. a distance of 255.10 feet; thence N02°27′32″ E. a distance of 341.51 feet to the POINT OF BEGINNING; containing 2.00 acres, more or less.

The above-described lands contain a total of 2.00 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads, and pipelines or any other valid easements of rights-of-way or reservations of record.

Dated: May 23, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–14028 Filed 6–13–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FWS–HQ–FAC–2016–N074; FF09F42300–FVWF97920900000–XXX]

Sport Fishing and Boating Partnership Council Charter

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of renewal.

SUMMARY: Following consultation with the General Services Administration, the Secretary of the Interior has renewed the Sport Fishing and Boating Partnership Council (Council) charter for 2 years. A Federal advisory committee, the Council will foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States.

FOR FURTHER INFORMATION CONTACT: Brian Bohnsack, Council Coordinator, by telephone at 703–358–2435, or by email at *brian_bohnsack@fws.gov.*

SUPPLEMENTARY INFORMATION: The Council will advise the Secretary of the Interior on aquatic conservation endeavors that foster partnerships to benefit recreational fishery resources and recreational boating, and that encourage partnerships among industry, the public, and government. The Council will conduct its operations in accordance with the provisions of the FACA (5 U.S.C. Appendix). It will report to the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service. The Council will function solely as an advisory body.

Certification: I hereby certify that the Sport Fishing and Boating Partnership Council is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k), the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and Executive Order 12962 of June 7, 1995 (60 FR 30769; June 9, 1995), as amended by Executive Order 13474 of September 26, 2008 (73 FR 57229; October 1, 2008).

Dated: May 24, 2016.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2016–13986 Filed 6–13–16; 8:45 am]

BILLING CODE 4310–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21094; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by July 14, 2016.

ADDRESSES: Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains were removed from the Blood Run National Historic Landmark, Lyon County, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Indians of Oklahoma; the Ponca Tribe of Nebraska; and the Winnebago Tribe of Nebraska.

History and Description of the Remains

In 1980, human remains representing, at minimum, two individuals were removed from the Blood Run National Historic Landmark, site number 13LO2, in Lyon County, IA. Several small skeletal elements were collected from the surface of the mounds during an archeological survey. These human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program. The human remains were identified as one juvenile and one adult, both of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals were removed from the Blood Run National Historic Landmark, site number 13LO2, in Lyon County, IA. The human remains were part of the

Amy Harvey collection. Amy Harvey collected Oneota materials while doing doctoral research at the University of Wisconsin-Madison in the early 1960s, and retained the materials when she began teaching at Stephens College in Columbia, Missouri, in 1965. The human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program in 2010. The human remains were identified as one subadult, approximately two years old, and one adult. Sex could not be determined. No known individuals were identified. No associated funerary objects are present.

The Blood Run National Historic Landmark (site 13LO2) is a large Oneota tradition village site located in Iowa and South Dakota, straddling the Big Sioux River southeast of Sioux Falls, SD. Archeological evidence, including radiocarbon dates and trade artifacts, suggests that the site was most intensively occupied from A.D. 1500–1700. Tribal histories, supported by French historical maps and documents, strongly suggest that the Omaha (possibly including the Ponca at this time), Iowa, and Oto tribes were present in the area at that time and were the probable residents of the site. The Ho-Chunk and Winnebago are also ethnohistorically linked to these tribes. Based on this contextual information, it has been determined that there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; and the Winnebago Tribe of Nebraska.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; and the Winnebago Tribe of Nebraska.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by July 14, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; and the Winnebago Tribe of Nebraska, may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; and the Winnebago Tribe of Nebraska, that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–14014 Filed 6–13–16; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–538 (Final)]

Certain Corrosion-Resistant Steel Products From Taiwan; Termination of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: On June 2, 2016, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation concerning certain corrosion-resistant steel products from Taiwan (81 FR 35299). Accordingly, the countervailing duty investigation concerning certain corrosion-resistant steel products from Taiwan (Investigation No. 701–TA–538 (Final) is terminated.

DATES: Effective Date: June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: June 8, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–13978 Filed 6–13–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1005]

Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 10, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ajinomoto Co., Inc. of Japan and Ajinomoto Heartland Inc. of Chicago, Illinois. A letter supplementing the complaint was filed on May 20, 2016. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for

importation, and the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of production by reason of infringement of certain claims of U.S. Patent No. 7,666,655 (''the '655 patent'') and U.S. Patent No. 6,180,373 (''the '373 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 8, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of production by reason of infringement of one or more of claims 4, 7, 8, and 20 of the '655 patent and claim 10 of the '373 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Ajinomoto Co., Inc., 15–1, Kyobashi 1-chome, Chuo-Ku, Tokyo, 104–8315, Japan

Ajinomoto Heartland Inc., 8430 W. Bryn Mawr Avenue, Suite 650, Chicago, IL 60631–3421

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

CJ CheilJedang Corp., CJ CheilJedang Center, 330, Dongho-ro, Jung-Gu, Seoul, Republic of Korea

CJ America, Inc., 3500 Lacey Road, Suite 230, Downers Grove, Illinois 60515–5423

PT CheilJedang Indonesia, Menara Jamsostek, 21st Floor, JL. Jend. Gatot Subroto Kav.38, Jakarta 12710, Indonesia

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge. The Office of Unfair Import Investigations will not be participating as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 9, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–14011 Filed 6–13–16; 8:45 am]

BILLING CODE 7020–02–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 16–01]

Establishment of MCC Advisory Council and Call for Nominations

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C.—App., MCC intends to establish the MCC Advisory Council (''Advisory Council''), and is hereby soliciting representative nominations. The Council shall serve MCC in a solely advisory capacity and provide insight regarding innovations in infrastructure, technology and sustainability; perceived risks and opportunities in MCC partner countries; new financing mechanisms for developing country contexts; and shared value approaches. The Advisory Council will provide a platform for systematic engagement with the private sector and contribute to MCC's mission—to reduce poverty through sustainable, economic growth. MCC will use the advice, information and recommendations provided by the Advisory Council to inform compact development and broaden and deepen public and private sector partnerships for more impact and leverage. The MCC Vice President of Compact Operations affirms that the creation of the Advisory Council is necessary and in the public interest.

The Advisory Council is seeking members representing a diverse group of private sector organizations with expertise in infrastructure, business and finance, and technology, particularly in the countries and regions where MCC operates. Additional information about MCC and its portfolio can be found at *www.mcc.gov.*

DATES: Nominations for Advisory Council members must be received on or before 5 p.m. EDT on July 8, 2016. Further information about the nomination process is included below. MCC plans to host the first MCC Advisory Council meeting in the fall of 2016. Starting in 2017, the Council will

meet up to four times a year in Washington, DC or via video/teleconferencing.

FOR FURTHER INFORMATION CONTACT: All nomination materials or requests for additional information should be emailed to MCC's Advisory Council Management Officer, Beth Roberts at *MCCAdvisoryCouncil@mcc.gov* or mailed to Millennium Challenge Corporation, Attn: Beth Roberts, 1099 14th St. NW., Suite 700, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Advisory Council shall consist of not more than twenty-five (25) individuals who are recognized thought leaders, business leaders and experts representing U.S. companies, the business community, advocacy organizations, non-governmental organizations, non-profit organizations, foundations, and industry sectors including infrastructure, information and communications technology, industry/manufacturing and finance, as well as sustainable development/environment. Qualified individuals may self-nominate or be nominated by any individual or organization. To be considered for the Advisory Council, nominators should submit the following information:

- Name, title, organization and relevant contact information (including phone and email address) of the individual under consideration;
- A letter, on organization letterhead, containing a brief description why the nominee should be considered for membership;
- Short biography of nominee including professional and academic credentials; Please do not send company, trade association, or organization brochures or any other information. Materials submitted should total two pages or less. Should more information be needed, MCC staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources.

All members of the Advisory Council will be independent of the agency, representing the views and interests of their respective industry or area of expertise, and not as Special Government employees. All members shall serve without compensation.

Nominees selected for appointment to the Advisory Council will be notified by return email and receive a letter of appointment. A selection team comprised of representatives from several MCC departments will review the nomination packages. The selection team will make recommendations regarding membership to the Vice President for Compact Operations based on criteria including:

(1) Professional or academic expertise, experience, and knowledge; (2) stakeholder representation; (3) availability and willingness to serve; and (4) skills working collaboratively on committees and advisory panels. Based upon the selection team's recommendations, the Vice President for Compact Operations will select representatives. In the selection of members for the Advisory Council, MCC will seek to ensure a balanced representation and consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the Advisory Council.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical disability, marital status, or sexual orientation.

Dated: June 8, 2016.

Sarah E. Fandell,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

[FR Doc. 2016–14075 Filed 6–13–16; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a reinstatement of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before August 15, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0059.

Title: Supervisory Committee Audits and Verifications, 12 CFR part 715.

Abstract: Title 12 CFR part 715 prescribes the responsibilities of the supervisory committee to obtain an audit of the credit union and verification of member accounts as outlined in Section 115 of the Federal Credit Union Act (Act), 12 U.S.C. 1761d. A supervisory committee audit is required at least once every calendar year covering the period since the last audit and to conduct a verification of members' accounts not less frequently than once every two years. The Act specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles which apply to certain audits, and the accounting principles which must be followed in reports filed with the NCUA Board.

The information is used by both the credit union and the NCUA to ensure through audit testing that the credit union's assets, liabilities, equity, income, and expenses exist, are properly valued, controlled and meet ownership, disclosure and classification requirements of sound financial reporting.

A written report on the audit must be made to the board of directors and, if requested, NCUA. Working papers must be maintained and made available to NCUA. Independence requirements must be met; standards governing verifications and the methods used to verify member's passbooks and accounts are set forth. Section 741.202 makes these requirements applicable to federally insured state-chartered credit unions.

Type of Review: Extension of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 6,025.

Estimated No. of Responses per Respondent: 3.42.

Estimated Annual Responses: 20,600.

Estimated Burden Hours per Response: 1.88.

Estimated Total Annual Burden Hours: 38,693.

Adjustments in the number of credit unions reflect a decrease from the previous submission and recordkeeping requirements associated with the membership verification, previously omitted, are now included in this request.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the

request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 8, 2016.

Dated: June 8, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–13949 Filed 6–13–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 14, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314–3428 or email at *PRAComments@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0133.

Type of Review: Reinstatement with change of a previously approved collection.

Title: Investment and Deposit Activities, 12 CFR part 703.

Abstract: The National Credit Union Administration (NCUA) Federal Credit Union Act, 12 U.S.C. 1757(7), 1757(8), 1757(15), lists securities, deposits, and other obligations in which a Federal Credit Union (FCU) may invest. The regulations related to these areas are contained in part 703 and section 721.3 of the NCUA regulations and set forth requirements related to maintaining an adequate investment program.

The information collected is used to limit and monitor the level of risk that exists within a credit union, the actions taken by the credit union to mitigate such risk, and help prevent losses to federal credit unions and the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 211,935.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 8, 2016.

Dated: June 8, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–13948 Filed 6–13–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2015–0273]

Information Collection: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The agency regulation authorizes the NRC to collect information about applicants and recipients who are either applying for, or receiving Federal Financial Assistance (FFA) from the Commission.

DATES: Submit comments by July 14, 2016.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0209), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0273 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0273. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0273 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ADAMS ML16145A294. The supporting statement and NRC Form 781, ''SBCR Compliance Review,'' and NRC Form 782 ''Complaint Form,'' are available in ADAMS under Accession numbers ML16145A343, ML16145A302, and ML16145A305.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

NRC's Office of Small Business and Civil Rights (SBCR) collects information from applicants in accordance with Federal mandates requiring compliance reviews be conducted prior to an agency issuing a grant award. The information is collected and analyzed to determine, if there are any ''concerns'' regarding discrimination violations. Following the issuance of a grant award, information is collected from recipients as part of the legislatively mandated post-award compliance process, to ensure compliance with Equal Opportunity (EO) and fair practice laws during the period of FFA. During the post-award period, recipients are required to submit an annual EO performance report no later than December 31st of each calendar year. Additionally, the regulations require SBCR to investigate Title 9 complaints alleging discrimination filed against recipients receiving FFA from the Commission. This document is the second of two **Federal Register** notices (second notice) required by the Paperwork Reduction Act (''PRA''). In December 2015, the NRC published a related **Federal Register** notice. The Commission did not receive any public comments. This ''second notice'' requests public comment, and OMB's review and approval of, the proposed collection of information discussed in this notice.

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review, entitled, ''10 CFR part 5, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on December 18, 2015, (80 FR 79102).

1. *The title of the information collection:* ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.''

2. *OMB approval number:* 3150–0209.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC 781, ''SBCR Compliance Review'' and NRC 782, ''Complaint Form''.

5. *How often the collection is required or requested:* 10 CFR part 5 follows provisions covered in 10 CFR part 4, section 4.331 Compliance Reviews, which indicates that the NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. The NRC may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

6. *Who will be required or asked to respond:* Recipients of FFA provided by the NRC (including educational institutions, other nonprofit organizations receiving FFA, and Agreement States).

7. *The estimated number of annual responses:* 800.

8. *The estimated number of annual respondents:* 200.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 3,600.

10. *Abstract:* The proposed collection of information is necessary to ensure nondiscrimination and compliance with Federal civil rights regulations in NRC's FFA programs and activities.

Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the NRC; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Dated at Rockville, Maryland, this 10th day of June 2016.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–14040 Filed 6–13–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–274; NRC–2015–0284]

United States Department of the Interior, United States Geological Survey TRIGA Research Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering renewal of Facility Operating License No. R–113, held by the United States Geological Survey (USGS or the licensee), for the continued operation of its USGS Training, Research, Isotope Production, General Atomics (TRIGA) research reactor (GSTR or the reactor). The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the renewal of the license.

DATES: The EA and FONSI are available as of June 14, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0284 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0284. Address questions about NRC dockets to Carol

Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Geoffrey A. Wertz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0893; email: *Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering renewal of Facility Operating License No. R–113, held by the USGS, which would authorize continued operation of its reactor, located in the Denver Federal Center, Lakewood, Colorado. Therefore, as required by section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC performed an EA. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the renewed license, and is issuing a FONSI.

II. Environmental Assessment

Identification of the Proposed Action

The proposed action would renew Facility Operating License No. R–113 for an additional 20 years from the date of issuance of the renewal license. The proposed action is in accordance with the licensee's application dated January 5, 2009, as supplemented by letters dated November 24, 2010; February 11, March 28, May 12, June 29, July 27, August 30, September 26, October 31, and November 30, 2011; January 3, January 27 (two letters), March 28, April 27, May 18, May 31, June 29, July 31, August 30, and November 16, 2012; February 8, May 17, and October 31, 2013; November 3, and November 24, 2014; September 8, 2015; and January 22, and April 1, 2016, (the renewal application). In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the GSTR to routinely provide teaching, research, and services to numerous institutions for a period of 20 years.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation (SE) of the proposed action to issue a renewed Facility Operating License No. R–113 to allow continued operation of the GSTR for a period of 20 years and concludes there is reasonable assurance that the GSTR will continue to operate safely for the additional period of time. The details of the NRC staff's SE will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the EA of the proposed action.

The GSTR is located within the Nuclear Science Building, Building 15, located on the Denver Federal Center, northwest of downtown Lakewood, Colorado, approximately 4 miles (6.4 kilometers) south of Interstate 70 and 10 miles (16 kilometers) west of downtown Denver, Colorado. The initial construction of Building 15 was completed in 1966 and the initial operating license was issued in February 1969. There are no permanent residences on the Denver Federal Center property, and the nearest residence is 2,100 feet (640 meters) from the GSTR.

The GSTR is a pool-type, light-water cooled, graphite-reflected research reactor licensed to operate at a maximum steady-state power level of 1.0 megawatt thermal power (MW) and has the capability to pulse to a peak power of approximately 1,600 MW. The fuel is located at the bottom of the inner aluminum tank with a diameter of approximately 7.5 feet (2.3 meters) and a depth of 25 feet (7.6 meters). The reactor is fueled with uranium-zirconium hydride TRIGA fuel elements with a uranium-235 enrichment of less than 20 percent. A detailed description of the reactor can be found in the GSTR Safety Analysis Report (SAR). There have been no major modifications to the GSTR or the Facility Operating License since issuing the operating license in February 1966.

A. Radiological Impacts

Environmental Effects of Reactor Operations

Gaseous radioactive effluents are discharged by the ventilation exhaust located on the roof of the building, at a volumetric flow rate of approximately 1000 cubic feet per minute (cfm) (28.3 cubic meters per minute). The reactor bay is maintained at a negative pressure relative to the outside environment, which helps ensure that any release pathways are through the ventilation exhaust that provides an elevated release point for dispersion of the effluent. This release pathway is monitored by GSTR staff. The only significant nuclide found in the gaseous effluent stream is Argon-41. The licensee has a current technical specification (TS) which limits the release of Argon-41 to an average annual concentration of 4.8E–6 microcuries/milliliter (μCi/ml). Argon-41 is released from the GSTR through a roof stack at an elevation of 21 feet (6.4 meters) above grade as specified in the GSTR TSs. The concentration of Argon-41 will be reduced by dispersion and dilution before it reaches the unrestricted area. The purpose of the TS is to help ensure that doses from Argon-41 released from the facility are within NRC regulatory requirements. Assuming continuous operation of the GSTR in order to continuously produce and release Argon-41 at the TS limit of 4.8E–6 μCi/ml, and a volumetric flow rate of 1,000 cfm from the exhaust stack, the total release of Argon-41 to the environment would be approximately 71.44 curies in a year.

The licensee performed calculations, assuming a continuous release of Argon-41 at the TS limit (4.8E–6 μCi/ml), and determined that the potential radiation dose to a member of the public, who could be continuously exposed for an entire year at the nearest publicly-available location, 1,558 feet (475 meters) from the GSTR, was approximately 0.3 millirem (mrem) (0.003 milliSieverts (mSv)) per year. The licensee also performed calculations for various locations within the Denver Federal Center, using occupancy factors to account for the duration that persons could be exposed. The maximum exposure was at the Building 15 south door. Using a conservative occupancy factor of 5 percent (1.75 hours per work day or 437 hours per year) to account for the time that an individual may be at

the door, the maximum radiation exposure was 6.75 mrem (0.0675 mSv). Using an occupancy factor of 22.8 percent (40 hours per week for 50 weeks per year), the licensee calculated that the annual dose to a person at the entrance to the nearest building (Building 21—161 feet (49 meters) away) was 2.37 mrem (0.024mSv).

A review of the licensee's annual reports for the previous 5 years of operation shows that the maximum annual release of Argon-41 for the five year time period was approximately 13 curies in 2013. Using reactor operation as provided in the 2013 annual report, which was 1,118 hours, the approximate average concentration released from the roof stack during reactor operation was calculated to be 6.8E–12 curies per milliliter (Ci/ml), which is well below the limit of 1.0E-8 Ci/ml as specified in 10 CFR part 20, appendix B for air effluent releases.

The licensee also considered the radiological effect of Nitrogen-16, which is produced from neutron activation of Oxygen-16 in the reactor pool coolant water. Nitrogen-16 decays with a very short half-life of 7 seconds, and given that the GSTR has a nitrogen diffuser, which provides a delay in the time it takes for the Nitrogen-16 to transit from the reactor core to the pool surface, most of the Nitrogen-16 has been removed through decay prior to reaching the pool surface. Other radioactive gaseous effluents released were reported to the NRC in the licensees' annual reports and were approximately 5 percent or less of the air effluent concentration limits set by 10 CFR part 20, appendix B. The NRC staff reviewed the radiological dose calculations provided by the licensee, the assumptions used, and the results of several years effluent releases from the licensee's annual reports, as well as toured the facility, and finds that the results of the licensee's dose estimates to be reasonable.

Since the potential radiation dose resulting from the effluent release from the normal operation of the GSTR to a person in the unrestricted area outside the Denver Federal Center, is less than 1 mrem (0.01 mSv), and to the maximum exposed person on the Denver Federal Center is less than 7 mrem (0.07 mSv), the licensee demonstrates compliance with the dose limit of 100 mrem (1 mSv) set by 10 CFR 20.1301. Additionally, this potential radiation dose also demonstrates compliance with the air emissions dose constraint of 10 mrem (0.1 mSv) specified in 10 CFR 20.1101(d).

The licensee does not routinely dispose of liquid radioactive wastes. Normal operations of the GSTR do not generate liquid radioactive waste, and the licensee's policy is not to dispose of any liquid radioactive waste directly to the environment or to the sanitary sewer. The occasional liquid radioactive waste generated at the GSTR includes irradiated samples, liquid standards, decontamination waste water, and reactor tank pool water. Primary coolant water is purified by a mixed-bed demineralizer which maintains the conductivity levels low in order to minimize the corrosion potential of the reactor components. Radioactive liquid generated during the resin exchange process or minor amounts collected in the reactor tank or from other uses are evaporated and disposed of as solid radioactive waste. A review of the GSTR annual reports submitted to the NRC for the past 5 years, through 2014, indicated that the licensee reported no routine releases of liquid radioactive waste.

The licensee's health physics staff oversees the handling of solid low-level radioactive waste generated at the GSTR. The bulk of the waste consists of ion exchange resin, irradiated samples, lab-ware, and anti-contamination clothing. The resins used in the demineralizer are replaced every 2 to 3 years, and any radioactive material captured in the resins are disposed with the resins as solid radioactive waste. The resin is aggregated for disposal as solid radioactive waste, until a quantity sufficient for disposal can be collected, which allows significant radioactive decay to further reduce the amount of solid radioactive waste.

The licensee disposes of the waste by transferring it to a low-level waste broker in accordance with all applicable regulations for transportation of radioactive materials.

To comply with the Nuclear Waste Policy Act of 1982, the USGS has entered into a contract with the U.S. Department of Energy (DOE) that provides that DOE retains title to the fuel utilized at the GSTR and that DOE is obligated to take the fuel from the site for final disposition.

As described in Chapter 11 of the GSTR SAR, personnel exposures are well within the limits set by 10 CFR 20.1201, ''Occupational dose limits for adults,'' and are as low as is reasonably achievable. The licensee health physics staff monitors personnel exposures, which are documented in the licensee's annual reports, and which are consistently less than 10 percent of the occupational limit of 5,000 mrem (50 mSv) per year. The TSs require a continuous air monitor and an area radiation monitor to be operable during reactor operation, in order to provide an indication of any change in the radiation levels. The NRC staff reviewed the operating experience from the GSTR, which is documented in both the licensee's annual reports and the NRC staff's inspection reports, and found that radiation exposures to personnel working in the GSTR from both direct and airborne radiation during normal operation, were within the limits of 10 CFR 20.1201. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

The licensee conducts an environmental monitoring program to record and track the radiological impact of GSTR operation on the surrounding unrestricted area. The program consists of quarterly exposure measurements at six locations. Biennially, soil and water samples are taken around the facility and analyzed for contamination. The licensee health physics staff administers the program and maintains the appropriate records. The NRC staff review of the environmental survey program indicated that radiation exposures at the monitoring locations did not significantly change, and no correlation appeared to exist between total annual reactor operations and annual exposures measured at the monitoring locations. Based on the NRC staff's review of the past 5 years of data, the NRC staff concludes that operation of the GSTR does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect radiation levels in the environment are expected as a result of the proposed action. Therefore, the NRC staff concludes that the proposed action would not have a significant radiological impact.

Environmental Effects of Accidents

Accident scenarios are provided in the guidance in NUREG–1537, ''Guidance for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' issued February 1996, and the results of the licensee's analysis was provided in Chapter 13 of the GSTR SAR. Typically, the most significant radiological fission product release accident considered at a research reactor is the maximum hypothetical accident (MHA) which for this reactor design is the rupture of one highly irradiated fuel element and the instantaneous release of the contained noble gases and halogen fission products into the air. The dose calculations conservatively assume no radioactive decay of the fission products prior to release. The licensee conservatively calculated doses to facility personnel and the maximum

potential doses to members of the public at various locations around the GSTR. The NRC staff performed independent calculations to verify that the licensee's calculated doses represented conservative estimates for the MHA. The details of these calculations are provided in the NRC staff's SE report that will be issued with the renewed license. The occupational radiation doses resulting from this postulated accident would be well below the 10 CFR 20.1201 limit of 5,000 mrem (50 mSv). The maximum calculated radiation doses for members of the public resulting from this postulated accident would be well below the 10 CFR 20.1301 limit of 100 mrem (1 mSv).

The licensee has not requested changes to the facility design or operating conditions as part of the license renewal. No changes are being made in the types or quantities of effluents that may be released offsite. The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and calculates releases of radioactive effluents. As discussed in the NRC staff's SE., the systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. Accordingly, license renewal should not result in an increase in routine occupational or public radiation exposure. As discussed in detail in the NRC staff's SE., the proposed action will not significantly increase the probability or consequences of accidents. Therefore, license renewal would not change the environmental impact of facility operations. The NRC staff evaluated information contained in the licensee's application, as supplemented, and data reported to the NRC by the licensee for the last 5e years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff found that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the NRC staff concluded that continued operation of the reactor for an additional 20 years should not have a significant environmental impact.

B. Non-Radiological Impacts

The GSTR core is cooled by natural convection of demineralized light-water in the primary cooling system consisting of the reactor tank and heat removal system. Cooling of the reactor core occurs by natural convection of coolant through the core, with the heated coolant rising out of the core and into the bulk pool water. The heat removal system transfers heat to the secondary system by pumping primary coolant through the tube-side of a 1000 kilowatt rated shell and tube heat exchanger. The secondary system circulates water through the shell-side of the heat exchanger and a forced-air cooling tower. Forced air is directed perpendicular to the water flow in the cooling tower to cool the water. During operation, the secondary system is maintained at a higher pressure than the primary system to minimize the likelihood of primary system contamination entering the secondary system, and ultimately the environment in the unlikely event of a heat exchanger failure. Secondary coolant make-up water to the cooling tower is provided by city water and is automatically added as needed by a float-type control valve. The addition of secondary coolant make-up water is based on the evaporative loss through the cooling tower, and, thus, is minimal with respect to the total capacity of city water. Release of thermal effluents from the GSTR cooling tower will not have a significant effect on the environment. No chemicals are used in the treatment of the primary or secondary coolant. No highly hazardous chemicals, toxins or reactives are present at the facility. No strong acids or bases are used or stored by the licensee. The facility does use small amounts (typically less than 50 milliliter) of chemicals for experiments, but these chemicals are of low toxicity, reactivity and corrosivity characteristics, and are transferred as licensed byproduct material as part of the experiment to the user. As such, the licensee generally maintains less than 1 gallon (3.8 liters) of any chemical at the facility.

Given that the proposed action does not involve any changes in the design or operation of the reactor, and the heat load is dissipated to the environment by evaporative loss through a forced-air cooling tower, the NRC staff concludes that the proposed action will not have a significant impact on the local water supply.

National Environmental Policy Act Considerations

The NRC has responsibilities that are derived from the National Environmental Policy Act and from other environmental laws, which include the Endangered Species Act (ESA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act (FWCA), and Executive Order 12898—Environmental Justice. The following presents a brief discussion of impacts associated with these laws and other requirements.

1. Endangered Species Act

The NRC staff conducted a search of Federally-listed species and critical habitats that have the potential to occur in the vicinity of the GSTR facility using the U.S. Fish and Wildlife Service (FWS) Environmental Conservation Online System Information for Planning and Conservation (IPaC) system. The IPaC system report identified 10 Federally endangered or threatened species that may occur or could potentially be affected by the proposed action (ADAMS Accession No. ML16120A471). However, none of these species are likely to occur near the GSTR facility because the facility is located within the Denver Federal Center, a U.S. General Services Administration-operated property that houses office buildings, warehouses, laboratories, and special use space. The area was developed for Federal government operations in the 1940s and has remained in use since that time. Because the area enclosed by the Denver Federal Center was developed for government buildings, it does not provide suitable habitat for any Federally-listed species. Further, the IPaC report determined that no critical habitat is within the vicinity of the GSTR facility. Accordingly, the NRC concludes that the proposed license renewal of the GSTR facility would have no effect on Federally-listed species or critical habitats. Federal agencies are not required to consult with the FWS if they determine that an action will not have an effect on listed species or critical habitat (ADAMS Accession No. ML16120A505). Thus, the Endangered Species Act (ESA) does not require consultation for the proposed GSTR facility license renewal, and the NRC considers its obligations under ESA Section 7 to be fulfilled for the proposed action.

2. Coastal Zone Management Act

The GSTR is not located within any managed coastal zones, nor would GSTR effluents and emissions impact any managed costal zones. Therefore, the NRC does not have obligations under CZMA for this proposed action.

3. National Historic Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. As stated in the Act, historic properties are any prehistoric or historic district, site, building, structure, or object included

in, or eligible for inclusion in the National Register of Historic Places (NRHP). The NRHP lists eleven historical sites in the Lakewood, Colorado area. None of the sites are closer than 0.5 miles (0.8 kilometers) to the GSTR. Given the distance between the GSTR facility and these historical properties, continued operation of GSTR within the Nuclear Science Building would not impact any historical sites. The State Historic Preservation Office (SHPO) was contacted and the SHPO determined that license renewal would have no adverse effect on historic properties in the vicinity of the GSTR. Based on this information, the NRC finds that the potential impacts of license renewal would have no adverse effect on historic properties located in the vicinity of Building 15 of the Denver Federal Center and the GSTR.

4. Fish and Wildlife Coordination Act

With regard to the GSTR, the licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage. Therefore, this action has no significant impact related to the FWCA.

5. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the GSTR. Such effects may include human health, biological, cultural, economic, or social impacts.

Minority Populations in the Vicinity of the GSTR—According to the 2010 Census, about 34 percent of the total population (approximately 930,000 individuals) residing within a 10-mile radius of the GSTR identified themselves as a minority. The largest minority population were people of Hispanic, Latino, or Spanish origin of any race (approximately 241,000 persons or 26 percent), followed by Black or African American (approximately 271,000 or 3 percent). According to the U.S. Census Bureau's 2010 census data, about 20 percent of the Jefferson County population identified themselves as minorities, with persons of Hispanic, Latino, or Spanish origin of any race comprising the largest minority (14.3 percent), followed by Asian (2.6 percent). According to the U.S. Census Bureau's 2014 American Community Survey 1-Year Estimates, the minority population of Jefferson County, as a percent of the total population, had increased to about 21.3 percent.

Low-income Populations in the Vicinity of the GSTR—According to the U.S. Census Bureau's 2009–2013 American Community Survey 5-Year Estimates, approximately 140,000 individuals (15.1 percent) residing within a 10-mile radius of the GSTR, were identified as living below the Federal poverty threshold. The 2013 Federal poverty threshold was $28,834 for a family of four.

According to the U.S. Census Bureau's 2014 American Community Survey 1-Year Estimates, median household income for Colorado was $61,303, while 8.0 percent of families and 12.0 percent of the state population were found to be living below the Federal poverty threshold. Jefferson County had a higher median household income average ($70,714) and lower percentages of families (4.5 percent) and individuals (8.1 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects, however radiation doses from continued operations associated with the license renewal are expected to continue at current levels, and would be well below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the proposed relicensing would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the GSTR.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC considered denying the proposed action (*i.e.*, the ''no-action'' alternative). If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required. The NRC notes that, even with a renewed license, the GSTR will eventually be decommissioned, at which time the environmental effects of decommissioning would occur. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan which would require a separate environmental review under 10 CFR 51.21. Cessation of facility operations would reduce or eliminate radioactive effluents and emissions. However, as previously discussed in this environmental assessment, radioactive effluents and emissions from reactor operations constitute a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the GSTR.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 10 to Facility Operating License No. R–113 for the GSTR, dated June 16, 2005, which extended the license expiration date from October 10, 2007, to February 24, 2009, by removing the construction time, from the issuance date of Construction Permit No. CPRR–102 on October 10, 1967, to the issuance of Operating License No. R–113 on February 24, 1969.

Agencies and Persons Consulted

In accordance with the agency's stated policy, on May 25, 2016, the staff consulted with the Colorado State Liaison Officer regarding the environmental impact of the proposed action. The consultation involved a telephone voice message with an explanation of the environmental review, and an electronic mail message with a copy of the details of this environmental assessment, and the NRC staff's findings. On May 27, 2016, the State Liaison Officer responded, via electronic mail, that they understood the NRC staff review, and had no comments regarding the proposed action (ADAMS Accession No. ML16153A207).

The NRC staff provided information about the proposed activity to the Colorado State Historic Preservation Officer for review in a letter dated January 26, 2011 (ADAMS Accession No. ML110310614). The staff requested a review concerning the historical assessment of the proposed action. On February 16, 2011, the Colorado Historic Preservation Office responded by letter (ADAMS Accession No. ML110600304) and concurred with the conclusions that no historical properties were affected by the proposed action.

The NRC staff provided information about the proposed activity to the City of Lakewood, Department of Planning and Public Works for review in a letter dated September 9, 2011 (ADAMS

Accession No. ML112560231). The staff requested a review concerning the historical assessment of the proposed action. On November 16, 2011, the Manager, Planning Development Assistance responded by electronic mail (ADAMS Accession No. ML113210158) and concurred with the conclusions that no historical properties were affected by the proposed action.

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of the EA included in Section II above and incorporated by reference in this finding, the NRC finds that there are no significant environmental impacts from the proposed action, and the proposed action will not have a significant effect on the quality of the human environment. The NRC staff has determined that a FONSI is appropriate, and decided not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The following table identifies the environmental and other documents cited in this document and related to the NRC's FONSI. These documents are available for public inspection online through ADAMS at *http://www.nrc.gov/reading-rm/adams.html* or in person at the NRC's PDR as described previously.

Document	ADAMS Accession No.
United States Geological Survey—Safety Analysis Report, Technical Specifications, and Environmental Report to Support License Renewal (redacted version), January 5, 2009.	ML092120136
U.S. Geological Survey TRIGA Reactor Response to the RAI Concerning R 113 License Renewal, November 24, 2010	ML103340090
Letter dated 01/26/11; Subject: Request for a Section 106 Review Under the National Historic Preservation Act for the U.S. Geological Survey TRIGA Reactor in Lakewood, Colorado, January 26, 2011.	ML110310614
Colorado Historical Society, Letter dated 2/16/11, RE: Request for a Section 106 Review under NHPA for USGS TRIGA Reactor, Lakewood, CO, February 16, 2011.	ML110600304
Letter dated 09/09/11; Subject: Request for a Section 106 Review Under the National Historic Preservation Act for the U.S. Geological Survey TRIGA Reactor in Lakewood, Colorado; from T. Jackson, NRC, to W. Clayton, City of Lakewood, CO, September 9, 2011.	ML112560231
City of Lakewood E-mail dated 11/16/11, Subject: Section 106 Review of USGS TRIGA Reactor in Lakewood, November 16, 2011.	ML113210158
Response to Letter of February 1, 2011 Concerning R–113 License Renewal, February 11, 2011	ML110480046
Response to Questions 23.1, 23.2, and 23.3 of the Referenced RAI, March 28, 2011	ML110950059
U.S. Geological Survey—Response to Questions 22.1, 22,2, 25.1, 25.2, 25.3, 25.4, and 25.6 of the Referenced RAI, May 12, 2011.	ML11138A027
U.S. Geological Survey, Response to Request for Additional Information for Questions 17.1 and 17.2, June 29, 2011	ML11181A305
Response to Question 2 of the Referenced RAI, July 27, 2011	ML11214A091
Response to Question 1 of the Referenced RAI, August 30, 2011	ML112500522
Response to Request for Additional Information to Question 20, September 26, 2011	ML11277A013
U.S. Geological Survey TRIGA Reactor (GSTR) Response to Question 6 of the Referenced RAI, October 31, 2011	ML11314A106
U.S. Geological Survey—Redacted—Licensee Response to NRC Request for Additional Information Questions 7 and 8, License Renewal, November 30, 2011.	ML113460014
U.S. Geological Survey—Redacted—Licensee Response to NRC Request for Additional Information Question 15.3, January 3, 2012.	ML120240003
U.S. Geological Survey TRIGA Reactor—Response to Question 15.2 of the Request for Additional Information dated September 29, 1010, January 27, 2012.	ML12068A138
U.S. Geological Survey TRIGA Reactor (GSTR)—Response to Question 18 of a Request for Additional Information dated September 29, 2010, January 27, 2012.	ML12039A173
U.S. Geological Survey TRIGA Reactor, Response to Request for Additional Information to Question 14, March 28, 2012	ML12100A097
U.S. Geological Survey TRIGA Reactor (GSTR)—Response to Question 16 of the Referenced RAI, April 27, 2012	ML12128A429
U.S. Geological Survey, Responses to Questions 26 and 27 of the Referenced RAI, May 18, 2012	ML12151A407
U.S. Geological Survey—Response to Request for Additional Information (RAI) Question 14, May 31, 2012	ML12160A064
U.S. Geological Survey TRIGA Reactor (GSTR)—Response to Question 3 of the Referenced RAI, June 29, 2012	ML12200A055
U.S. Geological Survey TRIGA Reactor Response to Question 21 of the Referenced RAI dated September 29, 2010, July 31, 2012.	ML12220A525
Responses to Questions 9, 10, 11, 12, 15.1, 23.4, 24, and 25.5; Along with a Corrected Copy of the Proposed Technical Specifications (Chapter 14) of the SAR, August 30, 2012.	ML12251A231
U.S. Geological Survey—Redacted—Response to NRC Request for Additional Information dated October 2, 2012, November 16, 2012.	ML12334A001
U.S. Geological Survey—Redacted—Responses to NRC Request for Additional Information dated October 2, 2012 and Telephone Conference dated December 20, 2012, February 8, 2013.	ML13052A179
Redacted USGS RAI Clarification Information Needed to Support the USGS License Renewal SAR (ME1593), May 17, 2013	ML13162A662
Follow-up Safety Analysis Responses from letter dated July 15, 2013, October 31, 2013	ML13311A047
Submission of Revised Technical Specifications, Chapter 14, November 3, 2014	ML14325A646
Redacted Version—U.S. Geological Survey TRIGA Reactor Request for Additional Information Responses to RAI Questions 15.3 and 28, November 24, 2014.	ML14338A196
Revision of Proposed Technical Specifications, September 8, 2015	ML15261A042
U.S. Geological Survey, Responses to RAI Questions 1a, 1b, and 1c, January 22, 2016	ML16042A575
U.S. Geological Survey RAI letter Redacted, April 1, 2016	ML16110A008
U.S. Fish and Wildlife Service, UGSG Training, Research, Isotope Production, General Atomics Research Reactor License Renewal, IPaC Trust Resources Report, April 29, 2016.	ML16120A471
U.S. Fish and Wildlife Service, Endangered Species Consultations Frequently Asked Questions, July 15, 2013	ML16120A505
Colorado State Liaison Officer E-mail, RE: Review of the draft Environmental Assessment Supporting License Renewal of the USGS Research Reactor, May 27, 2016.	ML16153A207

Dated at Rockville, Maryland, this 6th day of June 2016.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–14078 Filed 6–13–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–193; Order No. 3359]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Plus 1C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 15, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On June 7, 2016, the Postal Service filed notice that it has entered into an additional Global Plus 1C negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–193 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 15, 2016. The public portions of the filing 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 this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–193 for consideration of the matters raised by the Postal Service's Notice.

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 this proceeding (Public Representative).

3. Comments are due no later than June 15, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–13944 Filed 6–13–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–192; Order No. 3358]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 15, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On June 7, 2016, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–192 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 15, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–192 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 15, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–13943 Filed 6–13–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 7, 2016 (Notice).

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 7, 2016 (Notice).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32142; 812–14598]

ETF Managers Group LLC, et al.; Notice of Application

June 8, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: ETF Managers Group LLC and Factor Advisors, LLC (each an ''Initial Adviser'' and together, the ''Initial Advisers''), Delaware limited liability companies registered as investment advisers under the Investment Advisers Act of 1940, FactorShares Trust (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and ALPS Distributors, Inc. (the ''Distributor''), a Colorado corporation and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

DATES: *Filing Dates:* The application was filed on January 8, 2016 and amended on March 30, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 5, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Initial Advisers and the Trust, 35 Beechwood Road, Summit, New Jersey 07901; and Distributor, 1290 Broadway, Suite 1100, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Attorney-Adviser, at (202) 551–7345, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Positions''). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Positions that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage

[1] Applicants request that the order apply to future series of the Trust or of other open-end management investment companies that currently exist or that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Advisers or an entity controlling, controlled by, or under common control with the Initial Advisers (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Positions and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13967 Filed 6–13–16; 8:45 am]

BILLING CODE 8011–01–P

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78015; File Nos. SR–NYSE–2016–18; SR–NYSEMKT–2016–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Filings of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1, To Provide for How the Exchanges Would Determine an Official Closing Price if the Exchanges Are Unable To Conduct a Closing Transaction

June 8, 2016.

I. Introduction

On March 2, 2016, New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') (each an ''Exchange,'' and together the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend, respectively, NYSE Rule 123C and NYSE MKT Rule 123C—Equities (both hereinafter ''Rule 123C'') to provide for how each Exchange will determine an Official Closing Price if it is unable to conduct a closing transaction. The proposed rule changes were published for comment in the **Federal Register** on March 11, 2016.[3] The Commission received one comment letter in response to the NYSE proposal.[4]

On April 21, 2016, the Commission extended the time period within which to approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes, to June 9, 2016.[5] On May

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77305 (March 7, 2016), 81 FR 12977 (SR–NYSE–2016–18) (''NYSE Notice''); Securities Exchange Act Release No. 77306 (March 7, 2016), 81 FR 12986 (SR–NYSEMKT–2016–31) (''MKT Notice''). The proposals are substantially similar and the Commission is hereby noticing the Amendments No. 1 and granting accelerated approval jointly.

[4] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated April 5, 2016 (submitted to File No. SR–NYSE–2016–18) (''SIFMA Letter''). The Commission notes that this comment letter was also submitted in response to a similar filing by the Nasdaq Stock Market LLC. *See* Securities Exchange Act Release No. 77309 (March 7, 2016), 81 FR 13007 (March 11, 2016) (SR–NASDAQ–2016–035).

[5] *See* Securities Exchange Act Release Nos. 77677, 81 FR 24907 (April 27, 2016) (SR–NYSE–2016–18);

Continued

26, 2016, NYSE submitted a response to the comment letter,[6] and each Exchange filed an Amendment No. 1 to its proposal.[7] The Commission is publishing this notice to solicit comments on the Amendments No. 1 from interested persons, and is approving the proposed rule changes, each as modified by its respective Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Changes

Each Exchange proposes to amend its rules to specify closing contingency procedures for determining an Official Closing Price for its listed securities if it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue. Specifically, each Exchange proposes to amend its Rule 123C to provide for how it would determine an Official Closing Price if it is impaired.[8]

For each Exchange, under its current rules, the ''Official Closing Price'' of a security it lists is the price established in a closing transaction of one round lot or more.[9] If there is no closing transaction in a security, or if a closing transaction is less than one round lot, the Official Closing Price will be the most-recent last-sale-eligible trade in that security on the Exchange on that trading day.[10] Currently, if an Exchange is unable to conduct a closing transaction in a security due to a systems or technical issue, the Official Closing Price will be the last consolidated last-sale-eligible trade for that security during regular trading hours on that trading day, and if there were no such consolidated last-sale eligible trades, the Official Closing Price will be the prior day's Official Closing Price.[11]

Each Exchange proposes to amend its Rule 123C(1)(e)(ii) to provide for a proposed new contingency plan for how it would determine an Official Closing Price if it is unable to conduct a closing transaction in a security due to a systems or technical issue.[12] Each Exchange proposes that, if it determines at or before 3:00 p.m. Eastern Time that it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue, it would designate an alternate exchange for those securities. The affected Exchange would publicly announce the exchange designated as the alternate exchange via Trader Update.[13] In these circumstances, the Official Closing Price of each affected security on an Exchange would be determined based on the following hierarchy:

- The Official Closing Price would be the official closing price for that security under the rules of the designated alternate exchange.[14] For example, if NYSE Arca is the designated alternate exchange, the Official Closing Price would be based on NYSE Arca Equities Rule 1.1(ggP), which defines how NYSE Arca establishes an official closing price.[15] If Nasdaq were designated as the alternate exchange, the Official Closing Price would be the official closing price established in Nasdaq Rule 4754.
- If the designated alternate exchange does not have an official closing price in a security, the Official Closing Price would be the volume-weighted average price (''VWAP'') of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed.[16] The VWAP would include any closing transactions on an exchange and would take into account any trade breaks or corrections up to the time the VWAP is processed.
- If the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in that security, the Official Closing Price would be the last consolidated last-sale-eligible trade during regular trading hours on that trading day.[17]
- If the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale-eligible trades in a security on a trading day in that security, the Official Closing Price would be the prior day's Official Closing Price.[18]
- If an Official Closing Price for a security cannot be determined as provided above, and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for that security.[19]

In addition, each Exchange has proposed Rule 123C(1)(e)(iii) to describe how it would determine the Official Closing Price for a security if it determines after 3:00 p.m. Eastern Time that it is unable to conduct a closing transaction in one or more securities

77676, 81 FR 24907 (April 27, 2016) (SR–NYSEMKT–2016–31).

[6] *See* Letter from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, to Brent J. Fields, Secretary, Commission, dated May 26, 2016 (''NYSE Response Letter'').

[7] In its Amendment No. 1, each Exchange amended its proposed rule text to (1) add proposed Rule 123C(1)(e)(iv), which provides that, if the Exchange determines the Official Closing Price under Rule 123C(1)(e)(ii) or (e)(iii), the Exchange will publicly announce the manner by which it will determine its Official Closing Price and the designated alternate exchange, if applicable, and will cancel all open interest designated for the Exchange close; and (2) amend Rule 123C(1)(e)(i) to specify how the Exchange will determine the Official Closing Price for a security that has transferred its listing to the Exchange or is a new listing and does not have any last-sale eligible trades on the Exchange on its first day of trading on the Exchange. The Exchanges' respective Amendments No. 1 are available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2016/NYSE-2016-18,%20Pt.%20Am.%201.pdf* and *https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/rule-filings/filings/2016/NYSEMKT-2016-31,%20Pt.%20Am.%201.pdf.*

[8] According to the Exchanges, this proposal was developed in consultation with one another, their affiliated exchange, NYSE Arca, Inc. (''NYSE Arca''), and the NASDAQ Stock Market LLC (''Nasdaq''), and took into consideration feedback from discussions with industry participants. *See* NYSE Notice, *supra* note 3, at 12978; NYSE MKT Notice, *supra* note 3, at 12986. The Commission notes that the Nasdaq Stock Market LLC has also filed a similar proposed rule change with the Commission. *See* Securities Exchange Act Release No. 77309 (March 7, 2016), 81 FR 13007 (March 11, 2016) (SR–NASDAQ–2016–035).

[9] *See* Rule 123C(1)(e)(i). *See also* Securities Exchange Act Release Nos. 76598 (Dec. 9, 2015), 80 FR 77688 (Dec. 15, 2015) (SR–NYSE–2015–62); 76601 (Dec. 9, 2015), 80 FR 77680 (Dec. 15, 2015) (SR–NYSEMKT–2015–98).

[10] *See* Rule 123C(1)(e)(i).

[11] *See* Rule 123C(1)(e)(ii).

[12] Each Exchange states that, if it determines that it is impaired before 3:00 p.m. and the Official Closing Price for an Exchange-listed security is determined pursuant to proposed Rule 123C(1)(e)(ii), the SIP would publish the Official Closing Price for that security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to current Rule 123C(1)(e)(i). *See* NYSE Notice, *supra* note 3, at 12979; NYSE MKT Notice, *supra* note 3, at 12987–88. Accordingly, if the Official Closing Price of a security is determined pursuant to proposed Rule 123C(1)(e)(ii), the Exchanges note that recipients of SIP data would not have to make any changes to their systems. *See* NYSE Notice, *supra* note 3, at 12979; NYSE MKT Notice, *supra* note 3, at 12987–88.

[13] *See* NYSE Notice, *supra* note 3, at 12978; NYSE MKT Notice, *supra* note 3, at 12987. The Exchanges represent that they expect to designate an affiliated exchange as the alternate exchange and would designate Nasdaq only if the affiliated exchanges were also impacted by the systems or technical issue. *See* NYSE Notice, *supra* note 3, at 12978 n.6; NYSE MKT Notice, *supra* note 3, at 12987 n.6. In its respective Amendment No. 1, each Exchange specified that this determination would be publicly announced and that, in the event of such a determination, all open interest designated for the Exchange close would be deemed canceled. *See* Amendments No. 1.

[14] *See* Proposed Rule 123C(1)(e)(ii)(A).

[15] According to the Exchanges, NYSE Arca will be filing a rule proposal to amend its Rule 1.1(ggP)(1) to provide that the manner by which NYSE Arca determines the Official Closing Price for securities listed on NYSE Arca would also be applicable to any securities for which NYSE Arca conducts a closing auction, including securities that trade on an unlisted-trading-privileges basis. *See* NYSE Notice, *supra* note 3, at 12978 n.7; NYSE MKT Notice, *supra* note 3, at 12987 n.7.

[16] *See* proposed Rule 123C(1)(e)(ii)(B).

[17] *See* proposed Rule 123C(1)(e)(ii)(C).

[18] *See* proposed Rule 123C(1)(e)(ii)(D).

[19] *See* proposed Rule 123C(1)(e)(ii)(E).

due to a systems or technical issue.[20] According to each Exchange, if an announcement were made after 3:00 p.m. Eastern Time that the Exchange was impaired and unable to conduct a closing transaction, market participants would not have sufficient time to re-direct closing-only orders to an alternate venue.[21] Therefore, each Exchange proposes that the process for determining an Official Closing Price for a security under these circumstances would not contemplate a closing transaction on a designated alternate exchange. Accordingly, in such a scenario, each Exchange proposes to use the following hierarchy for determining the Official Closing Price for a security:

- The Official Closing Price would be the VWAP of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed, including any closing transactions on an exchange.[22] The VWAP would take into account any trade breaks or corrections up to the time the VWAP is processed.
- If there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in such security, the Official Closing Price would be the last consolidated last-sale-eligible trade during regular trading hours on that trading day.[23]
- If there were no consolidated last-sale-eligible trades in the security on a trading day, the Official Closing Price would be the prior day's Official Closing Price.[24]
- If an Official Closing Price for a security cannot be determined as provided above and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for that security.[25]

The Exchanges propose to implement the closing contingency procedures for determining an Official Closing Price no later than 120 days after approval, on a date to be announced via Trader Update.[26]

III. Summary of Comments

As noted above, the Commission received one comment letter on the NYSE proposal and a response letter from NYSE.[27] The commenter generally supports the proposal but suggests certain modifications to the proposal.[28] The Commission notes that, while this comment letter was submitted in response only to the NYSE proposal, the Exchanges' proposals are substantively similar and the comments raised are equally relevant to both.

First, the commenter suggests that NYSE's rules should specify that any designation of an alternate exchange would be *publicly announced* at or before 3:00 p.m. and that the announcement would be made through the SIP feed in addition to any other forms of communication.[29] According to the commenter, if a determination is made at 3:00 p.m., then the time between 3:00 p.m. and when member firms actually receive notice of the designation would cut into the time needed to re-direct closing interest to the designated alternate exchange.[30] NYSE agreed with the commenter's suggestion that it should publicly announce the designation of an alternate exchange.[31] As a result, each Exchange amended its proposal to specify that any designation of an alternate exchange will be publicly announced at or before 3:00 p.m.[32]

Second, the commenter suggests that, if NYSE determines not to carry out its own closing transaction, it should expressly assume responsibility for the cancellation of all closing interest that NYSE has already received.[33] According to the commenter, this would allow market participants to treat their closing interest as canceled even if they have not received an official notification of the cancellation.[34] The commenter also suggests that NYSE's rules should state that the official closing transaction will be canceled once NYSE determines that it is unable to conduct its own closing transaction, so as to avoid uncertainty regarding whether NYSE might change course if it determines before 4:00 p.m. that it can, in fact, conduct its own closing transaction.[35] NYSE agreed with the commenter's suggestion that it provide members with certainty that their open interest will not be executed if NYSE determines to employ the closing contingency procedures. As a result, each Exchange has amended its proposal to expressly state that it would cancel all open interest designated for the Exchange close if it determines to employ the closing contingency procedures.[36] The Commission also notes that, under the proposals, once an Exchange publicly announces that it will employ the closing contingency procedures, it will not revert to its ordinary closing procedures, and the Official Closing Price would be determined according to the hierarchies discussed above.[37]

Third, the commenter suggests that, when using the VWAP methodology, NYSE not include any other exchange's closing transaction in the calculation.[38] According to the commenter, a five-minute VWAP methodology should

[20] Each Exchange states that, similar to how the Official Closing Price would be published under proposed Rule 123C(1)(e)(ii), if it determines that it is impaired after 3:00 p.m. and the Official Closing Price for a security is determined pursuant to proposed Rule 123C(1)(e)(iii), the SIP would publish the Official Closing Price for that security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to current Rule 123C(1)(e)(i). *See* NYSE Notice, *supra* note 3, at 12980; NYSE MKT Notice, *supra* note 3, at 12988. Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 123C(1)(e)(iii), the Exchanges note that recipients of SIP data would not have to make any changes to their systems. *See* NYSE Notice, *supra* note 3, at 12980; NYSE MKT Notice, *supra* note 3, at 12988. In its Amendment No. 1, each Exchange has specified that this determination would be publicly announced and that, in the event of such determination, all open interest designated for the Exchange close would be deemed canceled. *See* Amendment No. 1.

[21] *See* NYSE Notice, *supra* note 3, at 12979; NYSE MKT Notice, *supra* note 3, at 12988.

[22] *See* proposed Rule 123C(1)(e)(iii)(A).

[23] *See* proposed Rule 123C(1)(e)(iii)(B).

[24] *See* proposed Rule 123C(1)(e)(iii)(C).

[25] *See* proposed Rule 123C(1)(e)(iii)(D).

[26] *See* NYSE Notice, *supra* note 3, at 12980; NYSE MKT Notice, *supra* note 3, at 12988. Each Exchange further notes that, under the proposed rule change, for purposes of NYSE Rule 440B(b) and NYSE MKT Rule 440B(b)—Equities, the Official Closing Price would continue to be determined based on Rule 123C and that, if the Exchange is impaired, the Official Closing Price as defined in proposed Rules 123C(1)(e)(ii) and (iii) would be used for purposes of determining whether a Short Sale Price Test is triggered in a security the next trading day. *See* NYSE Notice, *supra* note 3, at 12980; NYSE MKT Notice, *supra* note 3, at 12988. Each Exchange also proposes to specify in Rule 123C(1)(e)(i) that, for a security that has transferred its listing to the Exchange and does not have any last-sale-eligible trades on the Exchange on its first trading day, the Official Closing Price would be the prior day's closing price disseminated by the primary listing market that previously listed such security. *See* Amendments No. 1. In addition, for a new listing that does not have any last-sale eligible trades on an Exchange on its first trading day, the Official Closing Price would be based on a derived last sale associated with the price of that security before it begins trading. *See id.*

[27] *See* SIFMA Letter, *supra* note 4; NYSE Response Letter, *supra* note 6.

[28] *See* SIFMA Letter, *supra* note 4, at 1. The commenter also encourages NYSE and Nasdaq to continue to work with industry participants on this issue and to refine the backup mechanism as a next step. *See id.* at 3.

[29] *See id.* at 2–3.

[30] *See id.*

[31] The public announcement of an alternate exchange designation, however, would not be disseminated through the SIP feed.

[32] *See* NYSE Response Letter, *supra* note 6, at 1. *See also* Amendments No. 1.

[33] *See* SIFMA Letter, *supra* note 4, at 3. The commenter also asserts that, if NYSE executes the closing interest despite canceling the closing transaction, NYSE should be responsible under its own rules for any resulting losses to the member firms. *See id.* The Exchanges have not revised their proposals to assume this liability.

[34] *See* SIFMA Letter, *supra* note 4, at 3.

[35] *See id.*

[36] *See* NYSE Response Letter, *supra* note 6, at 2. *See also* Amendments No. 1.

[37] *See supra* notes 14–25 and accompanying text.

[38] *See* SIFMA Letter, *supra* note 4, at 3.

result in a price that is largely tradable and achievable.[39] However, according to the commenter, if a VWAP used as the official closing price included auction prints from other exchanges' closing transactions, the ability to trade and achieve the official closing price process would be reduced.[40] The Exchanges have not amended the proposals to exclude closing transactions from the VWAP calculation, but have stated that they would consider whether to do so at a later date.[41]

IV. Discussion and Commission Findings

After careful review of the proposals, as modified by the respective Amendments No. 1, and of the comment letter, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission finds that the proposed rule changes are consistent with section 6(b)(5) of the Act,[43] which requires, among other things, that the rules of a national securities 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 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 believes that the proposed rule changes would provide transparency regarding how the Exchanges would determine the Official Closing Price in Exchange-listed securities when the Exchanges are unable to conduct a closing transaction due to a systems or technical issue. The Commission notes that the primary listing market's closing price for a security is relied upon by market participants for a variety of reasons, including, but not limited to, calculation of index values, calculation of the net asset value of mutual funds and exchange-traded products, and the price of derivatives that are based on the security. As the Exchanges note, the proposed closing contingency procedures would provide a pre-determined, consistent solution that would result in the SIP disseminating an official closing price for securities on behalf of the listing Exchange within a reasonable time frame relative to the normal closing time; would minimize the need for industry participants to modify their processing of data from the SIP; and would provide advance notification of the initiation of a closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.[44] The Commission believes that each Exchange's proposal is reasonably designed to achieve these important goals and to prevent any issues that may result if the Exchange were unable to provide a closing price for its listed securities due to a systems or technical issue. For these reasons, the Commission finds that the proposed rule change is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether each Exchange's respective Amendment No. 1 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 Numbers SR–NYSE–2016–18 and SR–NYSEMKT–2016–31 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 Numbers SR–NYSE–2016–18 and SR–NYSEMKT–2016–31. These file numbers 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 Numbers SR–NYSE–2016–18 and SR–NYSEMKT–2016–31 and should be submitted on or before July 5, 2016.

VI. Accelerated Approval of Proposed Rule Changes, as Modified by Their Respective Amendments No. 1

The Commission finds good cause to approve the proposed rule changes, as modified by their respective Amendments No. 1, prior to the 30th day after the date of publication of the notices of each Amendment No. 1 in the **Federal Register**. As noted above, in its respective Amendment No. 1, each Exchange amended the proposed rule text to add Rule 123C(1)(e)(iv), which provides that if the Exchange determines the Official Closing Price under Rule 123C(1)(e)(ii) or (e)(iii), the Exchange will publicly announce the manner by which it will determine the Official Closing Price and the designated alternate exchange, if applicable, and will cancel all open interest designated for the Exchange close. As noted above, the Exchanges made these amendments in response to comments received on the NYSE proposal.

In addition, in its respective Amendment No. 1, each Exchange amended its Rule 123C(1)(e)(i) to specify how it will determine the Official Closing Price for a security that has transferred its listing to the Exchange or that is a new listing and does not have any last-sale-eligible trades on the Exchange on its first day of trading on the Exchange. Specifically, for a security that has transferred its listing to the Exchange and does not have any last-sale-eligible trades on the Exchange on its first trading day, the Official Closing Price would be the prior day's closing price disseminated by the

[39] *See id.*

[40] *See id.*

[41] *See* NYSE Response Letter, *supra* note 6, at 2.

[42] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(5).

[44] *See* NYSE Notice, *supra* note 3, at 12978, 12980; NYSE MKT Notice, *supra* note 3, at 12986, 12988–89.

primary listing market that previously listed that security.[45] For a new listing that does not have any last-sale eligible trades on the Exchange on its first trading day, the Official Closing Price would be based on a derived last sale associated with the price of such security before it begins trading.[46] Each Exchange states that its Amendment No. 1 is intended to provide increased transparency in the Exchange's rules as to how the Exchange would determine the Official Closing Price for such new or transferred listings.[47]

Because each Amendment No. 1 responded to the comments received on the original proposal, and provided additional transparency to the operation of the closing contingency procedures for transferred and newly listed securities, the Commission finds good cause for approving the proposed rule changes, as modified by the respective Amendments No. 1, on an accelerated basis, pursuant to section 19(b)(2) of the Act.[48]

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[49] that the proposed rule changes (SR–NYSE–2016–18 and SR–NYSEMKT–2016–31), as modified by their respective Amendments No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13964 Filed 6–13–16; 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, June 16, 2016 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.

Chair White, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and Settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters;

Opinion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Brent J. Fields,

Secretary.

[FR Doc. 2016–14080 Filed 6–10–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78023; File No. SR–MIAX–2016–14]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 519C, Mass Cancellation of Trading Interest

June 8, 2016.

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 May 27, 2016, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to adopt Exchange Rule 519C, Mass Cancellation of Trading Interest.

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 adopt new Rule 519C, Mass Cancellation of Trading Interest, to codify the Exchange's current practice of cancelling quotes and/or orders upon the receipt of a verbal or an electronic request from a Member.[3]

Proposed Rule 519C would codify the current process by which Members may call or send an electronic message to the Exchange's designated staff and to direct them to cancel all quotations and/or orders they have in the System.[4] All of the directing Member's quotations then in the System will be cancelled; a Member may submit a request to cancel all or any subset of its orders in the System.

Currently, Exchange Members may cancel all quotations and/or open orders in the System electronically or, in the alternative, may request Exchange staff to do so verbally by phone or via electronic message. The proposed rule would codify the current process of

[45] *See* Amendments No. 1.

[46] *See id.*

[47] *See id.*

[48] 15 U.S.C. 78s(b)(2).

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise trading rights associated with a Trading Permit. Members are deemed ''members'' under the Act. *See* Exchange Rule 100.

[4] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

requesting cancellations verbally or via electronic message. Specifically, proposed Rule 519C states that a Member may cancel all of its quotations and/or orders in the System by requesting the Exchange staff to effect such cancellations. The form of such a request includes but is not limited to email or a phone call from authorized individuals. The cancellation of quotes and orders as described herein does not disconnect Members from the Exchange's System.

The purpose of the proposed rule change is to codify this current practice in the Exchange's rules. The Exchange has a number of other rules covering related risk management processes available to Members [5] and it believes that this clarification will enhance transparency in the Exchange's rules.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] 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.

The proposed rule codifies existing risk protections that are currently available to Members and provides that the Exchange may take action on their behalf. The proposed rule protects investors and the public interest by clarifying, in the Exchange's rules, the risk protection tools and other mechanisms and processes available on the Exchange. The Exchange notes that similar rules are currently operative on other exchanges.[8]

The Exchange notes that the proposed rule change will not relieve Exchange Market Makers of their continuous quoting obligations under Exchange Rule 604 and under Reg NMS Rule 602.[9] Specifically, any interest that is executable against a Member's quotes and orders that is received by the Exchange prior to the time the cancellation is received by the System will automatically execute at the price up to the Member's size. Market Makers that request a mass cancellation of their trading interest will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day. Cancel messages entered into the System by Exchange staff are accepted upon receipt by the System, and will be processed in that order such that cancel messages and other interest already accepted into the System will be processed prior to the receipt by the System of the mass cancel message.

The codification of the existing process of requesting the removal of quotes and orders is intended to remove impediments to and perfect the mechanisms of a free and open market by adding precision and ease of reference to the Exchange's rules, thus promoting transparency and clarity for Exchange Members.

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 Exchange believes the proposed rule change will not impose any burden on intra-market competition because every Member of the Exchange has the opportunity to benefit from the procedure described in the proposed rule. The proposed rule is meant to provide all Members with the same protection in the event the Member is experiencing an issue that would require the Member to withdraw its quotes and/or orders from the market in order to ensure a fair and orderly market on the Exchange.

The Exchange believes the proposed rule change will not impose any burden on inter-market competition because the process of cancellation of quotations and orders on the Exchange is substantially similar to processes currently operative on other exchanges.[10]

For all the reasons stated, 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

Written comments were neither solicited nor 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–2016–14 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–2016–14. This file

[5] *See, e.g.,* Exchange Rules 519, MIAX Order Monitor, and 612, Aggregate Risk Manager (ARM).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* BATS BZX Exchange, Inc. (''BZX'') Rule 22.11, NASDAQ Options Market (''NOM'') Rules, Chapter VII, Section 11, and NASDAQ BX, Inc. (''BX'') Rules, Chapter VII, Section 11.

[9] 17 CFR 242.602.

[10] *See supra* note 8.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–2016–14, and should be submitted on or before July 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13966 Filed 6–13–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78012; File No. SR–C2–2016–007]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Penny Pilot Program

June 8, 2016.

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 June 1, 2016, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of Penny Pilot Program through December 31, 2016. The text of the proposed rule change is provided below. (additions are in *italics;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

Rule 6.4. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum quoting increments for options traded on the Exchange. When the Board of Directors determines to change the minimum increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of this Rule within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission. Until such time as the Board of Directors makes a change to the minimum increments, the following minimum increments shall apply to options traded on the Exchange:

(1) No change.

(2) No change.

(3) The decimal increments for bids and offers for all series of the option classes participating in the Penny Pilot Program are: $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, IWM, and SPY, the minimum increment is $0.01 for all option series. The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively-traded, multiply-listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day following [July 1, 2015 and January 1, 2016]*July 1, 2016.* The Penny Pilot shall expire on [June 30, 2016]*December 31, 2016.* Also, for so long as SPDR options (SPY) and options on Diamonds (DIA) participate in the Penny Pilot Program, the minimum increments for Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), respectively, may be $0.01 for all option series quoting less than $3 (including LEAPS), and $0.05 for all option series quoting at $3 or higher (including LEAPS).

(4) No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on June 30, 2016. C2 proposes to extend the Pilot Program until December 31, 2016. C2 believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, C2 proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

determined based on national average daily volume in the preceding six months,[5] and would be added on the second trading day following July 1, 2016. C2 will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program. The Exchange notes that it intends to utilize the same parameters to prospective replacement classes as was originally approved.

C2 is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[7] 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 facilitation 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)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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 Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program 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. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2016–007 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–C2–2016–007. 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–C2–2016–007 and should be submitted on or before July 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13961 Filed 6–13–16; 8:45 am]

BILLING CODE 8011–01–P

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following July 1, 2016 would be identified based on The Option Clearing Corporation's trading volume data from December 1, 2015 through May 31, 2016.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78014; File No. SR–NASDAQ–2016–035]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Secondary Contingency Procedures for the Exchange's Closing Cross

June 8, 2016.

I. Introduction

On March 2, 2016, 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 establish Secondary Contingency Procedures for its Closing Cross. The proposed rule change was published for comment in the **Federal Register** on March 11, 2016.[3] The Commission received one comment letter on the proposed rule change.[4] On April 21, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 6, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange states that it currently has three systems that are designed to ensure the orderly execution and dissemination of the Nasdaq Official Closing Price: (1) The Nasdaq Closing Cross; (2) the Auxiliary Procedures; and (3) the Primary Contingency Procedures.[7] The Exchange now proposes to add Rule 4754(b)(8) to establish Secondary Contingency Procedures, and to amend Rule 4754(b)(7) to provide additional details regarding the operation of the Primary and Secondary Contingency Procedures.[8]

Under the proposal, if a disruption occurs that prevents the execution of the Nasdaq Closing Cross, Nasdaq would use either the Primary Contingency Procedures or the Secondary Contingency Procedures to determine the Nasdaq Official Closing Price, which would be published by the SIP.[9] The determination to use the Primary or Secondary Contingency Procedures would be made by the President of Nasdaq or any Senior Executive designated by the President.[10] Nasdaq would publicly announce at the earliest possible time the initiation of the Primary or Secondary Contingency Procedures via system status alerts, Equity Trader Alerts, and email notification directories.[11] If Nasdaq publicly announces that it will employ its Secondary Contingency Procedures, it would cancel all open interest designated for the Nasdaq close residing in Nasdaq's systems in order to give members the opportunity to route their orders to alternative execution venues.[12]

Under the proposal, if Nasdaq publicly announces at or before 3:00 p.m. that it will employ the Secondary Contingency Procedures for one or more securities, it would designate an alternate exchange for those securities,[13] and the Nasdaq Official Closing Price for each security would be determined based on the following hierarchy:

- The Nasdaq Official Closing Price would be the official closing price established for the security under the rules of the designated alternate exchange.[14]
- If there is no official closing price in the security on the designated alternate exchange, the Nasdaq Official Closing Price would be the volume-weighted average price (''VWAP'') of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours as calculated by the SIP, including any closing transactions on an exchange and any trade breaks or corrections up to the time the VWAP is processed.[15]
- If there were no consolidated last-sale-eligible trades in the last five minutes of trading during regular trading hours, the Nasdaq Official Closing Price would be the last consolidated last-sale-eligible trade for the security during regular trading hours on that trading day.[16]
- If there were no consolidated last-sale-eligible trades during regular trading hours on that trading day, the Nasdaq Official Closing Price would be the prior day's Nasdaq Official Closing Price.[17]

If a security's Nasdaq Official Closing Price cannot be determined based on

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77309 (March 7, 2016), 81 FR 13007.

[4] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated April 5, 2016 (''SIFMA Letter''). The Commission notes that this comment letter was also submitted in response to a similar filing by New York Stock Exchange LLC (''NYSE''). *See* Securities Exchange Act Release No. 77305 (March 7, 2016), 81 FR 12977 (March 11, 2016) (SR–NYSE–2016–18).

[5] *See* Securities Exchange Act Release No. 77678, 81 FR 24909 (April 27, 2016).

[6] In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) Amended Rule 4754(b)(7) to specify the situations in which the Exchange would employ the proposed Secondary Contingency Procedures; (2) amended Rule 4754(b)(7)(A) to specify that the Exchange will publicly announce its determination to employ its Primary or Secondary Contingency Procedures and that such announcement will be made at or before 3:00 p.m. if the Exchange determines to designate an alternate exchange under proposed Rule 4754(b)(8)(A); (3) amended proposed Rule 4754(b)(8)(A)(ii) and (B)(i) to state that the VWAP (as defined below) calculation would take into account any trade breaks or corrections up to the time the VWAP is processed; (4) amended proposed Rule 4754(b)(8)(A) and (B) to provide that the Exchange would not publish an Official Closing Price if the Official Closing Price cannot be determined under proposed Rule 4754(b)(8)(A)(i)–(iv) or (B)(i)–(iii); (5) added proposed Rule 4754(b)(8)(C) to provide that under the Secondary Contingency Procedures, the Exchange will cancel all open interest designated for the Nasdaq close; (6) specified an implementation date for the proposal; (7) responded to the SIFMA Letter; and (8) made non-substantive clarifying and corrective changes to its proposed rule text. Amendment No. 1 is available at: *http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2016/SR-NASDAQ-2016-035_Amendment_1.pdf.*

[7] *See* Nasdaq Rule 4754. *See also* Amendment No. 1 at 4.

[8] The Commission notes that NYSE and NYSE MKT LLC (''NYSE MKT'') have also filed similar proposed rule changes with the Commission. *See* Securities Exchange Act Release Nos. 77305 (March 7, 2016), 81 FR 12977 (March 11, 2016) (SR–NYSE–2016–18); 77306 (March 7, 2016), 81 FR 12986 (March 11, 2016) (SR–NYSEMKT–2016–31).

[9] *See* proposed Rule 4754(b)(7) and (8). *See also* Amendment No. 1 at 4–6.

[10] The Exchange proposes to specify that it will employ the Primary Contingency Procedures if at all possible, and will employ the Secondary Contingency Procedures only if it determines that both the standard closing procedures and the Primary Contingency Procedures are unavailable. *See* proposed Rule 4754(b)(7). *See also* Amendment No. 1 at 4–5, 30.

[11] The proposal would clarify the interaction between the Primary Contingency Procedures and the proposed Secondary Contingency Procedures, but it would not change the operation of the Primary Contingency Procedures.

[12] *See* proposed Rule 4754(b)(8)(C). *See also* Amendment No. 1 at 9, 32.

[13] The Exchange proposes to designate NYSE Arca as its official back-up exchange because, according to the Exchange, NYSE Arca and Nasdaq membership substantially overlaps and NYSE Arca already operates a closing cross that it can use to execute a closing cross in Nasdaq-listed securities. *See* Amendment No. 1 at 5–6. The Exchange states that Nasdaq members that are also NYSE Arca members should be technically prepared to transfer liquidity to NYSE Arca in the event Nasdaq is unable to execute a closing cross. *See id.*

[14] *See* proposed Rule 4754(b)(8)(A)(i).

[15] *See* proposed Rule 4754(b)(8)(A)(ii).

[16] *See* proposed Rule 4754(b)(8)(A)(iii).

[17] *See* proposed Rule 4754(b)(8)(A)(iv).

this hierarchy, Nasdaq would not publish an Official Closing Price for the security.[18]

Under the proposal, if Nasdaq publicly announces after 3:00 p.m. that it will employ the Secondary Contingency Procedures for one or more securities, it would not designate an alternate exchange. Rather, the Nasdaq Official Closing Price of each security would be determined based on the following hierarchy:

- The Nasdaq Official Closing Price would be the VWAP of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours as calculated by the SIP, including any closing transactions on an exchange and any trade breaks or corrections up to the time the VWAP is processed.[19]
- If there were no consolidated last-sale-eligible trades in the last five minutes of trading during regular trading hours, the Nasdaq Official Closing Price would be the last consolidated last-sale-eligible trade for the security during regular trading hours on that trading day.[20]
- If there were no consolidated last-sale-eligible trades during regular trading hours on that trading day, the Nasdaq Official Closing Price would be the prior day's Nasdaq Official Closing Price.[21]

If a security's Nasdaq Official Closing Price cannot be determined based on this hierarchy, Nasdaq would not publish an Official Closing Price for the security.[22]

As with the Primary Contingency Procedures, if Nasdaq employs the Secondary Contingency Procedures, after hours trading would begin either as scheduled at 4:00 p.m. or upon resolution of the disruption that triggered Nasdaq to operate the Secondary Contingency Procedures.[23]

The Exchange states that the Operating Committees for the Nasdaq UTP Plan and the Consolidated Quote/Consolidate Tape Plan have already voted to modify the SIPs to support this proposal.[24] According to the Exchange, the Nasdaq SIP has announced plans to implement a new platform in the fourth quarter of 2016, and Nasdaq intends to implement the proposed rule change within 120 days of the date of implementation of that new SIP platform.[25] The Exchange states that a delay of 120 days will permit market participants to test and launch the new SIP platform, and then to separately test and launch the new backup closing functionality.[26]

III. Summary of Comments

As noted above, the Commission received one comment letter on the proposed rule change.[27] The commenter generally supports the proposal but suggests certain modifications to the proposal.[28]

First, the commenter suggests that the Exchange's rules should specify that any designation of an alternate exchange would be *publicly announced* at or before 3:00 p.m. and that the announcement would be made through the SIP feed in addition to any other forms of communication.[29] According to the commenter, if a determination is made at 3:00 p.m., then the time between 3:00 p.m. and when member firms actually receive notice of the designation would cut into the time needed to re-direct closing interest to the designated alternate exchange.[30] The Exchange agreed with the commenter's suggestion that it should publicly announce any determination to invoke the Secondary Contingency Procedures.[31] As a result, the Exchange amended its proposal to specify that any determination to invoke the Secondary Contingency Procedures will be publicly announced, and that an announcement to designate an alternate exchange would be made at or before 3:00 p.m.[32]

Second, the commenter suggests that if the Exchange determines not to carry out its own closing transaction, it should expressly assume responsibility for the cancellation of all closing interest that the Exchange has already received.[33] According to the commenter, this would allow market participants to treat their closing interest as canceled even if they have not received an official notification of the cancellation.[34] The commenter also suggests that the Exchange's rule should state that the official closing transaction will be canceled once the Exchange determines that it is unable to conduct its own closing transaction, so as to avoid uncertainty regarding whether the exchange might change course if it determines before 4:00 p.m. that it can, in fact, conduct its own closing transaction.[35] The Exchange agreed with the commenter's suggestion that it provide members with certainty that their open interest will not be executed if the Exchange invokes the Secondary Contingency Procedures. As a result, the Exchange amended its proposal to expressly state that it would cancel all open interest designated for the Nasdaq close if it determines to employ the Secondary Contingency Procedures.[36] The Commission also notes that, under the proposal, once Nasdaq publicly announces that it will employ the Secondary Contingency Procedures, it will not revert to its ordinary closing procedures, and the Nasdaq Official Closing Price would be determined according to the hierarchies discussed above.[37]

Third, the commenter suggests that, when using the VWAP methodology, the Exchange not include any other exchange's closing transaction in the calculation.[38] According to the commenter, a five-minute VWAP methodology should result in a price that is largely tradable and achievable.[39] However, according to the commenter, if a VWAP used as the official closing price included auction prints from other exchanges' closing transactions, the ability to trade and achieve the official closing price process would be reduced.[40] The Exchange disagreed with this comment. As the Exchange noted, the VWAP calculation should include the maximum liquidity available.[41] Accordingly, the Exchange has not amended the proposal to exclude closing transactions from the VWAP calculation.

IV. Discussion and Commission Findings

After careful review of the proposal, as modified by Amendment No. 1, and the comment letter, the Commission

[18] *See* proposed Rule 4754(b)(8)(A)(v). *See also* Amendment No. 1 at 8, 32.

[19] *See* proposed Rule 4754(b)(8)(B)(i).

[20] *See* proposed Rule 4754(b)(8)(B)(ii).

[21] *See* proposed Rule 4754(b)(8)(B)(iii)

[22] *See* proposed Rule 4754(b)(8)(B)(iv). *See also* Amendment No. 1 at 9, 32.

[23] *See* proposed Rule 4754(b)(8)(D).

[24] *See* Amendment No. 1 at 6.

[25] *See id.* at 9.

[26] *See id.*

[27] *See* SIFMA Letter, *supra* note 4.

[28] *See id.* at 1. The commenter also encourages NYSE and Nasdaq to continue to work with industry participants on this issue and to refine the backup mechanism as a next step. *See id.* at 3.

[29] *See id.* at 2–3.

[30] *See id.*

[31] The public announcement of an alternate exchange designation, however, would not be disseminated through the SIP feed.

[32] *See* proposed Rule 4754(b)(8)(A) and (B). *See also* Amendment No. 1 at 5, 13, 31–32.

[33] *See* SIFMA Letter, *supra* note 4, at 3. The commenter also asserts that, if the Exchange executes the closing interest despite canceling the closing transaction, the Exchange should be responsible under its own rules for any resulting losses to the member firms. *See id.* The Exchange has not revised its proposal to assume this liability.

[34] *See* SIFMA Letter, *supra* note 4, at 3.

[35] *See id.*

[36] *See* proposed Rule 4754(b)(8)(C). *See also* Amendment No. 1 at 9, 14, 32.

[37] *See supra* notes 14–22 and accompanying text.

[38] *See* SIFMA Letter, *supra* note 4, at 3.

[39] *See id.*

[40] *See id.*

[41] *See* Amendment No. 1 at 14.

finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[43] which requires, among other things, that the rules of a national securities 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 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 believes that the proposed rule change would provide transparency regarding how the Exchange would determine the Nasdaq Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a closing transaction due to a systems or technical issue. The Commission notes that the primary listing market's closing price for a security is relied upon by market participants for a variety of reasons, including, but not limited to, calculation of index values, calculation of the net asset value of mutual funds and exchange-traded products, and the price of derivatives that are based on the security. As the Exchange notes, the proposed Secondary Contingency Procedures would provide a pre-determined, consistent solution that would result in the SIP disseminating an official closing price for listed securities on behalf of the Exchange within a reasonable time frame relative to the normal closing time; would minimize the need for industry participants to modify their processing of data from the SIP; and would provide advance notification of the initiation of a closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.[44] The Commission believes that the Exchange's proposal is reasonably designed to achieve these important goals and to prevent any issues that may result if the Exchange were unable to provide a closing price for its listed securities due to a systems or technical issue. For these reasons, the Commission finds that the proposed rule change is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–035 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–NASDAQ–2016–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–035 and should be submitted on or before July 5, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**. As noted above, in Amendment No. 1, the Exchange specified the situations in which it would employ the proposed Secondary Contingency Procedures.[45] The Commission believes that this change would provide market participants with transparency regarding the Exchange's process for determining whether to employ its Primary or Secondary Contingency Procedures. In Amendment No. 1, the Exchange also specified that it will publicly announce its determination to use its Primary or Secondary Contingency Procedures; that such announcement will be made at or before 3:00 p.m. if the Exchange determines to designate an alternate exchange under proposed Rule 4754(b)(8)(A); and that under the Secondary Contingency Procedures, the Exchange would cancel all open interest designated for the Nasdaq close.[46] As noted above, the Exchange made these amendments in response to comments received on the proposal. In addition, in Amendment No.1, the Exchange stated that the VWAP calculation would take into account any trade breaks or corrections up to the time the VWAP is processed, and that it would not publish an Official Closing Price if the Official Closing Price cannot be determined under the proposed process.[47] The Commission notes that these changes would harmonize Nasdaq's proposal with NYSE's and NYSE MKT's proposals. Finally, in Amendment No. 1, the Exchange specified an implementation date for the proposal, responded to the SIFMA Letter, and made non-substantive clarifying and corrective changes to its proposed rule text.[48]

Because Amendment No. 1 provided additional transparency to the operation of the Secondary Contingency Procedures, harmonized Nasdaq's proposal to NYSE's and NYSE MKT's proposals, and responded to the comments received on the original proposal, the Commission finds good

[42] 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).

[43] 15 U.S.C. 78f(b)(5).

[44] *See* Amendment No. 1 at 10–11.

[45] *See* proposed Rule 4754(b)(7). *See also* Amendment No. 1 at 4–5, 30.

[46] *See* proposed Rule 4754(b)(8). *See also* Amendment No. 1 at 5, 9, 13–14, 31–32.

[47] *See* proposed Rule 4754(b)(8)(A)(ii) and (v); proposed Rule 4754(b)(8)(B)(i) and (iv). *See also* Amendment No. 1 at 7–8, 31–32.

[48] *See* Amendment No. 1 at 9, 13–14, 30–33.

cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to section 19(b)(2) of the Act.[49]

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[50] that the proposed rule change (SR–NASDAQ–2016–035), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13963 Filed 6–13–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78013; File No. SR–CBOE–2016–048]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Penny Pilot Program

June 8, 2016.

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 June 1, 2016, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of Penny Pilot Program through December 31, 2016. The text of the proposed rule change is provided below. (additions are in *italics;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.42. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum increments for options traded on the Exchange. When the Board of Directors determines to change the minimum increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission. Until such time as the Board of Directors makes a change to the minimum increments, the following minimum increments shall apply to options traded on the Exchange:

(1) No change.

(2) No change.

(3) The decimal increments for bids and offers for all series of the option classes participating in the Penny Pilot Program are: $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, IWM, and SPY, the minimum increment is $0.01 for all option series. The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively-traded, multiply-listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day following [July 1, 2015 and January 1, 2016]*July 1, 2016.* The Penny Pilot shall expire on [June 30, 2016]*December 31, 2016.*

(4) No change.

. . . Interpretations and Policies:

.01–.04 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on June 30, 2016. CBOE proposes to extend the Pilot Program until December 31, 2016. CBOE believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, CBOE proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program (''replacement class''). Any replacement class would be determined based on national average daily volume in the preceding six months,[5] and would be added on the second trading day following July 1, 2016. CBOE will employ the same parameters to prospective replacement classes as approved and applicable in determining the existing classes in the Pilot Program, including excluding high-priced underlying securities.[6] CBOE will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

[49] 15 U.S.C. 78s(b)(2).

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following July 1, 2016 would be identified based on The Option Clearing Corporation's trading volume data from December 1, 2015 through May 31, 2016.

[6] *See* Securities Exchange Act Release No. 60864 (October 22, 2009), 74 FR 55876 (October 29, 2009) (SR–CBOE–2009–76).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] 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 facilitation 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)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

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 Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program 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. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

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.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–048 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–2016–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–048 and should be submitted on or before July 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13962 Filed 6–13–16; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78016; File No. SR–NYSEArca–2015–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 6 to a Proposed Rule Change To Amend NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares

June 8, 2016.

I. Introduction

On November 6, 2015, NYSE Arca, Inc. (''NYSE Arca'' 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 amend NYSE Arca Equities Rule 8.600 by, among other things, adopting generic listing standards for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on November 27, 2015.[3] On January 4, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4]

On November 23, 2015, the Exchange filed Amendment No. 1 to the proposed rule change. On February 21, 2016, the Exchange withdrew Amendment No. 1 to the proposed rule change and filed Amendment No. 2 to the proposed rule change, which replaced the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on February 1, 2016.[5] On February 11, 2016, the Exchange filed Amendment No. 3 to the proposed rule change, which amended and replaced the proposed rule change as modified by Amendment No. 2 in its entirety.

On February 12, 2016, the Exchange filed Amendment No. 4 to the proposed rule change, which superseded the proposed rule change as modified by Amendment No. 3. On February 22, 2016, the Commission published notice of filing of Amendment No. 4. and instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No 4.[7] In the Order Instituting Proceedings, the Commission solicited comment on specified matters related to the proposal.[8]

On May 20, 2016, the Commission designated a longer period for Commission action on the proposed rule change.[9] On June 3, 2016, the Exchange filed Amendment No. 5 to the proposed rule change, which superseded Amendment No 4 to the proposed rule change. The Commission has received one comment on the proposed rule change.[10]

Pursuant to Section 19(b)(1) of the Act[11] and Rule 19b–4 thereunder,[12] notice is hereby given that, on June 6, 2016, the Exchange filed Amendment No. 6 to the proposed rule change, which supersedes the originally filed proposed rule change, as modified by Amendment No. 5, in its entirety.[13] The proposed rule change, as modified by Amendment No. 6, is as described in Items II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 6, from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. 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.

III. 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 V below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. Under the Exchange's current rules, a proposed rule change must be filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') for the listing and trading of each new series of Managed Fund Shares. The Exchange believes that it is appropriate to codify certain rules within Rule 8.600 that would generally eliminate the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process.[14]

Background

Rule 8.600 sets forth certain rules related to the listing and trading of Managed Fund Shares.[15] Under Rule 8.600(c)(1), the term ''Managed Fund Share'' means a security that:

(a) Represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser (hereafter ''Adviser'') consistent with the Investment Company's investment objectives and policies;

(b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a

[3] *See* Securities Exchange Act Release No. 76486 (Nov. 20, 2015), 80 FR 74169 (''Notice'').

[4] *See* Securities Exchange Act Release No. 76819, 81 FR 987 (Jan. 8, 2016). The Commission designated February 25, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. *See id.*

[5] *See* Securities Exchange Act Release No. 76974 (Jan. 26, 2016), 81 FR 5149.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 77203, 81 FR 9900 (Feb. 26, 2016) (''Order Instituting Proceedings''). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.,* 81 FR at 9908.

[8] *See id.* at 9909.

[9] *See* Securities Exchange Act Release No. 77872, 81 FR 33570 (May 26, 2016) (designating July 22, 2016 as the date by which the Commission must either approve or disapprove the proposed rule change).

[10] *See* Letter from Rob Ivanoff to the Commission dated Nov. 22, 2015 (commenting that the format of the Exchange's proposed rule change was unclear and difficult to read, and suggesting a new format that would be easier to understand). This comment is available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-1.htm.*

[11] 15 U.S.C. 78s(b)(1).

[12] 17 CFR 240.19b–4.

[13] The Commission notes that each of the Exhibits 4 to the Exchange's amendments depict the changes to the proposed rule text. The amendments, including the Exhibits 4, are available at the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2015-10/nysearca2015110.shtml.*

[14] The Exchange has previously filed a proposed rule change to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. *See* Securities Exchange Act Release No. 74433 (March 4, 2015), 80 FR 12690 (March 10, 2015) (SR–NYSEArca–2015–02). On June 3, 2015, the Exchange filed Amendment No. 1 to the proposed rule change. *See* Securities Exchange Act Release No. 75115 (June 5, 2015), 80 FR 33309 (June 11, 2015). On October 13, 2015, the Exchange withdrew the proposed rule change. *See* Securities Exchange Act Release No. 76186 (October 19, 2015), 80 FR 64461 (October 23, 2015). This Amendment No. 6 to SR–NYSEArca–2015–110 replaces SR–NYSEArca–2015–110 as originally filed and Amendments No. 2, 3, 4 and 5 thereto, and supersedes such filings in their entirety. The Exchange has withdrawn Amendment No. 1 to SR–NYSEArca–2015–110.

[15] *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (order approving NYSE Arca Equities Rule 8.600 and listing and trading of shares of certain issues of Managed Fund Shares) (the ''Approval Order''). The Approval Order approved the rules permitting the listing and trading of Managed Fund Shares, trading hours and halts, listing fees applicable to Managed Fund Shares, and the listing and trading of several individual series of Managed Fund Shares.

value equal to the next determined net asset value; and

(c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

Effectively, Managed Fund Shares are securities issued by an actively-managed open-end Investment Company (*i.e.,* an actively-managed exchange-traded fund (''ETF'')). Because Managed Fund Shares are actively-managed, they do not seek to replicate the performance of a specified passive index of securities. Instead, they generally use an active investment strategy to seek to meet their investment objectives. In contrast, an open-end Investment Company that issues Investment Company Units (''Units''), listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that generally correspond to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof. All Managed Fund Shares listed and/or traded pursuant to Rule 8.600 (including pursuant to unlisted trading privileges) are subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.[16]

In addition, Rule 8.600(d) currently provides for the criteria that Managed Fund Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Managed Fund Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading new series of Managed Fund Shares on the Exchange requires that the Exchange submit a proposed rule change with the Commission. In this regard, Commentary .01 to Rule 8.600 specifies that the Exchange will file separate proposals under Section 19(b) of the Act (hereafter, a ''proposed rule change'') before listing and trading of shares of an issue of Managed Fund Shares.

Proposed Changes to Rule 8.600

The Exchange would amend Commentary .01 to Rule 8.600 to specify that the Exchange may approve Managed Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to SEC Rule 19b–4(e) under the Act, which pertains to derivative securities products (''SEC Rule 19b–4(e)'').[17] SEC Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[18] if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which ''passive'' ETFs are listed under NYSE Arca Equities Rule 5.2(j)(3).

The Exchange would also specify within Commentary .01 to Rule 8.600 that components of Managed Fund Shares listed pursuant to SEC Rule 19b–4(e) must satisfy on an initial and continued basis certain specific criteria, which the Exchange would include within Commentary .01, as described in greater detail below. As proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares with components that do not satisfy the additional criteria described below or components other than those specified below. For example, if the components of a Managed Fund Share exceeded one of the applicable thresholds, the Exchange would file a separate proposed rule change before listing and trading such Managed Fund Share. Similarly, if the components of a Managed Fund Share included a security or asset that is not specified below, the Exchange would file a separate proposed rule change.

The Exchange would also add to the criteria of Rule 8.600(c) to provide that the Web site for each series of Managed Fund Shares shall disclose certain information regarding the Disclosed Portfolio, to the extent applicable. The required information includes the following, to the extent applicable: ticker symbol, CUSIP or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio.[19]

In addition, the Exchange would amend Rule 8.600(d) to specify that all Managed Fund Shares must have a stated investment objective, which must be adhered to under normal market conditions.[20]

Finally, the Exchange would also amend the continued listing requirement in Rule 8.600(d)(2)(A) by changing the requirement that a Portfolio Indicative Value for Managed Fund Shares be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange to a requirement that a Portfolio Indicative Value be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).

Proposed Managed Fund Share Portfolio Standards

The Exchange is proposing standards that would pertain to Managed Fund Shares to qualify for listing and trading pursuant to SEC Rule 19b–4(e). These standards would be grouped according to security or asset type. The Exchange notes that the standards proposed for a Managed Fund Share portfolio that holds U.S. Component Stocks, Non-U.S. Component Stocks, Derivative Securities Products and Index-Linked Securities are based in large part on the existing equity security standards applicable to Units in Commentary .01 to Rule 5.2(j)(3). The standards proposed for a Managed Fund Share portfolio that holds fixed income securities are based in large part on the existing fixed income security standards applicable to Units in Commentary .02 to Rule 5.2(j)(3). Many of the standards proposed for other types of holdings in

[16] *See* Approval Order, *supra* note 15, at 19547.

[17] 17 CFR 240.19b–4(e). As provided under SEC Rule 19b–4(e), the term ''new derivative securities product'' means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

[18] 17 CFR 240.19b–4(c)(1). As provided under SEC Rule 19b–4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

[19] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as applicable to the type of holding. *See, e.g.* Securities Exchange Act Release No. 72666 (July 3, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122) (the ''PIMCO Total Return Use of Derivatives Approval''), at 44227.

[20] The Exchange would also add a new defined term under Rule 8.600(c)(5) to specify that the term ''normal market conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

a Managed Fund Share portfolio are based on previous proposed rule changes for specific series of Managed Fund Shares.[21]

Proposed Commentary .01(a) would describe the standards for a Managed Fund Share portfolio that holds equity securities, which are defined to be U.S. Component Stocks,[22] Non-U.S. Component Stocks,[23] Derivative Securities Products,[24] and Index-Linked Securities [25] listed on a national securities exchange. For Derivative Securities Products and Index-Linked Securities, no more than 25% of the equity weight of the portfolio could include leveraged and/or inverse leveraged Derivative Securities Products or Index-Linked Securities. In addition, proposed Commentary .01(a) would provide that, to the extent that a portfolio includes convertible securities, the equity security into which such security is converted would be required to meet the criteria of Commentary .01(a) after converting.

As proposed in Commentary .01(a)(1) to Rule 8.600, the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(1) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each must have a minimum market value of at least $75 million; [26]

(2) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months; [27]

(3) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) must not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) must not exceed 65% of the equity weight of the portfolio; [28]

(4) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; [29]

(5) Except as provided in proposed Commentary .01(a), equity securities in the portfolio must be U.S. Component Stocks listed on a national securities exchange and must be NMS Stocks as defined in Rule 600 of Regulation NMS; [30]

(6) American Depositary Receipts (''ADRs'') may be exchange-traded or non-exchange-traded. However no more than 10% of the equity weight of the portfolio shall consist of non-exchange-traded ADRs.[31]

As proposed in Commentary .01(a)(2) to Rule 8.600, the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(1) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million; [32]

(2) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; [33]

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[21] *See* the PIMCO Total Return Use of Derivatives Approval. *See also,* Securities Exchange Act Release Nos. 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (the ''PIMCO Total Return Approval''); 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR–NYSEArca–2013–08) (the ''SPDR Blackstone/GSO Senior Loan Approval''); 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR–NYSEArca–2012–139) (the ''First Trust Preferred Securities and Income Approval''); 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR–NYSEArca–2013–33) (the ''International Bear Approval''); 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR–NYSEArca–2010–04) (the ''WisdomTree Real Return Approval''); and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR–NYSEArca–2012–25) (the ''WisdomTree Brazil Bond Approval''). Certain standards proposed herein for Managed Fund Shares are also based on previous proposed rule changes for specific series of Units for which Commission approval for listing was required due to the Units not satisfying certain standards of Commentary .01 and .02 to NYSE Arca Equities Rule 5.2(j)(3). *See, e.g.,* Securities Exchange Act Release No. 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR–NYSEArca–2012–108) (the ''NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Approval'').

[22] For the purposes of Commentary .01 and this proposal, the term ''U.S. Component Stocks'' would have the same meaning as described in NYSE Arca Equities Rule 5.2(j)(3).

[23] For the purposes of Commentary .01 and this proposal, the term ''Non-U.S. Component Stocks'' would have the same meaning as described in NYSE Arca Equities Rule 5.2(j)(3).

[24] For the purposes of Commentary .01 and this proposal, the term ''Derivative Securities Products'' would mean Investment Company Units and securities described in Section 2 of Rule 8.

[25] Index-Linked Securities are securities that qualify for Exchange listing and trading under NYSE Arca Equities Rule 5.2(j)(6). The securities described in Rule 5.2(j)(3), Rule 5.2(j)(6) and Section 2 of Rule 8, as referenced above, would include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

[26] This proposed text is identical to the corresponding text of Commentary .01(a)(A)(1) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable, and the addition of the reference to Index-Linked Securities.

[27] This proposed text is identical to the corresponding text of Commentary .01(a)(A)(2) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable, and the addition of the reference to Index-Linked Securities.

[28] This proposed text is identical to the corresponding text of Commentary .01(a)(A)(3) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable, and the addition of the reference to Index-Linked Securities.

[29] This proposed text is identical to the corresponding text of Commentary .01(a)(A)(4) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable, the addition of the reference to Index-Linked Securities, and the reference to the 100% limit applying to the ''equity portion'' of the portfolio.

[30] 17 CFR 240.600. This proposed text is identical to the corresponding text of Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), except for the addition of ''equity'' to make clear that the standard applies to ''equity securities'', the exclusion of unsponsored ADRs, and the omission of the reference to ''index,'' which is not applicable.

[31] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include not more than 10% of net assets in unsponsored ADRs (which are not exchange-listed). *See, e.g.,* Securities Exchange Act Release No. 71067 (December 12, 20113[sic]), 78 FR 76669 (December 18, 2013) (order approving listing and trading of shares of the SPDR MFS Systematic Core Equity ETF, SPDR MFS Systematic Growth Equity ETF, and SPDR MFS Systematic Value Equity ETF under NYSE Arca Equities Rule 8.600).

[32] The proposed text is identical to the corresponding representation from the ''SSgA Global Managed Volatility Release'', as defined in footnote 28, below. The proposed text is also identical to the corresponding text of Commentary .01(a)(B)(1) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable, and that each Non-U.S. Component Stock must have a minimum market value of at least $100 million instead of the 90% required under Commentary .01(a)(B)(1) to NYSE Arca Equities Rule 5.2(j)(3).

[33] The proposed text is identical to the corresponding representation from the SSgA Global Managed Volatility Release, as defined in footnote 28, below. This proposed text also is identical to the corresponding text of Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable.

(3) The most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; [34]

(4) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; [35] and

(5) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.[36]

The Exchange notes that it is not proposing to require that any of the equity portion of the equity portfolio composed of Non-U.S. Component Stocks be listed on markets that are either a member of the Intermarket Surveillance Group (''ISG'') or a market with which the Exchange has a comprehensive surveillance sharing agreement (''CSSA'').[37] However, as further detailed below, the regulatory staff of the Exchange, or the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares with other markets that are members of the ISG, including U.S. securities exchanges on which the components are traded. The Exchange notes that the generic listing standards for Units based on foreign indexes in NYSE Arca Equities Rule 5.2(j)(3) do not include specific ISG or CSSA requirements.[38] In addition, the Commission has approved listing and trading on the Exchange of shares of an issue of Managed Fund Shares under NYSE Arca Equities Rule 8.600 where non-U.S. equity securities in such issue's portfolio meet specified criteria and where there is no requirement that such non-U.S. equity securities are traded in markets that are members of ISG or with which the Exchange has in place a CSSA.[39]

Proposed Commentary .01(b) would describe the standards for a Managed Fund Share portfolio that holds fixed income securities, which are debt securities [40] that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. In addition, to the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted would be required to meet the criteria of Commentary .01(b) after converting.

The components of the fixed income portion of a portfolio must meet the following criteria initially and on a continuing basis:

(1) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more; [41]

(2) No component fixed-income security (excluding Treasury Securities and GSE Securities) could represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) must not in the aggregate account for more than 65% of the fixed income weight of the portfolio; [42]

(3) An underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers; provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in proposed Commentary .01(a).[43]

(4) Component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; [44] (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and

(5) Non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than

[34] This proposed text is identical to the corresponding text of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to ''index'', which is not applicable.

[35] This proposed text is similar to the corresponding text of Commentary .01(a)(B)(4) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable, the addition of the reference to Index-Linked Securities, the reference to the equity portion of the portfolio including Non-U.S. Component Stocks, and the reference to the 100% limitation applying to the ''equity weight'' of the portfolio, which is included because the proposed standards in Commentary .01 to Rule 8.600 permit the inclusion of non-equity securities, whereas Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) applies only to equity securities.

[36] This proposed text is similar to Commentary .01(a)(B)(5) to NYSE Arca Equities Rule 5.2(j)(3) as it relates to Non-U.S. Component Stocks.

[37] ISG is comprised of an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. *See www.isgportal.org.* A list of ISG members is available at *www.isgportal.org.*

[38] Under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), Units with components that include Non-U.S. Component Stocks can hold a portfolio that is entirely composed of Non-U.S. Component Stocks that are listed on markets that are neither members of ISG, nor with which the Exchange has in place a CSSA.

[39] *See* Securities Exchange Act Release No. 75023 (May 21, 2015), 80 FR 30519 (May 28, 2015) (SR–NYSEArca–2014–100) (order approving listing and trading on the Exchange of shares of the SPDR SSgA Global Managed Volatility ETF under NYSE Arca Equities Rule 8.600) (''SSgA Global Managed Volatility Release'').

[40] Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. Debt securities also include variable and floating rate securities.

[41] This text of proposed Commentary .01(b)(1) to Rule 8.600 is based on the corresponding text of Commentary .02(a)(2) to Rule 5.2(j)(3) .

[42] This proposed text is identical to the corresponding text of Commentary .02(a)(4) to Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable.

[43] This proposed text is similar to the corresponding text of Commentary .02(a)(5) to Rule 5.2(j)(3), except for the omission of the reference to ''index,'' which is not applicable, the exclusion of the text ''consisting entirely of exempted securities'' and the provision that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in proposed Commentary .01(a).

[44] With respect to subparagraphs (b) and (c) above, the special purpose vehicle (''SPV'') that issues the fixed income security (*e.g.,* an asset-backed or mortgage-backed security) would itself be required to satisfy the $700 million and $1 billion criteria, respectively, and not the entity that controls, owns or is affiliated with the SPV.

20% of the weight of the fixed income portion of the portfolio.[45]

Proposed Commentary .01(c) would describe the standards for a Managed Fund Share portfolio that holds cash and cash equivalents.[46] Specifically, the portfolio may hold short-term instruments with maturities of less than 3 months. There would be no limitation to the percentage of the portfolio invested in such holdings. Short-term instruments would include the following:[47]

(1) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities;

(2) certificates of deposit issued against funds deposited in a bank or savings and loan association;

(3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;

(4) repurchase agreements and reverse repurchase agreements;

(5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest;

(6) commercial paper, which are short-term unsecured promissory notes; and

(7) money market funds.

Proposed Commentary .01(d) would describe the standards for a Managed Fund Share portfolio that holds listed derivatives, including futures, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing.[48] There would be no limitation to the percentage of the portfolio invested in such holdings, subject to the following requirements:

(1) In the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement (For purposes of calculating this limitation, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.); and

(2) the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

Proposed Commentary .01(e) would describe the standards for a Managed Fund Share portfolio that holds over the counter (''OTC'') derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing.[49] Proposed Commentary .01(e) would provide that, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

Proposed Commentary .01(f) would provide that, to the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or fixed income securities, the aggregate gross notional value of such exposures shall meet the criteria set forth in Commentary .01(a) and .01(b) to Rule 8.600 (including gross notional exposures), respectively. The Exchange notes that, for purposes of this proposal, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

The following examples illustrate how certain of the proposed generic criteria of Rule 8.600 would be applied:

1. An actively managed ETF holds non-agency MBS that represent 15% of the weight of the fixed income portion of the portfolio. The fixed income portion of the portfolio meets all the requirements of Commentary .01(b). The ETF also holds an OTC swap on a non-agency MBS Index that represents 10% of the fixed income weight of the portfolio calculated on a notional value basis. Separately, the OTC swap and fixed income portion of the portfolio would meet the requirements of the Rule 8.600, Commentary .01. However, when the 15% weight in non-agency MBS and the 10% weight in the non-agency MBS Index OTC swap are combined, as required by proposed Commentary .01(f) to Rule 8.600, the 25% total weight would exceed the 20% limit for non-agency GSE and privately-issued mortgage-related securities in Commentary .01(b)(5). The portfolio, therefore, would not meet the proposed generic criteria of Rule 8.600.

2. An actively managed ETF holds a portfolio of non-U.S. equity securities, S&P 500 Index and gold futures. S&P 500 Index futures and the gold futures held by the fund are listed on an ISG member exchange. The equity portion of the portfolio consists of developed and emerging markets equity securities with a current aggregate market value of $15 million and all components meet the requirements under Commentary .01(a)(2). The gold futures contract trading unit size is 100 troy ounces and an ounce of gold is currently worth $1200. The fund holds 500 gold futures contracts with a notional value of $60 million (500 * 100 * $1200). One S&P 500 contract represents 250 units of the S&P 500 Index and the S&P 500 Index is trading at $2,000. The portfolio holds 50 contracts, so the notional value of the S&P 500 Index futures position is $25 million (50 * 250 * $2000). The S&P 500 Index futures meet the requirement under Commentary .01(f), that is, the S&P 500 Index meets the criteria in Commentary .01(a). The weights of the components are as follows: Equity securities represent 15% of the portfolio, gold futures represent 60% of

[45] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include up to 20% of net assets in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities. See, *e.g.,* Securities Exchange Act Release No. 75566 (July 30, 2015), 80 FR 46612 (August 5, 2015) (SR–NYSEArca–2015–42) (order approving listing and trading of shares of Newfleet Multi-Sector Unconstrained Bond ETF under NYSE Arca Equities Rule 8.600).

[46] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include cash and cash equivalents. *See, e.g.,* SPDR Blackstone/GSO Senior Loan Approval, *supra* note 21, at 19768–69 and First Trust Preferred Securities and Income Approval, *supra* note 21, at 76150.

[47] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly specified short-term instruments with respect to their inclusion in Managed Fund Share holdings. *See, e.g.,* First Trust Preferred Securities and Income Approval, *supra* note 21, at 76150–51.

[48] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include listed derivatives. *See, e.g.,* WisdomTree Real Return Approval, *supra* note 21, at 13617 and WisdomTree Brazil Bond Approval, *supra* note 21, at 32163.

[49] A proposed rule change for series of Units previously listed and traded on the Exchange pursuant to Rule 5.2(j)(3) similarly included the ability for such Units' holdings to include OTC derivatives, specifically OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS and therefore do not satisfy the requirements of Commentary .01(a)(A) to Rule 5.2(j)(3). *See, e.g.,* NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Approval, *supra* note 21, at 23602.

the portfolio and S&P 500 Index futures represent 25% of the portfolio. The gold futures represent 60% of the portfolio and exceeds the 30% concentration limitation on any single underlying reference asset as outlined in proposed Commentary .01(d)(2). The portfolio, therefore, would not meet the proposed generic criteria of Rule 8.600.

3. An actively managed ETF holds a portfolio of equity securities and call option contracts on company XYZ. The equity portion of [sic] portfolio meets the requirements under Commentary .01(a). Company XYZ represents 20% of the weight of the equity portion of the portfolio. The equity portion of the fund has a market value of $100 million and the market value of the fund's holdings in company XYZ has a market value of $20 million. The fund also holds 10,000 call option contracts on company XYZ which has a current market price of $50 a share and, therefore, a notional value of $50 million (50 * 100 * 10,000) (that is, the $50 market price per share times the multiplier of 100 times 10,000 contracts). The option contracts are traded on an ISG member exchange. The total exposure to company XYZ is therefore $70 million and represents 46.7% ($70 million/$150 million=46.7%) of the portfolio. This fund would not meet the requirements of Rule 8.600 because the exposure to XYZ at 46.7% exceeds the 30% concentration limitation of proposed Commentary .01(d)(2).

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Fund Shares. Additionally, the Exchange believes that the proposed portfolio standards for listing and trading Managed Fund Shares, many of which track existing Exchange rules relating to Units, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares.[50] These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

In support of this proposal, the Exchange represents that: [51]

(1) The Managed Fund Shares will continue to conform to the initial and continued listing criteria under Rule 8.600;

(2) the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Managed Fund Shares;

(3) prior to the commencement of trading of a particular series of Managed Fund Shares, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in a Bulletin of the special characteristics and risks associated with trading the Managed Fund Shares, including procedures for purchases and redemptions of Managed Fund Shares, suitability requirements under NYSE Arca Equities Rule 9.2(a), the risks involved in trading the Managed Fund Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated, information regarding the Portfolio Indicative Value and the Disclosed Portfolio, prospectus delivery requirements, and other trading information. In addition, the Bulletin will disclose that the Managed Fund Shares are subject to various fees and expenses, as described in the applicable registration statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Finally, the Bulletin will disclose that the net asset value for the Managed Fund Shares will be calculated after 4 p.m. ET each trading day; and

(4) the issuer of a series of Managed Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Managed Fund Shares, as provided under NYSE Arca Equities Rule 5.3.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that ETP Holders or issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[52] in general, and furthers the objectives of Section 6(b)(5) of the Act,[53] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. Specifically, after more than six years under the current process, whereby the Exchange is required to file a proposed rule change with the Commission for the listing and trading of each new series of Managed Fund Shares, the Exchange believes that it is appropriate to codify certain rules within Rule 8.600 that would generally eliminate the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Managed Fund Shares that have investment portfolios that are similar to investment portfolios for Units, which have been approved for listing and trading, thereby creating greater efficiencies in the listing process for the Exchange and the Commission. In this regard, the Exchange notes that the standards proposed for Managed Fund Share portfolios that include U.S. Component Stocks, Non-U.S. Component Stocks, Derivative Securities Products, and Index-Linked Securities are based in large part on the existing equity security standards applicable to Units in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and that the standards proposed for Managed Fund Share portfolios that include fixed income securities are based in large part on the existing fixed income standards applicable to Units in Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3). Additionally, many of the standards proposed for other types of holdings of series of Managed Fund Shares are based on previous proposed rule changes for specific series of Managed Fund Shares.[54]

With respect to the proposed addition to the criteria of Rule 8.600(c) to provide that the Web site for each series of Managed Fund Shares shall disclose certain information regarding the Disclosed Portfolio, to the extent applicable, the Exchange notes that proposed rule changes approved by the Commission for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as

[50] *See* Approval Order, *supra* note 15 at 19548.

[51] The Exchange made similar representations in the Approval Order. *See id.* at 19549.

[52] 15 U.S.C. 78f(b).

[53] 15 U.S.C. 78f(b)(5).

[54] *See supra,* note 21.

applicable to the type of holding.[55] With respect to the proposed definition of the term ''normal market conditions'' in proposed Rule 8.600(c)(5), such definition is similar to the definition of normal market conditions approved by the Commission for other issues of Managed Fund Shares.[56] In addition, proposed Rule 8.600(d)(1)(C), would specify that a series of Managed Fund Shares would be required to adhere to its stated investment objective during normal market conditions.

With respect to the proposed amendment to the continued listing requirement in Rule 8.600(d)(2)(A) to require dissemination of a Portfolio Indicative Value at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34), such requirement conforms to the requirement applicable to the dissemination of the Intraday Indicative Value for Units in Commentary .01(c) and Commentary .02 (c) to NYSE Arca Equities Rule 5.2(j)(3). In addition, such dissemination is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[57]

With respect to the proposed requirement in Commentary .01(a) that no more than 25% of the equity weight of the portfolio shall consist of leveraged and/or inverse leveraged Derivative Securities Products or Index-Linked Securities, such requirement would assure that only a relatively small proportion of a fund's investments could consist of such leveraged and/or inverse securities. In addition, such limitation would apply to both U.S. Component Stocks and Non-U.S. Component Stocks comprising the equity portion of a portfolio. With respect to the proposed provision in Commentary .01(a) that, to the extent a portfolio includes a convertible security, the equity security into which such security is converted must meet the criteria in Commentary .01(a) after converting, such requirement would assure that the equity securities into which a convertible security could be converted meet the liquidity and other criteria in Commentary .01 applicable to such equity securities. With respect to the proposed exclusion of Derivatives Securities Products and Index-Linked Securities from the requirements of proposed Commentary .01(a) of Rule 8.600, the Exchange believes it is appropriate to exclude Index-Linked Securities as well as Derivative Securities Products from certain component stock eligibility criteria for Managed Fund Shares in so far as Derivative Securities Products and Index-Linked Securities are themselves subject to specific quantitative listing and continued listing requirements of a national securities exchange on which such securities are listed. Derivative Securities Products and Index-Linked Securities that are components of a fund's portfolio would have been listed and traded on a national securities exchange pursuant to a proposed rule change approved by the Commission pursuant to Section 19(b)(2) of the Act[58] or submitted by a national securities exchange pursuant to Section 19(b)(3)(A) of the Act[59] or would have been listed by a national securities exchange pursuant to the requirements of Rule 19b–4(e) under the Act.[60] The Exchange also notes that Derivative Securities Products and Index-Linked Securities are derivatively priced, and, therefore, the Exchange believes that it would not be necessary to apply the proposed generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio component weighting) applicable to equity securities other than Derivative Securities Products or Index-Linked Securities (*e.g.,* common stocks) to such products.[61]

With respect to the proposed criteria applicable to U.S. Component Stocks, the Exchange notes that such criteria are similar to those in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) relating to criteria applicable to an index or portfolio of U.S. Component Stocks. In addition, Non-U.S. Component Stocks also will be required to meet criteria similar to certain generic listing standards in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) relating to criteria applicable to an index or portfolio of U.S. Component Stocks and Non-U.S. Component Stocks underlying a series of Units to be listed and traded on the Exchange pursuant to Rule 19b–4(e) under the Act.

With respect to the proposed requirement in Commentary .01(a)(1)(F) that ADRs in a portfolio may be exchange-traded or non-exchange-traded and that no more than 10% of the equity weight of the portfolio shall consist of non-exchange-traded ADRs, the Exchange notes that such requirement will ensure that unsponsored ADRs, which are traded OTC and which generally have less market transparency than sponsored ADRs, as well as any sponsored ADRs traded OTC, could account for only a small percentage of the equity weight of a portfolio. Further, the requirement is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[62]

With respect to the proposed provision in Commentary .01(b) that, to the extent a portfolio includes convertible securities, the fixed income security into which such security is converted must meet the criteria in paragraph (b) of Commentary .01 after converting, such requirement would assure that the fixed income securities into which a convertible security could be converted meet the liquidity and other criteria in Commentary .01(b) applicable to fixed income securities.

As proposed, pursuant to Commentary .01(b)(3) to Rule 8.600, an underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers, but there would be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities, as described in Commentary .01(a). The Exchange notes that, when evaluated in conjunction with proposed Commentary .01(b)(2), the proposed rule is consistent with Commentary .02(a)(4) and (5) of NYSE Arca Equities Rule 5.2(j)(3) in that it provides for a maximum weighting of a fixed income security in the fixed income portion of the portfolio of a fund that is comparable to the existing rules applicable to Investment Company Units based on fixed income indexes.

With respect to the proposed requirement in Commentary .01(b)(5) that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio, the Exchange notes that

[55] *See supra,* note 19.

[56] *See, e.g.,* Securities Exchange Act Release No. 74338 (February 20, 2015), 80 FR 10556 (February 26, 2015) (SR–NYSEArca–2014–143) (order approving listing and trading of shares of the SPDR Doubletree Total Return Tactical ETF under NYSE Arca Equities Rule 8.600).

[57] *See, e.g.,* Approval Order, *supra* note 15; International Bear Approval, *supra* note 21.

[58] 15 U.S.C. 78s(b)(2).

[59] 15 U.S.C. 78s(b)(3)(A).

[60] 17 CFR 240.19b–4(e).

[61] *See* Securities Exchange Act Release Nos. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (SR–NYSEArca–2008–29) (notice of filing of proposed rule change to amend eligibility criteria for components of an index underlying Investment Company Units); 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (order approving proposed rule change to amend eligibility criteria for components of an index underlying Investment Company Units).

[62] *See* note 31, *supra.*

such requirement is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[63]

With respect to the proposed amendment to Commentary .01(c) relating to cash and cash equivalents, while there is no limitation on the amount of cash and cash equivalents that can make up the portfolio, such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility. Further, the requirement is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[64]

With respect to proposed Commentary .01(d)(1) to Rule 8.600 relating to listed derivatives, the Exchange believes that it is appropriate that there be no limit to the percentage of a portfolio invested in such holdings, provided that, in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps would consist of futures, options, and swaps for which the Exchange may obtain information via ISG from other members or affiliates or for which the principal market is a market with which the Exchange has a CSSA. Such a requirement would facilitate information sharing among market participants trading shares of a series of Managed Fund Shares as well as futures and options that such series may hold. In addition, listed swaps would be centrally cleared, reducing counterparty risk and thereby furthering investor protection.[65] With respect to proposed Commentary .01(d)(2) to Rule 8.600, requiring percentage caps on the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets or based on any single underlying reference asset, the Exchange believes such requirements will help ensure that listed derivatives utilized by a fund are adequately diversified and not unduly concentrated.

With respect to proposed Commentary .01(e) to Rule 8.600 relating to OTC derivatives, the Exchange believes that the limitation to 20% of a fund's assets would assure that the preponderance of fund investments would not be in derivatives that are not listed and centrally cleared. The Exchange believes that such a limitation is sufficient to mitigate the risks associated with price manipulation because a 20% cap on OTC derivatives will ensure that any series of Managed Fund Shares will be sufficiently broad-based in scope to minimize potential manipulation associated with OTC derivatives and because the remaining 80% of the portfolio will consist of instruments subject to numerous restrictions designed to prevent manipulation, including equity securities (which, as proposed, would be subject to market cap, trading volume, and diversity requirements, among others), fixed income securities (which, as proposed, would be subject to principal amount outstanding, diversity, and issuer requirements, among others), cash and cash equivalents (which, as proposed, would be limited to short-term, highly liquid, and high credit quality instruments), and/or listed derivatives (which would be subject to the limitations in proposed Commentary .01(d)).

The Exchange notes that a fund's investments in derivative instruments would be subject to limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company can obtain. A fund's investments would be consistent with its investment objective and would not be used to enhance leverage. To limit the potential risk associated with a fund's use of derivatives, a fund will segregate or ''earmark'' assets determined to be liquid by a fund in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments.

With respect to proposed Commentary .01(f) to Rule 8.600 relating to a fund's use of listed or OTC derivatives to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the Exchange notes that the aggregate gross notional value of such exposure would be required to meet the numerical and other criteria set forth in proposed Commentary .01(a) and .01(b) to Rule 8.600 (including gross notional exposures), respectively.

Quotation and other market information relating to listed futures and options is available from the exchanges listing such instruments as well as from market data vendors. With respect to centrally-cleared swaps[66] and non-centrally-cleared swaps regulated by the CFTC,[67] the Dodd-Frank Act mandates that swap information be reported to swap data repositories (''SDRs'').[68] SDRs provide a central facility for swap data reporting and recordkeeping and are required to comply with data standards set by the CFTC, including real-time public reporting of swap transaction data to a derivatives clearing organization or SEF.[69] SDRs require real-time reporting of all OTC and centrally cleared derivatives, including public reporting of the swap price and size. The parties responsible for reporting swaps information are CFTC-registered swap dealers (''RSDs''), major swap participants, and swap execution facilities (''SEFs''). If swap counterparties do not fall into the above categories, then one of the parties to the swap must report the trade to the SDR. Cleared swaps regulated by the CFTC must be executed on a Designated Contract Market (''DCM'') or SEF. Such cleared swaps have the same reporting requirements as futures, including end-of-day price, volume, and open interest. CFTC swaps reporting requirements require public dissemination of, among other items, product ID (if available); asset class; underlying reference asset, reference issuer, or reference index; termination date; date and time of execution; price, including currency; notional amounts, including currency; whether direct or indirect counterparties include an RSD; whether cleared or un-cleared; and platform ID of where the contract was executed (if applicable).

With respect to security-based swaps regulated by the Commission, the Commission has adopted Regulation SBSR under the Act implementing requirements for regulatory reporting and public dissemination of security-based swap transactions set forth in Title VII of the Dodd-Frank Act. Regulation SBSR provides for the reporting of security-based swap

[63] *See* note 45, *supra.*

[64] *See* note 46, *supra.*

[65] The Commission has noted that ''[c]entral clearing mitigates counterparty risk among dealers and other institutions by shifting that risk from individual counterparties to [central counterparties (''CCPs'')], thereby protecting CCPs from each other's potential failures.'' *See* Securities Exchange Act Release No. 67286 (June 28, 2012) (File No. S7–44–10) (Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies).

[66] There are currently five categories of swaps eligible for central clearing: Interest rate swaps; credit default swaps; foreign exchange swaps; equity swaps; and commodity swaps. The following entities provide central clearing for OTC derivatives: ICE Clear Credit (US); ICE Clear (EU); CME Group; LCH.Clearnet; and Eurex.

[67] Pursuant to the Dodd-Frank Act, OTC and centrally-cleared swaps are regulated by the CFTC with the exception of security-based swaps, which are regulated by the Commission.

[68] The following entities are provisionally registered with the CFTC as SDRs: BSDR LLC., Chicago Mercantile Exchange, Inc., DTCC Data Repository, and ICE Trade Vault.

[69] Approximately eighteen entities are currently registered with the CFTC as SEFs.

information to registered security-based swap data repositories (''Registered SDRs'') or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information by Registered SDRs.[70]

Price information relating to forwards and OTC options will be available from major market data vendors.

A fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of a fund's broad-based securities market index (as defined in Form N–1A).[71] In addition, the Exchange notes that, under proposed Commentary .01(a) to Rule 8.600, for Derivative Securities Products and Index-Linked Securities, no more than 25% of the equity weight of a fund's portfolio could include leveraged and/or inverse leveraged Derivative Securities Products or Index-Linked Securities.

The proposed rule change is also designed to protect investors and the public interest because Managed Fund Shares listed and traded pursuant to Rule 8.600, including pursuant to the proposed new portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.[72]

The proposed rule change is also designed to protect investors and the public interest as well as to promote just and equitable principles of trade in that any Non-U.S. Component Stocks will each meet the following criteria initially and on a continuing basis: (1) Have a minimum market value of at least $100 million; (2) have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (3) most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; and (4) each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting. The Exchange believes that such quantitative criteria are sufficient to mitigate any concerns that may arise on the basis of a series of Managed Fund Shares potentially holding 100% of its assets in Non-U.S. Component Stocks that are neither listed on members of ISG nor exchanges with which the Exchange has in place a CSSA because, as stated above, such criteria are either the same or more stringent than the portfolio requirements for Units that hold Non-U.S. Component Stocks and there are no such requirements related to such securities being listed on an exchange that is a member of ISG or with which the Exchange has in place a CSSA. Further, the Exchange has not encountered and is not aware of any instances of manipulation or other negative impact in any series of Units that has occurred by virtue of the Units holding such Non-U.S. Component Stocks. As such, the Exchange believes that there should be no difference in the portfolio requirements for Managed Fund Shares and Units as it relates to holding Non-U.S. Component Stocks that are not listed on an exchange that is a member of ISG or with which the Exchange has in place a CSSA.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Managed Fund Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Managed Fund Shares with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Managed Fund Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b–4(e) under the Act by allowing Managed Fund Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares that do not satisfy the additional criteria described above.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[73] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Managed Fund Shares and result in a significantly more efficient process surrounding the listing and trading of Managed Fund Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Managed Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Managed Fund Shares more competitive by applying uniform listing standards with respect to Managed Fund Shares.

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.

IV. Date of Effectiveness of the Proposed Rule Change, as Modified by Amendment No. 6, and Timing for Commission Action

Section 19(b)(2) of the Act[74] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. On May 20, 2016, the Commission published notice of its determination that it was appropriate to

[70] *See* Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14564 (March 19, 2015) (Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information).

[71] *See, e.g.,* Securities Exchange Act Release No. 74842 (April 29, 2015), 86 FR 25723 (May 5, 2015) (SR–NYSEArca–2014–89) (order approving listing and trading of shares of eight PIMCO exchange-traded funds).

[72] *See* Approval Order, *supra* note 15, at 19547.

[73] 15 U.S.C. 78f(b)(8).

[74] 15 U.S.C. 78s(b)(2).

designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it would have sufficient time to consider the proposed rule change and, pursuant to Section 19(b)(2) of the Act,[75] designated July 22, 2016, as the date by which the Commission shall either approve or disapprove the proposed rule change.[76]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 6 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–110 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–2015–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–110 and should be submitted on or before June 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[77]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13965 Filed 6–13–16; 8:45 am]

BILLING CODE 8011–01–P

[75] 15 U.S.C. 78s(b)(2).

[76] *See supra* note 9 and accompanying text.

[77] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Louis Cupp, New Markets Policy Analyst, Office of Investment, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, 202–619–0511 *louis.cupp@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA Forms 1405 and 1405A are used by Small Business Administration (SBA) examiners as part of their examination of licensed small business investment companies (SBICs). This information is collected from SBIC'S Stockholders and partners and provides independent third party confirmation of an SBIC's representations concerning its owners. The information helps SBA to evaluate the SBIC'S with applicable laws and regulations concerning capital requirements.

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.

Title: ''Stockholders' Confirmation (Corporation); Ownership Confirmation (Partnership)''.

Description of Respondents: Licensed small business investment companies (SBICs).

Form Number's: 1405, 1405A.

Annual Responses: 600.

Annual Burden: 600.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–14012 Filed 6–13–16; 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: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, Director of Licensing and Program Standards, Office of Investment and Innovation, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT:
Carol Fendler, Director, Licensing and Program Standards, 202–205–7559 *carol.fendler@sba.gov*
Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: SBA Forms 2181, 2182 and 2183 provide SBA with the necessary information to make decisions regarding the approval or denial of an applicant for a small business investment company (SBIC)

license. SBA uses this information to assess an applicant's ability to successfully operate an SBIC within the scope of the Small Business Investment Act of 1958, as amended.

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.

Title: ''SBIC Management Questionnaire & License Application; Exhibits to SBIC License Application/ Management Assessment Questionnaire''.

Description of Respondents: SBIC License Applicants.

Form Number's: 2181, 2182, 2183.

Annual Responses: 425.

Annual Burden: 7,167.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–14018 Filed 6–13–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14736 and #14737]

Virginia Disaster #VA–00062

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of VIRGINIA dated 06/07/2016.

Incident: Severe Storms and Tornadoes.

Incident Period: 02/24/2016.

Effective Date: 06/07/2016.

Physical Loan Application Deadline Date: 08/08/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/07/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Appomattox, Essex.

Contiguous Counties:

Virginia: Amherst, Buckingham, Campbell, Caroline, Charlotte, King and Queen, King George, Middlesex, Nelson, Prince Edward, Richmond, Westmoreland.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14736 C and for economic injury is 14737 0.

The Commonwealth which received an EIDL Declaration # is Virginia.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 7, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–14021 Filed 6–13–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14740 and #14741]

Texas Disaster #TX–00473

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4269–DR), dated 06/03/2016.

Incident: Severe Storms and Flooding.

Incident Period: 04/17/2016 through 04/24/2016.

Effective Date: 06/03/2016.

Physical Loan Application Deadline Date: 08/02/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/03/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Austin, Bastrop, Bosque, Callahan, Colorado, Coryell, Fayette, Grimes, Harris, Milam, Montgomery, San Jacinto, Waller, Washington, Wharton.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 147406 and for economic injury is 147416.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–14026 Filed 6–13–16; 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: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Melissa Atwood, Director, Denver Finance Center, Small Business Administration, 721 19th Street, 3rd Floor, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT:

Melissa Atwood, Director, Denver Finance Center 303–844–8538 *melissa.atwood@sba.gov*

Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION:

Government wide requirements in the annual appropriations act, as well as OMB Circular A 123 Appendix B, require agencies to conduct an alternative credit worthiness assessment of new travel applications when the credit score inquiry results in no score. This information is to gather data to make the alternative credit 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.

Title: ''Alternative Creditworthiness Assessment''

Description of Respondents: Personnel that assist in the process of loan applications.

Form Number: 2294.

Annual Responses: 12.

Annual Burden: 2 hrs.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–14013 Filed 6–13–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14738 and #14739]

Mississippi Disaster #MS–00086

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 06/07/2016.

Incident: Torrential Rains and Flash Flooding.

Incident Period: 04/28/2016 through 05/02/2016.

Effective Date: 06/07/2016.

Physical Loan Application Deadline Date: 08/08/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/07/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Harrison.

Contiguous Counties:

Mississippi: Hancock, Jackson, Pearl River, Stone.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.250
Homeowners Without Credit Available Elsewhere	1.625
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14738 6 and for economic injury is 14739 0.

The State which received an EIDL Declaration # is Mississippi

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 7, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–14023 Filed 6–13–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–29]

Petition for Exemption; Summary of Petition Received; Raytheon Space and Airborne Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 5, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–0863 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the

public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso W. Pendergrass II (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 8, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–0863.

Petitioner: Raytheon Space and Airborne Systems (RSAS).

Section(s) of 14 CFR Affected: § 91.529(b).

Description of Relief Sought: RSAS is requesting an exemption to permit the combined hours attained as a pilot and flight engineer in the B727 to be used to satisfy the 50 hours every six months to retain flight engineer currency. All dual qualified pilots and flight engineers will continue to receive an annual pilot proficiency check as required under 14 CFR 61.58 as well as an annual flight engineer proficiency check as required under 14 CFR 91.529.

[FR Doc. 2016–13957 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Land Use Change and Release of Grant Assurance Restrictions at the Sacramento International Airport (SMF), Sacramento, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of a non-aeronautical land-use change.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a land-use change for approximately 31.1 acres of airport property at Sacramento International Airport (SMF), Sacramento. The land use change will allow airport land to be released from the aeronautical use provisions of the Grant Assurances that require it to serve an airport purposes since the land is not needed for aeronautical uses. The reuse of the land for solar energy generating arrays represents a compatible land use that will not interfere with the airport or its operations. The solar generated electricity will benefit the airport by producing a market return on the land while reducing electrical costs. Cost savings will equal or exceed the fair market rental value of the land occupied by the solar farms. These benefits will serve the interest of civil aviation and contribute to the self-sustainability of the airport.

DATES: Comments must be received on or before July 14, 2016.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Mr. James W. Lomen, Manager, Federal Aviation Administration, San Francisco Airports District Office, Federal Register Comment, 1000 Marina Boulevard, Suite 220, Brisbane, CA 94005. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Glen Rickelton, Airport Manager, Sacramento International Airport, 6900 Airport Boulevard, Sacramento, CA 95837.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The County of Sacramento, California requested a modification to the conditions in the Grant Assurances to permit the non-aeronautical use of approximately 31.1 acres of land at Sacramento International Airport for two separate solar array sites to produce solar generated electricity for the airport. One solar array site will occupy approximately 16.3 acres of unimproved land located in the north portion of the airfield, west of Taxiway D. Site two is approximately 14.8 acres of an unused parking area between Aviation Drive and Taxiway D in the south portion of the airfield. Reuse of the land for the solar arrays will not impede future development of the airport, as there is sufficient land for airport development. The lease rate is based on the appraised market value. In lieu of direct rental payments, the airport will be subject to a reduced electrical rate that will produce cost savings that equal or exceed the appraised market value of the land. The use of the property for the solar arrays represents a compatible use. Construction and operations of the solar arrays will not interfere with airport operations. The solar arrays will reduce airport operational costs, which will enhance the self-sustainability of the airport and, thereby, serve the interest of civil aviation.

Issued in Brisbane, California, on June 7, 2016.

James W. Lomen,

Manager, San Francisco Airports District Office, Western-Pacific Region.

[FR Doc. 2016–14069 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0028; Notice 1]

Volkswagen Group of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen), has determined that certain model year (MY) 2016 Volkswagen Beetle Convertible passenger cars do not fully comply with paragraph S4.3(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less.* Volkswagen filed a report dated February 23, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

DATES: The closing date for comments on the petition is July 14, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown at the heading of this notice.

DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Volkswagen submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are approximately 325 MY 2016 Volkswagen Beetle Convertible passenger cars that were manufactured between June 18, 2015, and November 9, 2015.

III. Noncompliance: Volkswagen stated that the subject vehicles have a Tire Placard Label that is misprinted with an incorrect tire size as compared to the tires the vehicle was equipped with and therefore does not fully conform to paragraph S4.3(d) of FMVSS No. 110.

IV. Rule Text: Paragraph S4.3(d) of FMVSS No. 110 requires, in pertinent part:

> S4.3 Placard. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3 (a) through (g), and may show, at the manufacturer's option, the information specified in S4.3 (h) through (i), on a placard permanently affixed to the driver's side B-pillar . . .
>
> (d) Tire size designation, indicated by the headings ''size'' or ''original tire size'' or ''original size,'' and ''spare tire'' or ''spare,'' for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement ''see above'' may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word ''none'' must replace the tire size designation;

V. Summary of Volkswagen's Petition: Volkswagen described the subject noncompliance and stated its belief that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) Volkswagen stated that the condition described (tire placard with an incorrect label size on it) would not adversely affect the tire and loading capability of the vehicle.

(2) Volkswagen stated that the loading and combined weight information was printed correctly on both versions of the Tire Placard Label.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–14000 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Port Performance Freight Statistics Working Group

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation (USDOT).

ACTION: Port Performance Freight Statistics Working Group: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Port Performance Freight Statistics Working Group (hereafter, ''Working Group''). The Working Group will provide advice and recommendations to the Bureau of Transportation Statistics (BTS) Director pursuant to Section 6018 of the *Fixing America's Surface Transportation (FAST) Act* (Pub. L. 114–94; 129 Stat. 1312) on matters related to port performance measures, including: (a) Specifications and data measurements to be used in the Port Performance Freight Statistics Program established under subsection 6018(a); and (b) a process for the Department to collect timely and consistent data, including identifying safeguards to protect proprietary information described in

subsection 6018(b)(2). The Working Group will operate in accordance with the provisions of the *Federal Advisory Committee Act (FACA)* and the rules and regulations issued in implementation of that Act.

DATES: The meeting will be held on July 15, 2016, from 10:30 a.m. to 4:30 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be at U.S. Department of Transportation; 1200 New Jersey Avenue SE., Washington, DC 20590. Any person requiring accessibility accommodations should contact Matthew Chambers at (202) 366–1270 or via email at: *portstatistics@dot.gov.*

FOR FURTHER INFORMATION CONTACT: U.S. Department of Transportation, Office of the Assistant Secretary for Research and Technology, Bureau of Transportation Statistics, Attn: Port Performance Freight Statistics Working Group, 1200 New Jersey Avenue SE., Room #E32–342, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background: The Port Performance Freight Statistics Working Group has been created in accordance with Section 6018 of the *Fixing America's Surface Transportation* (FAST) Act (Pub. L. 114–94; Dec. 4, 2015; 129 Stat. 1312). The Working Group supports development of the newly-established BTS Port Performance Freight Statistics Program. The goal of the program is ''to provide nationally consistent measures of performance'' of the nation's largest ports, and to report annually to Congress on port capacity and throughput.

The Working Group is established in the FAST Act to provide recommendations to the BTS Director on matters related to port performance measures; to identify a standard for port data; to specify standards for consistent port performance measures; to recommend statistics for measuring port capacity and throughput; and to develop a process to collect timely and consistent data. The FAST Act also identifies the membership of the Working Group, and sets a due date for recommendations to the BTS Director of December 4, 2016.

Agenda: This will be the Working Group's first meeting and will include a nonpublic administrative work session, including briefings on their responsibilities as Special Government Employees before the public session. The public session, starting at 10:30 a.m., will include U.S. Department of Transportation staff providing an overview of FAST ACT and an update of the Department's progress implementing its Port Performance Freight Statistics Program and related provisions. The Working Group will commence development of a list of tasks and subtask necessary for it to:

(a) Identify a generally accepted industry standard for port data collection and reporting.

(b) Specify standards for collecting data and reporting nationally consistent port performance measures.

(c) Make recommendations for statistics measuring on U.S. port capacity and throughput.

(d) Develop a process for the U.S. Department of Transportation (hereafter, ''Department'') to collect timely and consistent data, including identifying safeguards to protect proprietary information.

The final meeting agenda will be posted on the BTS Web site at *www.bts.gov/port_performance* in advance of the meeting.

Public Participation: The meeting will be open to the public on a first-come, first served basis, especially because space is limited. Members of the public who wish to attend in-person are asked to send RSVPs, including name and affiliation to *portstatistics@dot.gov* by July 11, 2016 in order to request a seat and to facilitate entry. Any person requiring accessibility accommodation, such as sign language interpretation, should contact Matthew Chambers at (202) 366–1270 or via email at: *portstatistics@dot.gov* five (5) business days before the meeting.

Written Comments: Persons who wish to submit written comments for consideration by the Working Group must send them via email to *portstatistics@dot.gov* or mail to Matthew Chambers, Designated Federal Officer, Port Performance Freight Statistics Working Group, 1200 New Jersey Avenue SE., Room #E32–342, Washington, DC 20590, which must be received on or before July 11, 2016.

Issued in Washington, DC, on June 8, 2016.

Patricia S. Hu,

Director, Bureau of Transportation Statistics.

[FR Doc. 2016–13991 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 15, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or at *Elaine.H.Christophe@irs.gov.* Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information. Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

1. *Title:* Certain Payments Made Pursuant to a Securities Lending Transaction.

OMB Number: 1545–1566.

Notice Number: Notice 97–66 and Notice 2010–46.

Abstract: Notice 97–66 modifies final regulations which were effective November 14, 1997. The notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and sale-repurchase transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments. Notice 2010–46 modifies Notice 97–66, by providing necessary information to ensure taxpayers are not subject to excessive tax pursuant to IRC section 871(l). The information will allow a withholding agent to make a substitute dividend payment to certain counterparties in a series of securities lending transactions without withholding and depositing additional excessive tax.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 383,500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 62,750.

2. *Title:* Volunteer Return Preparation Critical Intake Sheet—NR.

OMB Number: 1545–2075.

Form Number: 13614–NR.

Abstract: This form will be used at the nonresident alien VITA sites by volunteers to gather information—relevant to tax preparation—from taxpayer's.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 565,039.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Reporting Burden Hours: 141,260.

3. *Title:* Minimum Tax—Tax Benefit Rule.

OMB Number: 1545–1093.

Regulation Project Number: IA–56–87 and IA–53–87 (TD 8416).

Abstract: Section 58(h) of the Internal Revenue Code provides that the Secretary of the Treasury shall prescribe regulations that adjust tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items did not result in a tax benefit because of available credits or refund of minimum tax paid on such preferences.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 40.

4. *Title:* Form 8871, Political Organization Notice of Section 527 Status; Form 8453–X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

OMB Number: 1545–1693.

Form Number: Forms 8871 and 8453–X.

Abstract: Public Law 106–230 as amended by Public Law 107–276, amended Internal Revenue Code section 527(i) to require certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, Board of Directors, and related entities within the meaning of section 168(h)(4)). Forms 8871 and 8453–X are used to report this information to the IRS.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 5,500.

Estimated Time per Respondent: 7 hrs., 2 min.

Estimated Total Annual Reporting Burden Hours: 35,195.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: June 6, 2016.

Elaine Christophe,

IRS Tax Analyst.

[FR Doc. 2016–14108 Filed 6–13–16; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 114 June 14, 2016

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 23
Indian Child Welfare Act Proceedings; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 23

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113]

RIN 1076–AF25

Indian Child Welfare Act Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule adds a new subpart to the Department of the Interior's (Department) regulations implementing the Indian Child Welfare Act (ICWA), to improve ICWA implementation. The final rule addresses requirements for State courts in ensuring implementation of ICWA in Indian child-welfare proceedings and requirements for States to maintain records under ICWA.

DATES: This rule is effective on December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 273–4680; *elizabeth.appel@bia.gov*.

SUPPLEMENTARY INFORMATION:

Note: This preamble uses the prefix ''FR § '' to denote regulatory sections in this final rule, and ''PR § '' to denote regulatory sections in the proposed rule published March 20, 2015 at 80 FR 14,480.

I. Executive Summary

A. Introduction

This final rule promotes the uniform application of Federal law designed to protect Indian children, their parents, and Indian Tribes. In conjunction with this final rule, the Solicitor is issuing an M Opinion addressing the implementation of the Indian Child Welfare Act by legislative rule. *See* M–37037. Congress enacted the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.,* in 1978 to address an ''Indian child welfare crisis [ ] of massive proportions'': an estimated 25 to 35 percent of all Indian children had been separated from their families and placed in adoptive homes, foster care, or institutions. H.R. Rep. No. 95–1386, at 9 (1978), *reprinted in* 1978 U.S.C.C.A.N. 7530, 7531. Although the crisis flowed from multiple causes, Congress found that nontribal public and private agencies had played a significant role, and that State agencies and courts had 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(4)–(5). To address this failure, ICWA establishes minimum Federal standards for the removal of Indian children from their families and the placement of these children in foster or adoptive homes, and confirms Tribal jurisdiction over child-custody proceedings involving Indian children. 25 U.S.C. 1902.

Since its passage in 1978, ICWA has provided important rights and protections for Indian families, and has helped stem the widespread removal of Indian children from their families and Tribes. State legislatures, courts, and agencies have sought to interpret and implement this Federal law, and many States should be applauded for their affirmative efforts and support of the policies animating ICWA.

However, the Department has found that implementation and interpretation of the Act has been inconsistent across States and sometimes can vary greatly even within a State. This has led to significant variation in applying ICWA's statutory terms and protections. This variation means that an Indian child and her parents in one State can receive different rights and protections under Federal law than an Indian child and her parents in another State. This disparate application of ICWA based on where the Indian child resides creates significant gaps in ICWA protections and is contrary to the uniform minimum Federal standards intended by Congress.

The need for consistent minimum Federal standards to protect Indian children, families, and Tribes still exists today. The special relationship between the United States and the Indian Tribes and their members upon which Congress based the statute continues in full force, as does the United States' direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian Tribe. 25 U.S.C. 1901, 1901(2). Native American children, however, are still disproportionately more likely to be removed from their homes and communities than other children. *See, e.g.,* Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, *Ending Violence So Children Can Thrive* 87 (Nov. 2014); National Council of Juvenile and Family Court Judges, *Disproportionality Rates for Children of Color in Foster Care, Fiscal Year 2013* (June 2015). In addition, some State court interpretations of ICWA have essentially voided Federal protections for groups of Indian children to whom ICWA clearly applies. And commenters provided numerous anecdotal accounts where Indian children were unnecessarily removed from their families and placed in non-Indian settings; where the rights of Indian children, their parents, or their Tribes were not protected; or where significant delays occurred in Indian child-custody proceedings due to disputes or uncertainty about the interpretation of the Federal law.

B. Overview of Final Rule

The final rule updates definitions and notice provisions in the existing rule and adds a new subpart I to 25 CFR part 23 to address ICWA implementation by State courts. It promotes nationwide uniformity and provides clarity to the minimum Federal standards established by the statute. In many instances, the standards in this final rule reflect State interpretations and best practices, as reflected in State court decisions, State laws implementing ICWA, or State guidance documents. The rule provisions also reflect comments from organizations and individuals that serve children and families (including, in particular, Indian children) and have substantial expertise in child-welfare practices.

The final rule promotes compliance with ICWA from the earliest stages of a child-welfare proceeding. Early compliance promotes the maintenance of Indian families, and the reunification of Indian children with their families whenever possible, and reduces the need for disruption in placements. Timely notification of an Indian child's Tribe also ensures that Tribal government agencies have meaningful opportunities to provide assistance and resources to the child and family. And early implementation of ICWA's requirements conserves judicial resources by reducing the need for delays, duplication, and appeals.

In particular, the final rule addresses the following issues:

- *Applicability.* The final rule clarifies when ICWA applies, while making clear that there is no exception to applicability based on certain factors used by a minority of courts in defining and applying the so-called ''existing Indian family,'' or EIF, exception.
- *Initial Inquiry.* The final rule clarifies the steps involved in conducting a thorough inquiry at the beginning of child-custody proceedings as to whether the child is an ''Indian child'' subject to the Act.
- *Emergency proceedings.* Recognizing that emergency removal and placements are sometimes required to protect an Indian child's safety and welfare, the final rule clarifies the distinction between the requirements for emergency proceedings and other child-custody proceedings involving Indian children and includes provisions that help to ensure that emergency removal and placements are as short as possible, and that, when necessary, proceedings subject to the full suite of ICWA protections are promptly initiated.
- *Notice.* The final rule describes uniform requirements for prompt notice to parents and Tribes in involuntary proceedings to facilitate compliance with statutory requirements.
- *Transfer.* The final rule clarifies the requirement that a State court determine whether the State or Tribe has jurisdiction and, where jurisdiction is concurrent, establishes standards to guide the determination whether good cause exists to deny transfer (including factors that cannot properly be considered) and addresses transfer of proceedings to Tribal court.
- *Qualified expert witnesses.* The final rule provides interpretation of the term ''qualified expert witness.''
- *Placement preferences.* The final rule clarifies when and what placement preferences apply in foster care, pre-adoptive, and adoptive placements, provides presumptive standards for what may constitute good cause to depart from the placement preferences, and prohibits courts from considering

certain factors as the basis for departure from placement preferences.

• *Voluntary proceedings.* The final rule clarifies certain aspects of ICWA's applicability to voluntary proceedings, including addressing the need to determine whether a child is an ''Indian child'' in voluntary proceedings and specifying the requirements for obtaining consent.

• *Information, recordkeeping, and other rights.* The final rule addresses the rights of adult adoptees to information and sets out what records States and the Secretary must maintain.

The Department carefully considered the comments on the proposed rule and made changes responsive to those comments. The reasons for the changes are described in the section-by-section analysis below. In particular, while the proposed rule would have been directed to both State courts and agencies, the Department has focused the final rule on the standards to be applied in State-court proceedings. Most ICWA provisions address what standards State courts must apply before they take actions such as exercising jurisdiction over an Indian child, ordering the removal of an Indian child from her parent, or ordering the placement of the Indian child in an adoptive home. The final rule follows ICWA in this regard. Further, State courts are familiar with applying Federal law to the cases before them. Several ICWA provisions do apply, either directly or indirectly, to State and private agencies, *see, e.g.,* 25 U.S.C. 1915(c); *id.* 1922; *see also id.* 1912(a). Nothing in this rule alters these obligations. And agencies need to be alert to the standards identified in the final rule, since these will determine what a court will require with respect to issues like notice to parents and Tribes (FR § 23.111), emergency proceedings (FR § 23.113), active efforts (FR § 23.120), and placement preferences (FR § 23.129–132).

The Department is cognizant that child-custody matters address some of the most fundamental elements of human life—children, familial ties, identity, and community. They often involve circumstances unique to the parties before the court and may require difficult and sometimes heart-wrenching decisions. The Department is also fully aware of the paramount importance of Indian children to their immediate and extended families, their communities, and their Tribes. In the final rule, the Department carefully balanced the need for more uniformity in the application of Federal law with the legitimate need for State courts to exercise discretion over how to apply the law to each case, while keeping in mind that Congress enacted ICWA in part to address a concern that State courts were exercising their discretion inappropriately, to the detriment of Indian children, parents, and Tribes. In some cases, the Department determined that particular standards or practices are better suited to guidelines; the Department anticipates issuing updated guidelines prior to the effective date of this rule (180 days from issuance). These considerations are discussed further in the section-by-section analysis below.

II. Background

A. Background Regarding Passage of ICWA

Congress enacted ICWA in 1978 to address the policies and practices that resulted in the ''wholesale separation of Indian children from their families.'' *See* H.R. Rep. No. 95–1386, at 9. After several years of investigation, Congress had found that an alarmingly high percentage of Indian families [were] broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies. 25 U.S.C. 1901(4). The congressional investigation, which resulted in hundreds of pages of legislative testimony compiled over the course of four years of hearings, deliberation, and debate, revealed ''the wholesale separation of Indian children from their families.'' [1] H.R. Rep. No. 95–1386, at 9. The empirical and anecdotal evidence showed that Indian children were separated from their families at significantly higher rates than non-Indian children. In some States, between 25 and 35 percent of Indian children were living in foster care, adoptive care, or institutions. *Id.* Indian children removed from their homes were most often placed in non-Indian foster care and adoptive homes. AIPRC Report at 78–87. These separations contributed to a number of problems, including the erosion of a generation of Indians from Tribal communities, loss of Indian traditions and culture, and long-term emotional effects on Indian children caused by loss of their Indian identity. *See* 1974 Senate Hearing at 1–2, 45–51 (statements of Sen. James Abourezk, Chairman, Subcomm. on Indian Affairs and Dr. Joseph Westermeyer, Dep't of Psychiatry, University of Minn.).

Congress found that removal of children and unnecessary termination of parental rights were utilized to separate Indian children from their Indian communities. The four leading factors contributing to the high rates of Indian child removal were a lack of culturally competent State child-welfare standards for assessing the fitness of Indian families; systematic due-process violations against both Indian children and their parents during child-custody procedures; economic incentives favoring removal of Indian children from their families and communities; and social conditions in Indian country. H.R. Rep. No. 95–1386, at 10–12.

Congress also found that many of these problems arose from State actions, *i.e.,* that the States, exercising their recognized jurisdiction over Indian child-custody proceedings through 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). The standards used by State and private child-welfare agencies to assess Indian parental fitness promoted unrealistic non-Indian socioeconomic norms and failed to account for legitimate cultural differences in Indian families. Time and again, ''social workers, ignorant of Indian cultural values and social norms, ma[d]e decisions that [we]re wholly inappropriate in the context of Indian family life and so they frequently discover[ed] neglect or abandonment where none exist[ed].'' H.R. Rep. No. 95–1386, at 10. For example, Indian parents might leave their children in the care of extended-family members, sometimes for long periods of time. Social workers untutored in the ways of Indian family life assumed leaving children in the care of anyone outside the nuclear family amounted to neglect and grounds for terminating parental rights. Yet, the House Report noted, this is an accepted practice for certain Tribes. *Id.*

[1] *See Problems that American Indian Families Face in Raising Their Children and How These Problems Are Affected by Federal Action or Inaction: Hearing Before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs,* 93rd Cong. (1974) (hereinafter, ''1974 Senate Hearing''); Task Force Four: Federal, State, and Tribal Jurisdiction, American Indian Policy Review Commission Task Force Four, *Report on Federal, State, and Tribal Jurisdiction* (1976) (hereinafter ''AIPRC Report''); 123 Cong. Rec. 21042–44 (June 27, 1977); *To Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families, and for Other Purposes: Hearing on S. 1214 Before the S. Select Comm. on Indian Affairs,* 95th Cong. (1977) (hereinafter ''1977 Senate Hearing''); S. Rep. No. 95–597 (1977); 123 Cong. Rec. 37223–26 (Nov. 4, 1977); *To Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, To Prevent the Breakup of Indian Families, and for Other Purposes: Hearing on S. 1214 Before the Subcomm. On Indian Affairs and Public Lands of the H. Comm. on Interior and Insular Affairs,* 95th Cong. 29 (1978) (hereinafter, ''1978 House Hearing''); H.R. Rep. No. 95–1386 (1978); 124 Cong. Rec. H38101–12 (1978).

Non-Indian socioeconomic values that State agencies and judges applied in the child-welfare context similarly were found to not account for the difference in family structure and child-rearing practice in Indian communities. *Id.* Layered together with cultural bias, the result, the House Report concluded, was unequal and incongruent application of child-welfare standards for Indian families. *Id.* For example, parental alcohol abuse was one of the most frequently advanced reasons for removing Indian children from their parents; however, in areas where Indians and non-Indians had similar rates of problem drinking, alcohol abuse was rarely used as grounds to remove children from non-Indian parents. *Id.*

Congress heard testimony that removing Indian children from their families had become a regular, encouraged practice. Congress came to understand that ''agencies established to place children have an incentive to find children to place.'' *Id.* at 11. Indian leaders alleged that federally subsidized foster care homes encouraged non-Indians to take in Indian children to supplement their incomes with foster care payments, and that some non-Indian families sought to foster Indian children to gain access to the child's Federal trust account. *See id.; See also* 1974 Senate Hearing at 118. While economic incentives encouraged the removal of Indian children, the economic conditions in Indian country prevented Tribes from providing their own foster-care facilities and certified adoptive parents. Poverty and substandard housing were prolific on reservations, and obtaining State foster-care licenses required a standard of living that was often out of reach in Indian communities. Otherwise loving and supportive Indian families were accordingly prevented from becoming foster parents, which promoted the placement of Indian children in non-Indian homes away from their Tribes. *See* H.R. Rep. No. 95–1386, at 11.

In addition, State procedures for removing Indian children from their natural homes commonly violated due process. Social workers sometimes obtained ''voluntary'' parental-rights waivers to gain access to Indian children using coercive and deceitful measures. 1974 Senate Hearing at 95. Sometimes Indian parents with little education, reading comprehension, and understanding of English signed ''voluntary'' waivers without knowing what rights they were forfeiting. H.R. Rep. No. 95–1386, at 11. Moreover, State courts failed to protect the rights of Indian children and Indian parents. For example, in involuntary removal proceedings, the Indian parents and children rarely were represented by counsel and sometimes received little if any notice of the proceeding, and termination of parental rights was seldom supported by expert testimony. 1974 Senate Hearing at 67–68; H.R. Rep. No. 95–1386, at 11. Rather than helping Indian parents correct parenting issues, or acknowledging that the alleged problems were the result of cultural and socioeconomic differences, social workers claimed removal was in the child's best interest. 1974 Senate Hearing at 62.

Congress understood that these issues significantly impacted children who lived off of reservations, not just on-reservation children. Congress was concerned with the effect of the removal of Indian children ''whose families live in urban areas or with rural nonrecognized tribes,'' noting that there were approximately 35,000 such children in foster care, adoptive homes, or institutions. 124 Cong. Rec. H38102; 123 Cong. Rec. H21043. In the Final Report of the American Indian Policy Review Commission, which was included as part of the Senate Report on ICWA, the Commission recommended legislation addressing the fact that, because ''[m]any Indian families move back and forth from a reservation dwelling to border communities or even to distant communities, depending on employment and educational opportunities,'' problems could arise when Tribal and State courts offered competing child-custody determinations, and that legislation therefore had to address situations where ''an Indian child is not domiciled on a reservation and [is] subject to the jurisdiction of non-Indian authorities.'' S. Rep. No. 95–597, at 51–52 (1977).

Congress further recognized that the ''wholesale removal of [Tribal] children by nontribal government and private agencies constitutes a serious threat to [Tribes'] existence as on-going, self-governing communities,'' and that the ''future and integrity of Indian tribes and Indian families are in danger because of this crisis.'' 124 Cong. Rec. H38103. As one Tribal representative testified before Congress, ''[t]he ultimate preservation and continuation of [Tribal] cultures depends on our children and their proper growth and development.'' *See* 1977 Senate Hearing at 169. Commenters on the proposed legislation also noted that, because ''[p]robably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships,'' the ''chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their people.'' *Id.* at 157. Thus, in addition to protecting individual Indian children and families, Congress was also concerned about preserving the integrity of Tribes as self-governing, sovereign entities and ensuring that Tribes could survive both culturally and politically. *See* 124 Cong. Rec. H38,102.

B. Overview of ICWA's Provisions

In light of the information presented about State child-custody practices for Indian children, Congress passed ICWA to ''protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society.'' H.R. Rep. No. 95–1386, at 23. Congress further declared that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. 25 U.S.C. 1902. And although Congress described ''the failure of State officials, agencies, and procedures to take into account the special problems and circumstances of Indian families and the legitimate interest of the Indian tribe in preserving and protecting the Indian family as the wellspring of its own future,'' H.R. Rep. No. 95–1386, at 19, the legislature carefully considered the traditional role of the States in the arena of child welfare outside Indian reservations, and crafted a statute that would balance the interests of the United States, the individual States, Indian Tribes, and Indians, noting:

While the committee does not feel that it is necessary or desirable to oust the States of their traditional jurisdiction over Indian children falling within their geographic limits, it does feel the need to establish minimum Federal standards and procedural safeguards in State Indian child-custody proceedings designed to protect the rights of the child as an Indian, the Indian family and the Indian tribe.

H.R. Rep. No. 95–1386, at 19.

ICWA therefore applies to ''child-custody proceedings,'' defined as foster-care placements, terminations of parental rights, and pre-adoptive and adoptive placements, involving an ''Indian child,'' defined as any unmarried person who is under age eighteen and either is: (a) A member of an Indian tribe; or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. 25 U.S.C. 1903. In such proceedings, Congress accorded Tribes

''numerous prerogatives . . . through the ICWA's substantive provisions . . . as a means of protecting not only the interests of individual Indian children and their families, but also of the tribes themselves.'' *Miss. Band of Choctaw Indians* v. *Holyfield,* 490 U.S. 30, 49 (1989). In addition, ICWA provides important procedural and substantive standards to be followed in State-administered proceedings concerning possible removal of an Indian child from her family. *See, e.g.,* 25 U.S.C. 1912(d) (requiring provision of ''active efforts'' to prevent the breakup of the Indian family); *id.* 1912(e)–(f) (requiring specified burdens of proof and expert testimony regarding potential damage to child resulting from continued custody by parent, before foster-care placement or termination of parental rights may be ordered).

The ''most important substantive requirement imposed on state courts'' by ICWA is the placement preference for any adoptive placement of an Indian child. *Holyfield,* 490 U.S. at 36–37. In any adoptive placement of an Indian child under State law, ICWA requires that a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family (regardless of whether they are Tribal citizens); (2) other members of the Indian child's Tribe; or (3) other Indian families. 25 U.S.C. 1915(a). ICWA requires similar placement preferences for pre-adoptive placement and foster-care placement. 25 U.S.C. 1915(a)–(b). These preferences reflect ''Federal policy that, where possible, an Indian child should remain in the Indian community.'' *Holyfield,* 490 U.S. at 36–37 (internal citations omitted).

C. Need for These Regulations

Although the Department initially hoped that binding regulations would not be ''necessary to carry out the Act,'' *see* 44 FR 67,584 (Nov. 23, 1979), a third of a century of experience has confirmed the need for more uniformity in the interpretation and application of this important Federal law.

Need for Uniform Federal Standard. For decades, various State courts and agencies have interpreted the Act in different, and sometimes conflicting, ways. This has resulted in different standards being applied to ICWA adjudications across the United States, contrary to Congress's intent. *See Holyfield,* 490 U.S. at 43–46; *see also* 25 U.S.C. 1902; H.R. Rep. No. 95–1386, at 19; *see generally* Casey Family Programs, *Indian Child Welfare Act: Measuring Compliance* (2015), *www.casey.org/media/measuring-compliance-icwa.pdf.* Perhaps the most noted example is the ''existing Indian family,'' or EIF, exception, under which some State courts first determine the ''Indian-ness'' of the child and family before applying the Act. As a result, children who meet the statutory definition of ''Indian child'' and their parents are denied the protections that Congress established by Federal law. This exception to the application of ICWA was created by some State courts, and has no basis in ICWA's text or purpose. Currently, the Department has identified State-court cases applying this exception in a few states while other State courts have rejected the exception. *See, e.g., Thompson* v. *Fairfax Cty. Dep't of Family Servs.,* 747 SE.2d 838, 847–48 (Va. Ct. App. 2013) (collecting cases); *In re Alexandria P.,* 176 Cal. Rptr. 3d 468, 484–85 (Cal. Ct. App. 2014) (noting split across California jurisdictions). The question whether an Indian child, her parents, and her Tribe will receive the Federal protections to which they are entitled must be uniform across the Nation, as Congress mandated.

This type of conflicting State-level statutory interpretation can lead to arbitrary outcomes, and can threaten the rights that the statute was intended to protect. For example, in *Holyfield,* the Court concluded that the term ''domicile'' in ICWA must have a uniform Federal meaning, because otherwise parties or agencies could avoid ICWA's application ''merely by transporting [the child] across state lines.'' 490 U.S. at 46. State courts also differ as to what constitutes ''good cause'' for departing from ICWA's child placement preferences, weighing a variety of different factors when making the determination. *See, e.g., In re A.J.S.,* 204 P.3d 543, 551 (Kan. 2009); *In re Adoption of F.H.,* 851 P.2d 1361, 1363–64 (Alaska 1993); *In re Adoption of M.,* 832 P.2d 518, 522 (Wash. 1992). States are also inconsistent as to how to demonstrate sufficient ''active efforts'' to keep a family intact. *See State ex rel. C.D.* v. *State,* 200 P.3d 194, 205 (Utah Ct. App. 2008) (noting State-by-State disagreement over what qualifies as ''active efforts''). In other instances, State courts have simply ignored ICWA requirements outright. *Oglala Sioux Tribe & Rosebud Sioux Tribe* v. *Van Hunnik,* 100 F. Supp. 3d 749, 754 (D.S.D. 2015) (finding that the State had ''developed and implemented policies and procedures for the removal of Indian children from their parents' custody in violation of the mandates of the Indian Child Welfare Act''). The result of these inconsistencies is that many of the problems Congress intended to address by enacting ICWA persist today.

The Department's current nonbinding guidelines are insufficient to fully implement Congress's goal of nationwide protections for Indian children, parents, and Tribes. *See* 44 FR at 67,584–95. While State courts will sometimes defer to the guidelines in ICWA cases (*see In re Jack C.,* 122 Cal. Rptr. 3d 6, 13–14 (Cal. Ct. App. 2011); *In the Interest of Tavian B.,* 874 N.W.2d 456, 460 (Neb. 2016)), State courts frequently characterize the guidelines as lacking the force of law and conclude that they may depart from the guidelines as they see fit. *See, e.g.,Gila River Indian Cmty.* v. *Dep't of Child Safety,* 363 P.3d 148, 153 (Ariz. Ct. App. 2015).

These State-specific determinations about the meaning of key terms in the Federal law will continue absent a legislative rule, with potentially devastating consequences for the children, families, and Tribes that ICWA was designed to protect. Consider a child who is a Tribal citizen and who lives with his mother, who is also a Tribal citizen. The mother and child live far from their Tribe's reservation because of her work, and they are not able to regularly participate in their Tribe's social, cultural, or political events. If the State social-services agency seeks to remove the child from the mother and initiates a child-custody proceeding, the application of ICWA to that proceeding—which clearly involves an ''Indian child''—will depend on whether that State court has accepted the existing Indian family exception. Likewise, even if the court agrees that ICWA applies, the actions taken to provide remedial and rehabilitative programs to the family will be uncertain because there is no uniform interpretation of what constitutes ''active efforts'' under ICWA. This type of variation was not intended by Congress and actively undermines the purposes of the Act.

Need for Protections for Tribal Citizens Living Outside Indian Country. The need for more uniform application of ICWA in State courts is reinforced by the fact that approximately 78% of Native Americans live outside of Indian country,[2] where judges may be less familiar with ICWA requirements generally, or where a Tribe may be less

[2] *See* United States Census Bureau, Fact for Features: American Indian and Alaska Native Heritage Month: November 2012 (Oct. 25, 2012), *https://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb12-ff22.html* (summary files for 2015 are not yet available).

likely to find out about custody adjudications involving their citizens. Some commenters have pointed to the large number of Tribal citizens living off-reservation as proof that off-reservation Indians have made a conscious choice to distance themselves from their Tribe and its culture, and that ICWA's protections are unnecessary. They have accordingly questioned the need for a legislative rule, based on the assumption that off-reservation Indians do not want the Federal protections that accompany their status as Indians.

These comments misapprehend the reasons for high off-reservation Indian populations and the nature of Tribal citizenship generally, and do not diminish the need for the final rule. First, the fact that many Indians live off-reservation is, in part, a result of past, now-repudiated Federal policies encouraging Indian assimilation with non-Indians and, in some cases, terminating Tribes outright. For example, Congress passed the Indian General Allotment Act, 24 Stat. 388, codified at 25 U.S.C. 331 (1887) (repealed), which authorized the United States to allot and sell Tribal lands to non-Indians and take them out of trust status. The purpose of the Act was to ''encourage individual land ownership and, hopefully, eventual assimilation into the larger society,'' *Bugenig* v. *Hoopa Valley Tribe,* 266 F.3d 1201, 1205 (9th Cir. 2001), and to ''promot[e] interaction between the races and . . . encourage[e] Indians to adopt white ways,'' *Mattz* v. *Arnett,* 412 U.S. 481, 496 (1973). Many Indian lands subsequently passed out of Tribal control, which often led to Tribal citizens dispersing from their reservations.

Likewise, during the so-called ''termination era'' of the 1950s, Congress passed a series of acts severing its trust relationship with more than 100 Tribes. Terminated Tribes lost not only their land base but also myriad Federal services previously arising from the trust relationship, including education, health care, housing, and emergency welfare. *See Sioux Tribe of Indians* v. *United States,* 7 Cl. Ct. 468, 478 n.8 (Cl. Ct. 1985) (describing the termination policy). Lacking these basic services, which often did not otherwise exist in rural Tribal communities, many Indians were forced to move to urban areas. And in 1956, the Relocation Act was passed with funds to support the voluntary relocation of any young adult Indian willing to move from on or near a reservation to a selected urban center. Act of Aug. 3, 1956, Public Law 84–959, 70 Stat. 986. Thus, today's off-reservation population is not a new phenomenon; ICWA itself was enacted with Congress's awareness that many Indians live off-reservation. *See* 1978 House Hearings at 103; H.R. Rep. No. 95–1386, at 15. The fact that an Indian does not live on a reservation is not evidence of disassociation with his or her Tribe. In fact, citizens of many Tribes do not have the option to live on reservation land, as over 40 percent of Tribes have no reservation land.

Second, the comments ignore the fact that, regardless of geographic location of a Tribal citizen, Tribal citizenship (aka Tribal membership) is voluntary and typically requires an affirmative act by the enrollee or her parent. Tribal laws generally include provisions requiring the parent or legal guardian of a minor to apply for Tribal citizenship on behalf of the child. *See, e.g.,* Jamestown S'Klallam Tribe Tribal Code § 4.02.04(A)—Applications for Enrollment. Tribes also often require an affirmative act by the individual seeking to become a Tribal citizen, such as the filing of an application. *See, e.g.,* White Mountain Apache Enrollment Code, Sec. 1–401—Application Form: Filing. As ICWA is limited to children who are either enrolled in a Tribe or are eligible for enrollment and have a parent who is an enrolled member, that status inherently demonstrates an ongoing Tribal affiliation even among off-reservation Indians.

Rather than simply moving off-reservation, those enrolled Tribal citizens who do want to renounce their affiliation with a Tribe may voluntarily relinquish their citizenship. Tribal governing documents often include provisions allowing adult citizens to relinquish Tribal citizenship, sometimes also requiring a notarized or witnessed written statement. *See, e.g.,* Jamestown S'Klallam Tribe Tribal Code § 4.04.01(C)—Loss of Tribal Citizenship; White Mountain Apache Enrollment Code Sec. 1–702—Relinquishment. These procedures, and not an individual's geographic location, are the proper determinant of whether an individual retains an ongoing political affiliation with a Tribe (both generally and for the purposes of the ICWA placement preferences).

Commenters who raised this point also argued that a legislative rule would continue to apply Tribal placement preferences to individuals who have low Indian blood quantum. Several noted that the Indian child in *Adoptive Couple* v. *Baby Girl,* 133 S. Ct. 2552 (2013), purportedly was 3/256 Cherokee by blood, and questioned why ICWA should apply to such individuals, particularly when they live off-reservation. This argument mistakes and over-simplifies the nature of Indian status. Tribes have a wide variety of citizenship-eligibility requirements. For example, the Jamestown S'Klallam Tribe requires the applicant to produce ''documentary evidence such as a notarized paternity affidavit showing the name of a parent through whom eligibility for citizenship is claimed.'' Jamestown S'Klallam Tribe Tribal Code § 4.02.04(C)—Applications for Enrollment. Other Tribes include blood-quantum requirements. For example, the White Mountain Apache Tribe requires the applicant to be at least one fourth (1/4) degree White Mountain Apache blood. *See* White Mountain Apache Constitution, Article II, sec. 1—Membership. Federal courts have repeatedly recognized that determining citizenship (membership) requirements is a sovereign Tribal function. *See, e.g., Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 72 n.32 (1978) (''A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.''); *Montgomery* v. *Flandreau Santee Sioux Tribe,* 905 F. Supp. 740, 746 (D.S.D. 1995) (''Giving deference to the Tribe's right as a sovereign to determine its own membership, the Court holds that it lacks subject matter jurisdiction to determine whether any plaintiffs were wrongfully denied enrollment in the Tribe.''); *In re Adoption of C.D.K.,* 629 F. Supp. 2d 1258, 1262 (D. Utah 2009) (holding that ''the Indian tribes' 'inherent power to determine tribal membership' entitles determinations of membership by Indian tribes to great deference''). The act of fulfilling Tribal citizenship requirements is all that is necessary to demonstrate Tribal affiliation, and thus qualify as an ''Indian'' or ''Indian child'' under ICWA.

These types of objections, which are based on fundamental misunderstandings of Indian law, history, and social and cultural life, actually demonstrate the need for a legislative rule. Too often, State courts are swayed by these types of arguments and use the leeway afforded by the lack of regulations to craft ad hoc ''exceptions'' to ICWA. A legislative rule is necessary to support ICWA's underlying purpose and to address those areas where a lack of binding guidance has resulted in inconsistent implementation and noncompliance with the statute.

Continued Need for ICWA Protections. ICWA's requirements remain vitally important today. Although ICWA has helped to prevent the wholesale separation of Tribal

children from their families in many regions of the United States, Indian families continue to be broken up by the removal of their children by non-Tribal public and private agencies. Nationwide, based on 2013 data, Native American children are represented in State foster care at a rate 2.5 times their presence in the general population. *See* National Council of Juvenile and Family Court Judges, *Disproportionality Rates for Children of Color in Foster Care* tbl. 1 (June 2015). This disparity has *increased* since 2000. *Id.* (showing disproportionality rate of 1.5 in 2000). In some States, including numerous States with significant Indian populations, Native American children are represented in State foster-care systems at rates as high as 14.8 times their presence in the general population of that State. *Id.* While this disproportionate overrepresentation of Native American children in the foster-care system likely has multiple causes, it nonetheless supports the need for this rule.

Through numerous statutory provisions, ICWA helps ensure that State courts incorporate Indian social and cultural standards into decision-making that affects Indian children. For example, section 1915 requires foster-care and adoptive placement preference be given to members of the child's extended family. This requirement comports with findings that Tribal citizens tend to value extended family more than the Euro-American model, often having several generations of family and aunts and uncles participating in primary child-rearing activities. *See, e.g.,* John G. Red Horse, *Family Preservation: Concepts in American Indian Communities* (Casey Family Programs and National Indian Child Welfare Assoc. Dec. 2000). Likewise, from the adoptee's perspective, extended-family-member involvement and strong connection to Tribe shape reunification. Ashley L. Landers et al., *Finding Their Way Home: The Reunification of First Nations Adoptees,* 10 First Peoples Child & Family Review no. 2 (2015).

D. The Department's Implementation of ICWA

As required by ICWA, the Department issued regulations in 1979 to establish procedures through which a Tribe may reassume jurisdiction over Indian child-custody proceedings, 44 FR 45092 (Jul. 24, 1979) (codified at 25 CFR part 23), as well as procedures for notice of involuntary Indian child-custody proceedings, payment for appointed counsel in State courts, and procedures for the Department to provide grants to Tribes and Indian organizations for Indian child and family programs. 44 FR 45096 (Jul. 24, 1979) (codified at 25 CFR part 23). In January 1994, the Department revised its ICWA regulations to convert the competitive-grant process for Tribes to a noncompetitive funding mechanism, while continuing the competitive award system for Indian organizations. *See* 59 FR 2248 (Jan. 13, 1994).

In 1979, the Department published recommended guidelines for Indian child-custody proceedings in State courts. 44 FR 24000 (Apr. 23, 1979) (proposed guidelines); 44 FR 32,294 (Jun. 5, 1979) (seeking public comment); 44 FR 67584 (final guidelines). Several commenters remarked then that the Department had the authority to issue regulations and should do so. The Department declined to issue regulations and instead revised its recommended guidelines and published them in final form in November 1979. 44 FR 67584.

More recently, the Department determined that it may be appropriate and necessary to promulgate additional and updated rules interpreting ICWA and providing uniform standards for State courts to follow in applying the Federal law. In 2014, the Department invited public comments to determine whether to update its guidelines to address inconsistencies in State-level ICWA implementation that had arisen since 1979 and, if so, 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 (NCJFCJ) 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. The Department considered these comments and subsequently published updated Guidelines (2015 Guidelines) in February 2015. *See* 80 FR 10146 (Feb. 25, 2015).

Many commenters on the 2015 Guidelines requested not only that the Department update its ICWA guidelines but that the Department also issue binding regulations addressing the requirements and standards that ICWA provides for State-court child-custody proceedings. Commenters noted the role that regulations could provide in promoting uniform application of ICWA across the country, along with many of the other reasons discussed above why ICWA regulations are needed. Recognizing that need, the Department began a notice-and-comment process to promulgate formal ICWA regulations. The Department issued a proposed rule on March 20, 2015 that would ''incorporate many of the changes made to the recently revised guidelines into regulations, establishing the Department's interpretation of ICWA as a binding interpretation to ensure consistency in implementation of ICWA across all States.'' 80 FR 14480, 14481 (Mar. 20, 2015).

As part of its process collecting input on the proposed regulations, Interior held five public hearings and five Tribal-consultation sessions across the country, as well as one public hearing and one Tribal consultation by teleconference. Public hearings and Tribal consultations were held on April 22, 2015, in Portland Oregon; April 23, 2015, in Rapid City, South Dakota; May 5, 2015, in Albuquerque, New Mexico; May 7, 2015, in Prior Lake, Minnesota; May 11 and 12, 2015, by teleconference; and May 14, 2015, in Tulsa, Oklahoma. All sessions were transcribed. In addition to oral comments, the Department received over 2,100 written comments.

After the public-comment period closed on May 19, 2015, the Department reviewed comments received and, where appropriate, made changes to the proposed rule in response. This final rule reflects the input of all comments received during the public-comment period and Tribal consultation. The comments on the proposed rule and the contents of the final rule are discussed in detail below in Section IV.

In crafting this final rule, the Department is drawing from its expertise in Indian affairs generally, and from its extensive experience in administering Indian child-welfare programs specifically. BIA's Office of Indian Services, through its Division of Human Services, collects information from Tribes on their ICWA activities for the Indian Child Welfare Quarterly and Annual Report, ensures that ICWA processes and resources are in place to facilitate implementation of ICWA, administers the notice process under section 1912 of the Act, publishes a nationwide contact list of Tribally designated ICWA agents for service of notice, administers ICWA grants, and maintains a central file of adoption records under ICWA. In addition, BIA provides technical assistance to State social workers and courts on ICWA and Indian child welfare in general,

including but not limited to assisting in locating expert witnesses and identifying language interpreters. Currently, BIA employs a team of child protection social workers who provide this assistance on an as-needed basis as part of their daily duties. BIA also employs an ICWA Policy Social Worker, who is both an attorney and a social worker, and who serves as the central BIA expert and liaison on ICWA matters.

The Department is a significant Federal funding source for Indian child-welfare programs run by Tribes. Social-services funding is used to support Tribal and Department-operated Child Protection and Child Welfare Services (CPS/CW) on or near reservations and designated service areas. Tribal and Department caseworkers are the first responders for child and family services on reservations in Indian country. CPS/CW work is labor-intensive, as it requires social-service workers to frequently engage families through face-to-face contacts, assess the safety of children, monitor case progress, and ensure that essential services and support are provided to the child and her family. This experience is critical toward understanding the areas where ICWA is or is not working at the State level, as well as the necessary standards to address ongoing problems.

Congress also tasked the Department with affirmatively monitoring State compliance with ICWA by accessing State records of placement of Indian children, including documentation of State efforts to fulfill ICWA placement preferences. *See* 25 U.S.C. 1915(e). State courts are further responsible for providing the Department with a final decree or adoptive order for any Indian child within 30 days after entering such a judgment, together with any information necessary to show the Indian child's name, birthdate, and Tribal affiliation, the names and addresses of the biological and adoptive parents, and the identity of any agency having relevant information relating to the adoptive parent. *See* 25 CFR 23.71. The Department's experience administering these programs has informed development of this rule.

The Department has also consulted extensively with the Children's Bureau of the Administration for Children and Families, Department of Health and Human Services, and the Department of Justice in the formulation of this final rule. The Children's Bureau partners with Federal, State, and Tribal agencies to improve the overall health and well-being of children and families, and has significant expertise in child abuse and neglect. The Children's Bureau also administers capacity-building centers for States, Tribes, and courts. The Department of Justice has significant expertise in court practice, Indian law, and court decisions addressing ICWA. This close coordination with the Children's Bureau and the Department of Justice has helped produce a final rule that reflects the expertise of all three agencies.

Finally, in issuing this final rule, the Department has considered the trust obligation of the United States to Indian Tribes, which Congress expressly referenced in ICWA. 25 U.S.C. 1901(3). The Department has also kept in mind the canon of construction, applied by Federal courts, that Federal statutes should be liberally construed in favor of Indians, with ambiguous provisions interpreted for their benefit. *See, e.g., Montana* v. *Blackfeet Tribe of Indians,* 471 U.S. 759, 766 (1985); *Doe* v. *Mann,* 415 F.3d 1038, 1047 (9th Cir. 2005).

III. Authority for Regulations

The Department's primary authority for this rule is 25 U.S.C. 1952. Section 1952 states that, within one hundred and eighty days after November 8, 1979, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. This expansive language evinces clear congressional intent that the Secretary (or in this case, her delegee, the Assistant Secretary-Indian Affairs, who oversees the Bureau of Indian Affairs) will issue rules to implement ICWA.

As discussed above, the Department issued several rules implementing ICWA in 1979. These included regulations to establish procedures by which an Indian Tribe may reassume jurisdiction over Indian child-custody proceedings as authorized by § 1918 of ICWA, *see* 44 FR 45092 (codified at 25 CFR part 13); regulations addressing topics such as notice in involuntary child-custody proceedings, payment for appointed counsel, grants to Indian Tribes and Indian organizations for Indian child and family programs, and recordkeeping and information availability, *see* 44 FR 45096 (codified at 25 CFR part 23); and interpretive guidelines for State courts to apply in Indian child-custody proceedings. *See* 44 FR 67584. Some of these rules and regulations have been amended since their original issuance. *See, e.g.,* 59 FR 2248 (Jan. 13, 1994).

Having carefully considered public comments on the issue and having reflected on statements the Department made in 1979, all of which are discussed further below, the Department determines that the rulemaking grant in § 1952 encompasses jurisdiction to issue rules at this time that set binding standards for Indian child-custody proceedings in State courts. ICWA provides a broad and general grant of rulemaking authority that authorizes the Department to issue rules and regulations as may be necessary to implement ICWA. Similar grants of rulemaking authority have been held to presumptively authorize agencies to issue rules and regulations addressing matters covered by the statute unless there is clear congressional intent to withhold authority in a particular area. *See, e.g., AT&T Corp.* v. *Iowa Utils. Bd.,* 525 U.S. 366, 378 (1999); *Am. Hospital Ass'n* v. *Nat'l Labor Relations Bd.,* 499 U.S. 606, 609–10 (1991) (general grant of rulemaking authority ''was unquestionably sufficient to authorize the rule at issue in this case unless limited by some other provision in the Act''); *Mourning* v. *Family Publ'ns Ser*v., *Inc.,* 411 U.S. 356, 369 (1973) (''[w]here the empowering provision of a statute states simply that the agency may 'make . . . such rules and regulations as may be necessary to carry out the provisions of this Act,' we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation'''); *see also City of Arlington* v. *FCC,* 133 S. Ct. 1863, 1874 (2013) (finding not ''a single case in which a general conferral of rulemaking or adjudicative authority has been held insufficient to support *Chevron* deference for an exercise of that authority within the agency's substantive field''); *Qwest Communic'ns Int'l Inc.* v. *FCC,* 229 F.3d 1172, 1179 (D.C. Cir. 2000) (''[t]he grant of authority relied upon by a federal agency in promulgating regulations need not be specific; it is only necessary 'that the reviewing court reasonably be able to conclude that the grant of authority contemplates the regulations issued'''') (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 308 (1979)). As discussed elsewhere in this preamble, the Department finds that this regulation is ''necessary to carry out the provisions'' of ICWA, 25 U.S.C. 1952, and thus falls squarely within the statutory grant of rulemaking authority.

ICWA's legislative history is consistent with the understanding that the statute's grant of rulemaking authority is broad and inclusive. The original versions of the House and Senate bills that led to the enactment of ICWA, as well as the version of the bill that passed the Senate, included the general grant of rulemaking authority

but also included specific, additional procedural requirements. *See* S. 1214, 95th Cong., 1st Sess., Section 205; *see also* S. Rep. No. 95–597 (Nov. 3, 1977). In particular, the bills required that within six months, the Secretary must consult with Tribes and Indian organizations ''in the consideration and formulation of rules and regulations to implement the provisions of this Act''; within seven months, present the proposed rules to congressional committees; within eight months, publish proposed rules for notice and comment; and within ten months, promulgate final rules and regulations to implement the provisions of the Act. *See* S. 1214, sec. 205(b)(1). The bills authorized the Secretary to revise the rules and regulations, but required that they be presented to the congressional committees first. *Id.* 205(c). These requirements were considered during hearings held on February 9 and March 9, 1978, before the House of Representatives Committee on Interior and Insular Affairs. *See* 1978 House Hearings at 47.

During debate of the bill on the House floor, the bill sponsor, Representative Udall, offered an amendment to change the rulemaking grant to its current text. Representative Udall explained that this amendment was designed to remove the burdens of submitting regulations to congressional committees, but did not indicate that the scope of the grant of rulemaking authority was to change in any way. *See* 124 Cong. Rec. H38,107 (1978). ICWA thus does not impose procedural requirements on rulemaking that exceed those required by the Administrative Procedure Act. Moreover, the Department views it as unlikely that Congress would have introduced and considered bills throughout the 95th Congress that would have imposed burdensome procedural requirements on the agency if Congress did not intend that § 1952 would provide the Department with a broad grant of rulemaking authority.

A. Statements Made in the 1979 Guidelines

The Department has reconsidered and no longer agrees with statements it made in 1979 suggesting that it lacks the authority to issue binding regulations. At that time, although it undertook a notice-and-comment process, the Department made clear that the final issued guidelines addressing State-court Indian-child-custody proceedings were not intended to have binding effect. *See* 44 FR 67584. The Department cited a number of reasons for issuing nonbinding guidelines, a course of action that was opposed by numerous commenters.[3] *Id.* As described above, the Department concludes today that this binding regulation is within the jurisdiction of the agency, was encompassed by the statutory grant of rulemaking authority, and is necessary to implement the Act.

While the Department stated in 1979 that binding regulations were ''not necessary to carry out the Act,'' 37 years of real-world ICWA application have thoroughly disproven that conclusion and underscored the need for this regulation. *See* discussion *supra* at Section II.C. The intervening years have shown both that State-court application of the statute has been inconsistent and contradictory across, and sometimes within, jurisdictions. This, in turn, has impeded the statutory intent of providing minimum Federal standards that would protect Indian children, families, and Tribes, and has allowed problems identified in the 1970s to remain in the present day. The lack of clarity and uniformity regarding the meaning of key ICWA provisions also creates confusion, delays, and appeals in individual cases involving Indian children.

For these reasons, the Department's decision to issue binding regulations finds strong support in the Supreme Court's carefully reasoned decision in *Mississippi Band of Choctaw Indians* v. *Holyfield,* 490 U.S. 30 (1989). There, the Supreme Court addressed whether a State court had jurisdiction over a child-custody proceeding involving two Indian children. As the sole disputed issue in the case was whether the children were ''domiciled'' on a reservation for ICWA purposes, the Court confronted the initial question whether Congress intended the definition of ''domicile'' to be a matter of State law. The Court noted that ''the meaning of a federal statute is necessarily a federal question in the sense that its construction remains subject to this Court's supervision.'' *Id.* at 43. The Court further noted the rule of statutory construction that ''Congress when it enacts a statute is not making the application of the federal act dependent on state law.'' *Id.* The Court explained that one reason for this rule ''is that federal statutes are generally intended to have uniform nationwide application'' and another reason for the rule is ''the danger that the federal program would be impaired if state law were to control.'' *Id.* at 43–44.

The Court then discussed its prior holding in *NLRB* v. *Hearst Publications Inc.,* 322 U.S. 111 (1944), where it rejected an argument that the term ''employee'' in the Wagner Act should be defined by State law. It quoted that decision's finding that ''[t]he Wagner Act is . . . intended to solve a national problem on a national scale.'' 490 U.S. at 44. The Court concluded that what it said of the Wagner Act ''applies equally well to the ICWA.'' *Id.* In explaining the reasons for this conclusion, the Court noted, *inter alia,* that ''Congress was concerned with the rights of Indian families and Indian communities vis-à-vis state authorities'' and ''that Congress perceived the States and their courts as partly responsible for the problem it intended to correct.'' *Id.* at 45. ''Under these circumstances, it is most improbable that Congress would have

[3] *See, e.g.,* Letter from Bob Aitken, Director, Social Services, The Minnesota Chippewa Tribe to David Etheridge (May 23, 1979) (on file with the Department of the Interior) (''I feel strongly the Bureau of Indian Affairs should not be putting any of the act in 'guideline' form. The 'recommended guidelines for state courts' should be in rule or regulation form for state courts to follow. It appears the state courts will have a choice on whether or not to follow the Act. In my opinion, the Act *does* delegate to the Interior Department the authority to mandate such procedures.''); Letter from Henry Sockheson, Chairman, Steering Committee of the National Association of Indian Legal Services, to David Etheridge (May 17, 1979) (on file with the Department of the Interior) (''Fearful of a constitutional challenge by states, a possibility soundly discredited and rejected by the lawmakers, the Secretary has adopted a position which flies in the face of clear Congressional intent to the contrary, *i.e.,* that he, even as a steward of Congressional purpose, cannot mandate procedures for state or tribal courts, the very meat & potatoes of the whole of Title I of the Act. In the place of these badly needed regulations, therefore, was substituted a Notice of 'Recommended Guidelines for State Courts-Indian Child-custody proceedings', which will have the practical effect of regulations without the protections afforded to the public under the Administrative Procedures Act. . . . It is apparent that the delicate relationships sought to be preserved by the Act justified and required regulatory action with regard to state court procedures by the Bureau and cannot be subjected to the whim of what surely Congress believed were recalcitrant state courts now functioning under questionable 'guidelines.' ''); Letter from Alexander Lewis, Sr., Governor, Gila River Indian Community, to David Etheridge (May 21, 1979) (on file with the Department of the Interior) (''[A]bsent regulations [and] without force and effect, the guidelines are useless and the aims of the Act will be made more difficult to achieve. . . . By virtue of the Supremacy Clause of the United States Constitution, and this Act of Congress—the Indian Child Welfare Act, the Secretary of the Interior does have authority to promulgate regulations regarding the transfer of jurisdiction of Indian child proceedings from State to Tribal Court. I urge that you reconsider this action and promulgate regulations instead of guidelines, so that the provisions of the Act will not be emasculated.''); Letter from Frank Stede, Vice-Chief, Mississippi Band of Choctaw Indians, to David Etheridge (May 22, 1979) (on file with the Department of the Interior) (''[T]he notices should have been issued [as] regulations contrary to what the Interior Department presents as an [argument] for not issuing the guide lines as notices, the Congress clearly gave the Secretary authority to mandate procedures for State or Tribal court by passing legislation which deals with State and Tribal [i]ssue[s] in such an extensive fashion, clearly Congress would not have [g]one to such details if it had intended that compliance to [be] voluntary.'').

intended to leave the scope of the statute's key jurisdictional provision subject to definition by state courts as a matter of state law.'' *Id.* The *Holyfield* Court also recognized that Congress intended the implementation of ICWA to have nationwide consistency, so ''Congress could hardly have intended the lack of nationwide uniformity that would result from state-law definitions of domicile.'' *Id.*

In 1979, the Department had neither the benefit of the *Holyfield* Court's carefully reasoned decision nor the opportunity to observe how a lack of uniformity in the interpretation of ICWA by State courts could undermine the statute's underlying purposes. In practice, the meaning of various provisions of the Act has been subject to differing interpretation by each of the 50 States, and within the States, by various courts. What was intended to be a uniform Federal minimum standard now varies in its application based on the State or even the judicial district. *See* discussion *supra* at Section II.C. The Department thus has come to recognize that, as the Supreme Court stated in *Holyfield,* ''a statute under which different rules apply from time to time to the same child, simply as a result of his or her transport from one State to another, cannot be what Congress had in mind.'' *Id.* at 46.

Many commenters cited, or made comments that repeated, specific statements made by the Department in 1979 in arguing that the Department should or should not issue a binding regulation. These statements, and the reasons why the Department is now departing from them, are discussed further below in the responses to comments.

B. Comments Agreeing That Interior May Issue a Binding Regulation

Some commenters, including a group of law professors and the Tribal Law and Policy Institute, asserted that the Department has sufficient authority to issue binding regulations and that the legal basis for regulatory action is strong. These commenters pointed to 25 U.S.C. 1952 authorizing the Department to promulgate such rules and regulations as may be necessary to carry out the provisions of the Act and 25 U.S.C. 2 and 9, which provide Interior with general authority to prescribe regulations to carry into effect any provision of any Act of Congress relating to Indian affairs. These commenters further pointed to the fact that Congress's intent was to establish ''minimum Federal standards'' to be applied in State child-custody proceedings, and noted that in the last few decades, there have been divergent interpretations of ICWA provisions by State courts and uneven implementation by State agencies that undermine this purpose. Congress passed ICWA to address State-court and -agency application of child-welfare laws to provide a minimum Federal floor for such proceedings. These commenters asserted that regulations to enforce the minimum standards and address inconsistencies in implementation are well within the authority that Congress delegated to the Department.

Other commenters stated that deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984), would apply to the regulations because the regulations are within the grant of authority from Congress and directly address areas that are enforced inconsistently by the States in derogation of congressional intent. A commenter pointed out that there is no case in which a general conferral of rulemaking authority has been held insufficient to support *Chevron* deference for an exercise of that authority within the agency's substantive field.

Some commenters noted that under established case law, the Department's statements in 1979 concerning its authority to issue a binding regulation do not preclude it from issuing this binding regulation. Commenters further stated that issuance of the regulation is fully consistent with the Tenth Amendment, discounted the Federalism concerns potentially implicated by the regulation, and dismissed any suggestion that the regulation is unconstitutional. Some of these commenters stated that domestic family law is no longer the exclusive purview of States, if it ever was. Many commenters urged the Department to include in this preamble a thorough discussion of its authority to issue this binding regulation, including the citations to case law, in an effort to ensure that State courts will adhere to the regulations.

The Department agrees with these comments for the detailed reasons set forth in this preamble.

C. Comments Disagreeing That the Department Has Authority To Issue a Binding Regulation

Other commenters asserted that the Department does not have the authority to promulgate regulations. These commenters generally stated that ICWA provides the Department with authority for rulemaking only with respect to limited matters, such as with respect to grants to Tribes. The reasons cited in support of these comments are discussed separately below.

1. Agency Expertise

Comment: Some commenters stated that the BIA does not have expertise with respect to the child-welfare matters addressed by ICWA. These commenters pointed to a number of Supreme Court cases that establish domestic-relations law as being within the realm of State law.

Response: The Department respectfully disagrees with these commenters. ICWA addresses Indian affairs, is premised on Congress's plenary Indian-affairs power and trust responsibility, and seeks to prevent unwarranted State intrusion into Tribal affairs and sovereignty and to protect the integrity of Indian families. *See* 25 U.S.C. 1901, 1902. An express purpose of the statute was to provide safeguards against State officials who may not understand Tribal cultural or social standards. 25 U.S.C. 1901.

These are all areas squarely within the mandate and expertise of the BIA. The BIA is the Federal agency charged with the management of all Indian affairs and of all matters arising out of Indian relations, 25 U.S.C. 2, and may proscribe such regulations as [it] may think fit for carrying into effect the various provisions of any act relating to Indian affairs. 25 U.S.C. 9. The BIA's special expertise regarding Indian affairs, including Indian cultural values and social norms related to child-rearing, as well as Indian family and child service programs, make it logical for Congress to have entrusted the Department with rulemaking authority for the statute.[4] *Cf. Runs After* v. *United States,* 766 F.2d 347, 352 (9th Cir. 1985) (''It cannot be denied that the BIA has special expertise and extensive experience in dealing with Indian affairs.''); *Golden Hill Paugussett Tribe of Indians* v. *Weicker,* 39 F.3d 51, 60 (2d Cir. 1994).

Further, BIA has extensive and longstanding experience in Indian child-welfare matters. Congress statutorily charged BIA with providing child-welfare services to all federally recognized Tribes. BIA social services and law enforcement are often the first responders in matters involving families and children. *See, e.g.,* 25 CFR part 20.

[4] Indeed, the BIA has a long-established hiring preference for qualified Indian individuals, which was designed ''to increase the participation of tribal Indians in BIA operations'' and ''make the BIA more responsive to the needs of its constituent groups.'' *Morton* v. *Mancari,* 417 U.S. 535, 543–44, 554 (1974). The BIA is thus particularly well-suited to set standards that ensure consideration of Tribal cultural and social practices, and protect the integrity of Tribes.

These regulations fall squarely under the Department's broad responsibilities for Indian affairs. Finally, BIA has consulted extensively with the Children's Bureau of the Administration for Children and Families, Department of Health and Human Services, in formulating this final rule. The Children's Bureau partners with Federal, State, Tribal, and local governments to improve the overall health and well-being of children and families, and has significant expertise in child abuse and neglect. The Children's Bureau also administers capacity building centers for States, Tribes, and courts. BIA also consulted with the Department of Justice, which has significant expertise in court practice, Indian law, and court decisions addressing ICWA. Close coordination with these agencies has helped produce a final rule that reflects the substantial expertise of the Federal government in this area.

2. Chevron Deference

Comment: Commenters also asserted that courts will not grant these regulations deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984), because, they assert, *Chevron* deference applies only to interpretations of statutes that the agency administers and the Department has no statutory authority over child welfare. Commenters also asserted that no deference is warranted because of the statements the Department made in 1979 concerning the scope of its rulemaking authority. These commenters also assert that the regulations represent an interpretation of ICWA that is not within the range of reasonable interpretations, and that the Department's interpretation of certain provisions would render ICWA unconstitutional.

Response: The authority of the Department to issue this rule has been addressed above, and the rule is entitled to *Chevron* deference by Federal and State courts. As discussed in more detail in this preamble, the provisions of the final rule represent reasonable interpretations of the statute and do not raise constitutional concerns. Moreover, under any circumstances, the Department's interpretation of a statutory provision in this rule cannot render the *statute* unconstitutional.

3. Primary Responsibility for Interpreting the Act

Comment: Some commenters cited, or made statements that mirrored, the Department's statement in 1979 that ''primary responsibility'' for interpreting portions of ICWA that do not expressly delegate responsibility to the Department ''rests with the courts that decide Indian child custody cases.'' In support of this statement, these commenters noted that the Department cited ICWA's legislative history, which states that the term ''good cause,'' was ''designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child.''

Response: As noted above, the language in § 1952 authorizing the Department to ''promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter'' provides authority for this rulemaking. Accordingly, contrary to the Department's suggestion in 1979, the Department has authority to interpret the portions of ICWA addressed in this rule.

As discussed above, the Department's conclusion is in accord with ICWA's legislative history and the carefully reasoned decision in *Holyfield,* where the Supreme Court noted that the meaning of key ICWA terms and requirements necessarily raises Federal questions and that conflicting interpretations of the statute can lead to arbitrary outcomes that threaten the rights that ICWA was intended to protect. In 1979, the Department gave excessive weight to a single statement in the legislative history indicating that the term ''good cause'' was designed to provide State courts with flexibility when making certain determinations. 44 FR at 67584. That single statement was not addressing the reach of the Department's rulemaking authority. S. Rep. No. 95–597, at 17. Moreover, to the extent that the Department then believed that providing *any* regulatory guidance on the meaning of terms such as ''good cause'' improperly intrudes on a State court's flexibility to address particular factual scenarios, that interpretation was incorrect. The Department's standards relating to ''good cause'' in the final rule continue to leave State courts with flexibility, consistent with the legislative history. And other statements in the legislative history, which were not referenced by the Department in 1979, suggest Congress desired Federal agencies to be more involved in State removals of Indian children. *See, e.g.,* 1974 Senate Hearing at 463–65.

The Department also finds that the congressional purpose in passing ICWA supports its decision to issue this rule. Congress found that the States, exercising their recognized jurisdiction over Indian child-custody proceedings through 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. *See* 25 U.S.C. 1901(5); *see also* H.R. Rep. No. 95–1386, at 10–12 (identifying as two of the leading factors contributing to the high rates of Indian-child removal the lack of culturally competent State child-welfare standards for assessing the fitness of Indian families and systematic due-process violations against both Indian children and their parents during child-custody proceedings).

In *Holyfield,* the Supreme Court reviewed Congress's findings, which demonstrate that Congress ''perceived the States and their courts as partly responsible for the problem it intended to correct.'' 490 U.S. at 45. The Court concluded that ''[u]nder these circumstances it is most improbable that Congress would have intended to leave the scope of the statute's key jurisdictional provision subject to definition by state courts as a matter of state law.'' *Id.* The Department similarly concludes here that ''[u]nder these circumstances,'' it is improbable that Congress intended the broad grant of rulemaking authority in § 1952 to authorize the Department to issue binding rules that interpret only those portions of ICWA that expressly delegate responsibility to the Department.

4. Tenth Amendment and Federalism

Comment: Some commenters asserted that the proposed rule violates the Tenth Amendment of the U.S. Constitution because it commandeers State courts, or for unspecified reasons. Commenters also cited, or made statements that repeated, Federalism concerns that the Department briefly referenced in 1979. These commenters pointed out that the Department stated in 1979 that it would have been extraordinary for Congress to authorize the Department to exercise supervisory authority over State or Tribal courts, or to legislate for them with respect to Indian child-custody matters, in the absence of an express congressional declaration to that effect. *See* 44 FR 67584. The Department also stated that nothing in ICWA's legislative history indicated that Congress intended to delegate such extraordinary authority. *Id.* Several commenters stated that the rule violates Federalism principles because it tells State-court judges what they may and may not consider, and exactly how to interpret a Federal law.

Response: The Department has reflected on these comments and has reconsidered the statements it made in 1979. While ICWA does not ''oust the

States of their traditional jurisdiction over Indian children falling within their geographical limits,'' H.R. Rep. No. 95–1386, at 19, Congress enacted ICWA to curtail State authority in certain respects. At the heart of ICWA are provisions that address the respective jurisdiction of Tribal and State courts. Other important provisions of ICWA require State courts to apply minimum Federal standards and procedural safeguards in child-custody proceedings for Indian children. This rule serves to clarify ICWA's requirements, with the goal of promoting uniform application of the statute across States.

While a few commenters asserted that this rule violates the Tenth Amendment, the Supreme Court repeatedly has reaffirmed the ''power of Congress to pass laws enforceable in state courts.'' *New York* v. *United States,* 505 U.S. 144, 178 (1992); *Testa* v. *Katt,* 330 U.S. 386, 394 (1947); *F.E.R.C.* v. *Mississippi,* 456 U.S. 742, 760–61 (1982). The Court also has explained that ''[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States.'' *New York,* 505 U.S. at 156. Here, Congress enacted ICWA primarily pursuant to the Indian Commerce Clause, which provides Congress with plenary power over Indian affairs. 25 U.S.C. 1901(1). In clarifying ICWA's requirements, the Department is exercising the authority that Congress delegated to it. Having considered the nature of this rule, the comments received, and the relevant case law, the Department concludes that this rule does not violate the Tenth Amendment for the same reasons that ICWA does not violate the Tenth Amendment.

The Department also has reflected on the Federalism concerns it noted in 1979. The Department does not view this rule as an ''extraordinary'' exercise of authority involving an assertion of ''supervisory control'' over State courts. While the Department's promulgation of this rule may override what some courts believed to be the best interpretation of ambiguous provisions of ICWA or how these courts filled gaps in ICWA's requirements, the Supreme Court has reasoned that such a scenario is not equivalent to making ''judicial decisions subject to reversal by executives.'' *Nat'l Cable & Telecomm. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 983 (2005). Rather, the Department's rule clarifies a limited set of substantive standards and related procedural safeguards that courts will apply to the particular cases before them.[5] For these reasons, and because Congress unambiguously provided the Department authority to issue this rule, the Department does not view Federalism concerns as counseling against the issuance of this rule.[6]

5. Federalism Executive Order

Comment: A few commenters additionally stated that the rule has Federalism implications because it has substantial direct effects on States, on the relationship between the national government and States, and on the distribution of power and responsibilities among the various levels of government. A commenter stated that the Department violates the Federalism executive order because the rule preempts State law, and the Department did not provide ''all affected State and local officials'' notice and opportunity to comment on that preemption as required.

Response: The Department stated in the proposed rule that ''[u]nder the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The Department thus ''determined that this rule complies with the fundamental Federalism principles and policymaking criteria established in EO 13132.'' The Department reaffirms these determinations, and respectfully disagrees with commenters who stated or suggested that these determinations are incorrect.

ICWA balances the Federal interest in protecting the integrity of Indian families and the sovereign authority of Indian Tribes with the States' sovereign interest in child-welfare matters. Congress carefully crafted ICWA's jurisdictional scheme so as to recognize the authority of each of these sovereigns. In crafting this scheme, Congress recognized a need to curtail certain State authority and enacted ICWA to address Indian child welfare through a statutory framework intended to apply uniformly across States. Since 1978, States have been required to comply with ICWA, and this regulation serves to interpret and fill gaps in the Federal minimum standards and procedural safeguards set forth in the statute. Many of the standards included in this rule are already being followed by a number of States.

In the notice of the proposed rule, the Department specifically solicited comments on the proposed rule from State officials, including suggestions for how the rule could be made more flexible for State implementation. 80 FR 14883. The Department carefully considered and addressed in this rulemaking all comments received concerning this regulation, some of which were submitted by State judges and other State officials.

6. Change in Position From Statements Made in 1979

Comment: Several commenters expressed concern that the Department's issuance of a binding regulation would be inconsistent with, or impermissible in light of, statements the Department made in 1979 regarding its authority to promulgate binding regulations. These commenters asserted that the Department's issuance of a binding regulation would conflict with established case law and that the binding regulation would ''sweep aside 37 years of state appellate court decisions regarding rights of children and families.''

Response: The Department has described its reasons for departing from the statements it made in 1979. Under well-established case law, the Department's prior statements pose no bar to this regulation. The Department also notes that the final rule does not disregard State appellate-court decisions. To the contrary, the Department carefully considered State appellate-court decisions, State legislation, and State guidance documents in promulgating the final rule. Many State standards and practices are reflected in the final rule. And on many issues, the Department's review of disparate State standards reinforced the Department's view that more uniformity in the interpretation of ICWA is needed.

7. Timeliness

Comment: Some commenters who argued the regulations are unauthorized focused on the fact that ICWA imposed a deadline of November 8, 1978 for the Department to promulgate regulations; these commenters state that the

[5] The Supreme Court has explained that ''[v]alid regulations establish legal norms. Courts can give them proper effect even while applying the law to newfound facts, just as any court conducting a trial in the first instance must conform its rulings to controlling statutes, rules, and judicial precedents.'' *United States* v. *Haggar Apparel Co.,* 526 U.S. 380, 391 (1999). Of course, the construction of ICWA by State courts will ''remain[ ] subject to [the Supreme] Court's supervision.'' *Holyfield,* 490 U.S. at 43.

[6] In evaluating these concerns, the Department also notes that Congress provides a substantial amount of Federal funding to States for child-welfare programs, *see, e.g.,* Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Emilie Stoltzfus, Child Welfare: An Overview of Federal Programs and Their Current Funding (Congressional Research Service 2015), and that other Federal statutes address State family law. *See, e.g.,* 42 U.S.C. 652.

authority for promulgating regulations expired after that date.

Response: ICWA states that ''within'' 180 days after November 8, 1978, the Department shall promulgate such rules and regulations as may be necessary to carry out ICWA. *See* 25 U.S.C. 1952. Regulations may be issued after the passage of a statutory deadline, however, so long as the statute, as is the case with ICWA, does not spell out explicit consequences for late action. *See, e.g., Barnhart* v. *Peabody Coal Co.,* 537 U.S. 149, 159 (2003); *Brock* v. *Pierce Cty.,* 476 U.S. 253, 262 (1986).

IV. Discussion of Rule and Comments

A. Public Comment and Tribal Consultation Process

1. Fairness in Proposing the Rule

Comment: Commenters asserted that the 2015 Guidelines and the proposed regulations were drafted without any outreach or request for comment from adoption agencies, attorneys, or other adoption professionals. One commenter stated that all the comments that were incorporated into the proposed regulations were only from the position of Indian Tribes, and did not reflect any input from State Attorney Generals, State child-welfare agencies, or others.

Other commenters stated their appreciation for the Department's diligence in seeking input from the public. Commenters stated that the experts on Indian child-welfare matters are Tribes, because they work in the field on a daily basis and have no special interest in determining the best interest of Tribal children beyond wanting the children to succeed and be connected to their culture and community. A number of States commented favorably on the proposed rule, and provided helpful comments to improve the final rule.

Response: The Department disagrees with the assertion that the 2015 Guidelines or proposed rule were developed without public input. As part of the preparation of the updated guidelines, the Department invited comments from federally recognized Indian Tribes, State-court representatives, and organizations concerned with Tribal children, child welfare, and adoption. *See* 80 FR at 10146–67. Those comments, the recommendations of the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, developments in ICWA jurisprudence, and the expertise of the Department and other Federal agencies were all considered in updating the guidelines as well as the drafting of the proposed rule. Since issuing the proposed rule, the Department has engaged in a robust public comment process, as discussed above and as evidenced by the large number of written comments received by BIA on this rulemaking.

2. Locations of Meetings/Consultations

Comment: Several commenters opposed the locations where the Department held the public hearings on the proposed rule during the public comment process. The commenters noted that all the hearings were held west of the Mississippi River, and none were held in any of the most populous States. Some commenters requested additional hearings in various locations.

Response: The Department chose locations for public hearings based on general areas where there are likely to be larger populations of Indian children and thus more ICWA proceedings. The Department also hosted a national teleconference to accommodate other interested persons who were unable to attend an in-person session including, but not limited to, anyone who may reside far from where the in-person sessions were held. A total of 215 persons participated by teleconference. In addition, Tribal consultation sessions and public hearings were held in Oklahoma, Alaska, and several other locations. More than 2,100 written comments were received.

B. Definitions

1. ''Active Efforts''

ICWA requires the use of ''active efforts'' to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. 25 U.S.C. 1912(d). ICWA does not define ''active efforts.'' The Department finds, however, that Congress intended this requirement to provide vital protections to Indian children and their families by requiring that support be provided to keep them together, whenever possible. In particular, Congress recognized that many Indian children were removed from their homes because of poverty, joblessness, substandard housing, and related circumstances. Congress also recognized that Indian parents sometimes suffered from ''cultural disorientation, a [ ] sense of powerlessness, [and] loss of self-esteem,'' and that these forces ''arise, in large measure from our national attitudes as reflected in long-established Federal policy and from arbitrary acts of Government.'' H.R. Rep. No. 95–1386, at 12. But, Congress concluded, ''agencies of government often fail to recognize immediate, practical means to reduce the incidence of neglect or separation.'' *Id.* The ''active efforts'' requirement is one of the primary tools provided in ICWA to address this failure, and should thus be interpreted in a way that requires substantial and meaningful actions by agencies to reunite Indian children with their families. The ''active efforts'' requirement is designed primarily to ensure that services are provided that would permit the Indian child to remain or be reunited with her parents, whenever possible. This is viewed by some child-welfare organizations as part of the ''gold standard'' of what services should be provided in child-welfare proceedings.

The Department finds that there are compelling reasons for setting a nationwide definition for this critical statutory term. Although there is substantial agreement, among those State courts that have considered the issue, that active efforts requires more than simply formulating a case plan for the parent of an Indian child, there is still variation among the States as to what level of efforts is required. This means that the standard for what constitutes ''active efforts'' can vary substantially among States, even for similarly situated Indian children and their parents. The final rule will reduce this variation, thus promoting nationwide consistency in the implementation of this Federal right.

The final rule defines ''active efforts'' and provides examples of what may constitute active efforts in a particular case. The final rule retains the language from the proposed rule that active efforts means actions intended primarily to maintain and reunite an Indian child with his or her family. The final rule clarifies that, where an agency is involved in the child-custody proceeding, active efforts involve assisting the parent through the steps of a case plan, including accessing needed services and resources. This is consistent with congressional intent—by its plain and ordinary meaning, ''active'' cannot be merely ''passive.''

The final rule indicates that, to the extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions of the Indian child's Tribe, and in partnership with the child, parents, extended family, and Tribe. This is consistent with congressional direction in ICWA to conduct Indian child-welfare proceedings in a way that reflects the cultural and social standards prevailing in Indian communities and families. There is also evidence that services that are adapted to the client's cultural backgrounds are better. *See, e.g.,* Mental Health: Culture, Race, and

Ethnicity: A Supplement to Mental Health: A Report of the Surgeon General (2001); Substance Abuse and Mental Health Services Administration, A Treatment Improvement Protocol: Improving Cultural Competence (2015); Smith, T.B. *et al., (2011), Culture,* J. Clin. Psychol. 67, 166–175 (meta-analysis finding the most effective psychotherapy treatments tended to be those with greater numbers of cultural adaptations); Benish, S.G. *et al.*, (2011), *Culturally Adapted Psychotherapy and the Legitimacy of Myth: A Direct-Comparison Meta-Analysis,* 58 J. of Counseling Psychol. No. 3, 279–289 (meta-analysis finding that culturally adapted psychotherapy is more effective than unadapted psychotherapy).

Unlike the proposed rule, the final rule does not define ''active efforts'' in comparison to ''reasonable efforts.'' After considering public comments on this issue, the Department concluded that referencing ''reasonable efforts'' would not promote clarity or consistency, as the term ''reasonable efforts'' is not in ICWA and arises from different laws (*e.g.,* the Adoption Assistance and Child Welfare Act of 1980, as modified by the Adoption and Safe Families Act (ASFA), *see* 42 U.S.C. 670, *et seq.,* as well as State laws). Such reference is unnecessary because the definition in the final rule focuses on what actions are necessary to constitute active efforts.

The Department recognizes that what constitutes sufficient ''active efforts'' will vary from case-to-case, and the definition in the final rule retains State court discretion to consider the facts and circumstances of the particular case before it.

Comment: Several commenters stated their support for the definition and examples of active efforts. Several commenters, including States and State-court judges, noted the term ''active efforts'' is in need of clarification. Commenters noted that, while agencies are required to provide active efforts, there has not been a clear understanding of the level and types of services required and the term is interpreted differently from State to State and even county to county. One commenter noted that it receives numerous questions about active efforts each year and published a guide on this topic but that a nationwide regulation would further clarify the requirements. Several commenters supported the language stating that active efforts are above and beyond the reasonable efforts standard for non-ICWA cases. One commenter stated that California courts have construed active efforts as ''essentially equivalent to reasonable efforts to provide or offer reunification services to a non-ICWA case.'' Some of these commenters requested even stronger language distinguishing the two. Other commenters opposed defining active efforts in relation to reasonable efforts. Commenters stated that BIA has no authority to determine how reasonable efforts and active efforts would compare and that comparing them raises equal protection concerns. One commenter stated that the term does not need a definition.

Response: The proposed rule defined ''active efforts'' in a manner that compared it to ''reasonable efforts'' because many understand active efforts and reasonable efforts as relative to each other, where active efforts is higher on the continuum of efforts required and reasonable efforts is lower on that continuum. *See, e.g., In re Nicole B.,* 927 A.2d 1194, 1206–07 (Md. Ct. Spec. App. 2007). However, as commenters pointed out, the terms are used in separate laws and are subject to separate analyses. The term ''reasonable efforts'' is not used in ICWA; rather, it is used in the Adoption Assistance and Child Welfare Act of 1980, as modified by the Adoption and Safe Families Act (ASFA). *See* 42 U.S.C. 670, *et seq.* ASFA establishes ''reasonable efforts'' as a State responsibility in order to be eligible for Federal foster-care placement funding. Some State laws also utilize a ''reasonable efforts'' standard.

ICWA, however, requires ''active efforts'' prior to foster-care placement of or termination of parental rights to an Indian child, regardless of whether the agency is receiving Federal funding. Having considered the concerns of commenters with the use of the term ''reasonable efforts'' as a point of comparison, the Department has decided to delete reference to ''reasonable efforts'' from the definition of ''active efforts'' in the final rule. Such reference is unnecessary because the definition now focuses on the actions necessary to constitute active efforts, as affirmative, active, thorough, and timely efforts. Instead, the final rule provides additional examples and clarifications as to what constitutes active efforts.

Comment: A commenter pointed out that the ''active efforts'' requirement in the Act applies only to the ''Indian family'' and not to the Tribal community.

Response: The final rule deletes reference to ''Tribal community'' in the definition.

Comment: A commenter noted that the legislative history of the ''active efforts'' provision demonstrates that Congress intended to require States to affirmatively provide Indian families with substantive services and not merely make the services available.

Response: The Department agrees and the final rule's definition of ''active efforts'' reflects this.

Comment: A few commenters suggested adding appointment of legal counsel for both parents and children as a requirement for active efforts.

Response: Appointment of legal counsel does not clearly fall within the scope of remedial services and rehabilitative programs designed to prevent the breakup of the Indian family for which active efforts is required. 25 U.S.C. 1912(d). Further, 25 U.S.C. 1912(b) separately provides for appointment of counsel for the parent or Indian custodian in any case in which the court determines indigency.

Comment: Many commenters supported the proposed examples of ''active efforts'' in the definition, one saying they will be ''extremely helpful'' for determining whether services comply with the higher standard. The Oregon Juvenile Court Improvement Program noted that many of the examples reinforce Oregon's document ''Active Efforts Principles and Expectations.'' A few commenters suggested clarifying that the list is not exhaustive. Some suggested requiring a minimum number of the items on the list to be met to reach the ''active efforts'' threshold, while others requested clarifying that not all the items are required to be met to reach the threshold. A few commenters suggested shortening and simplifying the list. Others suggested including in each item a requirement to work with the Tribe. Several commented on the specifics of each example of ''active efforts'' listed in the definition. Some suggested adding new examples.

Response: The final rule simplifies the list somewhat by combining similar examples and clarifies that the list is not an exhaustive list of examples. The minimum actions required to meet the ''active efforts'' threshold will depend on unique circumstances of the case. The final rule also states, consistent with the BIA 1979 and 2015 Guidelines, that whenever possible, active efforts should be provided in partnership with the Indian child's Tribe, and should be provided in a manner consistent with the prevailing cultural and social conditions and way of life of the Indian child's Tribe. This practice is consistent with Congress' intent in ICWA that State child-custody proceedings better incorporate and consider Tribal values and culture. Further, as discussed above, culturally adapted treatment strategies have been shown to be more effective.

Comment: A commenter stated that the definition of ''active efforts'' reveals an assumption that the child has had a connection with the Tribal community, by using the terms ''maintain'' and ''reunite.'' The commenter states that this assumption is imbedded in the Act, which suggests that a relationship with the Tribal community was already in existence, and so the Act should not apply to children raised outside their Tribal communities prior to removal; otherwise, the Act would force the child to assume a new cultural identity on the basis of ancestry alone.

Response: The Act and the regulations require ''active efforts'' to prevent the breakup of the Indian child's family. Neither the text of the statute nor its legislative history suggests that this requirement is limited to circumstances where a State court determines that the Indian child has a sufficient pre-existing connection to a Tribal community. Indeed, Congress applied the ''active efforts'' requirement to Indian children residing outside of a reservation, and it can be presumed that Congress understood that for reasons of distance and age, some of these children may not have yet developed extensive connections to their Tribal community. Congress also found that State agencies and courts ''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). In light of this, the Department finds that it would not comport with congressional intent to require State courts to assess an Indian child's connection with her Tribal community.

Nothing in the Act or these regulations forces the child to assume a new cultural identity or assume a relationship with a Tribe or Tribal community that was not pre-existing. ICWA applies only to Indian children who have a political relationship (either through their citizenship, or through the citizenship of a parent and their own eligibility for citizenship) with a federally recognized Indian Tribe.

2. ''Agency''

The final rule defines ''agency'' as an organization that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in, the administrative and social work necessary for foster, preadoptive, or adoptive placements. The definition includes non-profit, for-profit, or governmental organizations. This comports with the statute's broad language imposing requirements on ''any party'' seeking placement of a child or termination of parental rights. *See, e.g.* 25 U.S.C. 1912 (a), (d).

Comment: A few commenters stated that the definition should clarify that ''agencies'' are covered by the regulations even if they are not licensed by the State. One commenter stated that the definition should also include attorneys and others who participate in private placements, so that they will also be subjected to requirements for ICWA compliance.

Response: The final rule updates the definition of ''agency'' to mean organizations including those who may assist in the administrative or social work aspects of seeking placement. An ''agency'' may also be assisting in the legal aspects of seeking placement, but the definition does not include attorneys or law firms, standing alone, because as used in the final rule, ''agencies'' are presumed to have some capacity to provide social services. Attorneys and others involved in court proceedings are addressed separately in various provisions in the final rule.

3. ''Child-Custody Proceeding''

See ''Applicability'' section below.

4. ''Continued Custody'' and ''Custody''

The final rule makes two changes from the proposed rule to the definition of ''continued custody,'' in response to comments. First, it clarifies that physical and/or legal custody may be defined by applicable Tribal law or custom, or by State law. This comports with ICWA's recognition that custody may be defined by any of these sources. *See, e.g.,* 25 U.S.C. 1903(6). Second, it clarifies that an Indian custodian may have continued custody, because the statute recognizes that Indian custodians may have legal or physical custody of an Indian child and are entitled to ICWA's statutory protections. The definition of ''custody'' did not substantively change from the proposed rule.

Comment: A few commenters suggested adding ''Indian custodian'' in addition to ''parent'' in the definition of ''continued custody.''

Response: The final rule makes this change, as discussed above.

Comment: Several commenters supported the ''continued custody'' definition as clarifying that parents who may never have had physical custody are nevertheless covered by ICWA if they had legal custody. A few commenters suggested clarifications in light of the Supreme Court's decision in *Adoptive Couple* v. *Baby Girl,* 133 S. Ct. 2552 (2013), that the father in that case did not have legal or physical custody. One commenter requested that the final rule add that the father has ''continued custody,'' even without physical or legal custody, unless he abandoned the child prior to birth.

Response: The final rule retains the definition of ''continued custody'' as proposed, which includes custody the parent or Indian custodian ''has or had at any point in the past.'' It clarifies that the parent or custodian may have physical and/or legal custody under any applicable Tribal law or Tribal custom or State law. The definition is consistent with *Adoptive Couple* v. *Baby Girl,* which determined under the facts of that case that the father never had custody. The Department finds that this definition is also most consistent with ICWA, which in other contexts defines legal custody as well as parental rights in reference to Tribal and State law. *See* 25 U.S.C. 1903(6), (9).

Comment: A few commenters stated that the definition should require a ''preexisting state'' of custody prior to the child-custody proceeding, or require custody for a certain period of time.

Response: The final rule does not add the requested requirement for a ''preexisting state'' of custody because there are situations in which a parent could be considered to have had custody but lost it for some period of time prior to the child-custody proceeding, or may have had, at the time of the commencement of the proceeding, custody for only a brief period of time. There is no evidence that Congress intended temporary disruptions (*e.g.,* surrender of child to another caregiver for a period) not to be included in ''continued custody.'' The Department believes that including this requirement could permit evasion of ICWA's protections, since it could create incentives to disrupt a parent's custodial rights prior to initiating a child-custody proceeding.

Comment: Some commenters requested that the definition emphasize the narrow holding of the Supreme Court in *Adoptive Couple* v. *Baby Girl* as not applying to a parent that ''at least had at some point in the past'' custody of the child.

Response: The proposed and final rule already defined ''continued custody'' to include custody a parent ''had at any point in the past,'' which is substantively the same as the language used by the Supreme Court in *Adoptive Couple* v. *Baby Girl.*

Comment: Several commenters suggested adding provisions to ''continued custody'' allowing putative fathers to assert custodial rights.

Response: Neither the statute nor the final rule directly addresses the ability of putative fathers to assert custodial

rights; in the final rule, custodial rights may be established under Tribal law or custom or State law.

Comment: Several commenters supported the proposed definition of ''custody'' as including Tribal law or Tribal custom. One commenter requested adding that ''continued custody,'' like ''custody,'' is based on Tribal law or Tribal custom. Another commenter suggested adding that State law may only be used in the absence of applicable Tribal law or Tribal custom.

Response: The final rule adds ''under any applicable Tribal law or Tribal custom or State law'' to the definition of ''continued custody'' to better parallel the definition of ''custody.'' The final rule does not establish an order of preference among Tribal law, Tribal custom, and State law because the final rule provides that custody may be established under any one of the three sources.

5. ''Domicile''

The final rule provides a more complete description of how to determine domicile for an adult, to better comport with Federal common law. The rule's definition is consistent with the definition of domicile provided by Black's Law Dictionary, a standard legal reference resource. The final rule also changes the definition of domicile for an Indian child whose parents are not married to be the domicile of the Indian child's custodial parent, in keeping with legal authority on this point.

Comment: With regard to the first part of the definition of ''domicile,'' addressing the domicile of ''parents or any person over the age of 18,'' a commenter suggested replacing ''any person over the age of 18'' with ''Indian custodian.''

Response: The final rule replaces ''any person over the age of 18'' with ''Indian custodian'' as suggested in this comment because the context in which the term ''domicile'' is used includes only parents or Indian custodians (children are addressed in another part of the definition).

Comment: One commenter suggested that domicile should be defined by Tribal law or custom of the Indian child's Tribe, and that a Federal definition should apply only in the absence of such law or custom.

Response: The U.S. Supreme Court found that Congress intended a uniform Federal law of domicile for ICWA. *See Miss. Band of Choctaw Indians* v. *Holyfield,* 490 U.S. 30, 44–47 (1989).

Comment: Several commenters stated that the reliance on physical presence in the definition of domicile is too narrow. Some recommended changing the definition to the common-law definition of domicile. These commenters noted that the common-law definition would better consider persons who may leave the reservation temporarily (*e.g.,* to obtain education, pursue work, or enter the military) and that the court in *Holyfield* stated that ''domicile'' is not necessarily synonymous with ''residence.'' One commenter suggested changing ''physical presence'' to ''was physically present'' to account for this difference. A commenter stated that a person's intent to return should be the main focus.

Response: The final rule adopts the commenters' suggestions by revising the definition of ''domicile'' to better reflect the common-law definition, which acknowledges that a person may reside in one place but be domiciled in another.

Comment: With regard to the second part of the definition, addressing the domicile of the child, several commenters stated that, in the case of an Indian child whose parents are not married to each other, the domicile is not necessarily that of the Indian child's mother. These commenters pointed out that the father or a guardian may have custody of the child, and some noted that some Tribes are patriarchal and this definition would conflict with those Tribes' cultural traditions. Some stated that the domicile of the child in this case should instead be the domicile of the custodial parent with whom the child lives most often and if the child lives with neither parent, then the domicile should be that of the mother or the Indian child's Tribe. Others stated the domicile should be that of the custodial parent (or primary custodial parent), Indian custodian, or legal guardian.

Response: The Supreme Court stated that a child born out of wedlock generally takes the domicile of his or her mother. *Holyfield,* 490 U.S. at 43–48. This rests on an underlying assumption that the mother is the child's custodial parent. This may generally be true at the time of the birth of the child. The general rule, however, is that a minor has the same domicile as the parent with whom he lives. *See, e.g.* Restatement (Second) of Conflict of Laws 22 (Am. Law. Inst. 1971). As one State court recognized, where the father is the custodial parent, the child's domicile is not that of the mother but rather follows that of the custodial parent. *Tubridy* v. *Iron Bear (In re S.S.),* 657 NE.2d 935, 942 (Ill. 1995). Thus, the final rule accepts the suggestion that the child's domicile should be the custodial parent's domicile when the parents are unwed.

6. ''Emergency Proceeding''

The statute treats emergency proceedings differently from other child-custody proceedings. *See* 25 U.S.C. 1922. In response to comments that reflected a lack of clarity on this point, the final rule adds a definition of ''emergency proceedings.'' ''Emergency proceedings'' are defined as court actions involving emergency removals and emergency placements. These proceedings are distinct from other types of ''child-custody proceedings'' under the statute. While States use different terminology (*e.g.,* preliminary protective hearing, shelter hearing) for emergency hearings, the regulatory definition of emergency proceedings is intended to cover such proceedings as may necessary to prevent imminent physical damage or harm to the child. *See* ''Emergency Proceedings'' section below for more information and responses to comments.

7. ''Extended Family Member''

This definition has not changed from the proposed rule, and tracks the statutory definition.

Comment: A few commenters suggested expanding the definition of ''extended family member'' to include various other individuals (*e.g.,* great-grandparents, great-aunts, and great-uncles).

Response: The definition of ''extended family member'' in the proposed rule and final rule matches the statutory definition. Additional categories of individuals may be included in the meaning of the term if the law or custom of the Indian child's Tribe includes them. ''Extended family member'' is not limited to Tribal citizens or Native individuals.

8. ''Hearing''

See ''Applicability'' section below.

9. ''Imminent Physical Damage or Harm''

The final rule does not provide a definition of ''imminent physical damage or harm.'' The Department has determined that statutory phrase is clear and understandable as written, such that no further elaboration is necessary.

The Department has concluded that the definition it included in the proposed rule, ''present or impending risk of serious bodily injury or death,'' is too constrained and does not capture circumstances that Congress would have considered as presenting ''imminent physical damage or harm.'' Commenters noted that situations of sexual abuse,

domestic violence, or child labor exploitation could arguably be excluded by the proposed definition. The Department did not, however, intend that such situations would fall outside the scope of ''imminent physical damage or harm.'' Since the statutory phrase reflects endangerment of the child's health, safety, and welfare, not just bodily injury or death, the Department has decided not to use the proposed definition.

The ''imminent physical damage or harm'' standard applies only to emergency proceedings, which are not subject to the same procedural and substantive protections as other types of child-custody proceedings, as discussed in Section IV.H below. In using this standard, Congress established a high bar for emergency proceedings that occur without the full suite of protections in ICWA. There are circumstances in which it may be appropriate to provide services to the parent or initiate a child-custody proceeding with the attendant ICWA protections (*e.g.,* those in 25 U.S.C. 1912 and elsewhere in the statute), but removal or placement on an emergency basis is not appropriate. Thus, section 1922 and these rules require that any emergency proceeding must terminate immediately when the emergency proceeding is not necessary to prevent imminent physical damage or harm to the child. This standard is substantially similar to the emergency removal provisions of many states. See, *e.g.,* W. Va. Code 49–4–6–2 (2015); N.Y. Fam. Ct. Act 1024 (McKinney 2009); Idaho Code 16–1608 (2016); Texas Fam. Code 262.104 (West 2015); N.J. Stat. Ann. 9:6–8.29 (West. 2012); Va. Code Ann. 16.1–251 (2015), Cal. Welf. & Inst. Code 305 (West).

Comment: Many commenters opposed the proposed definition of ''imminent physical harm or damage'' because they asserted:

- States should be able to define imminent harm in accordance with their State protection laws;
- The proposed definition is too narrow in omitting neglect and emotional or mental (psychological) harm and would preclude emergency measures to protect a child from these types of harms;
- By requiring ''serious'' bodily injury, the proposed definition would exclude physical harm such as domestic violence that does not rise to a major injury and exclude threatened physical harm (*e.g.,* present or impending sexual abuse, child labor exploitation, or misdemeanor assaults);
- The proposed definition would result in equal protection violations denying Indian children the same level of protections as non-Indian children because research shows that exposure to domestic violence produces significant and long-lasting harm to the child psychologically, even when the child does not himself experience physical injury; and
- The proposed definition would exclude some State and Federal crimes that would normally justify protection of the child.

Several other commenters supported the proposed definition of ''imminent physical harm or damage,'' to the extent it would apply to emergency situations. These commenters asserted:

- A narrow threshold for emergency removal is necessary because, in some jurisdictions, little more than being an Indian child on a reservation apparently constitutes ''imminent physical damage or harm,'' and the proposed definition would require a closer examination of whether the emergency removal was necessary;
- Not including minor physical harm or emotional harm is appropriate for emergency removal because a child experiencing those types of harm could be removed following the commencement of a child-custody proceeding rather than by emergency removal; and
- The proposed definition is in line with State laws that keep a child in his or her home unless the child is in need of immediate protection due to an imminent safety threat.

Even among commenters that supported the proposed definition, many had suggested changes, such as:

- Clarifying that situations like sexual abuse would be grounds for emergency removal;
- Including ''serious emotional damage'' only if the child displays specific symptoms such as severe anxiety, depression or withdrawal;
- Clarifying ''imminent'' rather than the degree of harm; and
- Clarifying that imminent physical harm or damage is not present when the implementation of a safety plan or intervention would otherwise protect the child while allowing them to remain in the home.

Response: The final rule does not use the proposed definition of ''imminent physical damage or harm'' because the Department has concluded that the statutory phrase encapsulates a broader set of harms than was reflected in the proposed definition. The Department agrees with commenters that the phrase focuses on the child's health, safety, and welfare, and would include, for example, situations of sexual abuse, domestic violence, or child labor exploitation.

The Department also agrees with commenters who emphasized that the section 1922 language focuses on the imminence of the harm, because the immediacy of the threat is what allows the State to temporarily suspend the initiation of a full ''child-custody proceeding'' subject to ICWA. Where harm is not imminent, issues that might at some point in the future affect the Indian child's welfare may be addressed either without removal, or with a removal on a non-emergency basis (complying with the Act's section 1912 requirements). We also agree with commenters that being an Indian child on a reservation does not justify emergency removal; Congress used the standard of ''imminent physical damage or harm'' to guard against emergency removals where there is no imminent physical damage or harm.

Comment: A few commenters stated that the only place ''imminent physical damage or harm to a child'' appears in ICWA is at section 1922, which addresses emergency removal only of children domiciled on a reservation, so it should not apply to State removal of children who are not domiciled on a reservation.

Response: The final rule is based on the premise that the emergency removal or placement of an Indian child may be conducted under State law in order to keep the child safe. *See* FR § 23.113. 25 U.S.C. 1922 requires, however, that any emergency proceeding terminate immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. Both the legislative history and the decisions of multiple courts support the conclusion that this provision applies to emergency proceedings involving Indian children who are both domiciled off of the reservation and domiciled on the reservation, but temporarily off of the reservation. *See* H. Rep. No. 95–1386, at 25; *see also Oglala Sioux Tribe* v. *Hunnik,* No. 13–5020, 2016 WL 697117 (D.S.D. Feb. 19, 2016); *In re T.S.,* 315 P.3d 1030 (Okla. Civ. App. 2013); *In re H.T.,* 343 P.3d 159, 167 n.3 (Mont. 2015); *Cheyenne River Sioux Tribe* v. *Davis,* 822 N.W.2d 62, 65 (S.D. 2012); *State ex rel. Children, Youth & Families Dep't* v. *Marlene C. (In re Esther V.),* 248 P.3d 863, 873 (N.M. 2011). Unless section 1922 is read to apply to children on and off of the reservation, ICWA could be read to prohibit the emergency removal of such Indian child in order to prevent imminent physical harm. *See e.g.,* H. Rep. 95–1386 (section 1922 is intended to ''permit'' such removal

''notwithstanding the provisions of this title'').

10. ''Indian Child''

The final rule retains the definition used in the statute with the addition of the terms ''citizen'' and ''citizenship'' because these terms are synonymous with ''member'' and ''membership'' in the context of Tribal government.

Comment: A commenter noted that the regulations sometimes refer to the Indian child being ''a member or eligible for membership'' without specifying that if the child is not a member, then the child's parent must be a member and the child must be eligible for membership.

Response: The statute specifies that if the child is not a Tribal member, then the child must be a biological child of a member and be eligible for membership, in order for the child to be an ''Indian child.'' 25 U.S.C. 1903(4). The final rule addresses this oversight by clarifying in each instance that the biological parent must be a member in addition to the child being eligible for membership.

Comment: One commenter queried whether it is constitutional to include ''eligible'' children in the definition, since these children are not yet Tribal members.

Response: The final rule reflects the statutory definition of ''Indian child,'' which is based on the child's political ties to a federally recognized Indian Tribe, either by virtue of the child's own citizenship in the Tribe, or through a biological parent's citizenship and the child's eligibility for citizenship. Congress recognized that there may not have been an opportunity for an infant or minor child to be enrolled in a Tribe prior to the child-custody proceeding, but nonetheless found that Congress had the power to act for those children's protection given the political tie to the Tribe through parental citizenship and the child's own eligibility. *See, e.g.,* H.R. Rep. No. 95–1386, at 17. This is consistent with other contexts in which the citizenship of a parent is relevant to the child's political affiliation to that sovereign. *See, e.g.,* 8 U.S.C. 1401 (providing for U.S. citizenship for persons born outside of the United States when one or both parents are citizens and certain other conditions are met); *id.* 1431 (child born outside the United States automatically becomes a citizen when at least one parent of the child is a citizen of the United States and certain other conditions are met).

Comment: One commenter stated that if the child grows up on the reservation and participates in Tribal rituals and community, that child is an Indian child regardless of whether the child is allowed to be a member.

Response: The statute defines ''Indian child'' based on a political connection with the Tribe rather than residence or participation in Tribal rituals and community. The regulation reflects the statutory definition.

Comment: Several commenters requested clarification that the child needs to be under age 18 only at the commencement of the initial child-custody proceeding for ICWA to apply for the duration of the case.

Response: ICWA defines an ''Indian child'' as a person under the age of 18. Other Federal law allows for States receiving Federal funding to extend foster care to persons up to age 21. *See* 42 U.S.C. 675(8)(B)(iii). And, the majority of States have statutes that explicitly allow child-welfare agencies to continue providing foster care to young people after they turn 18. *See* Keely A. Magyar, *Betwixt and Between But Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care,* 79 Temple L. Rev. 557 (2006) (summarizing State laws). Where State and/or Federal law provides for a child-custody proceeding to extend beyond an Indian child's 18th birthday, ICWA would not stop applying to the proceeding simply because of the child's age. This is to ensure that a set of laws apply consistently throughout a proceeding, and also to discourage strategic behavior or delays in ICWA compliance in circumstances where a child's 18th birthday is near. Thus, the final rule interprets the statutory definition to mean that the person need be under the age of 18 only at the commencement of the proceeding for ICWA to apply. The final rule adds clarification to the applicability section that ICWA will not cease to apply simply because the child turns 18. *See* FR § 23.103(d).

11. ''Indian Child's Tribe''

The final rule retains the definition used in the statute.

Comment: One commenter stated that the definition of ''Indian child's Tribe'' is too restrictive and could eliminate opportunities for multiple Tribes to be involved in a case because a child could have equal contacts with multiple Tribes for which they are eligible for membership, and each should have the opportunity to ensure the connection is maintained.

Response: The statute contemplates that one Tribe will be designated as the ''Indian child's Tribe,'' *see* 25 U.S.C. 1903(5), and the regulation reflects this.

12. ''Indian Custodian''

The definition in the final rule largely tracks the statutory definition. It clarifies that whether an individual has legal custody may be determined by looking to either the relevant Tribe's law or custom, or to State law.

Comment: A few commenters stated their support of the definition of ''Indian custodian'' and particularly the consideration of Tribal law or custom because there are informal Indian caretakers who may raise Indian children without a court order.

Response: Like the statute, the final rule includes a definition of ''Indian custodian'' that allows for consideration of Tribal law or custom.

13. ''Parent''

The final rule retains the definition used in the statute.

Comment: A few commenters supported the definition of ''parent'' and recommended no change. Several commented on the definition's approach to unwed fathers and suggested unwed biological fathers should be included. One commenter suggested adding that ''parent'' includes persons whose paternity has been established by order of a Tribal court, to ensure Tribal court orders acknowledging or establishing paternity are given full faith and credit by State courts. A few commenters suggested adding that paternity may be acknowledged or established ''in accordance with Tribal law, Tribal custom, or State law in the absence of Tribal law or Tribal custom.''

Response: The rule's definition of ''parent'' mirrors that of ICWA.

ICWA requires States to give full faith and credit to the public acts, records, and judicial proceedings of any Tribe applicable to Indian child-custody proceedings to the same extent that such entities give full faith and credit to any other entity. 25 U.S.C. 1911(d). This includes Tribal acknowledgement or establishment of paternity.

Comment: A few commenters recommended adding a Federal standard for what constitutes an acknowledgment or establishment of paternity, in accordance with Justice Sotomayor's dissent in *Adoptive Couple* v. *Baby Girl* and to address a split in State courts. These commenters recommended language requiring an unwed father to ''take reasonable steps to establish or acknowledge paternity'' and recommended listing examples of such steps to include acknowledging paternity in the action at issue and establishing paternity through DNA testing. Another commenter requested clarification on when the father must

acknowledge or establish paternity, because timing impacts due process and permanency for the child.

Response: The final rule mirrors the statutory definition and does not provide a Federal standard for acknowledgment or establishment of paternity. The Supreme Court and subsequent case law has already articulated a constitutional standard regarding the rights of unwed fathers, *see Stanley* v. *Illinois,* 405 U.S. 645 (1972); *Bruce L.* v. *W.E.,* 247 P.3d 966, 978–979 (Alaska 2011) (collecting cases)—that an unwed father who ''manifests an interest in developing a relationship with [his] child cannot constitutionally be denied parental status based solely on the failure to comply with the technical requirements for establishing paternity.'' *Bruce L.,* 247 P.3d at 978–79. Many State courts have held that, for ICWA purposes, an unwed father must make reasonable efforts to establish paternity, but need not strictly comply with State laws. *Id.* At this time, the Department does not see a need to establish an ICWA-specific Federal definition for this term.

Comment: One commenter suggested accounting for situations where extended family and non-relatives are exercising both physical and legal custody of the child, by adding that an Indian child may have several parents simultaneously if Tribal law so provides.

Response: The definition of ''parent'' includes adoptions under Tribal law or custom.

Comment: One commenter suggested deleting the word ''lawfully'' from the definition of ''parent'' to avoid disputes over what constitutes a lawful adoption.

Response: The final rule retains the word ''lawfully'' because it is used in the statute. *See* 25 U.S.C. 1903.

14. ''Reservation''

The definition in the final rule tracks the statutory definition.

Comment: Two commenters stated that ''reservation'' should be expanded to include traditional Tribal territories in Alaska because there is only one reservation in Alaska.

Response: The regulatory definition is similar to the statutory definition, and includes land that is held in trust but not officially proclaimed a ''reservation.''

15. ''Status Offenses''

This definition was not changed from the proposed rule.

Comments: Some commenters supported the definition of ''status offenses.'' Commenters also asked that the final rule clarify that status offenses are included in the definition of child-custody proceedings, pursuant to 25 U.S.C. 1903(1).

Response: See the ''Applicability'' discussion below. The final rule definition of ''child-custody proceeding'' is updated to make clear that its scope includes proceedings where a child is placed in foster care or another out-of-home placement as a result of a status offense. This reflects the statutory definition of ''child-custody proceeding,'' which is best read to include placements based on status offenses, while explicitly excluding placement[s] based upon an act which, if committed by an adult, would be deemed a crime. *See* 25 U.S.C. 1903(1).

16. ''Tribal Court''

The final rule retains the definition used in the statute.

Comment: A few commenters suggested changing the definition of ''Tribal court'' to explicitly recognize that the Tribal governing body, such as the Tribal council, may sit as a court and have jurisdiction over child-custody proceedings. Commenters also suggested that the term ''Tribal court'' should reflect that a Tribe may have other mechanisms for making child-custody decisions.

Response: The definition of ''Tribal court'' in both the statute and the final rule addresses these comments because the definition includes any other administrative body of a tribe vested with authority over child-custody proceedings. *See* 25 U.S.C. 1903(12); 25 CFR 23.2.

17. ''Upon Demand''

The term ''upon demand'' is important for determining whether a placement is a ''foster-care placement'' (because the parent cannot have the child returned upon demand) under § 23.2, and therefore subject to requirements for involuntary proceedings for foster-care placement. The rule also specifies that other placements where the parent or Indian custodian can regain custody of the child upon demand are not subject to ICWA. FR § 23.103(b)(4). The final rule clarifies that ''upon demand'' means that custody can be regained by a verbal request, and ''without any formalities or contingencies.'' Examples of formalities or contingencies are formal court proceedings, the signing of agreements, and the repayment of the child's expenses.

Comment: A commenter stated that the example ''repaying the child's expenses'' should be deleted from the definition of ''upon demand'' because it could unnecessarily limit interpretation of what is considered a contingency. A few other commenters suggested adding more examples for what ''upon demand'' means, to include ''being placed into custody'' because the return of the child upon demand is not a reality when the end result is that the agency may remove the child. Some commenters suggested ''upon demand'' should mean without having to resort to legal proceedings or make a filing in court.

Response: The final rule eliminated the use of examples, and now refers broadly generally to ''formalities or contingencies.''

18. ''Voluntary Placement,'' ''Voluntary Proceeding,'' and ''Involuntary Proceeding''

Comment: A few commenters requested clarifying the difference between a ''voluntary placement'' and a ''voluntary proceeding.''

Response: The final rule distinguishes the terms by eliminating the definition for ''voluntary placement'' and including only a definition of ''voluntary proceeding.'' For clarity, the rule also includes a definition of ''involuntary proceeding.'' The term ''voluntary placement'' is now used only in FR § 23.103(b), addressing what the rule does not apply to. The rule does not apply to voluntary placements when the parent or Indian custodian can regain custody of the child upon verbal demand without any formalities or contingencies.

Comment: A few commenters suggested changing the definition of ''voluntary placement'' from a placement that ''either parent'' has chosen to instead be a placement that ''both known biological parents'' have chosen. One commenter suggested addressing the situation where one parent refuses consent, by adding ''if either parent refuses to consent to the placement, the placement shall not be considered voluntary.''

Response: The proposed rule allowed for ''either parent'' to choose the placement to address situations where only one parent is known or reachable. The final rule adds ''both parents'' to allow for situations where both parents are known and reachable. The final rule does not add that ''if either parent refuses to consent to the placement, the placement shall not be considered voluntary'' because in some cases, efforts to find the other parent may be unsuccessful. If a parent refuses to consent to the foster-care, preadoptive, or adoptive placement or termination of parental rights, the proceeding would meet the definition of an ''involuntary proceeding.'' Nothing in the statute

indicates that the consent of one parent eliminates the rights and protections provided by ICWA to a non-consenting parent.

Comment: A few commenters requested clarification that a placement made only upon the threat of losing custody is not ''voluntary,'' stating that they are aware of instances in which a State agency threatens parents with removal of their children if they do not ''voluntarily'' place the child elsewhere and then argue that these are ''voluntary placements'' under ICWA.

Response: The final definition of ''voluntary proceeding'' specifies that placements where the parent agrees to the placement only under threat of losing custody is not ''voluntary,'' by adding the phrase ''without a threat of removal by a State agency.'' The final rule also specifies that a voluntary proceeding must be of the parent's or Indian custodian's free will. This revision is intended to clarify that a proceeding in which the parent agrees to an out-of-home placement of the child under threat that the child will otherwise be removed is not ''voluntary.''

Comment: A commenter suggested replacing ''voluntary placement'' with ''voluntary foster-care placement or termination of parental rights'' (excluding adoptive placements) to track the language in 25 U.S.C. 1913.

Response: The final rule now defines the term ''voluntary proceeding,'' which includes foster-care, preadoptive, and adoptive placements and termination of parental rights.

Comment: A commenter suggested changing ''chosen for'' to ''consented to'' because it could be erroneously interpreted as providing that the parents' choice can override the placement provisions in 25 U.S.C. 1915, which apply in all adoption proceedings (voluntary and involuntary).

Response: This suggestion was adopted. The distinguishing factor for a ''voluntary proceeding'' is the parent(s) or Indian custodian's consent, not whether they personally ''chose'' the placement for their child.

19. Suggested New Definitions

a. ''Best Interests''

Comment: Several commenters requested that a definition of ''best interests of the Indian child'' be added because State courts have used a general ''best interest of the child'' determination to avoid application of ICWA. These commenters point out that ICWA provides a framework to ensure the long-term (for the Indian child's entire life) best interests of an Indian child, rather than just a short-term view of what the best interests of an Indian child may be in that child-custody situation. Some recommended a variation on the definition of ''best interest'' found in Wisconsin's Indian Child Welfare Act. Another commenter suggested defining best interest ''in accordance with the child's indigenous culture, traditions and customs.''

Response: It is unnecessary to define the term ''best interests'' because it does not appear in the final rule.

Comment: Many commenters, without specifically defining what ''best interests'' means, argued that various provisions of the proposed rule would act to prohibit a judge from protecting the ''best interests'' of the child.

Response: The Department disagrees with these comments, as ICWA was specifically designed to protect the best interests of Indian children. 25 U.S.C. 1902. In order to achieve that general goal, Congress established specific minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture. *Id.* Congress implemented the general goal of protecting the best interests of children through specific provisions that are designed to protect children and their relationship with their parents, extended family, and Tribe.

One of the most important ways that ICWA protects the best interests of Indian children is by ensuring that, if possible, children remain with their parents and that, if they are separated, support for reunification is provided. This is consistent with the guiding principle established by most States for determining the best interests of the child. *See* U.S. Dept' of Health and Human Servs., Children's Bureau, Child Welfare Information Gateway, *Determining the Best Interests of the Child* (2013) at 2 (identifying the ''importance of family integrity and preference for avoiding removal of the child from his/her home'' as by far the most frequently stated guiding principle). Should a child need to be removed from her family, however, ICWA's placement preferences continue to protect her best interests by favoring placements within her extended family and Tribal community. Other ICWA provisions also serve to protect a child's best interests by, for example, ensuring that a child's parents have sufficient notice about her child-custody proceeding and an ability to fully participate in the proceeding (25 U.S.C. 1912(a),(b),(c)) and helping an adoptee access information about her Tribal connections (25 U.S.C. 1917).

Congress, however, also recognized that talismanic reliance on the ''best interests'' standard would not actually serve Indian children's best interests, as that ''legal principle is vague, at best.'' H.R. Rep. No. 95–1386, at 19. Congress understood, as did the Supreme Court, that ''judges [] may find it difficult, in utilizing vague standards like 'the best interests of the child', to avoid decisions resting on subjective values.'' *Id.* (citing *Smith* v. *Org. of Foster Families for Equality & Reform,* 431 U.S. 816, 835 n.36 (1977)). These subjective values are exactly what Congress passed ICWA to address, as demonstrated by the legislative history discussed above.

Instead of a vague standard, Congress provided specific procedural and substantive protections through pre-established, objective rules that avoid decisions being made based on the subjective values that Congress was worried about. By providing courts with objective rules that operate above the emotions of individual cases, Congress was facilitating better State-court practice on these issues and the protection of Indian children, families, and Tribes. *See* National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 14 (2000).

While ICWA and this rule provide objective standards, however, judges may appropriately consider the particular circumstances of individual children and protect the best interests of those children as envisioned by Congress.

b. Other Suggested Definitions

Several commenters suggested adding new definitions, including the following.

Comment: ''Abandon''—One commenter suggested adding a definition for abandon to address the Supreme Court's determination that ICWA does not apply to ''a parent [who] has abandoned a child prior to birth and the child has never been in the Indian parent's legal or physical custody.'' *See Adoptive Couple* v. *Baby Girl,* 133 S. Ct. at 2563. This commenter notes that ''abandon'' is a term of art that varies greatly from State to State.

Response: The final rule does not define the term ''abandon'' because it is not used in the Act or final regulations.

Comment: ''Guardianship''—A few commenters suggested adding a definition for ''guardianship if resulting from placement involving an agency or private adoption attorney.'' These commenters believe such a definition is necessary because agencies have instructed families to obtain

guardianship of children to avoid notice to Tribes and allow time to pass in which to bond with the children prior to giving notice to the Tribe or filing a petition to adopt, in order to avoid ICWA's placement preferences.

Response: The final rule does not add a definition for ''guardianship'' because the term ''guardianship'' is not used in the final rule. The statute defines ''foster-care placement'' as including any action removing an Indian child from its parent or Indian custody for temporary placement in the . . . home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand. 25 U.S.C. 1903(1). Where a guardianship meets these criteria, it is subject to applicable ICWA requirements for child-custody proceedings. The discussion on applicability, below, addresses guardianships in voluntary proceedings.

Comment: ''ICWA-Compliant Placement''—A few commenters recommended adding a definition of an ''ICWA-compliant placement'' to mean only those placements in accordance with the placement preferences in section 1915. One commenter suggested excluding all placements that are outside the identified placement preferences, regardless of whether there has been a good cause finding to deviate from the placement preferences.

Response: The final rule does not add this term because it is not used in the regulation, and because the Department believes that it could introduce confusion. The statute provides for certain placement preferences ''in the absence of good cause to the contrary.'' 25 U.S.C. 1915(a), (b). If a State court properly found good cause to not place an Indian child with a preferred placement, the placement complies with ICWA.

Comment: ''Indian home''—A few commenters requested a definition for ''Indian home'' stating that States in the past have identified non-Indian foster families to be ''Indian homes'' by virtue of the Indian child being placed there.

Response: The final rule includes a definition of ''Indian foster home,'' a term used in 25 U.S.C. 1915(b) and FR § 23.131. The statute already defines the term ''Indian'' as a person who is a member of a federally recognized Indian Tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. *See* 25 U.S.C. 1903(3). The new definition simply clarifies that an ''Indian foster home'' is one in which one or more of the foster parents is an Indian.

Comment: ''Indian family''—A few commenters requested a definition of ''Indian family'' as including at least one parent meeting the definition of ''Indian'' for reasons similar to those forming the basis for the request for a definition of ''Indian home.'' One commenter stated that it witnessed a State agency take the position that a non-Indian foster family was an Indian family due to a vague connection to a Tribe.

Response: The Department declines to add a definition of this term because it finds that the meaning of the term in the statute and regulations is adequately clear. The term ''Indian family'' is found in 25 U.S.C. 1915(a), which includes ''other Indian families'' in the placement preferences. The term ''Indian'' is defined by statute, *see* 25 U.S.C. 1903(3), and the term ''Indian family'' in this context thus refers to a family with one or more individuals that meet this definition. The term ''Indian family'' is also found in 25 U.S.C. 1912(d) (requiring active efforts designed to prevent the breakup of the Indian family), and it is clear from context that this means the Indian child's family. *See also* the discussion of the existing Indian family exception in the Applicability section.

Comment: ''Indian''—One commenter stated that the term ''Indian'' is offensive and should instead be ''indigenous peoples'' or ''First Nations.''

Response: The term ''Indian'' is used in the statute; therefore, the regulation also uses this term.

Comment: ''Party''—A few commenters suggested adding a definition of ''party'' for the purposes of section 1912 to include any party seeking foster-care placement or termination of parental rights because often these placements are made by individuals or attorneys rather than agencies. A few other commenters suggested adding a definition of ''party'' to exclude ''de facto parents,'' because these are generally foster parents who do not have legal status on par with a parent or Indian custodian.

Response: State courts and Tribal courts define the parties to a proceeding; therefore, the final rule does not add a definition for this term. The Department notes, however, that the statute and regulation define the term ''parent'' as meaning 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 and custom. *See* 25 U.S.C. 1903(9); 25 CFR 23.2. Thus, a ''de facto parent'' that does not otherwise qualify under this definition would not be entitled to the rights a ''parent'' is provided under ICWA.

Comment: ''State courts''—One commenter suggested adding a definition of ''State courts'' to include all officers of the court, to clarify that all legal professionals must comply with ICWA.

Response: The final rule does not add a definition for ''State courts'' because the term is adequately clear.

Comment: ''Indian organization''—A commenter suggested moving the definition for ''Indian organization'' to § 23.2 (from § 23.102).

Response: The definition of ''Indian organization'' in § 23.102 applies only to subpart I of part 23 because a different meaning of the term ''Indian organization'' related to eligibility of grants applies to other subparts of part 23. For this reason, the final rule defines the term at § 23.102 with a definition that applies only to subpart I.

Comment: ''Tribal Representative''—Several commenters requested that the final rule add a definition of ''Tribal representative'' or ''Tribal designee'' to remove restrictions on Tribes participating in ICWA proceedings via non-attorney representatives. These commenters asserted that the final rule must require States to allow non-attorney representatives because Tribes may not have the resources to send a licensed attorney to appear in every proceeding in multiple courts and may only be able to send social workers or court-appointed special advocates, and the rights and interests of the Tribe to participate in ICWA proceedings outweigh the rights and interests of a State with regard to requiring licensure by all who appear before the court. Commenters also stated that the new definition should clarify that even if the Tribal representative is an attorney, the State may not require licensure in the jurisdiction where the child-custody proceeding is located. A commenter stated that appearing *pro hac vice* is often not a viable alternative because of the cost, number of appearances, requirements for local co-counsel, and ultimately the discretion of the State to deny the application to appear *pro hac vice.*

Response: The Department declines to adopt the comments' suggestion at this time. The suggested definition and requirements for State courts were not included in the proposed rule, and the Department believes that it is advisable to obtain the views of State courts and other interested stakeholders before such provisions are included in a final rule.

The Department recognizes that it may be difficult for many Tribes to participate in State court proceedings, particularly where those actions take

place outside of the Tribe's State. Section 23.133 encourages State courts to permit alternative means of participation in Indian child-custody proceedings in order to minimize burdens on Tribes and other parties. The Department agrees with the practice adopted by the State courts that permit Tribal representatives to present before the court in ICWA proceedings regardless of whether they are attorneys or attorneys licensed in that State. *See e.g., J.P.H.* v. *Fla. Dep't of Children & Families,* 39 So.3d 560 (Fla. Dist. Ct. App. 2010) (per curiam); *State* v. *Jennifer M. (In re Elias L.),* 767 N.W.2d 98, 104 (Neb. 2009); *In re N.N.E.,* 752 N.W.2d 1, 12 (Iowa 2008); *State ex rel. Juvenile Dep't of Lane Cty.* v. *Shuey,* 850 P.2d 378 (Or. Ct. App. 1993).

C. Applicability

The final rule clarifies the terms ''child-custody proceeding'' and ''hearing.'' Both of those terms were used at various points in the draft rule, but only ''child-custody proceeding'' was defined in the proposed rule. The comments demonstrated confusion regarding the use of those terms. Thus, in order to be clearer about the distinctions made in certain provisions of the rule between ''child-custody proceedings'' and ''hearings,'' the final rule includes definitions for those terms.

The final rule adds a definition of ''hearing'' that reflects the common understanding of the term as used in a legal context. As defined in the final rule, a hearing is a single judicial session held for the purpose of deciding issues of fact or of law. That definition is consistent with the definition in Black's Law Dictionary, a standard legal reference resource. In order to demonstrate the distinction between a hearing and a child-custody proceeding, the definition of ''child-custody proceeding'' explains that there may be multiple hearings involved in a single child-custody proceeding.

Consistent with the proposed rule, the final rule defines a ''child-custody proceeding'' to be an activity that may culminate in foster-care placement, a preadoptive placement, an adoptive placement, or a termination of parental rights. The final rule uses the phrase ''may culminate in one of the following outcomes,'' rather than the less precise phrase ''involves,'' used in the draft rule, in order to make clear that ICWA requirements would apply to an action that may result in one of the placement outcomes, even if it ultimately does not. For example, ICWA would apply to an action where a court was considering a foster-care placement of a child, but ultimately decided to return the child to his parents. Thus, even though the action did not result in a foster-care placement, it may have culminated in such a placement and, therefore, should be considered a ''child-custody proceeding'' under the statute.

The final rule deletes as unnecessary the use of the word ''proceeding'' as part of the definition of child-custody proceeding. It also explicitly excludes emergency proceedings from the scope of a child-custody proceeding, as emergency proceedings are addressed separately in the statute and in the rule. The definition further makes clear that a child-custody proceeding that may culminate in one outcome (*e.g.,* a foster-care placement) would be a separate child-custody proceeding from one that may culminate in a different outcome (*e.g.,* a termination of parental rights), even though the same child may be involved in both proceedings.

The final rule definition of ''child-custody proceeding'' is also updated to make clear that its scope includes proceedings involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child. This reflects the statutory definition of ''child-custody proceeding,'' which is best read to include placements based on status offenses, while explicitly excluding placement[s] based upon an act which, if committed by an adult, would be deemed a crime. *See* 25 U.S.C. 1903(1).

As discussed in more depth below, the final rule also removes from the regulatory text an explicit mention by name of the so-called ''existing Indian family'' (EIF) exception: A judicially created exception to ICWA's applicability that has since been rejected by the court that created it. Although the reference to the EIF exception by name was removed, the final rule makes clear that the inquiry into whether ICWA applies to a case turns solely on whether the child is an ''Indian child'' under the statutory definition. The rule, consistent with the Act, thus focuses exclusively on a child's political membership with a Tribe, rather than any particular cultural affiliation.

The commenters who asserted that various ICWA provisions are inapplicable to some children who have ''assimilated into mainstream American culture'' are wrong under a plain reading of the statute. In order to make this clear, the final rule prohibits consideration of listed factors because they are not relevant to the inquiry of whether the statute applies. The inclusion of this prohibition prevents application of any EIF exception, which both ''frustrates'' ICWA's purpose to ''curtail state authorities from making child custody determinations based on misconceptions of Indian family life,'' *In re A.J.S.,* 204 P.3d at 551 (citation omitted), and encroaches on the power of Tribes to define their own rules of membership.

1. ''Child-Custody Proceeding'' and ''Hearing'' Definitions

—''Any proceeding or Action''

Comment: A few commenters requested clarification of ''any proceeding or action.'' A few commenters suggested clarifying that a proceeding or action may include an *ex parte* placement, a court-ordered placement or ''any court hearing, proceeding, or action by an agency or court.'' One commenter stated that ''proceeding'' should include any authorized use of State power that may result in a parent losing custody of the child and ''action'' to be the manner in which such power is employed in discrete instances of conduct (*e.g.,* an emergency removal would be an action). Similarly, another commenter requested clarification that ICWA applies to any situation in which the State has taken action involving an Indian child and there is a possibility that neither parent will have custody.

Response: See the discussion above regarding the definition of ''child-custody proceeding'' and ''hearing.'' Further, whereas the draft rule stated that a child-custody proceeding ''means and includes any proceeding or action that involves'' certain outcomes, the final rule uses only the word ''action.'' In addition to the word ''proceeding'' being duplicative, the use of the term ''action'' is also more consistent with the statute, as the statute uses that term several times in its definition of ''child-custody proceeding.'' *See* 25 U.S.C. 1903(1).

—Guardianships

Comment: Several commenters suggested clarifying whether ICWA applies to guardianships and conservators. A few commenters noted there have been various State interpretations of this issue. Several commenters stated that the rule should explicitly apply to private guardianships in which someone assumes the role of caretaker without State or Tribal intervention, so that the action of placing the child would still be subject to ICWA.

Response: The statute defines ''child-custody proceeding'' to include removal of an Indian child for temporary placement in . . . the home of a

guardian or conservator. 25 U.S.C. 1903(1)(i). The fact that an agency places the child in the home of a guardian or conservator rather than in a foster home or institution does not affect applicability of the Act, as such placement would be a ''child-custody proceeding.''

If a parent entrusts someone with the care of the child without State or Tribal involvement, that arrangement would not prohibit the parent from having the child returned upon demand, and therefore would not meet the definition of a ''child-custody proceeding.''

—Custody Disputes Between Family Members

Comment: Several commenters stated that the rule should include intra-family disputes as a ''child-custody proceeding'' because a minority of State courts have excluded disputes where the petitioner is a family member. Another commenter stated intra-family disputes should not be included as a ''child-custody proceeding'' and that the rule should clarify that ICWA is not about resolving grandparent custody battles.

Response: The statute and final rule exclude custody disputes between parents (*see* next response), but can apply to other types of intra-family disputes, assuming that such disputes otherwise meet the statutory and regulatory definitions. ICWA can apply to other types of intra-family disputes because the statute makes only two exceptions, neither of which are for intra-family disputes other than parental custody disputes. 25 U.S.C. 1903(1) (ICWA does not apply to the custody provisions of a divorce decree or to delinquency proceedings). While at least one court held that ICWA excludes intra-family disputes (*see In re Bertelson,* 617 P.2d 121, 125–26 (Mont. 1980)), several subsequent court decisions have ruled to the contrary. *See, e.g., Starr* v. *George,* 175 P.3d 50 (Alaska 2008); *In re Custody of A.K.H.,* 502 N.W.2d 790, 794 (Minn. Ct. App. 1993); *In re Q.G.M.,* 808 P.2d 684, 687–88 (Okla. 1991); *In re S.B.R.,* 719 P.2d 154, 156 (Wash. Ct. App. 1986); *A.B.M.* v. *M.H.,* 651 P.2d 1170, 1173 (Alaska 1982). BIA has concluded that, if the intra-family dispute meets the definition of a ''child-custody proceeding,'' the provisions of this rule would apply. There is no general exception from ICWA for actions by grandparents or other family members.

—Divorce Proceedings

Comment: A few commenters stated that many custody cases do not occur within the context of a divorce proceeding because in many cases the parents are not married. These commenters requested clarification that ICWA does not apply to custody cases between parents, regardless of whether the custody case is within the context of a divorce proceeding.

Response: The Act does not include placement with a parent as an ''Indian child-custody proceeding'' because ''foster-care placement'' does not include placement with a parent. 25 U.S.C. 1903(1)(i). While the Act specifically exempts from ICWA's applicability awards of custody to one of the parents ''in divorce proceedings,'' the exemption necessarily includes awards of custody to one of the parents in other types of proceedings as well. *See, e.g., John* v. *Baker,* 982 P.2d 738, 746–47 (Alaska 1999). For this reason, the final rule clarifies that ICWA does not apply to an award of custody to one of the parents, in a divorce proceeding or otherwise.

If, however, the proceeding is one that meets the definition of a ''child-custody proceeding,'' in that the Indian child has been removed from his or her parent and any party seeks to place the Indian child in a temporary placement other than the alternate parent, then provisions of ICWA and this rule would apply. *See e.g., In re Jennifer A.,* 103 Cal. App. 4th 692, 700 (Cal. 2002) (finding that ICWA requirements applied because the ''issue of possible foster-care placement was squarely before the juvenile court,'' even though the child was eventually placed with the noncustodial father). In addition, if a proceeding seeks to terminate the parental rights of one parent, that proceeding squarely falls within ICWA's definition of ''child-custody proceeding.'' *See* 25 U.S.C. 1903(1).

—Adoptions Without Termination of Parental Rights, Including Tribal Customary Adoptions

Comment: A commenter noted that while the definition of ''child-custody proceeding'' is consistent with the definition of preadoptive placement in § 1903(1), there are situations in which preadoptive placements may occur without termination of parental rights under Tribal law or State law. This commenter suggested adding that ''child-custody proceeding'' does not preclude preadoptive placements after it has been determined that the child cannot or should not be returned to the home of his or her parents or Indian custodian, but where termination of parental rights is not a prerequisite to the finalization of the adoption under State or Tribal law. Likewise, a few commenters requested expanding ''adoptive placement'' to include Tribal customary adoptions in which there is no termination of parental rights, when such adoptions are conducted as part of a State-court proceeding.

Response: BIA does not believe that the definition of a ''child-custody proceeding'' needs to be adjusted to address these comments. Adoptions that do not involve termination of parental rights are included within the definition of ''child-custody proceeding'' as either a ''foster-care placement'' or an ''adoptive placement,'' because these terms, as defined, do not require termination of parental rights. *See* 25 U.S.C. 1903.

—Withdrawal of Consent as ''Upon Demand''

Comment: A few commenters suggested that the ''foster-care placement'' portion of the definition of ''child-custody proceeding,'' which states that foster-care placement is when the parent or Indian custodian ''cannot have the child returned upon demand'' conflicts with section 1913 of the Act, which provides that the parent can withdraw consent to a foster-care placement. These commenters suggest adding the following language to the definition after ''cannot have the child returned upon demand:'' ''(except as provided in § 103(b) [25 U.S.C. 1913(b)] of the Act).'' *See In re Adoption of K.L.R.F.,* 515 A.2d 33 (Pa. Super. Ct. 1986).

Response: The term ''foster-care placement'' as used in the Act includes only foster care where the parent cannot have the child returned ''upon demand.'' The final rule clarifies the definition of ''upon demand'' to mean simply a verbal demand without any formalities or contingencies. A parent's withdrawal of consent to a foster-care placement under section 1913 of the Act is also a situation where the parent cannot have the child returned ''upon demand'' because the withdrawal of consent must be more formal than a mere verbal request. FR § 23.127. Truly voluntary placements not covered by ICWA are those in which the parent can have the child returned upon a mere verbal request, without any express or implied formalities or contingencies.

2. Juvenile Delinquency Cases

Comment: Several commenters requested clarification on the interplay between PR § 23.102(a) and (e) as to whether ''juvenile delinquency proceedings'' are covered by ICWA, noting that § 1903(1) of the statute states that ICWA does not apply to placements based on an act that would be deemed a crime if committed by an adult. These

commenters requested clarification that ICWA would apply to placements based on ''status offenses'' (an act that would not be deemed a crime if committed by an adult, such as truancy or incorrigibility). The proposed rule provided that ''juvenile delinquency proceedings'' involving status offenses are not covered by the Act, but one commenter pointed out that in New York, juvenile delinquency proceedings, by definition, exclude status offenses because the term refers only to proceedings for youth who committed an act that would constitute a crime if committed by an adult. Another commenter noted that the California Supreme Court has ruled that placements in delinquency proceedings are presumptively exempt from ICWA, but noted that an Indian child may be placed in a foster home rather than a detention center as a result of delinquency proceedings.

Response: The final rule deletes the term ''juvenile delinquency proceedings'' and instead clarifies in FR § 23.103(a) that ICWA applies to proceedings involving acts that are status offenses (as defined in the rule to be acts that would not be a crime if committed by an adult) and in FR § 23.103(b) that ICWA does not apply to proceedings involving criminal acts that are not status offenses. While ICWA does not apply to proceedings involving non-status offense crimes, States may nevertheless determine that it is appropriate to notify the Tribe in these instances and provide other protections to the parents and child.

Comment: A commenter stated that the final rule should clarify the Tribe has jurisdiction in cases in which the placement is based on a status offense, even in PL–280 States.

Response: If the placement is based upon a status offense, ICWA provisions apply, regardless of whether the State is a PL–280 State.

Comment: Several commenters recommended adding that ICWA applies to ''any placement of an Indian child in foster care as a result of a juvenile delinquency proceeding'' or to proceedings that ''have the potential to result in'' (rather than ''result in'') the need for foster care, preadoptive or adoptive placement or the termination of parental rights. Some commenters suggested additional factors for ICWA applicability to juvenile delinquency proceedings.

Response: The final rule continues to state that ICWA applies to any status offense proceeding that results in a placement of the Indian child because of the status offense. *See* FR § 23.103(a). The final rule does not incorporate the commenters' suggestion for ICWA applicability where the proceeding has the ''potential to result in'' the need for foster care because this language is overly broad, in that nearly all status offense proceedings initially have a potential to result in foster care. The final rule's language makes clear that if a child is placed in foster care or another out-of-home placement as a result of a status offense, that proceeding is an ICWA proceeding and ICWA's standards (*e.g.,* notice, timing, intervention) apply.

Comment: One commenter requested clarification as to whether foster care is intended to include facilities operated primarily for the detention of children who are determined to be delinquent.

Response: A placement, including juvenile detention, resulting from status offense proceedings meets the statutory definition of ''foster-care placement'' and such placement is therefore subject to ICWA.

3. Existing Indian Family Exception

Comment: A large number of commenters expressed their strong support of the proposed provision stating that there is no ''existing Indian family exception'' to ICWA. Many stated that this judicially created exception has denied ICWA protections to Indian children. These commenters stated that the clarification is a confirmation of the Supreme Court's decision in *Adoptive Couple* v. *Baby Girl,* and mirrors the ''overwhelming trend in State legislatures and courtrooms.'' A few commenters stated that the clarification is necessary for consistency because a small number of States are continuing to apply the exception, and parties continue to argue in favor of its application. These commenters note that the exception inappropriately invites scrutiny into Indian culture and identity and allows a court to substitute its judgment for a Tribe's determination of a child's membership. A few commenters noted that the court that created the exception (Kansas Supreme Court) in 1982 has since rejected it. Commenters also pointed out that Congress identified ''Indian child'' as the threshold for ICWA applicability and that the definition does not invite State court investigation into a child's blood quantum, the extent to which the parent or child is involved with the Tribal cultural or other activities, or stereotypical ideas of ''Indian-ness.''

Other commenters opposed the rejection of the EIF exception. A few stated that the Department lacks the authority to override the interpretations of those remaining State courts that still apply the EIF exception. These commenters stated that the EIF exception addresses whether ICWA may be constitutionally applied to children who are classified as ''Indian'' solely because of their heritage, when they have no social, cultural, or political connection to a Tribe. One commenter stated that ICWA assumes the parent maintains social and cultural ties with the Tribe, and points to various locations within the Act referring to prevailing standards of Indian communities, values of Indian culture, and contacts with the Tribe. Another commenter stated that the EIF exception is consistent with ICWA because Congress was not concerned with children whose families were fully assimilated, lived far from Indian country, and maintained little contact with the Tribe. This commenter stated that ICWA cannot treat a child from a reservation the same as a child that never lived near a reservation and that has not been exposed to any Tribal culture. Another commenter argued that the EIF exception must be available for families and children that choose not to live on a reservation.

Response: Congress clearly defined when ICWA would apply to a State court child-custody proceeding—when the child-custody proceeding involves an ''Indian child'' as defined by statute. *See, e.g.,* 25 U.S.C. 1903(1), 1903(4), 1911, 1912, 1915. ''Indian child'' is defined based on the child's political affiliation with a federally recognized Indian Tribe. *See* 25 U.S.C. 1901 (defining ''Indian child'' as a Tribal member or child of a Tribal member who is eligible in a Tribe). The statute includes no provision for a court to determine the applicability of ICWA based on an Indian child's or parent's social, cultural, or geographic ties to the Tribe. To the contrary, Congress expressly recognized that State courts and agencies 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). It would be illogical to read into the statute a requirement that State courts conduct the very inquiry that Congress determined they were often ill-equipped to make. *In re A.J.S.,* 204 P.3d at 551 (citation omitted). Reliance on the EIF both ''frustrates'' ICWA's purpose to ''curtail state authorities from making child custody determinations based on misconceptions of Indian family life,'' *id.* (citation omitted), and encroaches on the power of Tribes to define their own rules of membership.

As noted by a commenter, the court that first created the EIF exception has

since rescinded it. *In re S.M.H.,* 103 P.3d 976 (Kan. Ct. App. 2005). Only a handful of courts continue to recognize the exception (including only one of six appellate districts in California, Alabama, Indiana, Kentucky, Louisiana, Nevada, Missouri, Tennessee).[7] In contrast, a swelling chorus of other States have affirmatively rejected the EIF exception (including Alaska, Arizona, Colorado, Idaho, Illinois, Iowa, Michigan, Montana, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Virginia and Utah).[8]

Those courts that have rejected the EIF exception are correct. As explained above, ICWA applies to any child-custody proceeding involving an Indian child. And where Congress intended a categorical exemption, it provided one expressly. Congress thus excepted from the definition of a ''child-custody proceeding'' ''an award, in a divorce proceeding, of custody to one of the parents'' and also a ''placement'' resulting from a juvenile delinquency proceeding. 25 U.S.C. 1903(1). It provided no such exception for cases that, in a State court's view, do not involve an ''existing Indian family.'' In addition, the Supreme Court did not adopt the EIF exception, even though some parties urged the Court to adopt it in the *Adoptive Couple* case. *See Adoptive Couple* v. *Baby Girl,* 133 S. Ct. at 2552.

Congress did not intend to limit ICWA's applicability to those Tribal citizens actively involved in Indian culture. Contrary to the commenters' assertions, Congress was concerned with children whose families lived far from Indian country, and might only maintain sporadic contact with the Tribe. For example, Congress expressly distinguished between children domiciled on-reservation and off-reservation for the purposes of jurisdiction, and applied the vast majority of ICWA provisions to off-reservation Indian children. For these reasons, the final rule continues to clarify that there is no EIF exception to the application of ICWA.

The final rule no longer uses the nomenclature of the exception, and instead focuses on the substance, rather than the label, of the exception. Thus, the final rule imposes a mandatory prohibition on consideration of certain listed factors, because they are not relevant to the inquiry of whether the statute applies. If a child-custody proceeding concerns a child who meets the statutory definition of ''Indian child,'' then the court may not determine that ICWA does not apply to the case based on factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her Indian parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

One of the factors that the rule prohibits a court from considering in determining whether ICWA will apply to a proceeding is ''the Indian child's blood quantum.'' FR § 23.103(c). That factor is intended to make clear that, in a case involving a child who meets the statutory definition of an Indian child, a court may not then go on to determine that ICWA should not apply to that proceeding because the child has a certain blood quantum. That factor is, however, not intended to prohibit a court from examining a child's blood quantum for the limited purpose of determining whether the child meets the statutory definition of ''Indian child,'' if a Tribe does not respond to requests for verification of a child's citizenship or eligibility for citizenship. In that limited circumstance, a State court may review whether the child is eligible under a Tribe's citizenship criteria. Likewise, in that limited instance, and if the Tribe's criteria necessitates examining blood quantum to determine citizenship or eligibility, then the State court may consider blood quantum for the purpose of making a determination as to whether the child is eligible for citizenship and therefore an ''Indian child'' under the statute. If the Tribe responds to requests for verification of the child's citizenship or eligibility for citizenship, the court must accept the Tribe's verification and may not substitute its own determination regarding a child's citizenship in a Tribe, a child's eligibility for citizenship in a Tribe, or a parent's citizenship in a Tribe.

4. Other Applicability Provisions

Comment: Several commenters recommended adding that ICWA applies to any domestic-violence proceeding in which the Court restricts a parent's access to the Indian child.

Response: The final rule does not add the suggested language because a restriction of parental access to the child under these circumstances may not meet the definition of a ''child-custody proceeding'' under the Act.

Comment: One commenter suggested clarifying that ''foster care'' includes any placement that may use Title IV–E funding, since there are various definitions of foster care.

Response: The final rule's definition of ''foster-care placement'' mirrors that of the ICWA and generally includes placements that use Title IV–E funding where parental rights have not been terminated.

Comment: One commenter requested clarification here, in addition to in the definition of ''Indian child,'' that once ICWA applies, it applies throughout the duration of the case, regardless of whether the child turns 18.

Response: The final rule adds clarification to the applicability section that ICWA will not cease to apply simply because the child turns 18. *See* FR § 23.103(d).

Comment: One commenter questioned the provision stating that ICWA does not apply to Tribal court proceedings.

Response: Tribes may have their own laws similar to ICWA, but the Federal ICWA provides standards applicable only to State-court proceedings (except for provisions regarding transfer of jurisdiction to Tribal court or Tribal intervention).

D. Inquiry and Verification

The applicability of ICWA to a child-custody proceeding turns on the threshold question of whether the child in the case is an Indian child. It is, therefore, critically important that there be an inquiry into that threshold issue as soon as possible. If this inquiry is not timely, a child-custody proceeding may not comply with ICWA and thus may deny IWCA protections to Indian children and their families. The failure to timely determine if ICWA applies also can generate unnecessary delays, as the court and the parties may need to redo certain processes or findings under the correct standard. This is inefficient for courts and parties, and can create

[7] *See, e.g., In re Alexandria Y.,* 53 Cal. Rptr. 2d 679 (Cal. Ct. App. 1996) (4th Dist.); *Rye* v. *Weasel,* 934 S.W.2d 257 (Ky. 1996); *Hampton* v. *J.A.L.,* 27–869 (La. App. 2 Cir. 7/6/95); 658 So. 2d 331; *C.E.H.* v. *L.M.W.,* 837 S.W.2d 947 (Mo. Ct. App. 1992); *In re Morgan,* No. 02A01–9608–CH–00206, 1997 WL 716880 (Tenn. Ct. App. Nov. 19, 1997); *S.A.* v. *E.J.P.,* 571 So. 2d 1187 (Ala. Civ. App. 1990); *In re Adoption of T.R.M.,* 525 N.E.2d 298, 303 (Ind. 1988); *In re N.J.,* 221 P.3d 1255 (Nev. 2009).

[8] *See, e.g., In re Alexandria P.,* 176 Cal. Rptr. 3d 468, 484–86 (Cal. Ct. App. 2014); *J.W.* v. *R.J.,* 951 P.2d 1206 (Alaska 1998); *Michael J., Jr.* v. *Michael J., Sr.,* 7 P.3d 960 (Ariz. Ct. App. 2000); *In re N.B.,* No. 06CA1325 (Colo. Ct. App. Sept. 6, 2007); *In re Baby Boy Doe,* 849 P.2d 925 (Idaho 1993); *In re S.S.,* 657 N.E.2d 935 (Ill. 1995); *In re R.E.K.F.,* 698 N.W.2d 147 (Iowa 2005); *In re Elliott,* 554 N.W.2d 32 (Mich. Ct. App. 1996); *In re Riffle,* 922 P.2d 510 (Mont. 1996); *In re Child of Indian Heritage,* 543 A.2d 925 (N.J. 1988); *In re Baby Boy C.,* 805 N.Y.S.2d 313 (N.Y. App. Div. 2005); *In re A.D.L.,* 612 S.E.2d 639 (N.C. Ct. App. 2005); *In re A.B.,* 663 N.W.2d 625 (N.D. 2003); *In re Baby Boy L.,* 103 P.3d 1099 (Okla. 2004); *Quinn* v. *Walters,* 881 P.2d 795 (Or. Ct. App. 1994); *In re Baade,* 462 N.W.2d 485 (S.D. 1990); *In re W.D.H., III,* 43 S.W.3d 30 (Tex. App. 2001); *In re D.A.C.,* 933 P.2d 993 (Utah Ct. App. 1997); *Thompson* v. *Fairfax County Dep't of Family Servs.,* 747 S.E.2d 838 (Va. Ct. App. 2013).

delays and instability in placements for the Indian child.

The final rule, therefore, requires courts to inquire into whether a child is an Indian child at the commencement of a proceeding. The court is to ask each participant in the proceeding, including attorneys, whether they know or have reason to know that the child is an Indian child. Such participants could also include the State agency, parents, the custodian, relatives or trial witnesses, depending on who is involved in the case. Further, recognizing that facts change during the course of a child-custody proceeding, courts are to instruct the participants to inform the court if they subsequently learn information that provides reason to know the child is an Indian child. Thus, if the State subsequently discovers that the child is an Indian child, for example, or if a parent enrolls the child in an Indian Tribe, they will need to inform the court so that the proceeding can move forward in compliance with the requirements of ICWA.

ICWA's notice provisions are triggered if a court ''has reason to know'' that a child is an Indian child. 25 U.S.C. 1912(a). The final rule, therefore, uses the statutory language ''reason to know,'' rather than ''reason to believe,'' as was used in the proposed rule. This is to be more consistent with the statutory text and to be clear that the rule does not set a different standard for triggering notice than what is provided for in ICWA. The final rule does, however, provide specific guidance regarding what constitutes ''reason to know'' that a child is an Indian child. The court would have reason to know that a child was an Indian child if, for example, it was informed that the child lives on a reservation or has been a ward of a Tribal court.

If the court has reason to know that a child is an Indian child, then the court is to treat the child as an Indian child unless and until it determines that the child is not an Indian child. This requirement ensures that ICWA's requirements are followed from the early stages of a case. It is also intended to avoid the delays and duplication that would result if a court moved forward with a child-custody proceeding (where there is reason to know the child is an Indian child) without applying ICWA, only to get late confirmation that a child is, in fact, an Indian child. For example, it makes sense to place a child that the court has reason to know is an Indian child in a placement that complies with ICWA's placement preferences from the start of a proceeding, rather than having to consider a change a placement later in the proceeding once the court confirms that the child actually is an Indian child. Notably, the early application of ICWA's requirements—which are designed to keep children, when possible, with their parents, family, or Tribal community—should benefit children regardless of whether it turns out that they are Indian children.

The determination of whether a child is an Indian child turns on Tribal citizenship or eligibility for citizenship. The final rule recognizes that these determinations are ones that Tribes make in their sovereign capacity and requires courts to defer to those determinations. The best source for a court to use to conclude that a child or parent is a citizen of a Tribe (or that a child is eligible for citizenship) is a contemporaneous communication from the Tribe documenting the determination. Thus, if the court has reason to know that a child is a member of a Tribe, it should confirm that due diligence was used to identify and work with the Tribe to verify whether the child is a citizen (or a biological parent is a citizen and the child is eligible for citizenship).

The final rule does, however, allow a court to rely on facts or documentation indicating a Tribal determination such as Tribal enrollment documentation. This provision was added to the final rule in response to comments noting that sometimes Tribes are slow to respond to inquiries seeking verification of Tribal citizenship. It also reflects the fact that it may be unnecessary to obtain verification from a Tribe, if sufficient documentation is already available to demonstrate that the Tribe has concluded that a parent or child is a citizen of the Tribe or the child is eligible for citizenship.

The proposed rule included a suggested requirement that State agencies provide courts with genograms and other specifically-listed information in order to inform the court about whether a child is an Indian child. The final rule does not include that suggestion, as the Department has determined that suggestions on how agencies may conduct inquiries are more appropriate for guidance than regulation.

The final rule also includes provisions that are designed to assist courts and others in contacting Tribes to obtain verification of citizenship or eligibility of citizenship. In addition, BIA is available to assist in contacting Tribes and is taking steps to facilitate the ease of contact. For example, BIA has compiled a list of designated Tribal ICWA officials and is working to make that list more user-friendly.

1. How To Contact a Tribe

Comment: One commenter stated that the information in PR § 23.104 (now located in FR § 23.105) on how to contact a Tribe is helpful to assist in compliance. Several Tribal commenters recounted their experiences in having notices sent to various addresses other than the designated Tribal agent address listed in the **Federal Register**. A few commenters requested that BIA do more to keep the list of designated ICWA agents up-to-date.

A State commenter requested revisions to clarify that BIA publishes the ''official'' list of contacts in the **Federal Register**, and to require BIA to make the list available on its Web site with updates provided by Tribes between official **Federal Register** publications. A few commenters requested making the list easier to use, by including historical Tribal affiliations to facilitate notification of the correct Tribe or by grouping by Tribal heritage (*e.g.,* Chumash, Pomo) in addition to their specific band.

Response: In conjunction with this final rule, BIA is working to make its list of designated ICWA officials more user-friendly and maintaining an updated list on its Web site.

Comment: One commenter suggested that States be required to maintain a list of the ICWA contacts for Tribes in their State.

Response: The Department encourages States to maintain a list of designated ICWA officials of Tribes in their States, but the final rule does not require that they do so.

Comment: One commenter stated that the court should call Tribes for court hearings.

Response: The final rule does not require this.

Comment: One commenter recommended changing the rule to read you ''should'' seek BIA assistance in contacting the Tribe if you do not have accurate contact information or the Tribe fails to respond, rather than ''may,'' to avoid providing too much leeway.

Response: The final rule adopts this suggestion and changes the language to ''should.'' *See* FR § 23.105(c).

2. Inquiry

Comment: Many commenters stated that the provisions requiring early identification of Indian children will be particularly helpful. These commenters stated that children and families are too often denied ICWA protections because a court or agency did not ask whether the child was Indian. These commenters stated that a failure to ask whether a

child is an Indian child risks the Indian children not being identified at all, creates a risk of insufficient efforts to reunify the family, delay, or repetition in court proceedings, and increases the risk of placement instability. They noted that early identification is a best practice that will promote placement stability for children.

Commenters also supported the requirement that the courts ask every party, on the record, whether there is reason to believe the child is an Indian child. Commenters relayed their experiences with child-welfare agencies inadvertently failing to apply ICWA. A commenter noted that there is a tendency for those who are geographically proximate to Tribal lands to make greater efforts to comply with ICWA despite the fact that 78 percent of Native Americans do not live on Tribal lands. The National Council of Juvenile and Family Court Judges noted that they have long recommended this practice to judges because failing to make the necessary inquiries and notify the necessary parties, etc., can result in the case having to start over from the beginning. Commenters noted the importance of this provision because all the rights and responsibilities of ICWA flow from the determination as to whether ICWA applies.

One commenter opposed the requirement to ask if every child is subject to ICWA as a ''callous and unwarranted intrusion.'' One commenter opposed asking whether the child is an ''Indian child'' in the context of adoption because it would make adoption problematic by allowing the Tribe to declare the child an ''Indian child.''

Response: The Department agrees with the comments that stress the importance of early inquiry into the applicability of ICWA. As discussed above, the rule requires such early inquiry. The final rule retains the requirement for State courts to ask in every proceeding whether the child is an ''Indian child'' because this inquiry is necessary to determine if ICWA applies. The inquiry is a limited, non-burdensome imposition on State courts that is designed to ensure that they abide by Federal law and appropriately address key questions that go to jurisdictional, procedural, and substantive requirements under ICWA. ICWA applies to children that meet the definition of an ''Indian child'' and imposes obligations on a court when it knows or has reason to know that a child is an Indian child. In order for a court to determine whether it has reason to know that a child is an Indian child, the court needs to inquire into the issue. Asking if every child is subject to ICWA ensures that ICWA is implemented early on where applicable and thereby avoids the problems and inefficiencies generated by late identification that ICWA is applicable to a particular case.

Comment: Several commenters stated that PR § 23.103(c) and § 23.107, which require agencies and courts to ask whether the child ''is or could be an Indian child'' or whether there is ''reason to believe that the child is an Indian child'' are overly broad and apply when the child *could become* an Indian child. These commenters stated that determining whether ICWA applies and requiring notices to Tribes is expensive, time consuming, and causes undue delay, especially when a parent has only a vague notion of a distant Tribal ancestor, and when the Tribe does not require the parent to be a citizen for the child to be eligible for citizenship. Another commenter stated that the rule should impose a greater burden on State agencies to determine whether a child is eligible for Tribal citizenship. Other commenters noted the discrepancy between the phrases ''reason to believe'' and the statutory phrase ''reason to know.''

Response: The inquiry into whether a child is an ''Indian child'' under ICWA is focused on only two circumstances: (1) Whether the child is a citizen of a Tribe; or (2) whether the child's parent is a citizen of the Tribe and the child is also eligible for citizenship. For clarity, the terminology ''could be an Indian child'' is deleted from the final rule and the final rule changes the language in § 23.107(a) to reflect the statutory language as to whether there is knowledge or a ''reason to know'' the child is an ''Indian child.'' As discussed above, the final rule also provides clear guidance regarding when a court has ''reason to know'' the child is an ''Indian child.''

Comment: Several commenters discussed the terminology in PR § 23.107 regarding inquiry into whether the child ''is an Indian child'' or there is ''reason to believe'' the child is an Indian child. A few commenters suggested changing the requirement to ask whether the child ''is an Indian child'' to a requirement to ask whether the child ''may be an Indian child.'' Alternatively, one commenter stated that the agency or court should be required to ask if the child ''is an Indian child,'' not if they have a ''reason to believe'' the child is Indian—because the child may be Indian even if there is no apparent ''reason to believe.''

Response: As stated in the previous response, the final rule changes the § 23.107(a) language to reflect the statutory language as to whether there is knowledge or a ''reason to know'' the child is an ''Indian child.''

Comment: A few commenters stated that the regulations should be clear about whom, at a minimum, agencies should ask about the child's ancestry (*e.g.,* parents, custodians, other relatives that have a close relationship with the child), what should be asked (any potential Indian heritage that could indicate citizenship or eligibility) and when the questions should be asked (at a minimum, the onset of each new proceeding). Likewise, commenters asserted that State courts need specificity as to what will satisfy the investigation requirements.

A few commenters stated their support for requiring certification on the record of whether the child is an Indian child, to hold those responsible for the inquiry accountable. A commenter stated support of genograms and ancestry charts as supporting social work practice and skills. The National Council of Juvenile and Family Court Judges stated that the ICWA checklists it provides to judges and others also recommend family charts or genograms be created to facilitate Tribal citizenship identification as a best practice. A few commenters suggested making it mandatory for State courts to require agencies to provide the information, while others opposed the requirement as putting an undue burden on courts and agencies because the cost and time to investigate and prepare a history where there is no firm evidence of Indian heritage will waste scarce resources.

Several commenters opposed requiring genograms or ancestry charts as a burden on courts, agencies, and biological parents for voluntary adoptions. Commenters stated that parents rarely have more than basic information even about their own parents and said that requiring such information will discourage adoption. A few commenters stated that the rule imposes unfunded mandates by requiring States to create genealogies for all children. A State agency commented that the rule will create significant additional workload for it, State attorneys and courts without providing increased funding, all while facing record-high numbers of reports, investigations and children in out-of-home placement. Other commenters stated that the logistics and standards imposed on State courts are unworkable, labor-intensive, and extremely costly. Commenters also offered additional suggestions for information courts may wish to consider requiring agencies to provide in support

of certification regarding whether there is information suggesting the child is an Indian child.

Response: The final rule directly addresses courts only, as discussed above. It requires the court to ask all participants in the case whether there is reason to know the child is an Indian child on the record. It does not, however, require the agency to provide genograms or other information that was listed in the proposed rule, as the Department has determined that suggestions on how agencies may conduct inquiries are more appropriate for guidance than regulation.

Comment: A few commenters suggested requiring the inquiry to be made, not only at each child-custody proceeding, but also ''at subsequent hearings'' because children may become enrolled during this time.

Response: The final rule does not require an inquiry at each hearing. Instead, it requires that the State court should instruct parties to inform it if they later discover information that provides reason to know the child is an Indian child. *See* FR § 23.107(a). This instruction reflects that ICWA requirements apply throughout a child-custody proceeding, if a child is an Indian child. Thus, the instruction insures that if parties find out that there is reason to know the child is an Indian child, the court will be informed and can then conduct the requisite inquiry and provide the appropriate ICWA protections. And, if a new child-custody proceeding is initiated for the same child, the court should again inquire into whether there is reason to know that the child is an Indian child.

Comment: A few commenters suggested a requirement to proactively discover whether there is a ''reason to believe'' the child is an ''Indian child'' because parties could do nothing to discover and then truthfully certify they have no reason to believe.

Response: The final rule retains the provision at § 23.107 requiring State courts to ask participants in the proceeding if they know or have reason to know that the child is an ''Indian child.'' States or courts may choose to require additional investigation into whether there is a reason to know the child is an Indian child, and may choose to explain the importance of answering questions regarding whether the child is an Indian child.

Comment: A few commenters stated that the term ''active efforts'' in PR § 23.107(b) should be replaced with ''actively sought'' or ''due diligence'' to avoid confusion with use of the phrase ''active efforts'' in the statute.

Response: The final rule replaces the term ''active efforts'' with ''due diligence'' in the context of identifying the Tribes of which the child may be a citizen because ''due diligence'' is a common term in child-welfare cases with which practitioners are already familiar. *See* FR § 23.107(b); *see e.g.,* 42 U.S.C. 671(a)(29) (specifying funding requirement that within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to the following relatives: All adult grandparents, all parents of a sibling of the child, where such parent has legal custody of such sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents)).

Comment: A few commenters supported PR § 23.107(b) requiring certification on the record regarding whether the child is an Indian child and recommended adding a requirement that the certification include information documenting diligent search efforts or ''good faith effort'' to obtain information and all findings of the search. These commenters also recommended providing copies of the certifications and documents to the Tribe.

Response: The rule requires that, if the court has reason to know the child is an Indian child but does not have sufficient evidence to determine that the child is or is not an ''Indian child,'' the court must confirm that the agency or other party worked with Tribes to verify the child's citizenship; the court will necessarily require some evidence in the record to make that confirmation. *See* FR § 23.107(b).

Comment: A few commenters stated that the requirement in PR § 23.107(b) to work with ''all Tribes'' in which the child may be a citizen is overly burdensome.

Response: The final rule requires State courts to confirm that the agency used due diligence to work with all Tribes for which there is reason to know the child may be a citizen. The requirement does not mean an agency must work with all federally recognized Tribes because the reason to know will indicate a certain Tribe or group of Tribes with which the child may have political affiliations. It is necessary to work with all of the Tribes of which there is reason to know the child may be a citizen to identify the ''Indian child's Tribe'' as defined in the statute and comply with statutory requirements for notice and jurisdiction.

Comment: One commenter stated that the provision in PR § 23.107(c)(4), stating that there is a reason to know the child is an Indian child if the child or parents are domiciled in a predominantly Indian community, confuses Tribal enrollment with race.

Response: The final rule no longer uses the standard ''predominantly Indian community,'' as that phrase was overbroad. Instead, the regulation states that a court has reason to know that a child is an Indian child if the court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native Village. The regulation does not presume that the child is an Indian child if that provision is triggered; rather, such domicile or residence is a factor that requires further investigation because it gives the court ''reason to know'' that the child is an Indian child.

If a child or the child's parents reside on a Tribe's reservation, it is reasonable to contact that Tribe to find out if the child is a citizen (or the child's parent is a citizen and the child is eligible). In addition to reservations, the provision highlights Alaska Native Villages because Alaska is home to approximately half the federally recognized Indian Tribes, but there is only a single reservation. Thus it is similarly reasonable to contact the Tribe associated with the Alaska Native Village where the child or her parents reside.

Comment: A commenter suggested adding a new § 23.107(c)(6) to state ''[t]he child is or has been a ward of a Tribal court'' and a new § 23.107(c)(7) to state ''[e]ither parent or child possesses a Tribal membership card or certificate of Indian blood.''

Response: The final rule includes an identification card indicating citizenship in an Indian Tribe. *See* FR § 23.107(c)(5)–(6).

Comment: A commenter stated that it may be duplicative to require the court to ask whether a child is an Indian child if it is already stated on record.

Response: The inquiry may be appropriate even if it has already been established that the child is an ''Indian child'' to ensure that all Tribes through which the child meets the definition of ''Indian child'' have been identified.

3. Treating Child as an ''Indian Child'' Pending Verification

Comment: Several commenters stated their support for treating a child as an Indian child pending verification under PR § 23.103(d), noting that it is a best practice to allow time for notice to the Tribe and verification from the Tribe, keeps Indian children with their families and Tribes, and helps avoid

multiple placements. California Indian Legal Services noted that this approach is consistent with California law. A few commenters stated that ICWA has been viewed as the ''gold standard of child-welfare practice'' so there is no harm in temporarily applying ICWA standards to a child who may be Indian, even if it is ultimately determined that he or she is not. Commenters stated that this provision will help prevent the unpredictability that results where ICWA is not applied at the outset and it is determined later that ICWA applies.

Several commenters opposed the provision requiring treatment of a child as if ICWA applies. Some stated that it will result in overbroad application in violation of children's constitutional rights because, without confirmation of the political affiliation, it treats children as Indian children solely due to racial identification. A commenter noted that this requirement places a large burden on State agencies to provide active efforts for all possibly Indian children when Tribes may take months to respond to a request for verification. Another commenter stated that the provision removes any discretion from the court and eliminates its role as fact-finder because ''any reason'' is too broad and presumes the court is not capable of determining if the evidence is sufficient to show the child is an Indian child. One commenter suggested it will be difficult to explain to the child that he or she is being treated as an Indian child, especially when it is later discovered the child was not an Indian child.

Response: The final rule moves this provision to FR § 23.107(b) and clarifies that the trigger for treating the child as an ''Indian child'' is the reason to know that the child is an Indian child. This is not based on the race of the child, but rather indications that the child and her parent(s) may have a political affiliation with a Tribe. As discussed above, this requirement ensures that ICWA's requirements are followed from the early stages of a case and that harmful delays and duplication resulting from the potential late application of ICWA are avoided. If, based on feedback from the relevant Tribe(s) or other information, it turns out that the child is not an ''Indian child,'' then the State may proceed under its usual standards.

Comment: A few commenters suggested adding an end point to when the child should no longer be treated as an Indian child, to add clarity. A few commenters noted that Tribes often fail to respond to repeated inquiries as to whether children are Tribal citizens. One of these commenters stated that the rule should require Tribes to respond and another stated that imposing obligations on the Tribe would expand beyond the statute. A few commenters added that at some point, if the Tribe fails to respond, the court must be free to determine the child is not an Indian child.

Response: The rule requires that, if there is reason to know the child is an Indian child, the court is to treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an ''Indian child.'' The end point would be the court's determination that the child is not an Indian child. State courts have discretion as to when and how to make this determination. If a Tribe fails to respond to multiple repeated requests for verification regarding whether a child is in fact a citizen (or a biological parent is a citizen and the child is eligible for citizenship), and the agency has repeatedly sought the assistance of BIA in contacting the Tribe, a court may make a determination regarding whether the child is an Indian child for purposes of the child-custody proceeding based on the information it has available. If new evidence later arises, the court will need to consider it and if he or she is an Indian child, ICWA applies. The Department encourages prompt responses by Tribes, and encourages courts and agencies to include enough information in the requests for verification to allow the Tribes to readily determine whether the child is a Tribal citizen (or whether the parent is a Tribal citizen and the child is eligible for citizenship).

Comment: One commenter stated that this provision requires proving a negative and that if a Tribe fails to respond to notice, continuing to treat the child as an Indian child overrules the Tribe's power to determine its own citizenship.

Response: As noted above, if a Tribe repeatedly fails to respond, a court may make a determination regarding whether the child is an Indian child based on the information it has available. Treating the child as an Indian child in the interim does not overrule the Tribe's power to determine its citizenship. The determination of whether a child is an Indian child is made only for purposes of the particular child-custody proceeding. In addition, the Tribe remains free to respond in the affirmative or negative as to whether the child is a citizen (and as to whether the parent is a citizen and the child is eligible for citizenship).

Comment: A commenter notes that under ICWA, the burden of proof is on the party asserting ICWA to provide evidence that the child is Indian.

Response: Under the statute, ICWA requirements apply when the court and agency know or have a reason to know the child involved in the Indian child-custody proceeding is an Indian child. The applicability of ICWA can affect a State court's jurisdiction as well as the applicable law. Even if a party fails to assert that ICWA may apply, the court has a duty to inquire as to ICWA's applicability to the proceeding.

4. Verification From the Tribe

Comment: Several commenters stated that requiring States to ''obtain verification'' in PR § 23.107(a) is unfair because it holds the States responsible even if the Tribe fails to respond. Several commenters stated that written verification from the Tribe should not be required and the parties should be free to produce, under rules of evidence, whatever verification is available to allow the judge to determine whether the evidence suffices. One commenter stated that the requirement is unfair to Tribes because it places the obligation on the Tribe to verify, and the Tribe may lack the resources to respond to all requests for verification. A few provided alternate suggestions including requiring States to ''solicit verification'' or ''seek verification.'' Another commenter suggested adding that written notice to a Tribe is not sufficient to meet the requirements, unless the notice results in verification.

Response: The final rule requires the State court to ensure the agency worked with the Tribe(s) to obtain verification, but does not require that ''the agency must obtain verification,'' as required by the proposed rule. *See* FR § 23.107(b). It is expected that the agency would work with the Tribe(s) that the court has reason to know is/are the Indian child's Tribe to obtain verification regarding whether the child is a citizen (or a biological parent is a citizen and the child is eligible for citizenship). The Department encourages agencies to contact Tribes informally, in addition to providing written notice, to seek such verification. While written verification from the Tribe(s) is an appropriate method for such verification, other methods may be appropriate, so the final rule does not specify that the verification needs to be in writing.

Comment: A commenter stated that appearance by the Tribe's representative at a hearing should constitute verification.

Response: A Tribal representative's testimony at a hearing regarding whether the child is a citizen (or a biological parent is a citizen and the child is eligible for citizenship) is an

appropriate method of verification by the Tribe.

Comment: A commenter suggested that § 23.107(a) should require that agencies provide certain information in the request for verification to allow Tribes to make a determination, including at least: (1) The name of the child, child's birthdate and birth place; (2) the names of the parents, their birthdates and birthplaces; and (3) the names of the child's grandparents, their birthdates and birthplaces, to the extent known or readily discoverable.

Response: The request for verification is a meaningful request only if it provides sufficient information to the Tribe to make the determination as to whether the child is a citizen (or the parent is a citizen and the child is eligible for citizenship). Providing as much information as possible facilitates earlier identification of an Indian child and helps prevents disruptions. FR § 23.111(d) includes categories of information that must be provided in the notice to a Tribe in involuntary foster-care placement or termination of parental rights proceedings. Such information may be helpful to provide for other types of proceedings to assist in verification of whether the child an Indian child.

Comment: A commenter stated that § 23.107 should be revised to state that it is never appropriate for a State court to determine the child is not Indian, if there is any reason to believe the child is Indian, without providing notice to the Tribe.

Response: The Department agrees. ICWA establishes that notice to the Tribe is required for involuntary child-custody proceedings when the court has reason to know that an Indian child is involved. *See* 25 U.S.C. 1912(a). This provision avoids a determination that a child for whom there is ''reason to know'' was an Indian child is not an ''Indian child'' without notice to the Tribe.

5. Tribe Makes the Determination as to Whether a Child is a Citizen of the Tribe

Comment: A few commenters opposed the provision at PR § 23.108 stating that the Tribe makes the determination as to whether the child is a citizen, pointing out that courts have held that the parent has the burden to prove the child is an Indian child and that if the parent fails to prove that, then the court is free to determine the child is not an Indian child.

Several commenters stated their support of the provision that the Tribe makes the determination as to citizenship. These commenters stated that the provision recognizes Tribes' exclusive authority, as sovereign governments, to determine their political membership. One commenter noted that the State has no authority to determine whether ICWA applies based on items such as whether a Tribal citizen votes or participates in Tribal activities or has a certain blood quantum, and that only the Tribe may decide who is a citizen. A commenter stated that the emphasis should be that if a Tribe determines a child is a citizen, that determination is conclusive and binding on the State and any other entity or person.

A few commenters stated that while they support the provision, there should be a mechanism for the State court to determine the child is an Indian child if the Tribe fails to respond. One commenter suggested adding at the end of PR § 23.108(d) ''provided that if the Tribe does not respond following a good faith effort to obtain verification, the court must still treat the child as an Indian child if it otherwise has reason to believe that the child may be an Indian child.'' Likewise, a commenter requested a reference to PR § 23.108 be added to PR § 23.107 so it would read ''unless and until it is determined pursuant to PR § 23.108 that the child is not a member. . .'' to make clear only the Tribe makes the determination.

Response: Tribes, as sovereign governments, have the exclusive authority to determine their political membership and their eligibility requirements. A Tribe is, therefore, the authoritative and best source of information regarding who is a citizen of that Tribe and who is eligible for citizenship of that Tribe. Thus, the rule defers to Tribes in making such determinations and makes clear that a court may not substitute its own determination for that of a Tribe regarding a child's citizenship or eligibility for citizenship in a Tribe.

While a Tribe is the authoritative and best source regarding Tribal citizenship information, the court must determine whether the child is an Indian child for purposes of the child-custody proceeding. That determination is intended to be based on the information provided by the Tribe, but may need to be based on other information if, for example, the Tribe(s) fail(s) to respond. For example, the final rule clarifies that a Tribal determination of citizenship or eligibility for citizenship may be reflected in a preexisting document issued by a Tribe, such as Tribal enrollment documentation.

Comment: A few commenters stated that allowing Tribes the sole authority to determine membership is unfair to those who willfully left behind Indian country. They stated that families, rather than Tribes, should have the final say on membership.

Response: Because ICWA only applies when the child is a member or when the child's parent is a member, the individual does, in fact, have the final say on membership, as Tribal membership can be renounced. *See, e.g., Means* v. *Navajo Nation,* 432 F.3d 924, 934 n. 68 (9th Cir. 2005) (''The authorities suggest that members of Indian tribes can renounce their membership.''); *Thompson* v. *County of Franklin,* 180 F.R.D. 216, 225 (N.D.N.Y. 1998) (giving effect to individual's unequivocal renunciation of Tribal membership); *see, e.g.,* Fort Peck Comprehensive Code of Justice Title 4, Enrollment, sec. 217A(b) (1989) (''Any adult member of the Assiniboine and/or Sioux Tribes may apply for relinquishment of their respective tribal enrollment, at any time.'').

Comment: A commenter stated that PR § 23.108 is too narrow because it fails to account for Tribes that make membership determinations based on biological grandparent membership.

Response: The final rule does not affect how Tribes determine citizenship, whether based on biological grandparent citizenship or otherwise. For the purposes of ICWA applicability, if a child is eligible for Tribal citizenship based on a grandparent's citizenship, that is not the end of the inquiry. The statute still requires that the child must either himself or herself be a citizen, or that child's parent must be a citizen, in order for the child to be an ''Indian child.''

Comment: One commenter requested clarification that BIA will no longer make any membership decisions in lieu of a Tribe.

Response: The rule does not provide for BIA to make determinations as to Tribal citizenship or eligibility for Tribal citizenships except as otherwise provided by Federal or Tribal Law. BIA can help route the notice to the right place. The existing regulation at § 23.11(b) and the final regulation at FR § 23.111(e) state that, if the identity or location of the parents, Indian custodians or Tribe cannot be determined, notice must be sent to the BIA regional office. This mirrors the statutory requirement. *See* 25 U.S.C. 1912. To ensure response at the regional level, the final rule requires that notice be sent to the Regional Director and deletes the provision at § 23.11(a) requiring a copy of each notice be sent to Secretary.

Comment: A few commenters suggested strengthening this section by changing ''may'' to ''shall'' to confirm

that only the Tribe may define its membership.

Response: The final rule adopts the substance of this suggestion by deleting ''may'' and instead providing that the Tribe ''determines.''

Comment: One commenter requested clarification that a child may be a member in a Tribe without necessarily being enrolled.

Response: Tribes determine their citizenship; neither the statute nor the rule address how a Tribe determines who its citizens are (by enrollment, or otherwise).

Comment: A commenter requested adding language stating that a Tribe that previously made a determination as to Tribal membership may revisit and/or correct that decision.

Response: The Tribe determines citizenship and may provide new evidence as to Tribal citizenship to the court.

Comment: One commenter stated there should be a presumed Tribe the same way there is a presumed parent because it often takes a Tribe years to recognize a child as eligible for enrollment.

Response: The rule does not include a provision establishing a presumed Tribe. ICWA establishes that a child is an ''Indian child'' if the child is enrolled, or if the parent is enrolled and the child is eligible for enrollment.

E. Jurisdiction: Requirement To Dismiss Action

With limited exceptions, ICWA provides for Tribal jurisdiction ''exclusive as to any State'' over child-custody proceedings involving an Indian child who resides or is domiciled within the reservation of such Tribe. 25 U.S.C. 1911(a). ICWA also provides for exclusive Tribal jurisdiction over an Indian child who is a ward of a Tribal court, notwithstanding the residence or domicile of the child. *Id.*

A court's subject-matter jurisdiction is essential to the exercise of judicial power, is not a subject of judicial discretion, and cannot be waived. *See, e.g., Arbaugh* v. *Y&H Corp.,* 546 U.S. 500 (2006). Thus, the final rule identifies the determinations that a State court must make to assess its jurisdiction. If the State court does not have jurisdiction, either because the Indian child is domiciled on a reservation, where the Tribe exercises exclusive jurisdiction over child-custody proceedings, or because the Indian child is a ward of a Tribal court, the final rule instructs the State court to notify the Tribal court of the pending dismissal, dismiss the State-court proceedings, and send all relevant information to the Tribal court. State and Tribal courts and State and Tribal child-welfare agencies are encouraged to work cooperatively to ensure that this process proceeds expeditiously and that the welfare of the Indian child is protected.

Comment: A commenter stated that the court should be required to ''immediately'' dismiss a proceeding under PR § 23.110 as soon as it determines it lacks jurisdiction. A few commenters requested additions to ensure that the State diligently contacts the Tribe and transfers the case in a timely manner.

Response: The final rule does not include a requirement to dismiss a case within a certain time frame because the timing may depend upon coordination with the Tribal court. *See* FR § 23.110. The final rule does add a requirement that the State must ''expeditiously'' notify the Tribe of a pending dismissal. The State court may also need to reach out to the Tribal court or Tribal child-welfare agency to determine whether jurisdiction over child-custody proceedings for that Tribe is otherwise vested in the State by existing Federal law. *See* 25 U.S.C. 1911(a).

Comment: A few commenters suggested revising PR § 23.110(b) to specify that the documentation the agency must submit includes ''all agency documentation as well as reporter information'' because a Tribal court to which a case is transferred is at a disadvantage without reporter information on key witnesses and other details.

Response: The final rule requires the court to transmit all information in its possession regarding the Indian child-custody proceeding to the Tribal court. Such information would include all the information within the court's possession regarding the Indian child-custody proceeding; the final rule adds examples for clarity. The final rule also changes ''all available information'' to ''all information'' regarding the proceeding. *See* FR § 23.110. In order to best protect the welfare of the child, State agencies may wish to share information that is not contained in the State court's records but that would assist the Tribe in understanding and meeting the Indian child's needs.

Comment: A few commenters suggested an amendment to clarify that the mandatory dismissal provisions do not apply if the State and Tribe have an agreement regarding jurisdiction because, in some cases, Tribes choose to refrain from asserting jurisdiction.

Response: The final rule adds a reference to § 1919 of the Act, which allows for Tribal-State agreements governing jurisdiction.

Comment: A commenter stated that PR § 23.110(b) would apparently preclude the State from providing safety investigative services it currently provides when a child is domiciled on reservation but located off reservation.

Response: The final rule addresses dismissals of State-court child-custody proceedings based on lack of jurisdiction. It does not affect State authority to provide safety investigative services when a child is domiciled on reservation but located off reservation.

Comment: A commenter suggested adding to PR § 23.110(c) that the State court must contact the Tribal court not only when the child has lived on a reservation, but also if the State court has reason to believe the child may be a ward of Tribal court.

Response: The final rule clarifies that the Tribe has jurisdiction, notwithstanding the Indian child's residence or domicile off reservation, if the child is a ward of the Tribal court. *See* FR § 23.110(b). The State court may need to contact the Tribal court to confirm the child's status as a ward of that court. In addition, the final rule identifies the child's status as a ward of a Tribal court as one of the ''reasons to know'' that the child is an Indian child, FR § 23.107(c)(5), a status which may trigger certain notice requirements. *See* FR § 23.111.

Comment: A few commenters suggested allowing an exemption for dismissal in emergency cases. These commenters stated that this exemption is necessary to ensure the safety of the child, so the State does not dismiss proceedings until the Tribe has asserted jurisdiction.

Response: FR § 23.110 includes the introductory provision ''subject to § 23.113 (emergency proceedings)'' to ensure that the child is not subjected to imminent physical damage or harm.

Comment: One commenter noted that if PR § 23.110(c) continues to require the State court to contact the Tribal court, then BIA should maintain a comprehensive list of Tribal courts and their contact information.

Response: If the State court does not have contact information for the Tribal court, the Tribe's designated ICWA agent may provide that information. The BIA publishes, on an annual basis, a list of contacts designated by each Tribe for receipt of ICWA notices in the **Federal Register** and makes the list available at *www.bia.gov*.

Comment: A commenter suggested BIA compile a list of which reservations are subject to a Tribe's exclusive jurisdiction for child-welfare

proceedings and make this information readily available to States, to allow them to determine whether the Tribe exercises exclusive jurisdiction over a particular reservation.

Response: Each Tribe's ICWA designated contact will have information on whether the Tribe exercises exclusive jurisdiction.

F. Notice

The notice provisions included in section 1912(a) are one of ICWA's core procedural requirements in involuntary child-custody proceedings for protecting the rights of children, parents, Indian custodians, and Tribes. Prompt notice is necessary to ensure that parents, Indian custodians, and Tribes have the opportunity to participate in the proceeding. Without notice of the proceeding, they will not be able to exercise other rights guaranteed by ICWA, such as the right to intervene in or seek transfer of the proceedings. In addition, notice may facilitate early actions that will minimize disruptions for the children and families through, for example, enabling placement of Indian children in preferred placement homes as early as possible. It will also allow for prompt provision of Tribal resources and early transfer to Tribal courts.

In order for the recipients of a notice to be able to exercise their rights in a timely manner, the notice needs to provide sufficient information about the child, the proceeding, and the recipient's rights in the proceeding. The final rule, therefore, specifies the information to be contained in the notice. Some of the information that is required to be provided, such as identifying and Tribal enrollment information, is necessary so that that Tribes can determine whether the child is a member of the Tribe or eligible for membership. Other information, such as a copy of the petition initiating the child-custody proceeding and a description of the potential legal consequences of the proceeding, is necessary to provide the recipient with sufficient information about the proceeding to understand the background and issues that may be addressed in the proceeding and the consequences that may flow from the proceeding. Finally, other information, such as descriptions of the intervention rights and timelines, is necessary to inform the recipient of the rights that are available to the recipient.

The final rule deletes the provision PR § 23.135(a)(3) requiring notice of a change in placement. The Department, however, recommends that information about such changes regularly be provided. The statute provides rights to parents, Indian custodians and Tribes (*e.g.,* right to intervene) and a change in circumstances resulting from a change in placement may prompt an individual or Tribe to invoke those rights, even though they did not do so before.

ICWA also provides for minimum notice periods that are designed to allow notice recipients time to evaluate the notice and prepare to participate in the proceeding. The final rule, therefore, reiterates the minimum time limits required by the Act. In many instances, however, more time may be available under State-court procedures or because of the circumstances of the particular case. The final rule, therefore, makes clear that additional time may be available.

1. Notice, Generally

Comment: Several commenters stated their support of the provision at PR § 23.111(a) clarifying what information must be included in notices and to whom notices must be sent. Several commenters noted that too often, appropriate parties are not notified of a child-custody proceeding in a timely manner. Several commenters noted the importance of rigorous notice requirements in involuntary proceedings as necessary to: Facilitate parents', Indian custodians', and Tribes' participation and make available Tribal resources; facilitate placement of Indian children in preferred placement homes as early as possible and minimize the possibility that children will face a disruption in the future; and allow Tribes the opportunity to fully participate in proceedings affecting their citizens, advocate for their citizens, and transfer to Tribal courts without delay. One commenter noted that Tribes have rights to transfer and intervene that they can exercise only if they have notice of a proceeding. One commenter stated that the costs of not providing notice are great, in terms of costs to rectify removal and costs to the child in terms of trauma and loss of language and culture.

Response: The Department agrees with these comments, and has crafted the final rule to ensure complete and accurate notices of involuntary proceedings are provided in a timely manner.

Comment: A few commenters also supported the requirement in PR § 23.111(g) for a translated version of the notice or having the notice read and explained in a language understandable to the parents. These commenters stated that many Alaska Natives have limited English proficiency and that parents are often not informed in plain language of the process or their rights under ICWA. A commenter suggested this section change ''should'' to ''shall'' to require the court/agency to contact the Tribe or BIA for assistance in locating a translator or interpreter.

Response: The final rule continues to allow for a translator or interpreter, by including the requirement to provide language-access services, as governed by Title VI of the Civil Rights Act and other Federal laws. *See also* 25 CFR 23.82 (assistance in identifying language interpreters).

Comment: A few commenters opposed notice requirements in the emergency context. The Washington Department of Social and Human Services, Children's Administration, and California Department of Social Services opposed notice requirements for emergency proceedings, noting that the timelines associated with notice are unreasonable in this context. In California, for example, if the child has been removed, the detention hearing must be held by the next judicial day after the petition is filed. Requiring ICWA notice, and having to wait 10 days after the receipt of the notice, would make compliance with the detention timeframe impossible.

Response: The commenters point out a potential issue with timing of emergency removals and the section 1912(a) requirements for notice. The final rule addresses this by requiring formal notice and applicable timelines to only those placements covered by section 1912(a) of the Act and do not apply to emergency proceedings. The rule indicates, however, that the petition for emergency removal or emergency placement should include statements of any efforts made to contact the Indian child's parents or Indian custodians and Tribe. *See* FR § 23.113(c)(3), (c)(8). As discussed below, section 1922 of the Act applies in limited circumstances, for short periods of time, to ensure that ICWA's procedural and substantive provisions do not prohibit a State from removing a child under State law on an emergency basis ''to prevent imminent physical damage or harm to the child.'' In such situations, notice should be provided as soon as possible.

Comment: A commenter noted that an issue that constantly causes delay is the Tribe failing to timely respond to notice because often there are processes that have to take place within the Tribe that prevent timely response, causing emotional and financial difficulty for all parties.

Response: Any processes that are internal to a Tribe and may delay a Tribe's response to notice are beyond the scope of this rule. In addition, the

final rule may ameliorate that problem by identifying information to be provided in the notice that may allow Tribes to more readily determine the child's status.

Comment: Several commenters had additional suggestions for improving the notice requirements. For example, one commenter suggested a consistent process and format to inform Tribes of ICWA cases. Several commenters suggested adding a deadline to provide notice, such as within 15 days of when a child is removed from the home. These commenters also suggested adding a requirement for the State to prove the Tribe received notice, noting that in Alaska the mail is not always reliable.

Response: The Department is considering whether to provide a sample notice as part of updated guidelines and also encourages States to implement a consistent process and format to inform Tribes of ICWA cases. With regard to a deadline to provide notice, the rule does not establish such a deadline because the rule provision incorporates those deadlines specified by statute. *See* FR § 23.112; 25 U.S.C. 1912(a).

Comment: A few commenters suggested the rule should require States to contact Tribes by phone and email, in addition to mail, and clarify when contact less formal than registered mail is acceptable.

Response: The statute and the final rule require notice by registered or certified mail, return receipt requested. (*See* section IV.F.2 of this preamble for response to comments on registered and certified mail.) The Department encourages States to act proactively in contacting Tribes by phone, email, and through other means, in addition to sending registered or certified mail.

Comment: A commenter suggested that the rule should require notice to the putative father, if a putative father other than the alleged father becomes known, to protect the putative father's rights.

Response: The statute and regulations require notice to the parents; a ''parent'' includes unwed fathers that have established or acknowledged paternity. If, at any point, it is discovered that someone is a ''parent,'' as that term is defined in the regulations, that parent is entitled to notice.

Comment: A commenter suggested incorporating Colorado's requirement for notice to be sent to the designated Tribal agent (listed in the **Federal Register**) or the highest Tribal official, or if neither can be determined, then to the highest Tribal court judge with a copy to the Tribe's social services department.

Response: The rule specifically addresses how to contact a Tribe at FR § 23.105, and clarifies that BIA publishes a list of Tribally designated ICWA agents who may receive notice.

Comment: A few commenters requested that BIA forward all notices it receives to the Tribe, to provide checks and balances to ensure the Tribe receives notice and because some States provide notice to BIA without contacting the Tribe.

Response: The party seeking placement is responsible for providing the Tribe with notice under the statute. *See* 25 U.S.C. 1912(a). BIA assists when there is difficulty identifying or locating a Tribe; however, it is the responsibility of the party seeking placement to send notice directly to the appropriate Tribe(s).

Comment: A few commenters suggested revising PR § 23.111(d) to provide that the court/agency must check the **Federal Register** contact information for the child's Tribe and send the notice to BIA only if unable to identify the Tribe.

Response: The final rule's directions for how to contact a Tribe includes checking the **Federal Register** contact information. *See* FR § 23.105.

Comment: A commenter stated that the number of notices required is excessive. Another commenter stated that it is unclear whether PR § 23.111(a) requires notice only once at the initiation of the proceeding, or whether it is required for each hearing within a proceeding. A few commenters suggested requiring registered mail only for the first notice because notice for each subsequent hearing or action and all the data elements is onerous and unnecessary if the Tribe is already noticed and involved in the proceedings. Similarly, another commenter suggested that there be an exception to notice requirements if the Tribe has actual notice of the hearing, so the State does not have to unnecessarily spend additional resources.

Response: Notice of an involuntary proceeding for foster-care placement or termination of parental rights is required by section 1912 of the Act. *See* FR § 23.111(a). Each proceeding may involve more than one court hearing, but only one notice meeting the registered (or certified) mail requirements of section 1912(a) is required for each proceeding (regardless of the number of court hearings within the proceeding). *See* Section IV.C.1 (''Child-custody proceeding'' Definition) of this preamble. Consistent with the statute, the final rule requires that notice be given for a termination-of-parental-rights proceeding, even if notice has previously been given for the child's foster-care proceeding. If a Tribe intervenes or otherwise participates in a proceeding, the Tribe should receive notice of hearings in the same manner as other parties.

Comment: A commenter requested clarification that any time an agency opens an investigation or the court orders the family to engage in services to keep the child in home as part of a diversion, differential, alternative response, or other program, that agencies and courts should follow the verification and notice provisions.

Response: The statute applies to Indian child-custody proceedings. The final rule does not address in-home services that do not meet the Act's definition for ''child-custody proceeding.''

2. Certified Mail v. Registered Mail

Comment: A few commenters supported requiring notice in PR § 23.111 by registered mail with return receipt requested. One commenter stated that this requirement is important because it establishes proof of notice. A few suggested this requirement replace the requirement for certified mail in § 23.11(a).

Several commenters opposed the requirement for registered mail with return receipt. These commenters noted issues with registered mail with return receipt requested that undermine ICWA compliance: Specifically, that registered mail with return receipt requested is approximately three times more costly, and that registered mail is less reliable as timely notification. One commenter noted that, in 1994, BIA considered requiring registered mail with return receipt requested but ultimately rejected it because it determined it undermined the purpose of ICWA notice. A few commenters also stated that registered mail requires the individual to pick up the mail from the postal service whereas certified mail is in-person delivery with a sign-off; and that registered mail can result in delays because only the person whose name exactly matches the addressee can pick up the mail, and if the person is not present the mail is sent back to the sender.

Response: The final rule requires either registered mail with return receipt requested or certified mail with return receipt requested. Both types of mail provide evidence of delivery with the return receipt. *See* FR § 23.111. As the commenters detail, there is no clear benefit of requiring registered mail over certified mail, because there is no practical difference between the two that impacts any of the interests that ICWA protects. Registered mail offers

the added feature of a chain of custody while in transit, but this chain of custody is not necessary to effectuate notice under ICWA and adds delay. In terms of cost and timeliness, certified mail provides benefits over registered mail in that certified mail is less expensive and enables notice more quickly.

Comment: Several commenters opposed the provision stating that personal service may not substitute for registered mail return receipt requested. These commenters stated that personal service is the best guarantee of receipt. Several also stated that actual notice should be a substitute for registered mail.

Response: If State law requires actual notice or personal service, that may be a higher standard for protection of the rights of the parent or Indian custodian of an Indian child than is provided for in ICWA. In that case, meeting that higher standard would be required. *See* 25 U.S.C. 1921.

Comment: One commenter suggested requiring that the postal receipt be filed with the court, to ensure that service is completed before any hearings are held.

Response: Maintaining documentation of notice is important; as courts have emphasized, the ''filing of proof of service in the trial court's file would be the most efficient way of meeting [the] burden of proof'' in proving notice. *See In re E.S.,* 964 P.2d 404, 411 (Wash. Ct. App. 1998). The rule requires the court to ensure this documentation is in the record. *See* FR § 23.111(a)(2).

3. Contents of Notice

Comment: Several commenters stated that the notice must contain the names and birthdates of the child's parents for the notice to be useful for the Tribe to determine whether the child is a member or if the parent is a member and the child is eligible for membership. A commenter stated that notices seldom include the father's name but it is necessary to determine if the child is a member. A few of these stated that the rule should also require including the names and birthdates and birthplaces of the child's grandparents to the extent known or readily discoverable. Another commenter suggested the rule require including maiden names or prior names or aliases. Several of these commenters noted that the more information that is provided to Tribes, the more easily the responding Tribes can verify membership or eligibility for membership.

Response: The final rule includes the requirement for the parents' names (including any known maiden or former names or aliases), birthplaces, and birthdates and as much information as is known regarding the child's other direct lineal ancestors. *See* FR § 23.111(d)(2). This information was required under the current § 23.11(d)(3), which the new rule is replacing.

Comment: A few commenters stated that the rule should provide consequences if the notice fails to include the necessary information, such as invalidating State actions or providing a basis for dismissal.

Response: The rule recognizes the importance of providing meaningful notice to meet the goals of the statute. The statute provides that certain parties may seek to invalidate actions based on ICWA violations, including notice violations. *See* 25 U.S.C. 1914; FR § 23.137. In addition, State courts may also make additional determinations imposing consequences for failure to provide meaningful notice.

Comment: One commenter stated that it is problematic for § 23.111 to require a copy of the petition be provided with the notice because it contains confidential information about the children and parents and the notice may be sent to Tribes that ultimately have no affiliation.

Response: The final rule continues to require a copy of the petition, as the petition contains important information about the proceeding and the child and parties involved. This requirement was required under the former rule at 25 CFR 23.11(d)(4), which this rule is replacing. While it is true that a petition may contain confidential information, providing a copy of the petition with notice to Tribes is a government-to-government exchange of information necessary for the government agencies' performance of duties. Tribes are often treated like Federal agencies for the purposes of exchange of confidential information in performance of governmental duties. *See, e.g.,* Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3205 (2012); Family Rights and Education Protection Act, 20 U.S.C. 1232(g) (2012). The substance of the petition is necessary to provide sufficient information to allow the parents, Indian custodian and Tribes to effectively participate in the hearing.

Comment: A few commenters supported PR § 23.111(c)'s requirement for the notice to contain a statement that counsel will be appointed to represent an indigent parent or Indian custodian, but opposed the qualification ''where authorized by State law.'' These commenters stated that the statute does not include the qualification ''where authorized by State law.''

Response: The statute provides indigent parents/Indian custodians the right to counsel. *See* 25 U.S.C. 1912(b). The final rule restates this right, and deletes the provision ''where authorized by State law'' because the statute establishes that the right exists even if State law does not provide for such court-appointed counsel. *See* FR § 23.111(d).

Comment: One commenter stated that where a State appoints counsel because the parents or Indian custodians cannot afford one, at PR § 23.111(c)(4)(iv), that the counsel must represent the party for the entirety of the case to ensure parents' rights are addressed consistently throughout the case rather than appointing different representatives at each stage.

Response: While it is a recommended practice to appoint the same counsel for the entirety of the case (throughout all proceedings), the final rule does not require a single counsel for the duration of a case.

4. Notice of Change in Status

Comment: A State agency commented that requiring notice of a change in placement, as under PR § 23.135, will create additional workload because the notice has to include information about the right to petition for return of the child, which contemplates that the notice must be in writing. This commenter stated that the section should be amended to allow for notice by whatever means is customary to the Tribe that is actively participating and to recognize that confidential information cannot be shared.

Response: The final rule deletes the provision PR § 23.135(a)(3) requiring notice of a change in placement. The Department, however, recommends that information about such changes regularly be provided. The statute provides rights to parents, Indian custodians and Tribes (*e.g.,* right to intervene) and a change in circumstances resulting from a change in placement may prompt an individual or Tribe to invoke those rights, even though they did not do so before.

Comment: A commenter opposed the requirement in PR § 23.135 to provide notice to biological parents whenever the child's adoption is vacated or set aside or the adoptive parents voluntarily consent to termination of parental rights. According to the commenter, this provision violates confidentiality because, at that point, the biological parent has no right to notification about the child.

Response: The final rule continues to use ''biological parent'' with regard to notice that a final decree of adoption of

an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child because the statute provides the biological parent or prior Indian custodian certain rights if the adoption decree is vacated or set aside. *See* 25 U.S.C. 1916(a); FR § 23.139.

Comment: A Tribal commenter requested adding a requirement for the State to notify the Tribe if the child is placed in an approved adoptive placement or with a placement that intends to adopt the child.

Response: The statute requires notice of involuntary proceedings for foster-care placement or termination of parental rights. *See* 25 U.S.C. 1912(a). There is no statutory authority to require notice if a foster family forms an intention to adopt that Indian child or is generally designated an ''approved adoptive placement'' in addition to being a foster placement. It is a best practice for the State agency to inform the Tribe if a child's permanency plan or a concurrent plan changes, such as from foster care to adoption.

Comment: A commenter requested deletion of the provision at PR § 23.135(c) allowing a parent or Indian custodian to waive the right to notice of a change in an adopted child's status because parents may sign without a full understanding of the legal right they are waiving, especially if the waiver is presented with other documents. Another commenter supported the provision but suggested adding safeguards because a waiver by vulnerable parents with issues that have given rise to an involuntary proceeding is particularly suspect, and parents or Indian custodians in other cases may have been pressured to waive notice. This commenter suggested that any waiver should be explicitly confirmed before the judge with the consequences explained as part of the section 1913 process, as well as the parent's right to withdraw the waiver and how that can be done. Commenters also stated the court should be required to maintain this information in a database and inform waiving parents that they can obtain that information at any time, notwithstanding the waiver, merely by contacting the court through a clearly defined and simple process that does not require legal counsel.

Response: The statute does not specify that parents or Indian custodians may waive their right to notice if an adoption fails, but there is no prohibition on parents or Indian custodians waiving the right to future notice. Given that parents and Indian custodians may choose to waive their right to notice of failed adoptions, the rule addresses this circumstance to provide safeguards on any such waiver and ensure the right to revoke the waiver. The final rule adds several of the suggested safeguards to ensure ICWA's intent is met. The final rule does not add a requirement for the court to maintain information on the waiver in its database, but does provide that the waiver may be revoked at any time by filing a notice of revocation. *See* FR § 23.139.

Comment: A few commenters stated that the provision in PR § 23.135(c) allowing notice to be waived should not apply to foster-care placement changes where parental rights have not been terminated.

Response: FR § 23.139 limits waiver of notice to two situations: where adoption of an Indian child is vacated or set aside and where the adoptive parents voluntarily terminate their parental rights. In those cases, the biological parent or prior Indian custodian may waive notice of these actions. Neither of those two situations involves foster-care placements.

Comment: A commenter suggested PR § 23.135(c) should clarify that only ''completed proceedings'' will not be affected by a revocation of a waiver of right to notice.

Response: The final rule specifies that a waiver of right to notice will not affect completed proceedings. *See* FR § 23.139(c). This clarifies that notice of proceedings that are in progress when the waiver is executed and filed may be affected.

5. Notice to More Than One Tribe

Comment: A commenter stated that PR § 23.109(b) should be mandatory, such that if there is only one Tribe in which the child is a member or eligible for membership, that Tribe must be designated as the child's Tribe.

Response: The final rule includes this suggested change. *See* FR § 23.109(a).

Comment: A commenter stated that PR § 23.109(d), allowing one Tribe to authorize another to represent it, should require that the authorization be documented by filing the authorization in court to establish that the Tribe was properly notified.

Response: Nothing in the statute either allows or prohibits one Tribe from authorizing another to represent it. The final rule therefore deletes the provision.

Comment: Several commenters stated that all Tribes should be encouraged to participate in Indian custody proceedings where the child is a member of, or eligible for membership in, more than one Tribe. These Tribes point out that the child and family will benefit from the involvement of all the Tribes and will provide more Tribal resources to increase the likelihood of preferred placement.

Response: The statute establishes one Tribe as the ''Indian child's Tribe.'' *See* 25 U.S.C. 1903(5). As a best practice, other Tribes that are interested in the proceeding may coordinate with the Tribe designated as the ''Indian child's Tribe'' or with State agencies to ensure involvement and provide Tribal resources to increase the likelihood of a preferred placement.

Comment: A few commented on who makes the determination as to the designation of the Tribe. Several commenters opposed having the State select the Tribe with which the child has more significant contacts. Others recommended clarifying that the court, rather than the agency, makes the determination as to which Tribe should be designated as the child's Tribe.

Response: The statute establishes that the Indian child's Tribe is the Tribe with which the Indian child has more significant contacts. *See* 25 U.S.C. 1903(5). The final rule clarifies that the court must first provide the opportunity for the Tribes to make that determination, but that if the Tribes are unable to agree, the State court must designate, for the purposes of ICWA, which is the child's Tribe for this limited purpose. *See* FR § 23.109(c). In situations where the Tribes are unable to agree, it is a best practice to notify the Tribes and conduct a hearing regarding designation of the Indian child's Tribe.

Comment: A few commenters stated that the preference of the parents should be determinative, rather than the court's determination.

Response: The Act provides that the child's Tribe is the Tribe with which the Indian child has the more significant contacts. *See* 25 U.S.C. 1903(5). The rule provides that the State court may consider the parent's preferences for which Tribe should be designated the Indian child's Tribe as a factor in determining with which Tribe the child is more significant contacts. *See* FR § 23.109(c).

Comment: Several commented on the factors for determining with which Tribe the child has more significant contacts and suggested the list at PR § 23.109(c)(1) should be combined with the list at PR § 23.109(c)(2)(ii). Another commenter suggested adding examples of ''more significant contacts'' for determining which Tribe is the child's Tribe, to include ''relative or extended family contacts, kinship contacts, trips home for cultural events, funerals, or similar events.''

Response: The final rule combines the two proposed lists to establish one list of factors indicative of significant contacts because the court is making the same determination on ''more significant contacts'' in both provisions of the proposed rule. The proposed lists varied slightly from each other, so the final list reconciles them in two ways: first, by including the preferences of parents, rather than both parents and extended family members who may become placements, because that would require speculation about prospective placements that is not directly relevant to the question of which Tribe the child has more significant contacts; and second, by deleting ''availability of placements'' as a factor, for the reason discussed below. *See* FR § 23.109(c).

Comment: A few commented on inclusion of the availability of placements in the list of factors. One stated that inclusion of this factor is wise as long as courts do not question the suitability of placements. Another stated that it should not be included as a factor because it has nothing to do with the contact the child has had with the Tribe.

Response: The final rule deletes this factor because it is not relevant to the question of with which Tribe the child has more significant contacts.

Comment: One commenter opposed the requirement to notify ''all Tribes'' that a determination of the child's Tribe has been made because it would require another round of notices to Tribes that already determined the child is not theirs and another Tribe would be involved.

Response: The final rule does not include the proposed requirement to notify all Tribes of a determination of the child's Tribe.

6. Notice for Each Proceeding

Comment: A commenter stated that the notice should list the date, time, and location of the hearing, the issue to be heard, and the consequences of any requested ruling.

Response: The final rule lists required information in the notice, including the date, time, and location of the hearing if the hearing has been scheduled at the time notice is sent. The final rule requires the notice to include contact information for the court to ensure the recipient may contact the court for information on any hearings and requires the notice to state the potential legal consequences of the proceeding. *See* § 23.111(d)(6)(vii)–(viii).

Comment: A commenter requested clarification that PR § 23.111(h) does not allow parties to waive timely notice.

Response: The statute provides that no placement shall occur if the requirements for notice, including the timing of the notice, are not met. *See* 25 U.S.C. 1912(a). These statutory provisions are implemented at FR § 23.112(a).

7. Notice in Interstate Placements

Comment: A few commenters stated their support of PR § 23.111(i), which requires both the originating and receiving States to provide notice if a child is transferred interstate. Some of these commenters referred to the facts underlying the *Adoptive Couple* v. *Baby Girl* case and asserted that this provision would help prevent a similar situation.

A few commenters opposed this provision. Most of these commenters suggested the sending State should be responsible for providing notice because the receiving State would not be aware of the placement and have no court case or opportunity to provide notice. Another stated that notice should be required only in the State where the court proceeding is pending. One stated that this requirement will result in duplicative notices and cause potential confusion. A few commenters stated that this requirement would strain already overburdened resources.

Response: The final rule deletes this provision, as this subject is not directly addressed in the statute. However, BIA encourages such notification as a recommended practice.

8. Notice in Voluntary Proceedings

Comments regarding notice in voluntary proceedings are addressed in Section IV.L.2 of this preamble, below.

G. Active Efforts

ICWA requires that any party seeking to effect a foster-care placement of, or termination of parental rights to, an Indian child must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 U.S.C. 1912(d). This is one of the key provisions in ICWA designed to address Congress' finding that the removal of many Indian children was unwarranted. 25 U.S.C. 1901(4). The active-efforts requirement helps protect against these unwarranted removals by ensuring that parents who are or may readily become fit parents are provided with services necessary to retain or regain custody of their child.

The active-efforts requirement embodies the best practice for all child-welfare proceedings, not just those involving an Indian child. Natural parents possess a ''fundamental liberty interest'' in the care, custody, and management of their child, and this interest ''does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.'' *Santosky* v. *Kramer,* 455 U.S. 745, 753 (1982). And until a parent has been proven to be unfit, the child shares with the parent ''a vital interest in preventing erroneous termination of their natural relationship.'' *Id.* at 760. For proceedings involving an Indian child, the active-efforts requirement helps protect these interests.

The Department finds compelling the views of child-welfare specialists who opine that ''the cornerstone of an effective child-welfare system is the presumption that children are best served by supporting and encouraging their relationship with fit birth parents who are interested in raising them and are able to do so safely.'' *See, e.g.,* Comments of Casey Family Programs, et al., at 1 (comments submitted on behalf of a group of national organizations, associations, and professors); *see also* Brief of Casey Family Programs, et al., *Adoptive Couple* v. *Baby Girl,* at 7. These specialists note that ''[a]mong the most important components of a sound child-welfare system is the requirement for agencies and others responsible for children's well-being to be vigilant in striving to keep children in their families; to remove them only when necessary to protect them from serious harm; and to work diligently to assist families with overcoming obstacles to children's safe return promptly.'' Comments of Casey Family Programs, et al., at 3; *see also* National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 5 (2000). Congress has recognized this principle in other contexts as well. *See* 42 U.S.C. 671 (requiring State plan for foster care and adoption assistance to provide that reasonable efforts will be made to prevent or eliminate the need for removal of the child from his home and to make it possible for the child to return to his home.)

The active-efforts requirement in ICWA reflects Congress' recognition of the particular history of the treatment of Indian children and families, and the need to establish a Federal standard for efforts to maintain Indian families. After extensive hearings in the 1970s, Congress recognized that the social conditions, including poverty, facing many Tribes and Indian people—some brought about or exacerbated by Federal policies—were often cited as a reason for the removal of children by State and

private agencies. H.R. Rep. No. 95–1386, at 12. Congress found that ''agencies of government often fail to recognize immediate, practical means to reduce the incidence of neglect or separation.'' *Id.* ICWA's active-efforts requirement is one critical tool to ensure that State actors identify these ''means to reduce the incidence of neglect or separation,'' and provide necessary services to parents of Indian children.

Congress also found that ''our national attitudes as reflected in long-established Federal policy and from arbitrary acts of Government'' had helped produce ''cultural disorientation, a [ ] sense of powerlessness, [ ]loss of self-esteem'' that affected the ability of some Indian parents to effectively care for their children. *Id.* The active-efforts requirement is designed to address this problem where possible, by requiring appropriate services be provided to parents to help them attain the necessary parenting skills or fitness.

Congress also found that States cited alcohol abuse as a frequent justification for removing Indian children from their parents, but failed to accurately assess whether the parent's alcohol use caused actual physical or emotional harm. *Id.* at 10. Congress found that different standards for alcohol use were applied in Indian versus non-Indian homes. *Id.* The active-efforts requirement helps ensure that alcohol, drug, or other rehabilitative services are provided to an Indian child's parent where appropriate, to avoid unnecessary removals or termination of parental rights.

Congress was also clear that it did not feel existing State laws were adequately protective. The House Report accompanying ICWA stated that ''[t]he committee is advised that most State laws require public or private agencies involved in child placements to resort to remedial measures prior to initiating placement or termination proceedings, but that these services are rarely provided. This subsection imposes a Federal requirement in that regard with respect to Indian children and families.'' H.R. Rep. No. 95–1386, at 22.

The Department recognizes that both laws and child-welfare practices in many States may have changed since the passage of ICWA. However, ICWA's active-efforts requirement continues to provide a critical protection against the removal of an Indian child from a fit and loving parent.

The final rule removes PR 23.106 to better reflect 25 U.S.C. 1912(d)'s focus on State court actions and predicate findings.

1. Applicability of Active Efforts

Comment: A few commenters pointed out that the Act requires ''active efforts'' only to provide remedial services and rehabilitative programs (*see* 25 U.S.C. 1912), while the proposed rule would require active efforts to prevent removal (PR § 23.106), to work with Tribes to verify Tribal membership (PR § 23.107(b)(2)), to assist parents in obtaining the return of their children following emergency removal (PR § 23.113(f)(9)), to avoid removal (PR § 23.120(a)), and to find placements (PR § 23.131(c)(4)).

Response: To avoid confusion, the final rule uses the term ''active efforts'' only in conjunction with the requirements in 25 U.S.C. 1912. The final rule deletes the provisions at PR § 23.106 to better reflect 25 U.S.C. 1912(d)'s focus on State-court actions. In FR § 23.107, the final rule changes the terminology with regard to working with Tribes to verify citizenship, to now require ''diligence'' in working with Tribes to verify a child's Tribal citizenship. The Department agrees with the commenter that this is not clearly within section 1912(d). The term ''active efforts'' has also been removed from what was PR 23.131(c)(4) (regarding placement preferences) to avoid confusion; FR § 23.132(c)(5) now requires that a ''diligent search'' be conducted to find suitable placements meeting the preference criteria before a court may find good cause to deviate from the statutory preferences.

Comment: A commenter suggested addressing whether there is an exception to requiring active efforts when there is ''shocking'' or ''heinous'' physical or sexual abuse or when active efforts were previously provided to the family and the same conditions exist.

Response: The ''active efforts'' requirement is a vital part of ICWA's statutory scheme, and the statute does not contain any exceptions. The final rule's definition of ''active efforts,'' however, specifies that what constitutes sufficient active efforts may be based on the facts and circumstances of a particular case. This may include, for example, consideration of whether circumstances exist that other Federal laws have recognized as excusing the mandatory requirement for reasonable efforts to preserve and reunify families. *See e.g.,* 42 U.S.C. 671(a)(15)(D) (reasonable efforts not required where a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances, or committed murder or other specified felonies). Of course, even in the case where one parent has severely abused a child, the court should consider whether active efforts could permit reunification of the Indian child with a non-abusive parent.

a. Active Efforts To Verify Child's Tribe

Comment: Two commenters supported the proposed requirement at PR § 23.107(b)(2) for active efforts to determine a child's Tribal membership, as one stated that State workers frequently rely on whether the child ''does or does not look Indian.'' Several commenters suggested using a term other than ''active efforts'' because Congress's use of the term applied only to providing remedial services and rehabilitative programs. One commenter suggested instead using ''due diligence'' or ''continuing efforts.''

Response: As mentioned above, the final rule uses the term ''diligent'' rather than ''active efforts'' for verification of Tribal citizenship. *See* FR § 23.107(b)(1).

b. Active Efforts To Avoid Breakup in Emergency Proceedings

Comment: One commenter stated that the requirement for active efforts to begin immediately, even in an emergency, is supported by Oklahoma case law.

Response: The Act does not explicitly apply the active-efforts requirement to emergency proceedings. For this reason, the final rule does not require active efforts prior to an emergency removal or emergency placement.

However, the statute requires a showing of active efforts prior to a foster-care placement. *See* 25 U.S.C. 1912(d). In many cases, this means that active efforts must commence at the earliest stages of a proceeding.

c. Active Efforts To Avoid the Need To Remove the Child

Comment: A few commenters supported the provisions in PR § 23.120 clarifying the requirement for active efforts to avoid the need to remove the Indian child. A few commenters opposed requiring State authorities to demonstrate that active efforts were provided as a precondition for commencing a proceeding because it could subject Indian children to continued harm. A commenter stated that there may be situations where a child is removed for emergency safety reasons (*e.g.,* placed in police protective custody or hospital hold) and the agency may not have the opportunity to make any efforts to prevent removal.

Response: Nothing in the final rule prevents the removal of a child to prevent imminent physical damage or harm. These removals are addressed by the emergency proceeding provisions of

the statute and final rule, as well as State law. The statute requires, however, that active efforts must be demonstrated prior to a foster-care placement or termination of parental rights. *See* 25 U.S.C. 1912(d). The ultimate goal is to prevent the long-term breakup of the Indian child's family.

Comment: A few commenters stated that the active-efforts requirement is inapplicable if there is no existing Indian family to break up, citing *Adoptive Couple* v. *Baby Girl.* Another commenter suggested addressing the holding in *Adoptive Couple* v. *Baby Girl* by adding ''except in the case of a private adoption where the father abandoned the child (having knowledge of the pregnancy) and never had previous legal or physical custody.''

Response: As stated earlier in this preamble, there is not an ''existing Indian family'' exception to ICWA. Under the facts of *Adoptive Couple* v. *Baby Girl,* the Court held that the requirements in 25 U.S.C. 1912(d) did not apply to a parent that abandoned the child prior to birth and never had legal or physical custody of the child. *See Adoptive Couple,* 133 S. Ct. at 2562–63.

Comment: A few commenters stated that PR § 23.120(a) implies that active efforts are required only to the point a proceeding commences, and requested clarification that the requirement continues during the entirety of the proceeding.

Response: The final rule revises this provision to clarify that the court will review whether active efforts have been made, and that those efforts were unsuccessful, whenever a foster-care placement or termination of parental rights occurs. The court should not rely on past findings regarding the sufficiency of active efforts, but rather should routinely ask as part of a foster-care or termination-of-parental-rights proceeding whether circumstances have changed and whether additional active efforts have been or should be provided.

Comment: A commenter suggested clarifying in PR § 23.120(a) that the active-efforts requirements apply to parents of an Indian child, not simply to Indian parents.

Response: ICWA applies when an Indian child is the subject of a child-custody proceeding, and the active-efforts requirement of 25 U.S.C. 1912(d) applies to the foster-care placement or termination of parental rights to an Indian child. The child's family is an ''Indian family'' because the child meets the definition of an ''Indian child.'' As such, active efforts are required to prevent the breakup of the Indian child's family, regardless of whether individual members of the family are themselves Indian.

Comment: A commenter stated that the requirement in PR § 23.120(b) to use the available resources of the extended family, the child's Indian Tribe, Indian social service agencies and individual Indian caregivers should not be mandatory. This commenter stated that practically, it may not be possible to use the available resources listed.

Response: The final rule removes this provision from § 23.120(b) because the concept is already included in the definition of ''active efforts,'' which provides that these resources should be used ''to the maximum extent possible'' (as the proposed rule did at PR § 23.120(b)). *See* FR § 23.2.

d. Active Efforts To Establish Paternity

Comment: Several commenters suggested adding efforts to establish paternity as an example of active efforts. These commenters asserted that when the father is a Tribal citizen, such acknowledgment or establishment is critical to determining whether the Act applies and is necessary to prevent the breakup of the Indian family.

Response: The rule does not require active efforts to establish paternity because the statute uses the term ''active efforts'' only with regard to providing remedial services and rehabilitative programs to prevent the breakup of the Indian family. *See* 25 U.S.C. 1912(d).

e. Active Efforts To Apply for Tribal Membership

Comment: Two commenters suggested including efforts to apply for Tribal membership for the child as an example of active efforts because the child may obtain Tribal benefits and enrollment may be more difficult if family reunification ultimately fails.

Response: The rule does not include a requirement to conduct active efforts to apply for Tribal citizenship for the child. The Act requires active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family. This does not clearly encompass active efforts to obtain Tribal citizenship for the child. In any particular case, however, it may be appropriate to seek Tribal citizenship for the child, as this may make more services and programs available to the child. Securing Tribal citizenship may also have long-term benefits for an Indian child, including access to programs, services, benefits, cultural connections, and political rights in the Tribe. It may be appropriate, for example, to seek Tribal citizenship where it is apparent that the child or its biological parent would become enrolled in the Tribe during the course of the proceedings, thereby aiding in ICWA's efficient administration.

f. Active Efforts To Identify Preferred Placements

Comment: A few commenters suggested requiring active efforts to identify families that meet the placement preferences. One noted that California law requires this.

Response: The rule does not require active efforts to identify preferred placements because the statute uses the term ''active efforts'' only with regard to providing remedial services and rehabilitative programs to prevent the breakup of the Indian family. *See* 25 U.S.C. 1912(d). It is, however, a recommended practice and the Department encourages other States to follow California's leadership in this regard. As discussed further below at Section IV.M.5, the final rule permits a finding of ''good cause'' to depart from the placement preferences based on the unavailability of a suitable placement only where the court finds that a ''diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located.'' FR § 23.132(c)(5).

2. Timing of Active Efforts

a. Active Efforts Begin Immediately and During Investigation

Comment: Several commenters expressed their support of the proposed provision at PR § 23.106(a) stating that the requirement for active efforts begins the moment the possibility arises that a child may need to be removed, and as soon as an investigation is opened. A commenter stated that this requirement will help prevent removals and promptly reunify children if placements are needed. Another commenter stated that early, concentrated efforts on the part of professionals to achieve family preservation and permanency are part of what has led to declining foster care populations. A commenter suggested further defining when active efforts are required, because some counties defer the requirement until after detention and jurisdictional hearings, rather than when removal first occurs. Another commenter suggested clarifying that active efforts must be initiated at the ''crucial moment of considered intent to remove the child from the family.'' Another suggested that active efforts are required at the moment of the agency's first contact with the family.

A few commenters stated that BIA exceeds its authority in requiring an agency to conduct active efforts while investigating Indian status, because it is

not yet clear whether the Act applies. Another commenter suggested narrowing the trigger point for active efforts to be when at least two of the four types of placements described in the Act are planned. One of these commenters stated that the requirement to engage in active efforts immediately will unduly increase the burden on State agencies by requiring active efforts in the vast majority of referrals, and that this requirement is inconsistent with ICWA and case law.

Response: The final rule deletes the proposed provision, PR § 23.106, directed at agencies providing active efforts because 25 U.S.C. 1912(d) is directed at what State courts must find prior to making certain determinations in Indian child-custody proceedings. Nevertheless, the statute and final rule provide that the State court must conclude that active efforts were provided and were unsuccessful prior to ordering an involuntary foster-care placement or termination of parental rights. *See* 25 U.S.C. 1912(d); FR § 23.120. Thus, if a detention, jurisdiction, or disposition hearing in an involuntary child-custody proceeding includes a judicial determination that the Indian child must be placed in or remain in foster care, the court must first be satisfied that the active-efforts requirement has been met. In order to satisfy this requirement, active efforts should be provided at the earliest point possible.

Comment: A commenter suggested clarifying that active efforts should continue even after the return of a child to parental custody, if necessary to prevent the future breakup of the Indian family.

Response: If a child is returned to parental custody and there is no pending child-custody proceeding, then ICWA no longer applies. If a child-custody proceeding is ongoing, even after return of the child, then active efforts would be required before there may be a subsequent foster-care placement or termination of parental rights.

Comment: A few commenters suggested adding that active efforts are required in voluntary service agreements and differential/alternative response programs to prevent removal.

Response: Voluntary service agreements and differential/alternative response programs may help prevent removal of an Indian child; however, these are not ''child-custody proceedings'' within the scope of the Act.

b. Time Limits for Active Efforts

Comment: Several commenters recommended stating that there are no time limits on active efforts. A few commenters requested adding a timeline for active efforts; one of these suggested the timeline should establish that active efforts terminate at termination of parental rights and adoption.

Response: The final rule does not provide any time limits on active efforts. A State court must make a finding that active efforts were provided in order to make a foster-care placement or order termination of parental rights to an Indian child, so the active-efforts requirement must be satisfied as of each of those determinations. The requirement to conduct active efforts necessarily ends at termination of parental rights because, at that point, there is no service or program that would prevent the breakup of the Indian family.

3. Documentation of Active Efforts

Comment: Several commenters supported the proposed requirement that State courts document that the agency used active efforts. Several also requested clarifying that documentation of active efforts must be made part of the court record.

Response: The final rule continues to provide that documentation of active efforts must be part of the court record. *See* FR § 23.120(b). The active-efforts requirement is a key protection provided by ICWA, and it is important that compliance with the requirement is documented in the court record. 25 U.S.C. 1914 permits an Indian child, parent, Indian custodian, or Tribe to petition a court of competent jurisdiction to invalidate a foster-care placement or termination of parental rights upon a showing that the action violated section 1912 of the statute. The parties to the proceeding also have appeal rights under State law. In order to effectively exercise these rights, there must be a record of the basis for the court's decision with regard to active efforts and other ICWA requirements.

Comment: Some commenters suggested adding a requirement that agencies' documentation of the active efforts be provided to the Tribe and all parties involved as well.

Response: The final rule requires that active efforts be documented in detail in the record, which the parties to the case should have access to. *See* FR §§ 23.120(b), 23.134.

Comment: Commenters also suggested requiring the court to address active efforts at each hearing.

Response: The final rule reflects that the court must conclude that active efforts were made prior to ordering foster-care placement or termination of parental rights, but does not require such a finding at each hearing. *See* FR § 23.120. It is recommended practice for a court to inquire about active efforts at every court hearing and actively monitor the agency's progress towards complying with the active efforts requirement. This will help avoid unnecessary delays in achieving reunification with the parent, or other permanency for the child.

4. Other Suggested Edits for Active Efforts

Comment: A few commenters suggested adding a requirement that State courts consult with Tribes about appropriate active efforts and actual performance of active efforts.

Response: The definition of ''active efforts'' includes working in partnership with the Indian child's Tribe to the maximum extent possible. *See* FR § 23.2.

Comment: A commenter recommended establishing that the standard of proof to make a finding of ''active efforts'' is the same standard of proof for the underlying proceeding (*e.g.,* clear and convincing evidence for foster-care proceedings and beyond a reasonable doubt for termination-of-parental-rights proceedings).

Response: The Department declines to establish a uniform standard of proof on this issue in the final rule, but will continue to evaluate this issue for consideration in any future rulemakings.

H. Emergency Proceedings

The provisions concerning jurisdiction over Indian child-custody proceedings are ''[a]t the heart of the ICWA,'' with the statute providing that Tribes have exclusive jurisdiction over some child-custody proceedings and presumptive jurisdiction over others. *Holyfield,* 490 U.S. at 36. Recognizing, however, that a Tribe may not always be able to take swift action to exercise its jurisdiction, Congress authorized States to take temporary emergency action. Specifically, section 1922 of ICWA was designed to ''permit, under applicable State law, the emergency removal of an Indian child from his parent or Indian custodian or emergency placement of such child in order to prevent imminent physical harm to the child notwithstanding the provisions of'' ICWA. H.R. Rep. No. 95–1386, at 25; 25 U.S.C. 1922.

Congress, however, imposed strict limitations on this emergency authority, requiring that the emergency proceeding terminates as soon as it is no longer

required. ICWA requires that State officials ''insure'' that Indian children are returned home (or transferred to their Tribe's jurisdiction) as soon as the threat of imminent physical damage or harm has ended, or that State officials ''expeditiously'' initiate a child-custody proceeding subject to all ICWA protections. 25 U.S.C. 1922. Thus the rule emphasizes that an emergency proceeding pursuant to section 1922 needs to be as short as possible and includes provisions that are designed to achieve that result.

In addition to requiring that any emergency proceeding be as short as possible, the rule places a presumptive outer bound on the length of such emergency proceeding. The final rule provides that an emergency proceeding for an Indian child should not be continued for more than 30 days unless the court makes specific findings. These provisions are included because, unless there is some kind of time limit on the length of an emergency proceeding, the safeguards of the Act could be evaded by use of long-term emergency proceedings. An unbounded use of section 1922's emergency proceeding authority would thwart Congress's intent—reflected in section 1922's immediate termination provisions—to strictly constrain State emergency authority to the minimum time necessary to prevent imminent physical damage or harm to the Indian child.

The Department believes, based on its review of comments and its own understanding of emergency proceedings, that a presumptive 30-day limit on the use of the emergency proceeding authority in section 1922 is appropriate. Even if a safe return of the child to her parent or custodian is not possible in that time frame, it is unlikely that a court should need longer than 30 days to either transfer jurisdiction of the child's case to her Tribe or to require the initiation of a child-custody proceeding, with the attendant ICWA protections. A court should be able to accomplish one of those tasks within 30 days.

Should the court need the emergency proceeding of an Indian child to last longer than 30 days, however, it may extend the emergency proceeding if it makes specific findings. *See* FR § 23.113(e). The final rule tailors those findings more closely to the statutory requirements of section 1922 than did the draft rule. A court may extend an emergency proceeding only if it makes the following determinations: (1) The child still faces imminent physical damage or harm if returned to the parent or Indian custodian, (2) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe, and (3) it has not been possible to initiate an ICWA child-custody proceeding. *Id.* Allowing a court to extend an emergency proceeding if it makes those findings provides appropriate flexibility for a court that finds itself facing what the Department expects should be unusual circumstances.

A number of commenters expressed concerns regarding the requirement that the emergency removal or placement must terminate when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. These comments assume that the statutory mandate requiring the termination of the emergency proceeding means that the actual placement of the child must change. That is not necessarily the case. If an Indian child can be safely returned to a parent, the statute requires this (as do many State laws). In this circumstance, the State agency may still initiate a child-custody proceeding, if circumstances warrant. But, if the child cannot be safely returned to the parents or custodian, the child must either be transferred to the jurisdiction of the appropriate Indian Tribe, or the State must initiate a child-custody proceeding. Under this scenario, the child may end up staying in the same placement, but such placement will not be under the emergency proceeding provisions authorized by section 1922. Instead, that placement would need to be pursuant to Tribal law (if the child is transferred to the jurisdiction of the Tribe) or comply with the relevant ICWA statutory and rule provisions for a child-custody proceeding (if the State retains jurisdiction).

1. Standard of Evidence for Emergency Proceedings

See also comments and responses above regarding the definition of ''imminent physical damage or harm.''

Comment: Several commenters opposed the proposed regulation's standard that emergency removal is necessary to prevent ''imminent physical damage or harm'' and a few commenters suggested alternative standards for when emergency removal is appropriate (*e.g.,* the best interests of the child or ''substantial and immediate danger or threat of such danger.'')

Response: The Act addresses emergency proceedings at section 1922, establishing that requirements of the Act may not be construed to interfere with any emergency proceeding under State law to prevent ''imminent physical damage or harm'' to the Indian child. The regulations incorporate this statutory standard for emergency proceedings at FR § 23.113. There is no statutory authority for establishing a different standard.

Comment: One commenter suggested defining the term ''emergency'' or better specifying what ''imminent physical damage and harm'' is, to better clarify whether, for example, a child may be removed, under an emergency removal, from a parent who fails to get the child to school.

Response: The final rule relies on the statutory phrase ''imminent physical damage or harm'' and does not provide a further definition, as discussed above. The statutory phrase, however, is clear and the commenter's example of failure to get the child to school, standing alone, would not qualify as ''imminent physical damage or harm'' justifying an emergency proceeding (and attendant delay of compliance with ICWA section 1912).

Comment: A few commenters noted that each State may have a different or broader basis for emergency removal.

Response: As discussed above, the Department believes that section 1922's use of ''imminent physical damage or harm'' is in accord with the emergency-removal provisions of most States' laws. The Department recognizes, however, that a State may have a different or broader basis for immediate removals and placements. Regardless of how the State defines emergency removals and the triggers for emergency removals, ICWA requires that an emergency proceeding terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

States must comply with ICWA's limitations on such removals and placements. Upon removing an Indian child, the State must either determine that there is a risk of ''imminent physical damage or harm'' to the child and follow the requirements for an emergency proceeding, or it must immediately terminate the emergency proceeding and initiate a child-custody proceeding and, if appropriate, return the child to her parent(s) or Tribe.

Comment: Several commenters also asserted that, to the extent ICWA's basis for emergency removal is narrower for Indian children, the rule places them at a greater risk of injury or death than non-Indian children.

Response: ICWA's standard of ''imminent physical damage or harm'' is focused on the health, safety, and welfare of the child, such that Indian children will not be placed at a greater risk than non-Indian children. As discussed above, the ICWA standard is similar to that of many States.

Comment: A few commented on the provision allowing continuation of emergency custody beyond 30 days in ''extraordinary circumstances.'' One commenter stated that the circumstances need to be better defined to prevent the exception from swallowing the rule.

Response: The final rule implements the statutory mandate that an emergency proceeding involve only the temporary suspensions of full ICWA compliance, and that the agency must initiate a child-custody proceeding that complies with all the notice, timing, hearing, and other requirements of ICWA as soon as possible, if the child is not returned to his Tribe. The final rule deletes the provision in the proposal allowing for ''extraordinary circumstances'' to justify continued emergency proceedings because the Act is clear that the emergency proceeding must terminate immediately when no longer necessary to prevent imminent physical damage or harm to the child. There is a continuing obligation to determine whether the imminent physical damage or harm is no longer present. As discussed above, the final rule includes a presumptive 30-day limit on an emergency proceeding, but allows a court in very limited circumstances to extend that period by making certain findings. *See* FR § 23.113(d).

Comment: Several commenters pointed out that some State agencies, as a practice, continue emergency placements for indeterminate times without ICWA compliance, and that the emergency placements ultimately became long-term placements.

Response: The final rule addresses this issue by implementing the statutory intention for emergency proceedings to be of limited duration. *See* FR § 23.113.

Comment: One commenter suggested changing the language ''removal or placement'' with ''emergency removal or emergency placement'' to clarify that this section applies only in the emergency removal context.

Response: The final rule adds this clarification. *See* FR § 23.113.

2. Placement Preferences in Emergency Proceedings

Comment: A few commenters suggested the rule should explicitly state that placement preferences apply to emergency placements as a type of foster-care placement ''whenever practical and appropriate'' or ''whenever possible.'' One commenter stated that they have often seen situations where an agency removes an Indian child as an emergency removal when there was no emergency or the emergency subsided, places the child in a non-Indian home, and then takes months to even notify the family of the custody. This commenter stated that placing the child directly into the home of a preferred placement allows for an unbroken connection to the Tribe and family.

Response: The Act does not explicitly require that emergency placements comply with the placement preferences, so the rule does not include this suggestion. As a recommended practice, however, States should make emergency placements of Indian children in accordance with the placement preferences whenever possible and as soon as possible. This will help prevent subsequent disruptions if the child needs to be moved to a preferred placement once a child-custody proceeding is initiated.

3. 30-Day Limit on Temporary Custody

Comment: Several commenters supported the provision at FR § 23.113(f) prohibiting continuation of emergency removal or placement beyond 30 days without the initiation of a full ICWA-compliant child-custody proceeding, to clarify that emergency proceedings must terminate as soon as they are no longer necessary to prevent imminent physical damage or harm to the child. The National Council of Juvenile and Family Court Judges stated that this provision, and shortening the time period for temporary custody without a hearing from 90 to 30 days, align with key principles of avoiding unnecessary separation of children and families and are best practices.

A few commenters opposed making the 30-day provision a mandate. One commenter stated that agencies may avoid emergency removals or remove children earlier than appropriate to avoid the detailed steps to necessary satisfy this section, resulting in Indian children being less protected from harm.

A few commenters stated that a shorter time should be included in the rule. One commenter noted that, often, returning a child to a parent within 72 hours will not result in imminent physical damage or harm. Another commenter suggested that State law should govern the timing of the initial evidentiary hearing, provided it is no longer than 72 hours after removal (and then that the removal may not last beyond 30 days without a section 1912(e)-compliant foster care hearing). Commenters noted that allowing for longer periods of removal will make return to parental custody increasingly more difficult due to a combination of agency practice and consequential trauma to the parents from separation. One commenter also suggested adding a 45-day presumptive deadline by which an adjudicatory hearing must be held, to ensure the parent receives a hearing within a meaningful time.

Response: The basis for the presumptive 30-day outer limit for an emergency proceeding is discussed above. The rule's emergency proceedings provisions are designed to ensure that such removals/placements be as short as possible and that the Indian children be returned home (or transferred to their Tribe's jurisdiction) as soon as the threat of imminent physical damage or harm has ended, or that State officials ''expeditiously'' initiate a child-custody proceeding subject to all ICWA protections.

The concerns that the 30-day limit is too short are addressed through adjusting the rule's language regarding the circumstances under which the time period may be extended, as discussed above. *See* FR § 23.113(d). Notably, in light of the comments received, these changes include deleting the requirement for obtaining a qualified expert witness by that time.

The rule does not specify that a hearing should be held within 72 hours of removal. While providing a hearing within 1–3 days of removal may be required to comply with State law or to provide the parents or custodian with constitutionally required due process, the provision of such a hearing is not an ICWA-specific requirement, so it is not required by the rule.

Comment: Two commenters stated there are difficulties in obtaining qualified expert witness testimony in a timely fashion and that the timeframe would be increasingly difficult if the Tribe were out of State, the Tribe were unable or unwilling to provide an expert, or the exact Tribe is unknown. Another commenter noted that Tribes have up to 30 days to respond to notice, making it nearly impossible to secure expert witness testimony in that time. A commenter also stated that New Mexico allows for adjudication of an abuse/neglect petition to occur within 60 days but the proposed rule's requirements for clear and convincing evidence at an earlier stage (emergency stage) would cause more than one full evidentiary hearing on whether the parent's custody is likely to result in imminent physical damage or harm.

Response: The final rule deletes from the emergency proceeding requirements certain requirements that apply to child-custody proceedings (*e.g.,* requirement for a qualified expert witness and clear and convincing evidence) because section 1922 of ICWA does not impose such requirements on emergency proceedings and, as the commenters

noted, compliance with these requirements may not be practically possible.

4. Emergency Proceedings—Timing of Notice and Requirements for Evidence

Comment: Several commenters opposed the proposed rule's requirements for notice and time limits to apply to emergency hearings (known in various States as 72-hour hearings, detention hearings, shelter care hearings, and other terms). These commenters stated that it is not possible to comply with the time limits (*e.g.,* waiting until 10 days after each parent, the Indian custodian, and Tribe have received notice before beginning the proceeding) and comply with State law requiring a hearing shortly following emergency removal. A State commenter stated that once a child is removed on an emergency basis, a petition must be filed within 48 hours, and the petition is the commencement of the proceeding, then a hearing must be held the next judicial day to determine if it is a dependency action, then a jurisdiction hearing is held within 21 days, at which time the petition is confirmed. The proposed rule's statement that a proceeding may not begin means the petition may not be filed (again, resulting in either a delayed return to parents or no initial removal to the detriment of the child). Commenters suggested adding to the end of PR § 23.111(h) and at the beginning of PR § 23.112 exceptions for emergency removals and emergency placements.

Response: The final rule does not require that the section 1912(a) notice provisions and waiting periods for notices apply to emergency proceedings. These requirements are not imposed by section 1922. The final rule does, however, indicate that agencies should report to the court on their efforts to contact the parents, custodian, and Tribe for emergency proceedings. FR § 23.113(c).

Comment: Several commenters stated that, where it is impossible to notify the Tribe and give adequate time to intervene or transfer, the decision should not be binding on the party that did not receive notice.

Response: To the extent the commenters are concerned that emergency placements may become permanent placements, the final rule confirms that emergency proceedings must terminate as soon as the emergency ends and, at that point, either the child must be returned to the parent, custodian, or Tribe or the State must initiate a child-custody proceeding following ICWA's requirements, including notice requirements. *See* FR §§ 23.110, 23.113.

Comment: A State commenter stated that it is unclear what is meant by ''substantive proceedings, rulings or decisions on the merits'' and how it relates to emergency removals (shelter care hearings). Another State commenter requested clarification that ''on the merits'' means this section does not apply to emergency removals.

Response: The final rule deletes the phrase ''substantive proceedings, rulings, or decisions on the merits'' from what was PR § 23.111(h) and clarifies that the section 1912(a) notice provisions and waiting periods for notices do not apply to emergency proceedings.

5. Mandatory Dismissal of Emergency Proceedings

Comment: A few commenters stated that PR § 23.110 and PR § 23.113 conflict in that PR § 23.110 says that a State court must dismiss the proceeding if it determines it lacks jurisdiction, and PR § 23.113 says States must transfer the proceeding. A commenter stated that the wording of PR § 23.110(a) creates a safety issue because it implies that transferring to Tribal court is not an option and would result in cases being dismissed where children were at imminent risk of harm.

Response: The mandatory dismissal provisions in § 23.110 apply ''subject to'' § 23.113 (emergency proceedings). Section 1922 of the Act allows removal and placement under State law to prevent imminent physical damage or harm to the child. *See* FR § 23.110.

6. Emergency Proceedings Subsection-by-Subsection

Comment: With regard to PR § 23.113(a)(1), a commenter stated that because the terms ''proper'' and ''continues to be necessary'' are subjective and open to culturally biased interpretation, the investigation should include input from a qualified expert witness, Tribal representatives, and members of the child's extended family not connected with the emergency who have a relationship with the child.

Response: The final rule uses the term ''necessary'' because that is the term the statute uses. *See* 25 U.S.C. 1922. *See* FR § 23.113(b)(1).

Comment: With regard to PR § 23.113(a)(2), a few commenters suggested ''promptly hold a hearing'' needs a more definitive timeframe. One of these commenters suggested replacing ''promptly hold a hearing'' with ''promptly, but in no case beyond 72 hours, hold a hearing.''

Response: The final rule continues to use the term ''promptly,'' recognizing that different States may have different timeframes for being able to hold such a hearing. *See* FR § 23.113(b)(2).

Comment: A commenter suggested clarifying in PR § 23.113(a)(2) and (a)(3) that if the agency determines the emergency has ended, it should promptly return the child without the need for a hearing. A hearing should be required only when a court order entered in connection with the emergency removal must be vacated or dismissed.

Response: State procedures determine whether a hearing is required.

Comment: A commenter asked whether the notice requirements in PR § 23.113(b)(5), to ''take all practical steps to notify'' are intended to be so radically different from the notice requirements for foster care, which requires 10 days advance notice. A few commenters suggested more definition of ''practical steps'' is needed. One of these commenters suggested adding notice via personal service, email, telephone, registered mail, and fax. A few commenters suggested that notice by registered mail should be required in addition to taking all practical steps to notify the parents or Indian custodian and Tribe.

Response: Notice by registered or certified mail is not required by ICWA for emergency proceedings because section 1922 does not require such notice and because of the short timeframe in which emergency proceedings are conducted to secure the safety of the child (although there may be relevant State or due process requirements). In order to protect the parents', Indian custodians', and Tribes' rights in these situations, however, it is a recommended practice for the agency to take all practical steps to contact them. This likely includes contact by telephone or in person and may include email or other written forms of contact.

Comment: A commenter suggested specifying that notice of an emergency removal and emergency placement must fully inform the parents and the Tribe promptly of the timing of the emergency hearing and basis for the removal, including copies of the petition, affidavit and any evidence in support of the emergency removal, the parents and Indian custodian be advised of the full scope of their rights at the hearing, including the right to be present, to contest the allegations, to testify, and to call witnesses and introduce evidence, cross-examine adverse witnesses, and to have counsel appointed.

Response: These requirements are not specified by section 1922 and so are not

included in the rule (although there may be relevant State and due process requirements). Any emergency proceeding pursuant to section 1922, however, is required to be as short as possible, after which the child is to be returned to the parent, custodian, or Tribe or a child-custody proceeding with all the attendant ICWA protections is to be initiated.

Comment: A few commenters pointed out that PR § 23.113(c) is missing.

Response: The final rule addresses this omission.

Comment: One commenter noted that the requirements in PR § 23.113(d)(7) and (d)(9) (requiring the affidavit to include the circumstances leading to the emergency removal and active efforts taken) and PR § 23.113(f) (requiring custody to continue beyond 30 days only if certain circumstances exist) mirror requirements of the Oklahoma ICWA and are the ''gold standard'' resulting in faster identification of Indian children, streamlined Tribal involvement, faster placements in preferred homes, and less time out of home.

A commenter stated concern that a failure to include any of the required elements in the affidavit may result in denial of the petition, even if the child is in imminent danger.

One commenter stated that the information required by PR § 23.113(d) to be included in the affidavit is already included in the State's dependency petitions, and requested adding that such information is required only if the petition does not already include the information.

Response: The final rule states that either the petition or accompanying documents (which may include an affidavit) should include 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 (which was listed in proposed 23.113(d)(10)). *See* FR § 23.113(d). This information is appropriate under ICWA section 1922. The final rule separately lists additional information (which was listed in PR §§ 23.113(c)(1)–(10)), that should be included in the petition or accompanying documents. Inclusion of these items is a recommended practice and, as a commenter noted, the ''gold standard'' for ICWA implementation.

Comment: A commenter suggested incorporating some of the requirements of the Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA) section 209 regarding determination of a child's residence or domicile, where the child has been living for the past 5 years, and prior court proceedings.

Response: This rule addresses implementation of ICWA and does not address implementation of UCCJEA, so it does not include such requirements.

Comment: A commenter suggested adding a requirement in PR § 23.113(d)(3) that the petition include efforts to locate extended family members.

Response: The final rule does not add the requested requirement because it is not required by the statute; however, it is a recommended practice to make efforts to locate extended family members as soon as possible.

Comment: A commenter suggested amending PR § 23.113(d)(3) to require the petition to include a statement that if the domicile or residence of the parents or Indian custodian is unknown, that a detailed description of the efforts to identify them, including notice to the Tribal social services agency, submission of an affidavit of service by publication, and other avenues such as the Tribal enrollment office or posting on the Tribal bulletin board or newsletter, for parents who are hard to locate.

Response: The final rule states that the petition or accompanying documents should include a description of the steps taken to locate and contact the child's parents, custodians and Tribe about any emergency proceeding, but does not specify the detail suggested by the commenter.

Comment: A commenter expressed concern that requiring a factual determination on the need for continued removal at every hearing may result in fewer protections for parents because a full evidentiary hearing for the emergency hearings would give States cause to extend the deadline for the first hearing. For this reason, the commenter suggested deleting PR § 23.113(e).

Response: Because of the statutory requirement to ''insure'' that emergency proceedings terminate ''immediately'' when the emergency has ended, the State court (and agency) have a continuing obligation under section 1922 to evaluate whether the emergency situation has ended. The court therefore needs to revisit that issue at each opportunity. The Department does not agree that this will result in fewer protections for parents because an assessment of the need for continued removal will occur at each hearing, meaning the parent has the opportunity for return of the child at each hearing.

Comment: A few commenters suggested rewording PR § 23.113(g) to provide that the placement must terminate as soon as the Tribal court issues an order for the placement to terminate, instead of when the Tribe exercises jurisdiction. The commenters stated that this would better allow the Tribe the opportunity to decide whether the placement should continue.

Response: A State court may terminate an emergency proceeding by transferring the child to the jurisdiction of the appropriate Indian Tribe. *See* 25 U.S.C. 1922; FR § 23.113(b)(4)(ii). The child may stay in a particular placement if the Tribe chooses to keep that placement upon exercising jurisdiction.

Comment: A commenter suggested the placement terminate as soon as the emergency no longer exists or a solid safety plan is in place, in which case dismissal may be appropriate at an early stage.

Response: A safety plan may be a solution to mitigate the situation that gave rise to the need for emergency removal and placement and allow the State to terminate the emergency proceeding. If the State court finds that the implementation of a safety plan means that emergency removal or placement is no longer necessary to prevent imminent physical damage or harm, the child should be returned to the parent or custodian. The State may still choose to initiate a child-custody proceeding, or may transfer the case to the jurisdiction of the Tribe.

Comment: A commenter stated that requiring termination of the emergency removal as soon as the imminent physical damage or harm no longer exists is unworkable in Montana because Montana requires parents to work on treatment plan tasks and make progress before the State will return the children. The commenter stated that the proposed rule provision subverts that Montana process and allows for unlimited challenge to the State's out-of-home placement.

Response: Under the statute, the emergency removal and placement must end when no longer necessary to prevent imminent physical damage or harm to the child. If the court finds that the parent must make progress on specified case plan items in order to prevent imminent physical damage or harm to the child, that is permissible under ICWA. The State agency may also promptly initiate a child-custody proceeding with all the attendant ICWA protections.

Comment: A few State commenters stated that requiring an agency to expeditiously ''initiate a child-custody proceeding subject to the provisions of ICWA'' as one of the options following termination of emergency removal is confusing because the emergency

removal petition is considered an initiation of a child-custody proceeding. Other commenters stated that the ICWA proceeding should be initiated at the same time as the emergency proceeding, because emergency proceedings are generally only subject to State law.

Response: The statute treats emergency proceedings, at section 1922, differently from other child-custody proceedings. The final rule clarifies ''emergency proceedings'' to be emergency removals and emergency placements, which are proceedings distinct from ''child-custody proceedings'' under the statute. While States use different terminology (*e.g.,* preliminary protective hearing, shelter hearing) for emergency hearings, the regulatory definition of emergency proceedings is intended to cover such proceedings as may be necessary to prevent imminent physical damage or harm to the child. The emergency proceedings should be as short as possible and may end with the initiation of a child-custody proceeding subject to the provisions of ICWA (*e.g.,* the notice required by § 23.111, time limits required by § 23.112).

Comment: One commenter stated that the provision at PR § 23.113(h) requiring a child to be returned to a parent within one business day may not be possible in parts of Alaska in which villages can be weathered out for days.

Response: The statute provides that emergency removal and placement must end when no longer necessary to prevent imminent physical damage and harm. We understand that it may not be possible to return a child within one business day.

7. Emergency Proceedings—Miscellaneous

Comment: A few commenters suggested replacing the term ''emergency physical custody'' with ''emergency placement'' for consistency.

Response: The final rule incorporates this suggestion.

I. Improper Removal

FR § 23.114 implements section 1920 of the statute. It requires that, where a court determines that a child has been improperly removed from custody of the parent or Indian custodian or has been improperly retained in the custody of a petitioner in a child-custody proceeding, the court should return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger. 25 U.S.C. 1920.

Comment: A commenter stated that PR § 23.114(b) should refer to the standard in ICWA section 1920 (''substantial and immediate danger or threat of danger'') specific to improper removals rather than the standard in 25 U.S.C. 1922 (''imminent physical damage or harm'') specific to emergency removals. A commenter requested adding ''Indian'' before ''custodian.''

Response: The final rule incorporates these suggested changes to more closely reflect the statutory language. *See* FR § 23.114(b).

Comment: A few State commenters stated that the proposed rule's provisions on improper removal exceed ICWA and are beyond BIA's authority. One stated there is no standard for when a person can request a stay and demand an additional hearing to determine if removal was improper, and the other stated that requiring an immediate stay creates a substantive requirement that may unreasonably preclude the State protective services from securing an order of protection from the court.

Response: The final rule replaces the requirement for the State court to stay the proceedings with a requirement that the State court expeditiously make the determination as to whether the removal was improper. *See* FR § 23.114(a).

Comment: A commenter suggested rewording this section to require the court to terminate the proceeding and return the child if any party asserts improper removal or the court has reason to believe the removal was improper due to expert testimony not having been presented at the time of removal.

Response: The final rule does not incorporate this suggestion because the statute does not require expert testimony at the time of removal.

J. Transfer to Tribal Court

25 U.S.C. 1911(b) provides for the transfer of any State court proceeding for the foster-care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's Tribe. This provision recognizes that Indian Tribes maintain concurrent jurisdiction over child-welfare matters involving Tribal children, even off of the reservation. In enacting ICWA, Congress recognized that child-custody matters involving Tribal children are ''essential tribal relation[s],'' *see Williams* v. *Lee,* 358 U.S. 217 (1959), that fall squarely within a Tribe's right to govern itself. H.R. Rep. No. 95–1386, at 14–15. Congress also recognized that State courts were often not well-informed about Indian culture, and may not correctly assess the standards of child abuse and neglect in this context. *Id.* at 11. Tribal-court jurisdiction remedies this problem.

Tribal courts are also well-equipped to handle child-welfare proceedings, including those involving non-member parents. Congress has repeatedly sought to strengthen Tribal courts, and has recognized that Tribal justice systems are an essential part of Tribal governments. 25 U.S.C. 3601(5), 3651(5); *see also* S. Rep. No. 103–88, at 8 (1993) (noting that 25 U.S.C. 3601(6) ''emphasize[s] that tribal courts are permanent institutions charged with resolving the rights and interests of both Indian and non-Indian individuals''); Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. 450, 450a (providing funding and assistance for Tribal government institutions, including courts); Indian Tribal Justice Act of 1993, 25 U.S.C. 3601 *et seq.* (establishing the Office of Tribal Justice Support within the Bureau of Indian Affairs and authorizing up to $50 million annually to assist Tribal courts).

The final rule reflects 25 U.S.C. 1911(b)'s requirement that a child-custody proceeding be transferred to Tribal court upon petition of either parent or the Indian custodian or the Indian child's Tribe, except in three circumstances: (1) where either parent objects; (2) where the Tribal court declines the transfer; or (3) where there is good cause to the contrary. The first two exceptions are fairly straightforward. The third exception is not defined in the statute, and in the Department's experience, has in the past been used to deny transfer for reasons that frustrate the purposes of ICWA. The legislative history indicates that this provision is intended to permit a State court to apply a modified doctrine of *forum non conveniens,* in appropriate cases, to insure that the rights of the child as an Indian, the Indian parents or custodian, and the Tribe are fully protected. *See* H.R. Rep. No. 95–1386, at 21. The Department finds that this indicates that Congress intended for the transfer requirement and its exceptions to permit State courts to exercise case-by-case discretion regarding the ''good cause'' finding, but that this discretion should be limited and animated by the Federal policy to protect the rights of the Indian child, parents, and Tribe, which can often best be accomplished in Tribal court. Exceptions cannot be construed in a manner that would swallow the rule.

Accordingly, the final rule does not mandate or instruct State courts as to how they must conduct the good-cause analysis. Rather, the final rule provides certain procedural protections, and also

identifies a limited number of considerations that should not be part of the good-cause analysis because there is evidence Congress did not wish them to be considered, or they have been shown to frustrate the application of 25 U.S.C. 1911(b) and the purposes of ICWA, or would otherwise work a fundamental unfairness. FR § 23.118. Specifically:

- The final rule prohibits a finding of good cause based on the advanced stage of the proceeding, if the parent, Indian custodian, or Indian child's Tribe did not receive notice of the proceeding until an advanced stage. This protects the rights of the parents and Tribe to seek transfer where ICWA's notice provisions were not complied with, and thus will help to promote compliance with these provisions. It also ensures that parties are not unfairly advantaged or disadvantaged by noncompliance with the statute.
- The final rule prohibits a finding of good cause based on whether there have been prior proceedings involving the child for which no petition to transfer was filed. ICWA clearly distinguishes between foster-care and termination-of-parental-rights proceedings, and these proceedings have significantly different implications for the Indian child's parents and Tribe. There may be compelling reasons to not seek transfer for a foster-care proceeding, but those reasons may not be present for a termination-of-parental-rights proceeding.
- The final rule prohibits a finding of good cause based on predictions of whether the transfer could result in a change in the placement of the child; this has been altered slightly from the proposed rule, which could be read to assume that a State court could know or predict which placement a Tribal court might consider or ultimately order. As an initial matter, these predictions are often incorrect. Like State courts, Tribal courts and agencies seek to protect the welfare of the Indian child, and would consider whether the current placement best meets that goal. Further, the transfer inquiry should not focus on predictions or speculation regarding how the other tribunal might rule regarding placement or any other matter. ICWA recognizes that Tribal courts are presumptively well-positioned to adjudicate child-custody matters involving Tribal children. Tribal courts will evaluate each case on an individualized basis to determine whether a change in placement is in the interests of the child, and if so, how to effect the change in placement with the minimum disruption to the child.
- The final rule prohibits a finding of good cause based on the Indian child's perceived cultural connections with the Tribe or reservation. Congress enacted ICWA in express recognition of the fact that State courts and agencies were generally ill-equipped 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). It would be inconsistent with congressional intent to permit State courts to evaluate the sufficiency of an Indian child's cultural connections with a Tribe or reservation in evaluating a motion to transfer.
- The final rule prohibits consideration of any perceived inadequacy of judicial systems. This is consistent with ICWA's strong recognition of the competency of Tribal fora to address child-custody matters involving Tribal children. It is also consistent with section 1911(d)'s requirement that States afford full faith and credit to public acts, records, and judicial proceedings of Tribes to the same extent as any other entity.
- The final rule prohibits consideration of the perceived socioeconomic conditions within a Tribe or reservation. In enacting ICWA, Congress found that misplaced concerns about low incomes, substandard housing, and similar factors on reservations resulted in the unwarranted removal of Indian children from their families and Tribes. *E.g.,* H.R. Rep. at 12. Congress also found that States ''have often failed to recognize the essential Tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.'' *See* 25 U.S.C. 1901(5). These factors can introduce bias into decision-making and should not come into play in considering whether transfer is appropriate.

State courts retain the ability to determine ''good cause'' based on the specific facts of a particular case, so long as they do not base their good cause finding on one or more of these prohibited considerations.

1. Petitions for Transfer of Proceeding

Comment: Several commenters stated that the proposed rule's provisions on transfer exceed statutory authority by allowing a transfer to Tribal court in any child-custody proceeding, whereas ICWA section 1911(b) explicitly addresses transfer only for foster-care placement and termination-of-parental-rights proceedings. Another commenter claimed there is authority to extend the transfer provisions to preadoptive and adoptive proceedings because such proceedings may occur as part of termination-of-parental-rights proceedings, transfer may be appropriate to provide a higher standard of protection of the rights of the parent or Indian custodian under ICWA section 1921, and ICWA section 1919 allows States and Tribes to enter into agreements to transfer jurisdiction of any child-custody proceeding on a case-by-case basis. Another commenter asserted that ICWA section 1911 applies to both involuntary and voluntary proceedings, and that, in any case, the biological parent can veto a transfer so that he or she is not forced into a forum foreign to him or her.

Response: Like the statute, the final rule addresses transfer of foster-care-placement and termination-of-parental-rights proceedings. *See* FR § 23.115; 25 U.S.C. 1911(b). And, like the statute, the final rule's provisions addressing transfer apply to both involuntary and voluntary foster-care and termination-of-parental-rights proceedings. This includes termination-of-parental-rights proceedings that may be handled concurrently with adoption proceedings. Parties may request transfer of preadoptive and adoptive placement proceedings, but the standards for addressing such motions are not dictated by ICWA or these regulations. Tribes possess inherent jurisdiction over domestic relations, including the welfare of child citizens of the Tribe, even beyond that authority confirmed in ICWA. *See, e.g., Holyfield,* 490 U.S. at 42 (1989) (''Tribal jurisdiction over Indian child-custody proceedings is not a novelty of the ICWA.''); *Fisher* v. *Dist. Court,* 424 U.S. 382, 389 (1976) (pre-ICWA case recognizing that a Tribal court had exclusive jurisdiction over an adoption proceeding involving Tribal members residing on the reservation). Thus, it may be appropriate to transfer preadoptive and adoptive proceedings involving children residing outside of a reservation to Tribal jurisdiction in particular circumstances.

Comment: Several commenters supported the provision at PR § 23.115 allowing for motions to transfer to be made orally, stating that oral motions are already allowed by court rules and that by explicitly allowing for oral motions in the rule removes a hurdle to making a motion, particularly for parties not represented by counsel.

Response: The final rule retains the provision allowing for the petition to transfer to be made orally because nothing in the Act indicates that a written document would be required. FR § 23.115(a). For the purposes of this rule, an oral petition would be

considered ''filed'' when made on the record.

Comment: One commenter requested specific language to clarify that parents may request transfer to a Tribal court even if the parents live off reservation.

Response: Nothing in the statute or rule limits the right to request transfer to parents who live on reservation. As confirmed by ICWA, Tribes retain authority over the welfare of Tribal children, even when they reside outside of a reservation.

Comment: A few commenters stated their support of the provision providing that transfer can be requested at any stage. A few commenters opposed this provision, stating that a time limit should be imposed. Commenters had various suggestions for time limits to impose on requests for transfer, ranging from, for example, within 30 days of notification to the parents, Indian custodians, and Tribe, to within 6 months of such notification. One commenter suggested a time limit that would allow transfer until the order for foster-care placement or termination of parent rights has been entered. Commenters in support of imposing time limits on transfer stated that:

- Congress implied there is a time limit because, while ICWA section 1911 addresses both transfer and intervention, it allows only for intervention ''at any point in a proceeding;''
- ICWA does not allow for transfer after termination of parental rights, so time limits should prevent transfer of an appeal of a foster-care order or termination-of-parental-rights order;
- When jurisdiction is transferred to a Tribe, the Tribe often changes the child's placement. If a child was in the previous placement for a long time and has developed attachments to that placement, this can disrupt those attachments;
- The Supreme Court warned in *Adoptive Couple* v. *Baby Girl* that parties should not be able to play the ''ICWA trump card at the eleventh hour;''
- Allowing transfer at any time rewards ''deadbeat'' parents who request transfer after a child has been in a placement for an extended period of time, causing extreme trauma for the child for no reason.

Response: The final rule does not establish a deadline or time limit for requesting transfer. It provides that the right to request a transfer is available at any stage in each proceeding. This adheres most closely to the statute, which does not establish any time limits for seeking transfer. Further, the statute indicates Congress's understanding that Tribes would have presumptive jurisdiction over Indian children domiciled outside of a reservation. *See* 25 U.S.C. 1911(b) (the State court shall transfer such proceeding to the jurisdiction of the Tribe unless certain conditions are present); *Holyfield,* 490 U.S. at 49. Establishing time limits for seeking transfer would be contrary to this intent.

The Department's conclusion is also consistent with the general approach that courts take to deciding transfer motions. For example, motions to change venue pursuant to 28 U.S.C. 1404 (the modern version of forum non conveniens where the alternative forum is within the territory of the United States) may be granted at any time during the pendency of the case. *See, e.g., Chrysler Credit Corp.* v. *Country Chrysler, Inc.,* 928 F.2d 1509, 1516 (10th Cir. 1991); *see also* H.R. Rep. No. 95–1386, at 21 (describing ICWA's transfer provision as a ''modified doctrine of *forum non conveniens''*). The mere passage of time is not alone a sufficient reason to deny a motion to transfer pursuant to 28 U.S.C. 1404; nor is it for 25 U.S.C. 1911(b).

The Department is cognizant that child-custody matters involve children, for whom there may be special considerations related to the passage of time and the need to minimize disruptions of placements. As discussed elsewhere, the Department disagrees that transfer to Tribal jurisdiction will necessarily entail unwarranted disruption of an Indian child's placement in any particular case. Tribes seek to protect the welfare of the children in their jurisdiction, which may mean in any particular case that a current placement will be temporarily or permanently maintained. Under any circumstances, the Department finds that the strong Federal policy in support of Tribal jurisdiction over Tribal children weighs strongly in favor of no time limits for motions to transfer.

There are also compelling practical reasons for the Department's decision. Although a commenter expressed concern about parents strategically waiting to seek transfer to Tribal court, evidence suggests that opponents of transfer can also behave strategically to thwart transfer. *See, e.g. In the Interest of Tavian B.,* 874 N.W.2d 456, 460 (Neb. 2016) (noting that State dismissed its motion to terminate parental rights to avoid transfer, leaving an Indian child suspended in uncertainty).

And, the Department is aware of child-custody proceedings in which the Tribe intervenes, but does not immediately move to transfer the case because maintaining State-court jurisdiction appears to hold out the most promise for reunification of the family. This may be for any number of reasons, including geographic considerations, or because the State is able to provide specialized services to the parents or child that the Tribe cannot. *See, e.g., In re Interest of Zylena R.,* 825 N.W.2d 173, 183 (Neb. 2013) (discussing that ''a Tribe may have no reason to seek transfer of a foster placement proceeding'' but ''once the goal becomes termination of parental rights, a Tribe has a strong cultural interest in seeking transfer of that proceeding to tribal court.''). A parent may defer moving to transfer a case for similar reasons. The Tribe or parent rationally decides that seeking transfer of a foster-care proceeding would not support the goal of reunification of the Indian child with her parent(s). But once the State abandons this goal, and seeks to terminate parental rights, the Tribe's or parent's calculus might reasonably change. If time limits were imposed for moving to transfer, Tribes might be forced to seek transfer early in a foster-care proceeding, even if that outcome does not facilitate reunification. The Department believes that this would undermine the goals and intent of ICWA, and not produce the best outcomes for Indian children.

For these reasons, the final rule provides that a request for transfer may be made at any stage within each proceeding. *See* FR § 23.115(b). A request for transfer may be denied for ''good cause,'' however, which is discussed elsewhere.

Comment: Several commenters stated that the provision at PR § 23.115(b) providing the right to transfer with ''each proceeding'' is unclear as to whether it means each child-custody proceeding or each hearing. One commenter supported just stating ''any stage of the proceeding'' as in PR § 23.115(c) instead.

Response: The final rule clarifies in the definitions that, as relevant here, a ''proceeding'' is a foster-care-placement or termination-of-parental-rights proceeding, and that each proceeding may include several ''hearings,'' which are judicial sessions to determine issues of fact or of law. *See* FR § 23.2. The final rule permits a party to request transfer at any stage in each proceeding. *See, e.g., In re Interest of Zylena R.,* 825 N.W.2d at 182–84.

Comment: One commenter suggested deleting PR § 23.115(b) and (c) as superfluous.

Response: The final rule deletes proposed paragraph (b) because paragraph (a) already captures that the right to transfer arises with each

proceeding, and moves proposed paragraph (c) to final paragraph (b). The final paragraph (b) is necessary to emphasize that the request to transfer may be made at any stage. *See* FR § 23.115.

Comment: A commenter suggested revising PR § 23.115(a) to refer to ''jurisdiction of the Tribe'' rather than ''Tribal court'' because in some cases the Tribe may not have a Tribal court.

Response: The final rule incorporates this suggested revision because it more closely matches the statute. *See* FR § 23.115.

Comment: A commenter requested adding the guardian ad litem and child (at a minimum age) to those who may request transfer to Tribal court.

Response: The statute allows petition for transfer by the Indian child's parent, Indian custodian or Tribe only. The statute does not expressly provide for the child to request transfer. *See* 25 U.S.C. 1911(b). State courts, however, may permit motions to transfer from a guardian ad litem and child.

2. Criteria for Ruling on Transfer

Comment: One commenter noted the provision at PR § 23.116 appeared in the 1979 guidelines and is necessary where courts may otherwise deny transfer based on the judge's belief that transfer is not in the child's best interests. A few commenters suggested adding that Tribal jurisdiction is presumed in all ICWA cases because Tribes have concurrent and presumptive jurisdiction when an Indian child is domiciled outside of a reservation. A few commenters suggested stating that the best interests of the Indian child presumptively favor granting the petition for transfer to improve ICWA compliance.

Response: The final rule, like the proposed rule, states that State courts must grant a petition to transfer unless one or more of three criteria are met. This comports with the statute, which states that a State court ''shall transfer'' unless these specified conditions are present. The final rule does not add the suggested additions because they are not necessary to implement ICWA's transfer provision, which already requires transfer except in specified circumstances.

Comment: A few commenters suggested clarifying that a parent's objection to transfer must be in writing and the consequences of the objection must be explained to the parent, to ensure an informed decision.

Response: The final rule does not impose the suggested limitations on parental objections; however, State courts must document the objection. *See* FR § 23.117(a).

Comment: A few commenters suggested clarifying that a parent whose parental rights have been terminated may not object.

Response: If a parent's parental rights have been terminated and this determination is final, they would no longer be considered a ''parent'' with a right under these rules to object.

Comment: One Tribal commenter stated that the regulations fail to respond to the ambiguity in section 1911(b), which requires transfer ''absent objection by either parent'' but has been incorrectly interpreted to require transfer ''provided that a parent does not object.'' This commenter provided several reasons for why ICWA's language does not require a court to deny transfer if a parent objects and stated that the rule should clarify that the court still has the discretion to transfer even if a parent objects.

Response: The final rule mirrors the statute in requiring transfer in the absence of a parent's objection. The House Report states ''Either parent is given the right to veto such transfer.'' H.R. Rep. No. 95–1386, at 21.

Comment: A commenter suggested that the guardian ad litem (where both parents are unfit or unable to consider the welfare of the child) or child himself should have the ability to object to transfer. Another commenter stated that if the child is permitted to object, there should be a minimum age requirement.

Response: The statute specifically addresses objection by ''either parent'' only; however, nothing prohibits the State court from considering the objection of the guardian ad litem or child himself in determining whether there is good cause to deny transfer, pursuant to the criteria identified in FR § 23.118.

3. Good Cause To Deny Transfer

Comment: Several commenters opposed the proposed rule's approach of defining what factors courts may not consider in determining good cause to deny transfer (*see* PR § 23.117), saying it substitutes BIA's judgment for the courts' judgment, and denies courts the ability to consider every relevant aspect of an individual child's case. One commenter stated that it limits the ''good cause'' analysis to nothing more than a convenient forum analysis, and that it is beyond BIA's authority to limit the analysis in this way. Another commenter noted that the proposed rule could be interpreted to require a court to transfer to Tribal court every case involving young Indian children where parental rights were terminated.

Several commenters stated that limiting the discretion of State courts to deny transfer of a case to the Tribe was particularly helpful, and clarifies that Tribes have ''presumptive jurisdiction'' in child-welfare cases. Many commenters recounted their experiences with State courts inappropriately finding ''good cause'' to deny transfer based on the State court believing the Tribe will make a decision different from the one it would make, because of reliance on bonding with the foster parents, bias against Tribes and Tribal courts, or other reasons, and asked that the rule help prevent denials on this basis in the future. One commenter noted that State courts sometimes employ a ''best interests of the child'' analysis in determining whether to transfer jurisdiction, but stated that the question of whether to transfer is a jurisdictional one that should not implicate the best interests of the child, because ICWA recognizes that Tribal courts are fully competent to determine a child's best interests. A few commenters stated their support of the proposed rule's statement that the socioeconomic status of any placement relative to another should not be considered as a basis for good cause to deny transfer because such reasoning has been used in the past.

Response: The limits imposed by the final rule are consistent with the statutory language and congressional intent in enacting ICWA. Congress directed that State courts ''shall transfer'' proceedings to the jurisdiction of the Tribe unless specified conditions were met. This indicates that Congress intended transfer to be the general rule, not the exception. Congress also intended ICWA, and the transfer provision in particular, to protect the ''rights of the child as an Indian'' as well as the rights of the Indian parents or custodian and the Tribe. H.R. Rep. No. 95–1386, at 21. If the ''good cause'' provision is interpreted broadly, or in ways that could permit decision-making that assumes the inferiority of the Tribal forum, congressional intent would be undermined. In keeping with congressional intent, the Department has imposed certain limits on what the court may consider in determining ''good cause'' to promote consistency in application of the Act and effectuate the Act's purposes. These limits focus on those factors that there is evidence Congress did not wish to be considered, or that have been shown to frustrate the application of 25 U.S.C. 1911(b). State courts retain discretion to determine ''good cause,'' so long as they do not

base their good cause finding on one or more of these prohibited considerations.

Comment: A few commenters noted that the 1979 Guidelines identified what State courts could consider in determining whether good cause exists, whereas the regulations now identified what a State court may not consider, leaving open the question of what would qualify as good cause. Several commenters stated that the rule could be strengthened by providing a list of examples of what good cause to deny transfer may resemble. Commenters disagreed on whether the list of examples should be non-exhaustive (to allow for situations not contemplated in the examples) or exhaustive. A few commenters suggested that not stating what may constitute good cause may expand courts' ability to create good cause.

Response: The regulations take the approach of listing what courts must not consider, for the reasons listed above. *See* FR § 23.118. ICWA's legislative history indicates the good cause provision was intended to permit a State court to apply a modified (*i.e.,* limited, narrow) version of the *forum non conveniens* analysis. H.R. Rep. No. 95–1386, at 21. The Department believes that it is most consistent with congressional intent, and will best serve the purposes of ICWA, if State courts retain limited discretion to determine what constitutes good cause to deny transfer. Reliance on the factors identified in the rule, however, would be inconsistent with the purposes of ICWA, and thus is not permitted.

Comment: Several commenters opposed removing ''advanced stage'' as a ''good cause'' basis to deny transfer. Among the reasons commenters stated for this opposition were the following:

- The rule radically departs from the prior guidelines, which explicitly allowed consideration of whether the proceeding was at an advanced stage;
- State courts should be able to consider whether the proceeding is at an advanced stage for good policy reasons—to prevent forum shopping (*i.e.,* waiting until the ruling becomes clear and then, if it is unfavorable, seeking transfer) and to prevent harm to the child (from disruption in placement and delay in permanency);
- Timeliness is a proven weapon against disruption caused by negligence or obstructionist tactics;
- Not allowing consideration of whether the case is at an advanced stage violates the Indian child's right to permanency;
- The rule is inconsistent with ASFA-mandated permanency deadlines, which have been the basis of policy established by appellate courts in dozens of states to interpret ''good cause'' under advanced stage principles;
- State courts have overwhelmingly agreed good cause may exist if the proceeding is at an advanced stage, but merely disagreed regarding what is ''advanced stage,'' so the rule will increase litigation and delays in case resolution;
- It was not Congress's intent to authorize late transfers and congressional intent has not changed;
- Congress could have expressly allowed transfer at any point in the proceeding in section 1911(b), as it did for intervention in section 1911(c), but it did not;
- Late transfers are more disruptive than late interventions, because a transfer may require retrying the entire case whereas problems resulting from a late intervention are primarily those of the intervener;
- If courts are precluded from considering the ''advanced stage'' they should at least be able to consider as good cause any ''unjustifiable delay'' in requesting transfer; otherwise, the rule incentivizes delay until the outcome in the original proceeding becomes clear.

Several commenters supported restricting State courts from considering whether a case is at an ''advanced stage'' as a ''good cause'' basis to deny transfer. Among the reasons stated for this support were the following:

- ICWA does not specify any time limits on transferring to Tribal court;
- The 1979 Guidelines' provision allowing consideration of the ''advanced stage of the proceedings'' as good cause to deny transfer caused confusion among courts and resulted in disparate interpretations because there is no consistent understanding of ''advanced stage'' across the States (*e.g.,* one court held just over 2 months into a proceeding was ''advanced stage'');
- Each of the four ICWA-defined proceedings should be reviewed anew, so that a petition to transfer filed late in a foster-care proceeding would be considered early for an adoptive placement and State proceedings do not perfectly map to the ICWA-defined proceedings;
- There are a myriad of reasons a Tribe may wait to transfer a case to their own jurisdiction, including allowing sufficient time to do the work necessary to determine whether to transfer, or waiting until the termination of parental rights stage because the Tribe works with the State or monitors the case before that time to promote family reunification.

One commenter shared a story of a State court denying transfer on the basis that the case was at an advanced stage, even though the Tribe did not learn about the case until that stage.

Response: While the 1979 guidelines explicitly allowed consideration of whether the case was at an advanced stage as good cause to deny transfer, the final rule prohibits reliance on the advanced stage of the proceeding in circumstances where the Indian parent, custodian, or Tribe did not receive notice until the proceeding was at an advanced stage. The Department is including this requirement to address circumstances in which denying transfer is unfair, and undermines ICWA's goals. Specifically, as pointed out by a commenter, there have been situations where a parent, Indian custodian, or the child's Tribe did not receive timely notice, and then seeks to transfer the proceeding shortly after receiving notice, but the State court denies the petition to transfer based on the case being at an ''advanced stage.'' The final rule ensures that parents, custodians, and Tribes who were disadvantaged by noncompliance with ICWA's notice provisions may still have a meaningful opportunity to seek transfer. This provision should also serve as an incentive for States to provide the required notice promptly. *See* FR § 23.117(c).

While ICWA does not establish a time limit on the opportunity to transfer or expressly allow for transfer at any point in the proceeding, it does expressly allow for intervention at any point in the proceeding. One of the rights of an intervenor is to seek transfer of the proceeding. To effectuate rights to notice in section 1912(a) and rights to intervene in section 1911(c), State courts should allow a request for transfer within a reasonable time after intervention.

The final rule also clarifies that ''advanced stage'' refers to the proceeding, rather than the case as a whole. Each individual proceeding will culminate in an order, so ''advanced stage'' is a measurement of the stage within each proceeding. This allows Tribes to wait until the termination-of-parental-rights proceeding to request a transfer to Tribal court, because the parents, Indian custodian, and Tribe must receive notice of each proceeding. The Department recognizes that it is often at the termination-of-parental-rights stage that factors that may have dissuaded a Tribe from taking an active role in the case (such as the State's efforts to reunite a child with her nearby parent) change in ways that may warrant reconsidering transfer of the case. *See, e.g., Zylena R.,* 825 N.W.2d at 183 (Neb. 2013).

Comment: A State commenter stated that litigation over whether a State court may consider, in its good cause determination, whether the proceeding is at an ''advanced stage'' is causing delays, which are, in turn, delaying permanency for children and putting the State in a position of not being able to meet required permanency timelines.

Response: The final rule aims to reduce litigation over determinations as to whether a proceeding is at an ''advanced stage'' by establishing clearer standards for when this factor may not be considered. Expeditious transfer does not delay permanency for a child.

Comment: A few commenters opposed not including the child's contacts with the reservation as a basis for good cause to deny transfer, noting that the 1979 Guidelines included this factor and that transferring a child's case to a court with which the child has no connection does not serve the child well. Another commenter supported removing this provision noting that young children would not have evidence of involvement with a Tribe at that age anyway.

Response: As noted above, the final rule establishes that the court must not consider a child's cultural connections with the Tribe or reservation in determining whether there is good cause to deny transfer. State courts are ill-equipped to make this assessment, and young children are unlikely to have had the opportunity to develop such connections.

Comment: Several commenters opposed restricting State courts from considering whether there will be a change in placement, for the following reasons:

- Restricting courts from considering whether there will be a change in placement effectively restricts the court from considering the impact on the child of the transfer;
- Legally, it is impossible to separate jurisdiction and custody, because once jurisdiction is transferred to a Tribe, only the Tribe has jurisdiction over the child's custody;
- Transferring jurisdiction to a Tribe but retaining the child's placement raises legal and practical questions about whether the court has jurisdiction over caregivers, to monitor the care provided to the child, and to determine if the child is subject to new abuse or neglect;
- Many courts have held that the child's best interests may be considered in determining whether good cause to deny transfer exists;
- Not allowing the court to consider whether a transfer would result in a placement change violates the child's equal protection rights and is detrimental to the child;
- Best practices in child-welfare proceedings direct that children should have minimal changes in placement.

Response: The final rule provides that the State court must not consider, in its decision as to whether there is good cause to deny transfer to the Tribal court, whether the Tribal court could change the child's placement. This is an inappropriate consideration because it would presume a decision that the Tribal court has not yet made. *See* FR § 23.118(c)(3). A transfer to Tribal court does not automatically mean a change in placement; the Tribal court will consider each case on and individualized basis and determine what is best for that child. Some commenters erroneously assume that Tribal courts and social services agencies do not follow ''best practices in child-welfare proceedings'' regarding changes in a child's placement.

The Department also declines to accept the comments recommending that State courts be permitted to consider whether transfer could result in change of placement because the Department has concluded it is not appropriate to grant or deny transfer based on predictions of how a particular Tribal court might rule in the case. *See e.g., Piper Aircraft Co.* v. *Reyno,* 454 U.S. 235,261 (1981) (holding that the ''Court of Appeals erred in holding that the possibility of an unfavorable change in law bars dismissal on the ground of *forum non conveniens*'').

For similar reasons, the Department does not find the equal protection concerns raised by commenters compelling. The transfer decision should focus on which jurisdiction is best-positioned to make decisions in the child's custody proceeding. ICWA—and the Department's experience—establishes that Tribal courts are presumptively well-positioned to address the welfare of Tribal children. State courts retain limited discretion under the statute but the choice between two court systems does not raise equal protection concerns. *See, e.g. United States* v. *Antelope,* 430 U.S. 641 (1977).

Finally, the Department does not find these concerns compelling because even if a child-custody proceeding remains in State court, the State court must still follow ICWA's placement preferences (or find good cause to deviate from them). If there is an extended family or Tribal placement that the parties believe that the Tribal court is likely to consider and perhaps choose, the State court must consider that placement as well.

Comment: One commenter suggested prohibiting consideration of whether transfer ''could'' result in a change in placement, rather than ''would'' result because it can be the mere ''fear'' by a State-court judge of the potential change that leads to denial of transfer.

Response: The final rule incorporates this suggestion because the State court will not know whether, once the proceeding is transferred, the Tribal court would decide to change the placement.

Comment: A commenter noted that the issue in deciding whether there is good cause to deny transfer is not what is best for the child, but who should be making decisions about what is best for the child. This commenter notes that a presumption by State courts that the Tribe cannot or will not act in a child's best interest was one of the reasons ICWA was initially passed.

Response: The Department agrees that ruling on a transfer motion should not involve predicting how Tribal courts may rule in a particular case.

Comment: Several commenters stated their concern that the proposed rule removes from State-court judges the ability to consider the child's best interests in determining whether a case should be transferred. One commenter stated that this is an unwarranted expansion of Tribal authority over children not domiciled in reservations and has the potential to cause grave harm to children.

In contrast, several other commenters suggested the rule should explicitly prohibit State courts from applying the traditional ''best interests of the child'' analysis in determining whether there is good cause to deny transfer to the Tribe because: (1) This prohibition was included in the Guidelines; (2) ICWA establishes the placement preferences as being in the child's best interest; and (3) leaving best interests to be argued undermines ICWA's goal to overcome bias and determinations based on lack of knowledge of Tribes and Indian children. A few commenters stated that a best interests inquiry is inconsistent with the presumption of Tribal jurisdiction and recognition of Tribal courts as fully competent to protect an Indian child's welfare. Others stated that the regulations establish that transfer is presumptively in the child's best interests.

A commenter suggested inserting a ''best interests'' analysis that includes consideration of the child's strong interest in having a connection to the child's Tribe, learning the child's culture, being part of the Tribal community, and developing a positive Indian identity. This commenter also requested adding language from the 1979 Guidelines stating that certain

facts may indicate transfer is not in the best interests of the child (*e.g.,* if the child is part of a sibling group with non-Indian children).

Response: The final rule does not include a ''best interests'' consideration, but does provide other guidance. *See Zylena R.,* 825 N.W.2d at 183 (Neb. 2013) (best interests of child should not be a factor in determining whether there is good cause to deny a transfer motion); *In re A.B.,* 663 N.W.2d 625, 634 (N.D. 2003) (same, collecting cases). In general, the transfer determination should focus on what jurisdiction is best positioned to hear the case. The BIA guidelines also provide additional guidance regarding what factors are appropriate to consider in analyzing whether there is good cause to deny transfer.

Comment: A few commenters suggested the rule should establish a ''clear and convincing'' standard of evidence for a showing of good cause to deny transfer. The commenters stated that this standard would be appropriate to protect the Tribe's presumptive jurisdiction and promote consistency by preventing State courts from adopting a lesser standard. A few commenters stated that there should be no burden of proof specified for good cause to deny transfer.

Response: The statute does not establish the standard of evidence for the determination of whether there is good cause to transfer a proceeding to Tribal court. There is, however, a strong trend in State courts to apply a clear and convincing standard of evidence. *See, e.g., In re M.E.M.,* 635 P.2d 1313, 1317 (Mont. 1981); *In re Armell,* 550 N.E.2d 1060, 1064 (Ill. App. Ct. 1990); *In re S.W.,* 41 P.3d 1003, 1013 (Okla. Civ. App. 2002); *In re T.I.,* 707 N.W.2d 826, 833–34 (S.D. 2005); *Thompson* v. *Dep't. of Family Servs,* 747 S.E.2d 838 (2013); *People in Interest of J.L.P.,* 870 P.2d 1252 (Colo. 1994); *Matter of Adoption of T.R.M.,* 525 N.E.2d 298 (Ind. 1988); *In re A.P.,* 961 P.2d 706 (1998). The Department declines to establish a Federal standard of proof at this time, but notes the strong State court approach to this issue is compelling. States are already applying this standard and the Department will consider this issue for future action.

Comment: A few commenters suggested that the rule should allow only States, and not foster or putative adoptive parents, to advance a claim that there is good cause to deny transfer.

Response: Neither the statute nor the rule limit who may advance a claim that there is good cause to deny transfer. State laws or rules of practice may limit the rights of certain individuals to raise such an objection.

Comment: A few commenters suggested additional factors that a State court should not be permitted to consider, including the distance between the State court and any Tribal or BIA social service or judicial systems.

Response: The final rule does not add the suggested factor to the list of items a State court may not consider in determining good cause to deny transfer. If a State court considers distance to the Tribal court, it must also weigh any available accommodations that may address the potential hardships caused by the distance.

Comment: A commenter noted that some of PR § 23.117 reflects what is in current California law, particularly that a court may not consider the socioeconomic conditions and perceived inadequacy of Tribal systems, but asserts that PR § 23.117(c) and (d) would unduly restrict the State judge's discretion by not allowing the judge to consider exceptional circumstances relating to the Indian child's welfare.

Response: The regulation's limitations on what may be considered in the ''good cause'' determination do not limit State judges from considering some exceptional circumstance as the basis of good cause. However, the ''good cause'' determination whether to deny transfer to Tribal court should address which court will adjudicate the child-custody proceeding, not the anticipated outcome of that proceeding.

4. What Happens When Petition for Transfer Is Made

Comment: A few commenters noted that ICWA does not require the Tribe to affirmatively accept jurisdiction before transfer. One of these commenters suggested revising PR § 23.118(a) to mirror the statutory provision at section 1911(b) stating that the State court ''shall transfer . . . subject to declination by the tribal court.''

Response: The rule requires prompt notification to the Tribal court of the transfer petition, and permits a court to request a response regarding whether the Tribal court wishes to decline the transfer. FR § 23.116. As a practical matter, the State and Tribal courts must communicate regarding whether the Tribal court will accept jurisdiction in order to facilitate a smooth transfer and protect the Indian child and minimize disruption of services to the family. *See* FR § 23.119

Comment: A few commenters opposed the proposed provision allowing the Tribe 20 days to decide to accept transfer, noting that ICWA does not mandate a timeframe for Tribal response and that Tribal court scheduling may occur less frequently.

Response: The final rule deletes the proposed provision allowing the Tribe 20 days to decide to accept transfer, and instead specifies that the State court may request a timely response form the Tribe. The Tribe has a statutory right to decline (or accept) jurisdiction, without a statutorily mandated timeline. The Department, however, believes that Tribal courts will respond in a timely manner, recognizing the need for expediently addressing child-welfare issues.

Comment: A few commenters stated that the rule should require the State child-welfare agency to provide a copy of the agency file and additional listed information to the Tribe at no charge because such documentation is essential to appropriate care decisions and are often not provided to Tribes upon transfer. Another commenter stated that the rule should require the records to be sent to the Tribe at the time the Tribe is requested to make a decision to accept or decline a transfer, so it can make an informed decision.

Response: The final rule combines the provisions in the proposed rule regarding transmission of information from the State court to the Tribal court upon transfer, and provides that the State court should expeditiously provide to the Tribal court all records regarding the proceeding. *See* FR § 23.119. In addition, State agencies should share records with Tribal agencies as they would other governmental jurisdictions, presumably at no charge, under the ICWA provision requiring mutual full faith and credit be given to each jurisdiction's records. *See* 25 U.S.C. 1911(d).

Comment: A commenter stated that the rule should instruct the State court to follow procedures for transfer as dictated by the Tribe.

Response: Once the State court determines that it must transfer to Tribal court, the State court and Tribal court should communicate to agree to procedures for the transfer to ensure that the transfer of the proceeding minimizes disruptions to the child and to services provided to the family.

Comment: One Tribal commenter stated that the rule should require the State court to send notice of request to transfer to the designated ICWA office rather than the Tribal court because there may be multiple Tribal courts.

Response: As discussed above, if the State court does not have contact information for the Tribal court, it should contact the Tribe's ICWA officer.

K. Adjudication

1. Access to Reports and Records

ICWA and these rules require that access to certain records be provided to certain parties. For example, ICWA provides that each party to an ICWA foster-care-placement or termination-of-parental-rights proceeding has the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based. 25 U.S.C. 1912(c); FR § 23.134. In order to comport with due process requirements, the final rule also extends this right to parties to emergency proceedings. FR § 23.134. Tribes that are parties to such proceedings are entitled to receipt of the documents upon which a decision may be based. In addition, the notice provisions of FR § 23.111(d) require that Tribes be provided the document by which the child-custody proceeding was initiated (as well as other information), and FR § 23.141 requires that States make available to an Indian child's Tribe the placement records for that child's child-welfare proceedings.

Comment: A few commenters suggested clarifying that the child's Tribe has the right to timely receipt of documents filed with the court or upon which a decision may be based. One stated that such access is necessary for the Tribe to determine whether to intervene. Two Tribes stated that States refuse them access to information on the basis of confidentiality.

Response: States cannot refuse to provide an Indian child's Tribe with access to information about that child's proceedings. ICWA expressly provides for Tribal access to certain records, and makes no exception for confidentiality concerns (which presumably are present in all child-custody proceedings). Tribes are sovereign entities that have concurrent jurisdiction over child-custody proceedings, and they should have the ability to review documents relevant to those proceedings. Further, the Indian Child Protection and Family Violence Protection Act addresses this concern, providing that State agencies that investigate and treat incidents of child abuse should provide information and records to Tribal agencies that need to know the information in performance of their duties to the same extent they would provide the information and records to Federal agencies. 25 U.S.C. 3205. Therefore, confidentiality generally is not a valid basis to withhold information and records to the Indian child's Tribe. The rule does not incorporate this provision because it is not unique to ICWA implementation.

Comment: One commenter stated the rule should clarify that Tribes have a right to both discovery and disclosure of every document, and should not be required to pay for photocopying of documents that other parties receive.

Response: State agencies must share records with Tribal agencies that are parties to child-custody cases as they would other parties and governmental entities. The rule does not, however, address payment of such charges, as the issue is not addressed in the statute.

Comment: One commenter requested the rule require States to allow Tribes at least three business days to review records.

Response: The statute does not require States to provide Tribes with a certain time period for reviewing records, but all parties should be provided sufficient time to review the records to allow for meaningful participation in the proceeding.

Comment: One commenter opposed PR § 23.119(b) (the court's decisions must be based only upon documents in the record), because it suggests that agreed orders entered into between the parties could not be off the record or ex parte, despite local practice and State statutory authority, and could overload State courts by requiring all cases to be heard on the record.

Response: ICWA requires clear and convincing evidence for foster-care placements and evidence beyond a reasonable doubt for termination of parental rights, each of which would necessarily require documentation in the record. This does not foreclose agreed orders, but the court must still make the statutorily required findings.

2. Standard of Evidence for Foster-Care Placement and Termination

a. Standard of Evidence for Foster-Care Placement

Comment: Several commenters supported PR § 23.121(a), establishing the standard of evidence applicable to foster-care placement. A few commenters suggested strengthening PR § 23.121(a) and (b) by changing ''may not'' to ''must not'' or ''shall not'' to make it more clearly mandatory. One commenter stated that while ''may not'' is the phrase used by the statute, it does not depart from the intent of ICWA to use ''shall not.''

Response: The final rule changes ''may not'' to ''must not'' as requested to clarify that the standard of evidence is mandatory.

Comment: Several commenters pointed out that PR § 23.121(a), establishing that the court may not order foster-care placement unless continued custody is likely to result in serious physical damage or harm to the child uses the phrase ''serious physical damage or harm to the child'' while the statute, at section 1912(e), uses ''serious emotional or physical damage to the child.'' Commenters opposed the omission of ''emotional'' as beyond the authority granted by the statute. Some assumed this was an inadvertent omission, while others interpreted this as meaning that foster care may not be ordered even where parents are inflicting serious emotional harm on the Indian child.

Response: The proposed rule mistakenly omitted the term ''emotional'' in PR § 23.121(a) and instead used the term ''harm.'' The final rule more closely tracks the statutory language, using the phrase ''serious emotional or physical damage to the child.'' *See* FR § 23.121(a).

b. Standard of Evidence for Termination

One commenter suggested changing ''continued custody of the child by the parent or Indian custodian'' in PR § 23.121(b) to ''custody of the child by either parent or Indian custodian.''

Response: The final rule retains the proposed language stating ''continued custody of the child by the parent or Indian custodian'' because this is the statutory language. *See* 25 U.S.C. 1912(f), FR § 23.121(b).

c. Causal Relationship

Comment: One commenter noted that PR § 23.121(c) requires a showing of a relationship between particular conditions but it does not say in the second item how these conditions relate. The commenter suggested clarifying in both (c) and (d), that the actions are directly putting the children in danger. A commenter noted that the word ''between'' is confusing in PR § 23.121(c).

Response: The final rule addresses the commenters' concerns by revising the language to clarify that there must be a causal relationship between the particular conditions in the home and the risk of serious emotional or physical damage to the child. *See* FR § 23.121(c).

Comment: A commenter stated that the requirement for a causal relationship should apply to both clear and convincing evidence for foster-care placement and beyond a reasonable doubt for termination of parental rights because the statute establishes these evidentiary standards in mirroring provisions.

Response: The final rule requires the causal relationship for both clear and convincing evidence for foster-care placement and beyond a reasonable

doubt for termination of parental rights. *See* FR § 23.121(c).

Comment: A few commenters suggested that ''particular conditions in the home'' should be ''particular conditions in the home listed in the petition'' because the petition should include all the allegations.

Response: The final rule does not add that the conditions must be listed in the petition because evidentiary requirements that are not unique to ICWA govern what allegations must be included in the petition. *See* FR § 23.121(c).

Comment: A commenter suggested replacing ''conditions in the home'' with ''facts'' to prevent exclusion of facts such as a parent's propensity to abuse the child, as opposed to the living conditions.

Response: The final rule retains the phrase ''conditions in the home'' because this phrase generally indicates all conditions of the child's home life rather than just the physical location. This phrase was also used in the 1979 Guidelines. *See* FR § 23.121(c).

d. Single Factor

Comment: Several commenters expressed concern regarding PR § 23.121(d), which states that one of the listed factors may not, of itself, meet the burden of evidence. A few stated that the proposed rule presumes States routinely remove children solely on the basis of poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior, when in fact they do not. One commenter expressed concern that PR § 23.121(d) is dangerous, because one could argue that where both parents are abusing and producing drugs, the evidence shows only the existence of inadequate housing and substance abuse, which cannot meet the burden of evidence. Another commenter noted that substance abuse is a significant contributing factor to child abuse and neglect, and asserted that excluding substance abuse from evidence fails to protect the child. Another commenter stated that Congress never suggested alcohol or substance abuse that harms Indian children was not a sufficient reason for removing Indian children. A commenter stated that not allowing a judge to consider substance abuse or nonconforming social behavior takes away the court's power to protect Indian children.

Response: The final rule does not prohibit State courts from considering the factors. Instead, the final rule prohibits relying on any one of these factors, absent the causal connection identified in FR § 23.121(c), as the sole basis for determining that clear and convincing evidence or evidence beyond a reasonable doubt support a conclusion that continued custody is likely to result in serious emotional or physical damage to the child. *See* FR § 23.121(d). The intention behind this provision is to address the types of situations identified in the statute's legislative history where States remove Indian children at higher rates than they remove non-Indian children based on subjective assessments of these factors. To address the commenters' concerns that this provision may prevent State courts from protecting Indian children, the final rule addresses this comment by stating that a court may not consider any one of these factors unless there is a causal relationship between the factor and the damage to the child. In other words, if one of these factors is causing the likelihood of serious emotional or physical harm to the Indian child, the court may rely on the factor.

Comment: One commenter suggested defining or giving examples of ''nonconforming social behavior'' in the provision stating that evidence of nonconforming behavior by itself is not evidence that continued custody is likely to result in serious emotional or physical damage to the child.

Response: The final rule does not define the term, but the Department notes that ''nonconforming social behavior'' includes behaviors that do not comply with society's norms, such as dressing in a manner that others perceive as strange, an unusual or disruptive manner of speech, or discomfort in or avoidance of social situations. *See* FR § 23.121(d).

Comment: A commenter stated that the list of factors in PR § 23.121(d) should not be sufficient for evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child, in addition to not being sufficient for clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.

Response: The final rule adds ''beyond a reasonable doubt'' as requested. *See* FR § 23.121(d).

3. Qualified Expert Witness

The Act requires the testimony of qualified expert witnesses for foster-care placement and for adoptive placements. 25 U.S.C. 1912(e), (f). The final rule provides the Department's interpretation of this requirement. *See* FR § 23.122.

The legislative history of the qualified expert witness provisions emphasizes that the qualified expert witness should have particular expertise. Congress noted that ''[t]he phrase 'qualified expert witnesses' is meant to apply to expertise beyond the normal social worker qualifications.'' H.R Rep. No. 95–1386, at 22. In addition, a prior version of the legislation called for testimony by ''qualified professional witnesses'' or a ''qualified physician.'' *See* S. Rep. No. 95–597, at 21.

The final rule requires that the qualified expert witness must be qualified to testify regarding whether the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. FR § 23.122(a). This requirement flows from the language of the statute requiring a determination, supported by evidence . . ., including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. 1912(e), (f).

In addition, the qualified expert witness should have specific knowledge of the prevailing social and cultural standards of the Indian child's Tribe. FR § 23.122(a). In passing ICWA, Congress wanted to make sure that Indian child-welfare determinations are not based on ''a white, middle-class standard which, in many cases, forecloses placement with [an] Indian family.'' *Holyfield,* 490 U.S. at 36 (citing H.R. Rep. No. 95–1386, at 24). Congress recognized that States have failed to recognize the essential Tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. *See* 25 U.S.C. 1901(5). Accordingly, expert testimony presented to State courts should reflect and be informed by those cultural and social standards. This ensures that relevant cultural information is provided to the court and that the expert testimony is contextualized within the Tribe's social and cultural standards. Thus, the Department believes that the question of whether the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child is one that should be examined in the context of the prevailing cultural and social standards of the Indian child's Tribe.

The final rule does not, however, strictly limit who may serve as a qualified expert witness to only those individuals who have particular Tribal social and cultural knowledge. FR § 23.122(a). The Department recognizes that there may be certain circumstances where a qualified expert witness need not have specific knowledge of the

prevailing social and cultural standards of the Indian child's Tribe in order to meet the statutory standard. For example, a leading expert on issues regarding sexual abuse of children may not need to know about specific Tribal social and cultural standards in order to testify as a qualified expert witness regarding whether return of a child to a parent who has a history of sexually abusing the child is likely to result in serious emotional or physical damage to the child. Thus, while a qualified expert witness should normally be required to have knowledge of Tribal social and cultural standards, that may not be necessary if such knowledge is plainly irrelevant to the particular circumstances at issue in the proceeding. A more stringent standard may, of course, be set by State law.

Comment: Several commenters supported the proposed rule's requirement in PR § 23.122 for the qualified expert witness to have knowledge of the prevailing social and cultural standards and childrearing practices within the child's Tribe and prioritizing use of experts who are members of the child's Tribe and recognized by the Tribal community as knowledgeable in Tribal customs. A few commenters stated that this ensures cultural information is provided to the court and avoids increasing use of non-Indian professionals without experience or knowledge in Indian families. A few commenters noted that expert witness testimony has been provided by those without any knowledge of Indian family customs or based on information gleaned from the Tribe's Web site; these commenters supported the proposed rule for addressing this issue. A commenter supported the definition of qualified expert witness in PR § 23.122 as consistent with the way the term has been defined in various State statutes implementing ICWA, in various Tribal-State agreements, and in accordance with ICWA's intent.

Several other commenters stated that the proposed provisions addressing who may serve as a qualified expert witness are beyond the Department's authority. Other commenters stated that the Department is within its purview to define who may be considered as a qualified expert witness in ICWA cases because the statute requires qualified expert witnesses but does not define the term.

Several commenters objected to PR § 23.122, stating that it commandeers State courts by telling them who may serve as expert witnesses and that, instead, State-court judges should determine what expert testimony is credible and reliable based on rules of evidence. A few other commenters stated that the rule conflicts with established rules of evidence because questions of bias and prejudice go to the weight, not the admissibility, of evidence. These commenters note that concerns as to bias and prejudice can be addressed through impeachment in cross-examination.

Response: The Act is ambiguous regarding who is a ''qualified expert witnesses.'' Thus, as discussed above, the final rule provides the Department's interpretation of this requirement. *See* FR § 23.122. Providing State courts with this regulatory language will promote uniformity of the application of ICWA.

As discussed above, the Department emphasizes that qualified expert witnesses must have particular relevant expertise and should have knowledge of the prevailing social and cultural standards of the Indian child's Tribe. These are not issues of bias or prejudice; rather, they are issues of the knowledge that the expert should have in order to offer her testimony. The final rule still provides State courts with discretion to determine what qualifications are necessary in any particular case.

Comment: A few commenters noted that ICWA does not require the qualified expert witness have specific knowledge of the Tribe's culture or customs. A commenter stated that Congress said the phrase was meant to apply to expertise beyond ''normal social worker qualifications'' but did not impose additional requirements for knowledge of the Tribe's culture and customs. This commenter also noted that numerous courts have ruled that, if cultural bias is not implicated in the testimony or proceeding, then the expert witness is not required to have experience with or knowledge of the Indian culture. A few commenters pointed to case law holding that specialized knowledge of Indian culture is not necessary for a person to be qualified as an expert in an ICWA case, and State law controls who is recognized as an expert.

A few commenters pointed out the purpose of the requirement for qualified expert witness testimony and stated that Congress intended to prevent removal of Indian children due to cultural misunderstandings, poverty, or different standards of living. Another stated that Congress was trying to address social workers improperly basing findings of neglect and abandonment on factors such as the care of Indian children by extended family members, Indian parents' permissive discipline, and unequal considerations of alcohol abuse.

Response: As discussed above, the final rule states that a qualified expert witness should have an understanding of the child's Tribe's cultural and social standards. However, the final rule still provides State courts with discretion to determine what qualifications are necessary in any particular case. State law may also provide standards for qualified expert witnesses that are more protective of the rights of the Indian child and parents.

Comment: One commenter noted that the requirement for specific knowledge of the Tribe applies even if the child has never been involved in the Tribe's customs or culture. A commenter asserted it would be unfair to a child that has no connection to the Tribe's customs or culture to require a Tribal expert witness. One commenter stated that it does not take an expert with specific knowledge of Indian culture to provide helpful information to the court, so long as the expert has substantial education and experience and testifies on matters not implicating cultural bias. This commenter stated that the requirement for an expert with special knowledge of Indian life is unreasonable when an agency seeks action on any ground not pertaining to the child's heritage. A few commenters pointed to case law holding that when cultural bias is not clearly implicated, the qualified expert witness need not have specialized knowledge of Indian culture.

Response: As discussed above, the final rule states that a qualified expert witness should have an understanding of the child's Tribe's cultural and social standards. The child's involvement with Tribal customs and culture is not relevant to an inquiry that focuses on the ability of the parent to maintain custody of their child.

There may be limited circumstances where this knowledge is plainly irrelevant to the question whether the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and the final rule allows for this. The Department disagrees, however, with the commenters' suggestion that State courts or agencies are well-positioned to assess when cultural biases or lack of knowledge is, or is not, implicated. ICWA was enacted in recognition of the fact that the opposite is generally true. Indeed, as other commenters have pointed out, some theories, such as certain bonding and attachment theories, presented by experts in foster-care, termination-of-parental-rights, and adoption proceedings are based on Western or Euro-American cultural norms and may have little application outside that context. *See, e.g.,*

Comments of Casey Family Programs, at pp 13–17.

Comment: Several commenters opposed restricting expert testimony since it could prevent courts from receiving relevant information. Commenters also stated that limitations on expert evidence would cause harm and prevent positive outcomes for many children. A commenter noted that the proposed rule's requirements improperly allow the Tribe to dictate who the State can call as an expert witness in their own case-in-chief. This commenter stated that the Tribe as a party may call their own witnesses and cross-examine the State's expert and should have the responsibility to present evidence. A few commenters noted that the regulations do not limit the number of expert witnesses at a hearing but ensures the court has all the information it needs to make culturally informed decisions. These commenters state that the proposed rule requires the State to find someone who agrees with the foster-care placement or termination of parental rights after reviewing the case from the perspective of the child's culture and community, to ensure that the cultural norms of the child's Tribe are considered. Other commenters stated that the proposed rule restricts testimony from psychological experts in trauma, attachment, developmental psychology, etc., unless they also have knowledge of the specific Tribe's customs. Several commenters requested clarification that these requirements do not preclude State courts from hearing testimony from other expert witnesses in addition to the expert on the Tribe's culture and customs as they pertain to childrearing. A few commenters noted that a primary policy underlying ICWA was to protect the best interest of Indian children, but the proposed rule provides no qualification for experts who can speak to the best interests of the child. These commenters state that any such expert should be given priority regardless of whether the expert is from a Tribe.

Response: The rule does not restrict expert testimony. The court may accept expert testimony from any number of witnesses, including from multiple qualified expert witnesses. The statute requires, however, that the proposed foster-care placement or termination of parental rights be supported by the testimony of qualified expert witnesses.

Comment: Several commenters noted the difficulty in obtaining expert witnesses with specific knowledge of the Tribe's culture and customs who are willing to testify. One noted that, in California, due to the historical relocation policies, finding an expert can be a challenge. These commenters were concerned that the difficulties in securing qualified expert witnesses could delay permanency decisions. Suggested solutions to this issue included:

- Allowing regional experts (particularly in Alaska, where it may not be possible to find experts in each unique village or Tribe that can be available at hundreds of hearings held each year);
- Providing guidance for finding witnesses from out-of-State Tribes;
- Applying expert witness requirements only when the child is domiciled on or residing on the reservation because otherwise it is difficult to locate an impartial qualified expert witness with specific knowledge of the Tribe's culture and customs;
- Requiring Tribes to respond to requests to provide an expert, or to relieve the agency of the obligation to identify a Tribal expert if the Tribe fails to respond;
- Requiring BIA provide a list of qualified expert witnesses.

Response: The Department encourages States to work with Tribes to obtain a qualified expert witness. In some instances, it may be appropriate to accept an expert with knowledge of the customs and standards of closely related Tribes. Parties may also contact the BIA for assistance. *See* 25 CFR 23.81.

Comment: A commenter noted that the evidentiary issue before the court is whether the child is at risk of serious emotional or physical damage, and that the new definition does not require the expert witness to have any knowledge, education, or qualification on that issue. This commenter noted that knowledge of the Tribe's culture and customs can inform an expert's opinion but that is secondary to the expert's ability to address the main issue.

Response: The final rule states that the testimony of at least one qualified expert witness must address the issue of whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Comment: A few commenters supported the preference list of qualified expert witnesses. A few commenters suggested redrafting PR § 23.122(b) to clarify that the presumption is in descending order, to read ''The [qualified expert witness] shall be determined in the following order of preference.'' One commenter stated that the preference order is important because in some counties, the State worker is accepted as an expert witness to circumvent the Tribe's opinion, if it is known that the Tribe has an opposing opinion.

A few commenters opposed listing a member of the child's Tribe recognized as knowledgeable in Tribal customs or childrearing as the first preference because choosing a layperson over a professional would be choosing that Tribe's cultural opinion over an educated person who can provide evidence-based testimony.

A few commenters opposed the priority given to professionals with substantial experience and education in his or her specialty being below the priority of Tribal members of the child's or another Tribe, and laypersons with knowledge of the Tribe's cultural and childrearing practices. These commenters stated that the priorities essentially eliminate the input of licensed child-welfare experts, and could jeopardize the safety and wellbeing of the children.

One commenter stated that the fourth preference should be removed because a non-Native anthropologist will likely not understand the culture and traditions of Tribes. This commenter recommends instead adding language similar to three, saying that a layperson who is recognized by the child's Tribe in having substantial experience.

A commenter opposed ranking at all because the trier of fact should determine what weight to give to testimony, and by ranking, it implies the higher ranked expert would be more reliable or credible.

Response: The final rule does not include a preference list of qualified expert witnesses. Instead it requires that the qualified expert witnesses be able to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and that the qualified expert witnesses should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. The final rule also allows a Tribe to designate a person as being qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe.

Comment: A few commenters expressed concern that a witness in the proposed order of preference would be biased, because a member of the Tribe would not oppose the Tribe's position.

Response: The final rule does not require that the qualified expert witness be a citizen of the Tribe. The witness should be able to demonstrate knowledge of the prevailing social and cultural standards of the Indian child's Tribe or be designated by a Tribe as

having such knowledge. *See* FR § 23.122(a), (b).

Comment: One commenter suggested considering Native elders knowledgeable about ICWA and the family's heritage, etc., as qualified expert witnesses.

Response: Any potential qualified expert witness, including Native elders, would need to meet the requirements of FR § 23.122 to testify on whether continued custody is likely to result in serious emotional or physical damage to the child. The court may allow experts to testify for other purposes as well.

Comment: Several commenters suggested further improving the regulation by providing that the Tribe will designate and authorize the expert witness. Several other commenters requested clarification that, while the Tribe may assist in locating an expert, it is under no obligation to do and that the Tribe's failure to do so does not absolve the State of its obligation. A few other commenters requested requiring the State to seek assistance from the Tribe or the BIA agency if the Tribe is unable to be contacted. Another commenter noted that the Tribe is often the State's opposing party, so it shouldn't be required to seek assistance from the Tribe.

Response: The final rule provides that the court or any party may request the assistance of the Indian child's Tribe or the BIA agency serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses. This is not required.

Comment: Several commenters requested a new provision prohibiting the qualified expert witness from being employed by the State agency due to a concern about the potential that the State worker may have a bias, and noting that the original intent of the requirement for a qualified expert witness was to combat such bias. Others requested the prohibition be extended to private agencies and Federal agencies. These commenters stated that it is a conflict of interest, or at least the appearance of impropriety, for the agency seeking placement to claim to be an expert in whether the child should be placed.

Response: The final rule adds a provision prohibiting the social worker that is regularly assigned to the child from serving as the qualified expert witness, to help to address concerns regarding bias or conflicts. In addition, this provision reflects the congressional direction that ''[t]he phrase 'qualified expert witnesses' is meant to apply to expertise beyond the normal social worker qualifications.'' H.R. Rep. No. 95–1386, at 22.

Comment: One commenter noted that because the standard of evidence for foster-care placement and termination of parental rights hinges on harm to the child, the qualified expert should be someone familiar with the child, not just the Tribe. A commenter suggested requiring the qualified expert witness to make contact with the parents and make an effort to view interactions between the parents and child, and attempt to meet with extended family members involved in the child's life. Otherwise, the expert will rely on one-sided State reports.

Response: The commenter's suggestions are recommended practices.

L. Voluntary Proceedings

Certain ICWA requirements apply to voluntary proceedings. The statute defines ''child-custody proceeding'' broadly to include foster-care, preadoptive, and adoptive placements, without regard to whether those placements are made with or without the consent of the parent(s). 25 U.S.C. 1903(1). Similarly, termination-of-parental-rights proceedings fall within the statutory definition whether or not the termination is voluntary or involuntary. *Id.*

The statute does not condition Tribal court jurisdiction over Indian child-custody proceedings on whether that proceeding is voluntary or involuntary. Rather, exclusive Tribal jurisdiction is recognized over any child-custody proceeding involving an Indian child who resides or is domiciled within the reservation of the Tribe under 25 U.S.C. 1911(a). *See also generally Holyfield.* Transfer and intervention rights apply in any State court proceeding for the foster-care placement of, or termination of parental rights to, an Indian child. 25 U.S.C. 1911(b), (c). Similarly, section 1915 of the statute provides placement preferences that apply in any adoptive placement of an Indian child under State law, without specifying whether that adoption is the result of a voluntary or involuntary termination of parental rights. And, section 1913 of the statute specifically addresses voluntary proceedings, and provides a number of significant protections to parents.

The Department is cognizant that voluntary proceedings require consideration of the interests of the Indian child's biological parents to direct the care, custody, and control of their child. *See, e.g., Troxel* v. *Granville,* 530 U.S. 57, 65 (2000). The rights of the child, including the rights of the child as an Indian, must also be considered. State and Tribal governments also have a sovereign interest in protecting the welfare of the child. And Congress has articulated a clear Federal interest in protecting Indian children and the survival of Tribes. State law varies in how these various interests are considered and protected.

ICWA balances these important and sometimes competing considerations. It recognizes that Tribes have exclusive jurisdiction over child-custody proceedings involving children domiciled on the reservation, and the right to seek transfer or intervene in foster-care or termination-of-parental rights proceedings involving off-reservation children. The final rule retains this balance, and makes clear that ICWA's placement preferences apply to voluntary placements, but also permits departure from those preferences based on various factors, including the request of one or both parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference. FR § 23.132(c). This balances the importance of the placement preferences with the rights of the parent.

For clarity, the final rule indicates in FR § 23.104 which provisions apply to voluntary proceedings. The final rule also provides specific standards for voluntary proceedings. In particular:

- Section 23.124(a) and (b) provide the minimum requirements for State courts to determine whether the child is an ''Indian child'' as defined by statute. If there is reason to believe that the child is an ''Indian child,'' but this cannot be confirmed based on the evidence before the State court, it must ensure that the party seeking placement sought verification of the Indian child's status with the Tribes of which the child might be a citizen. The determination of whether the child is an ''Indian child'' is a threshold inquiry; it affects the jurisdiction of the State court and what law applies to the matter before it. *See, e.g., In re A.G.,* 109 P.3d 756, 758 (Mont. 2005) (whether child is an ''Indian child'' is a ''threshold inquiry'' and must be definitively resolved before termination of parental rights). Section (a) mirrors the provision in the proposed rule; section (b) was added to clarify the obligation to confirm a child's status as an ''Indian child.''
- FR § 23.124(c) clarifies that the regulatory provisions addressing the application of the placement preferences apply with equal force to voluntary proceedings.
- The final rule does not include a provision requiring agencies and State courts to provide notice to the Indian Tribe of voluntary proceedings. As a practical matter, notice to the Tribe may be required in order to comply with

other provisions of the statute or regulation (*see, e.g.,* FR § 23.124(b)). In the Department's view, it is a best practice to provide such notice.

• FR § 23.125 details how consent must be obtained in a voluntary proceeding, and is designed to ensure that the procedural protections provided by ICWA are implemented in each case. The final rule makes some wording changes from the proposed rule, but is substantively similar.

• FR § 23.126 describes what information a consent document should contain. The final rule makes some wording changes from the proposed rule, but is substantively similar.

• FR § 23.127 describes how withdrawal of consent to a foster-care placement is achieved. It clarifies that the parent or Indian custodian may withdraw consent to foster-care placement at any time; requires the filing of an instrument under oath, and if consent is properly withdrawn, requires the immediate return of the child to the parent or custodian.

• FR § 23.128 addresses withdrawal of consent to termination of parental rights or adoption. The final rule includes termination of parental rights, to better match the statutory provision. *See* 25 U.S.C. 1913(c). The final rule, like the proposed rule, requires that a withdrawal of consent be filed in court or made by testifying in court, and that after withdrawal of consent is filed, the child must be returned to the parent or Indian custodian.

1. Applicability of ICWA to Voluntary Proceedings—In General

Comment: Several commenters noted and supported the applicability of ICWA to voluntary placements. A commenter stated that the proceedings identified in PR § 23.103(f) (voluntary proceedings in which the parent or Indian custodian may regain custody upon demand) are those that operate outside of the court and child-welfare systems, and that these are distinct from those described in PR § 23.103(g) (in which a parent consents to foster care or termination of parental rights).

Response: Certain provisions of the final rule are applicable to voluntary placements. To clarify which placements are outside of ICWA, the final rule defines ''upon demand'' to mean verbal demand without any required formalities or contingencies. Section 1913 of the statute (implemented by FR § 23.103(g)) requires formalities for consent and withdrawal of consent of a foster-care placement.

Comment: Several commenters supported PR § 23.103(g) stating that private adoption placements made voluntarily by parents are covered by ICWA. Among the reasons stated in support of this provision were:

• Private adoption placements contribute to the wholesale separation of Indian children from their families, culture and Tribes;

• Indian children are routinely adopted into non-Indian homes through private adoptions because adoption agencies control which homes the birth parents choose from;

• There are hundreds or thousands of Indian homes that would like to adopt Indian children;

• ICWA as a whole does not only pertain to involuntary proceedings.

One Tribe recounted a situation where the Tribe intervened in a voluntary adoption and the Tribal member changed her mind and placed the child with a placement that preserved the child's ties to family, culture, and community.

Response: The final rule clarifies which provisions are applicable to voluntary proceedings. *See e.g.,* FR § 23.104. It balances the interests of biological parents with the Federal policy promoting retention of Indian children within their extended family and Tribal community whenever possible.

Comment: A few commenters stated that the proposed rule treats the child as property of the Tribe, inviting Tribal interference with the parent's right to make decisions.

Response: The rule in no way treats the child as property of the Tribe. Tribes, like other governments, have a sovereign interest in the welfare of their citizens, and in particular, their children. The final rule balances this interest with a parent's interest in directing the care, custody, and control of their child.

2. Applicability of Notice Requirements to Voluntary Proceedings

Comment: Many commenters stated support for the provision of the proposed rule related to notice to Tribes in voluntary proceedings. These commenters noted that Tribes are *parens patriae* for their member children and that, when Tribes do not receive notice in voluntary proceedings they are effectively denied rights and protections granted by ICWA. Specifically, a Tribe must receive prior notice of a voluntary proceeding in order to avail itself of the following statutory rights and protections:

• The opportunity to verify a child is a member, and therefore subject to ICWA;

• The exercise of exclusive Tribal jurisdiction over Indian children who reside or are domiciled within the reservation or who are wards of Tribal court (25 U.S.C. 1911(a));

• The exercise of concurrent jurisdiction over Indian children by transferring the proceeding to Tribal court (25 U.S.C. 1911(b));

• Intervention in voluntary foster-care placement and termination-of-parental-rights proceedings (25 U.S.C. 1911(c));

• The opportunity to provide an interpreter to a parent or Indian custodian (25 U.S.C. 1913(a));

• Monitoring and compliance (filing a petition to invalidate proceedings) (25 U.S.C. 1914);

• Assistance in identifying placements and providing information on ''prevailing social and cultural standards'' in the Indian community (25 U.S.C. 1915(d));

• Facilitation of documentation of efforts to comply with the order of preference (25 U.S.C. 1915(e)).

A few commenters asserted that the proposed requirement for notice in voluntary proceedings addresses an ambiguity in the statute: The provision at section 1913 addressing consent for voluntary termination does not address how the provision interacts with other provisions of the Act. A few commenters stated that the proposal addresses Congress's concern about both State and private agency adoptions. These commenters assert that birth parents' rights are balanced against the government's interest in the child's safety.

One commenter noted that while the statute explicitly requires notice in involuntary proceedings, it does not preclude notice in voluntary proceedings. Other stated reasons for support of requiring notice in voluntary proceedings were:

• Voluntary adoptions are often used to skirt around ICWA;

• Including the Tribe in voluntary placements will help find suitable placements and lead to placement stability;

• Requiring notice in voluntary proceedings is consistent with several State laws, including California SB 678 and the Oklahoma Indian Child Welfare Act, and Tribal-State agreements, and that nationalization of the requirement ensures equal treatment on the issue across jurisdictions;

• Requiring notice allows the Tribe the opportunity to assist the mother with any situations leading her to feel that she cannot raise her child.

A few commenters suggested adding that the notice to Tribes of voluntary

proceedings is to permit the Tribe to determine whether the child involved is an Indian child.

Several other commenters opposed the proposed requirement for notice in voluntary proceedings, stating that it is contrary to the plain language of the statute because the notice provisions at section 1912 apply only to involuntary proceedings and the provisions specific to voluntary proceedings at section 1913 make no mention of notice. These commenters also pointed to case law concluding there is no Tribal right to notice in voluntary proceedings and past congressional attempts to amend ICWA to require this notice as proof that the Act currently does not require such notice.

Several commenters stated that requiring notice in voluntary proceedings violates an individual's rights to privacy and due process, and will result in children not being adopted because the birth parents will be forced into a choice of doing what they believe is best for the child or preserving their constitutionally protected privacy and anonymity. One commenter stated her belief that the birth parent's desire should be paramount. One commenter pointed to the Supreme Court's decision in *Whalen* v. *Roe,* 429 U.S. 589 (1977), as protecting parents' right to privacy.

A few commenters stated that the regulations should suggest, rather than mandate, notice in voluntary proceedings because the Act does not require notice but such notice may be advisable to protect the Tribe's right to intervene.

Response: The final rule has been changed from the proposed rule, and does not require in all cases that notice be provided to Tribes of voluntary proceedings. The final rule does require that the court make a determination of whether the child is an ''Indian child,'' because this is essential in order to assess the State court's jurisdiction and what law applies. An inquiry with one or more Tribes may be necessary in some cases to confirm a child's status as an ''Indian child.'' The final rule does not preclude State requirements for notice in voluntary proceedings in other circumstances. The Department recommends that Tribes be provided notice in voluntary proceedings.

Comment: Many commenters opposed the provisions at PR § 23.107(d) stating that a request for anonymity in voluntary proceedings does not relieve the obligation to obtain verification from the Tribe and provide notice. These commenters stated that requiring notice to Tribes in voluntary cases is contrary to the plain language of the statute, because the statute states the court or agency ''shall give weight'' to the parent's desire for anonymity and nothing in the statute requires notice to Tribes in voluntary proceedings. These commenters also stated that requiring verification and notice in voluntary proceedings even where the parent has expressed a desire for anonymity violates constitutional privacy rights and the non-discrimination provisions of the Multi-Ethnic Placement Act. A few commenters argued that it is good public policy to allow for anonymity without notice to the Tribe and others because removing the option for a ''quiet adoption'' will make other options, such as abortion or taking advantage of ''safe haven'' laws to anonymously abandon a child more desirable.

A few commenters supported this provision and requested adding that a request for anonymity does not relieve the obligation to comply with any other provision of ICWA as well. These commenters stated that Tribes can work within their Tribal systems to keep the information confidential and that these regulations are consistent with the approach taken in some States. One commenter stated that, without this provision, adoption attorneys and agencies that seek to place Indian children with non-Indian families need only tell the parents to request anonymity to enable placement without complying with ICWA. One commenter stated that the link between notice to the Tribe and harm to the parents is attenuated and that the alleged constitutional right to privacy would be an expansion of Supreme Court jurisprudence.

A few commenters specifically addressed PR § 23.107(d)'s requirement that the agency or court keep documents confidential and under seal. A State commenter requested explanation for how it could be possible to keep the documents confidential and under seal while still seeking verification and notice. A few other commenters requested a revision to state that the requirement to keep documents confidential and under seal may not allow the court to deny access to the documents by a Tribe or any party that needs them to fully present their position in the child-custody proceeding. One commenter noted that, just as no parent in a child-custody proceeding has an anonymity interest that supersedes a State's sovereign interest in protecting children, neither does a parent have an anonymity interest that supersedes a Tribe's sovereign interest in protecting children.

Response: As discussed above, the final rule requires notice to Tribes when necessary to determine a child's status as an ''Indian child.'' Tribes, like other governments, are equipped to keep such inquiries confidential, and the final rule requires this of Tribes. While this inquiry to the Tribe may require the State to share confidential information, this sharing is a government-to-government exchange of information necessary for the government agencies' performance of duties. Tribes are often treated like Federal agencies for the purposes of exchange of confidential information in performance of governmental duties. *See, e.g.,* Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3205; Family Rights and Education Protection Act, 20 U.S.C. 1232(g). The final rule balances the rights of the parents to confidentiality with the need to determine the Indian status of the child.

Comment: Several commenters noted that State ''safe haven'' laws, such as the law in Wisconsin and Minnesota, that allow parents to anonymously relinquish children, undermine ICWA and suggested addressing this issue in the regulations. Some commenters asserted that the Federal ICWA preempts State ''safe haven'' laws. Others suggested adding a requirement for representatives of safe haven facilities to ask the parents to provide information regarding Tribal affiliation and then inform any agency or court involved.

Response: The operation of State ''safe haven'' laws is beyond the scope of this rulemaking. Child-custody proceedings involving children relinquished under these laws must still comply with applicable requirements under ICWA and these regulations.

Comment: A few commenters requested clarification that Health Insurance Portability and Accountability Act of 1996 (HIPAA) only applies to medical information and does not apply to information on Tribal affiliation.

Response: These comments are beyond the scope of this rulemaking.

Comment: A few commenters stated that notice is necessary to address situations where the mother places a child voluntarily for adoption, but the proceeding is involuntary to the father.

Response: In situations where a mother voluntarily places an Indian child for adoption, but the proceeding is involuntary to the father, then the involuntary proceedings requirements under section 1912 of the Act apply (*e.g.,* notice, active efforts, evidence beyond a reasonable doubt including

the testimony of qualified expert witnesses).

Comment: A few commenters stated that the proposed language applying ICWA to voluntary placements may create barriers when parents agree to out-of-home placements to allow them to engage in informal supervision services that provide intensive support to families to prevent court intervention.

Response: If a parent agrees to out-of-home placement but may not regain custody of the child upon verbal request, the out-of-home placement is a child-custody proceeding, FR § 23.2, and ICWA requirements (for voluntary or involuntary proceedings, as the case may be) are applicable. ICWA establishes minimum Federal standards that require court involvement at certain points.

3. Applicability of Placement Preferences to Voluntary Proceedings

Comment: A few commenters stated their support of the proposed provision clarifying that placement preferences apply to voluntary proceedings. A commenter suggested revisions to clarify that the placement preferences apply to both involuntary and voluntary proceedings because otherwise, parents who proceed through attorneys rather than an ''agency'' may interpret the provision to apply only to involuntary proceedings.

Many commenters opposed this provision. Commenters in opposition to this provision state that the Tribe's rights should not ''trump'' the rights of the birth parents to choose what they believe to be the best adoptive placements for their children and what placement they as the parents believe is in the best interests of the child. Commenters stated that the proposed rule takes away parents' ability to make placement plans for their children. Several commenters asserted that birth parents may choose to perjure themselves to withhold information on Tribal membership, terminate a pregnancy, or may feel forced to parent the child themselves in an undesirable environment because they will not be able to choose the adoptive family, or may ultimately have the child taken away involuntarily. Some stated that this rule will prevent adoptive families from being open to adopting Indian children due to the fear that the Tribe could override the birth parents' choice and take the child away.

Response: The plain language of section 1915(a) of the Act requires that the placement preferences be applied ''in any adoptive placement,'' which includes both voluntary and involuntary adoptive placements, in the absence of good cause to the contrary. The regulation likewise requires that the preferences be applied in both voluntary and involuntary placements, but notes that a basis for good cause to deviate from the placement preferences may be the request of one or both of the parents, if they attest that they have reviewed the placement options that comply with the order of preference. The regulation therefore permits parents to choose a placement for their child that does not comply with the preferences. *See* FR § 23.132(c).

Comment: A few commenters stated that they intentionally chose to disassociate from the Tribe and therefore find it ''offensive'' that a Tribe could claim their child as a member. One commenter stated that Tribal members who choose not to live on a reservation should not be subject to their Tribal governments making choices for their children, such as where to place their infants for adoption.

Response: Parents who choose to dissociate from the Tribe by not enrolling or by disenrolling (and by not enrolling their child in the Tribe) are not subject to ICWA because the child will not qualify as an ''Indian child.'' If, however, the child is an ''Indian child,'' the Tribe has a legitimate and federally recognized interest in the welfare of that child and the maintenance of ties to the Tribe. The final rule balances this interest with the interests of parents in directing the care, custody, and control of their child.

Comment: A few commenters stated that looking at what is in the best interest of the child should come before everything else and nobody other than the parents should be able to determine what best interest means to them. These commenters stated that culture should be a consideration but the Tribe should not be able to interfere if the family chooses a non-preferred adoptive placement. Commenters also stated that birth mothers of Indian children should have the same rights as all other birth mothers under the Constitution to choose who will raise the child. A few commenters cited Supreme Court cases addressing constitutional rights with respect to family autonomy. *See, e.g., Troxel,* 530 U.S. at 66; *Santosky, supra.* A commenter cited to an Iowa Supreme Court decision stating that ICWA does not curtail a parent's right to choose the family she feels is best suited to raise her child. *In re the interest of N.N. E.,* 752 N.W.2d 1, 9 (Iowa 2008).

Response: While the placement preferences apply to voluntary placements, the final rule allows birth parents to choose families outside the preferences if they attest that they have reviewed the placement options that comply with the order of preference. *See* FR § 23.132(c)(1). This balances the interest of the parent with the other interests protected by ICWA.

Comment: One commenter raised that, in step-parent adoptions, an Indian family should not come before an Indian mother who wants her husband to adopt her Indian child.

Response: Adoptive placement with a step-parent would meet the placement preferences of the Act, because the first placement preference is a member of the child's extended family and step-parents are included in the definition of ''extended family member.'' *See* 25 U.S.C. 1903(2); 1915(a); FR §§ 23.2, 23.130(a)(1).

Comment: A few commenters opposed requiring a diligent search for placements in a voluntary adoption context because it conflicts with the parent's freedom to choose who will raise their children. One commenter stated that, by the time a parent goes to an adoption agency, the parent has already explored potentially placing within the family or community and has ruled it out.

Response: The final rule does not include the provision that the commenters identified.

Comment: One commenter stated that applying the placement preferences to voluntary adoptions will result in Indian children having a more difficult time being adopted if there are no available families within the placement preferences.

Response: The placement preferences for adoptions cover a wide range of individuals, including extended family, other citizens of the Indian child's Tribe, and other Tribal citizen families. Nevertheless, good cause may be found to deviate from the placement preferences based on the parent's request for placement with another family or lack of available placements that meet the preferences, among other reasons. *See* FR § 23.131.

4. Applicability of Other ICWA Provisions to Voluntary Proceedings

Comment: Several commenters stated there is no Tribal right to intervene in voluntary proceedings because section 1911(c) provides the right only in State court proceeding for the foster-care placement of, or termination of parental rights to, Indian child. Other commenters stated that there is a compelling governmental interest of Tribes that supports intervention of right, to protect its sovereign interest in Tribal children, and the welfare of Indian children is the same whether the proceeding is voluntary or involuntary.

Response: The commenters are correct that section 1911(c) refers to ''termination of parental rights'' but not ''adoptive placement''; however, nothing in the Act restricts the phrase ''termination of parental rights'' to involuntary proceedings. By its plain language, the statute permits Tribal intervention in a voluntary termination-of-parental-rights proceeding.

Comment: One commenter stated that active efforts are required in voluntary proceedings, and another stated they are not.

Response: The statutory provision requiring active efforts appears in the section of the Act that primarily addresses involuntary proceedings. *See* 25 U.S.C. 1912(d). The regulation therefore does not require a showing of active efforts to prevent the breakup of the Indian family in voluntary proceedings.

Comment: One commenter requested clarification as to whether the rule is saying the right in section 1912(b) to appointment of counsel in involuntary proceedings is also available in voluntary proceedings (because PR § 23.111(c)(4)(iv) and (v) and PR § 23.111(f) require the notice to include statements regarding the right to counsel).

Response: The statutory provision requiring the right to court-appointed counsel appears in the section of the Act that primarily addresses involuntary proceedings. *See* 25 U.S.C. 1912(b).

5. Applicability to Placements Where Return is ''Upon Demand''

A few commenters requested deletion or clarification of PR § 23.103(f) because of the risk that it will improperly exclude certain adoptive placements from ICWA. One commenter suggested as an alternative ''voluntary placements made without involvement of an agency or State court where the parent can regain custody of the child upon demand are not covered by ICWA.'' One commenter stated that if the State is involved, there is always the threat of involuntary removal if the parent does not ''agree'' to the placement, and that these placements should be subject to ICWA. This commenter suggested adding that every placement in which the State has a say should be treated as an ICWA placement.

Response: As mentioned above, the final rule defines ''upon demand'' to mean verbal demand without any required formalities or contingencies and adds to the definition of ''voluntary placement'' that the placement be without a threat of removal by a State agency. *See* FR § 23.2.

6. Consent in Voluntary Proceedings

Comment: A commenter suggested beginning PR § 23.124(a) with ''any voluntary consent to'' rather than ''a voluntary termination.''

Response: The final rule makes this editorial change for consistency. *See* FR § 23.125(a).

Comment: A commenter noted that PR § 23.124 is important because agencies and attorneys have used voluntary consent to essentially ''trick'' parents and extended family into permanently surrendering their custodial rights. The commenter notes that safeguards, including that the consent be recorded before a judge, are essential to protecting rights and eliminating the possibility of dispute over intent, preventing litigation, and avoiding emotional trauma. Another commenter stated that the rule should instead allow for consent to be entered before a notary public to save time and money.

Response: The regulation's requirement that consent be recorded before a judge repeats the statutory requirement. *See* 25 U.S.C. 1913(a), FR § 23.125.

Comment: One commenter suggested clarifying that the court of competent jurisdiction may not be the same court where the child-custody proceeding takes place.

Response: Neither the statute nor the regulations limit the location of the court of competent jurisdiction.

Comment: A commenter suggested the ''timing limitations'' and ''point at which such consent is irrevocable'' include cross-references to distinguish consent to foster-care placements (to which no time limitations apply) in PR § 23.126 and adoptions (to which there are time limitations—may be withdrawn at any time prior to the entry of the final decree of termination or adoption) in PR § 23.127.

Response: The final rule clarifies the applicable timeframes in FR §§ 23.127, 23.128.

Comment: A few commenters suggested adding a requirement that the court explain on the record the consequences of consent, right to withdraw consent, and procedure for withdrawing consent, and at what point the right to withdraw ends.

Response: FR § 23.125(b) & (c) requires this explanation on the record.

Comment: A commenter requested clarification that the right to withdraw consent cannot be waived.

Response: The right to withdraw consent is a statutory right. Congress did not include a procedure for waiving the right.

Comment: Several commenters stated it would be unclear what consent procedures to follow in a voluntary proceeding if a child is treated as an Indian child, and then the Tribe later determines the child is not eligible for membership. Under those circumstances, the court would have told the parent they have the right to withdraw consent at any time prior to termination of parental rights; whereas, the right to revoke consent under State law may be more limited.

Response: In the situation described by the commenter, if the State court determines that the child is not an Indian child, the State court would need to determine whether to allow the withdrawal under State law.

Comment: A commenter suggested adding that the written consent must be by both the mother and father. Another commenter suggested adding that a known biological parent must have the opportunity to consent or object where the other parent has voluntarily consented.

Response: An individual parent's consent is valid only as to himself or herself.

Comment: A commenter recommended revising ''need not be made in open court'' to clarify that the consent still must be recorded before a judge, but need not be recorded in a session open to the public.

Response: FR § 23.125(d) clarifies that the consent must be recorded before a judge, though it need not be recorded in a session open to the public.

Comment: A commenter stated that the provision that ''a consent given prior to or within 10 days after the birth is not valid'' infringes on a parent's right to arrange for adoption.

Response: The final rule retains this provision because it is statutory. *See* 25 U.S.C. 1913(a).

Comment: A commenter suggested allowing incarcerated parents that cannot leave prison to attend court for this purpose to consent without attending court to avoid undue delays in permanency for children.

Response: The final rule encourages the use of alternative methods of participation such as participation by telephone, videoconferencing or other methods. *See* FR § 23.133.

7. Consent Document Contents

Comment: Commenters suggested requiring additional information in the consent document (PR § 23.125), such as the name and address of the non-custodial parent, parents' Tribal enrollment numbers, the name and address of prospective adoptive or preadoptive parents, and details

regarding the right and timeframes for withdrawing consent.

Other commenters stated that the extent of information proposed is inappropriate, and suggested deleting:

- The address of the consenting parent because the information would already be in other files and could cause confidentiality concerns; and
- Identification and addresses of foster parents because of confidentiality.

Response: The final rule establishes that the written consent must include the name and birthdate of the Indian child, the name of the Indian child's Tribe, identifying Tribal enrollment number, if known, and the name of the consenting parent. It must also clearly set out any conditions to the consent. *See* FR § 23.126. A State may choose to include additional information.

Comment: A few commenters suggested adding a provision stating that any consent not executed as described is not binding.

Response: The final rule requires that any conditions be set out in the written consent, because section 1913(a) requires the consent to be in writing in order to be valid. *See* FR § 23.126(a).

8. Withdrawal of Consent

Comment: A few commenters suggested adding when consent to a termination of parental rights or adoption or consent to a foster-care placement may be withdrawn.

Response: The final rule addresses the deadline for withdrawing consent to the termination of parental rights and adoption, and adds that consent to a foster-care placement may be withdrawn ''at any time.'' *See* FR § 23.127, § 23.128.

Comment: A commenter requested clarification that the parent withdrawing the consent does not need to be the person who files the withdrawal in court because many parents may not have legal representation and may lack the sophistication to file papers with the court and the parent may not be informed as to which court the consent was filed in. This commenter stated that the parent should be allowed to file the withdrawal with current custodians, their attorney, or the agency that took the consent, or as a last resort with BIA.

Response: The final rule sets as a default standard that the parent or Indian custodian must file a written withdrawal of consent with the court, or testify before the court, but that State law may provide additional methods for withdrawing consent. *See* FR § 23.127, § 23.128. This is not intended to be an overly formalistic requirement. Parents involved in pending foster-care placement or termination-of-parental-rights proceedings can be reasonably expected to know that there are court proceedings concerning their child, and the final rule balances the need for a clear indication that the parent wants to withdraw consent with the parent's interest in easily withdrawing consent.

Comment: A few commenters opposed the requirements for withdrawal of consent to be filed. A commenter stated that ICWA's intent was to make it as easy as possible to withdraw consent in furtherance of having Indian children raised by their families, so they should be able to do so in any way where the intent to withdraw is clear. Another commenter stated that State law may permit revocation without filing an instrument in court, and that the requirement for filing may delay return of the child.

Response: The final rule continues to require a filing of the withdrawal with the court, but adds testimony before the court as an option to fulfill this requirement, because the formality roughly equal to that required for the original consent is appropriate and it is important that the court and other parties know when the parent seeks to withdraw consent. The final rule sets this standard as a default, but States may have additional methods for withdrawing consent that are more protective of a parent's rights that would then apply.

Comment: One commenter stated that the return of the child in PR § 23.126(b) should not be immediate but should be ''as soon as practicable'' as stated in PR § 23.127(b), because there are circumstances where immediate return is not practical. Another commenter noted that section 1913 of the Act does not specify when the child must be returned.

Response: The final rule accepts the suggested edit for return of a child ''as soon as practicable'' if a parent withdraws consent to foster-care placement, but the Department notes that in most cases the return should be nearly immediate because foster-care placement is necessarily intended to be temporary. The final rule retains the requirement for return of the child ''as soon as practicable'' when the parent withdraws consent to a termination or adoption. *See* FR §§ 23.127, 23.128.

Comment: A few commenters opposed the provision stating that consent to termination of parental rights or adoption may be withdrawn any time prior to the entry of the final decree of termination or final decree of adoption, ''whichever is later;'' rather than the statutory language, ''as the case may be.'' These commenters state that courts have uniformly interpreted section 1913(c) to cut off the right to withdraw consent upon entry of the final order terminating parental rights, even if an adoption decree has not been entered.

Other commenters supported the language ''whichever is later.'' One noted that a child has no legal parents after termination but before the final decree of adoption, so if the purpose of adoption is to provide the child with parents, then the biological parents or Indian custodian should be allowed to resume parental responsibilities up to the point of a finalized adoption. Another stated that this phrase addresses confusion caused by the statutory phrase ''as the case may be'' to construe the original intent of the provision that would establish a nationwide standard that does not limit a parent's right to end a possible adoption and secure return of the child.

Response: As a commenter noted, the statute uses the phrase ''as the case may be'' rather than specifying whichever is later. *See* 25 U.S.C. 1913(c). To better address the meaning of ''as the case may be,'' the final rule treats each proceeding separately, so that a parent may withdraw consent to a termination of parental rights any time before the final decree for that termination of parental rights is entered, and a parent may withdraw consent to an adoption any time before the final decree of adoption is entered.

Comment: A commenter stated that PR § 23.127(b) places the burden on the court to notify the placement of the withdrawal of consent, but in some cases the court may not know the contact information for the placement (*e.g.,* where consent was filed in a different court than the one with current jurisdiction and placement was arranged by private parties).

Response: The final rule (like the proposed rule) requires the court to contact the party by or through whom any preadoptive or adoptive placement has been arranged. In most cases this will be the agency, whether public or private. The agency is expected to have the contact information for the placement.

Comment: A commenter suggested using the word ''court'' instead of ''clerk of the court'' which may be too specific.

Response: The final rule uses ''court'' instead of ''clerk of the court.'' *See* FR § 23.128(d).

Comment: A commenter suggested adding a requirement that the court notify the consenting parent or Indian custodian of the entry of a final decree of adoption within 15 days so that they know there is no longer a right to withdraw the consent. This commenter

also suggested requiring the court to notify the consenting parent every 120 days following the consent, to keep them informed as to the progress of adoptive placement in case an adoption never occurs.

Response: The final rule does not incorporate these requirements, as the statute does not require such notice.

9. Confidentiality and Anonymity in Voluntary Proceedings

Comment: Many commenters opposed the proposed rule on the basis that it would violate the parents' right to privacy, confidentiality, and anonymity in choosing a placement. Among the problematic provisions these commenters pointed to were:

- PR § 23.123(a) requiring an inquiry be made into whether the child is an Indian child in voluntary proceedings, because this will result in the parents losing their privacy and confidentiality, particularly in small Tribal communities; and
- The requirement to inform members of the Indian child's extended family, in order to identify a placement.

These commenters noted that the 1979 guidelines stated that the Act gives confidentiality a ''much higher priority'' in voluntary proceedings, and that the Act directs State courts to respect parental requests for confidentiality in voluntary proceedings.

Response: The final rule requires, for the reasons already stated, that the State court determine whether the child is an ''Indian child'' which may, in some instances, require contacting the Tribe. The final rule does not mandate contacting extended family members to identify potential placements. The final rule also includes several protections to ensure confidentiality. Among these are the following:

- With regard to inquiry and verification, the final rule provides that, where a consenting parent requests anonymity, both the State court and Tribe must keep relevant documents and information confidential. *See* FR § 23.107(d).
- With regard to a parent or Indian custodian's consent to a placement or termination of parental rights, the final rule provides that, where confidentiality is requested or indicated, the parent or Indian custodian does not need to execute the consent in a session of court open to the public, as long as he or she executes the consent before a judge. *See* FR § 23.125(d).

M. Dispositions

In ICWA, Congress expressed a strong Federal policy in favor of keeping Indian children with their families and Tribes whenever possible. Section 1915, which lays out the placement preferences, constitutes the ''most important substantive requirement [that ICWA] imposed on state courts.'' *Holyfield,* 490 U.S. at 36. It establishes a series of preferred placements for foster care, preadoptive, and adoptive placements. It also allows the Indian child's Tribe to establish a different order of preference. The party urging that the ICWA preferences not be followed bears the burden of proving by clear and convincing evidence the existence of ''good cause'' to deviate from such a placement. 25 U.S.C. 1915(a), (b); FR § 23.132(b).

Congress established preferred placements in ICWA that it believed would help protect the needs and long-term welfare of Indian children and families, while providing the flexibility to ensure that the particular circumstances faced by individual Indian children can be addressed by courts. In §§ 23.129–23.132, the final rules provide guidance to States to ensure nationwide uniformity of the application of these placement preferences as well as the standards for finding good cause to deviate from them.

The preferences in ICWA and the final rule codify the best practice in child welfare of favoring extended family placements, including placement within a child's broader kinship community. If a child is removed from her parents, the first choice in child-welfare practice for an alternative placement—for all children, not just Indian children—is the child's extended family. *See* National Council of Juvenile and Family Court Judges, Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases 10–11 (2000) (''An appropriate relative who is willing to provide care is almost always a preferable caretaker to a non-relative.''); Child Welfare League of America, Standard of Excellence for Adoption Services 1.10 (2000) (2000) (''Adoption Standards'') (''The first option considered for children whose parents cannot care for them should be placement with extended family members . . .''); Child Welfare League of America, Standard of Excellence for Kinship Care Services 1.4 (2000) (''Kinship Care Standards'') (''Kinship care . . . should be the first option considered . . .''); Elaine Farmer & Sue Moyers, Kinship Care: Fostering Effective Family and Friends Placements (2008).

Placing children with their extended family benefits children. *See* Adoption Standards 8.24, 4.23 (kinship care ''maximizes a child's connection to his or her family''); Tiffany Conway & Rutledge Hutson, *Is Kinship Care Good for Kids?,* Center for Law and Social Policy 2 (Mar. 3, 2007) (''[T]he research tells us that many children who cannot live with their parents benefit from living with grandparents and other family members.'') (emphasis omitted). This is true for children who are placed in foster care as well as those who are adopted. *See* Kinship Care Standards, at 5 (noting beneficial outcomes of kinship care for foster care including children being less likely to experience multiple placements and more likely to be successfully reunified with their parents); Adoption Standards § 4.23; Marc A. Winokur, et al., *Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes,* 89 Families in Soc'y: J. Contemp. Soc. Sciences 338, 344–45 (2008) (reporting better outcomes for children in kinship care on several metrics). Congress recognized that this general child-welfare preference for placement with family is even more important for Indian families, as one of the driving concerns leading to the passage of ICWA ''was the failure of non-Indian child welfare workers to understand the role of the extended family in Indian society.'' *Holyfield,* 490 U.S. at 35 n.4.

Even if biological relatives are not available for placements, there are benefits to children from placements within their community, which Congress recognized by establishing placement preferences for Tribal members. 25 U.S.C. 1915(a), (b). Again, this is not just a principle of child-welfare practice for Indian children, but for all children. *See* Kinship Care Standards §§ 1.1, 2.8. But it has special force and effect for Indian children, since, as Congress recognized, there are harms to individual children and parents caused by disconnection with their Tribal communities and culture, and also harms to Tribes caused by the loss of their children.

Recognizing the benefits of placements with family and within communities, Congress has repeated its emphasis on such placements in subsequent statutes in the years since it passed ICWA. For example, in order to obtain Federal matching funds, a State must consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards, and must exercise ''due diligence'' to identify, locate, and notify relatives when children enter the foster care

system. 42 U.S.C. 671(a)(19), (29); see also *Miller* v. *Youakim,* 440 U.S. 125, 142 n.21 (1979) (noting ''Congress' determination that homes of parents and relatives provide the most suitable environment for children''). Congress has also required states receiving Federal funds to prioritize placement in close proximity to the parents' home, recognizing the importance of placement within the community. 42 U.S.C. 675(5)(A).

Congress, through ICWA's placement preferences, and the Department, through this regulation, continue to treat the physical, mental, and emotional needs of the Indian child as paramount. *See, e.g.,* FR § 23.132(c), (d). These physical, mental, and emotional needs include retaining contact, where possible, with the Indian child's extended family, community, and Tribe. If there are circumstances in which an individual child's extraordinary physical, mental, and emotional needs could not be met through a preferred placement, then good cause may exist to deviate from those preferences. *See* FR § 23.132(c)(4).

The Department received many comments regarding what may constitute ''good cause'' to deviate from the placement preferences and whether the final rule should set out such factors. By providing clear guidance on what constitutes ''good cause'' to deviate from the placement preferences, the final rule gives effect to the fact that Congress intended good cause to be a limited exception, rather than a broad category that could swallow the rule. The Department also recognizes that the question of what constitutes good cause is a frequently litigated area of ICWA, and this litigation can result in harmful delays in achieving permanency for children. For these reasons, the Department has determined that it is important to provide some parameters on what may be considered ''good cause'' in order to give effect to ICWA's placement preferences.

The final rule, therefore, lays out five factors upon which courts may base a determination of good cause to deviate from the placement preferences. These factors are discussed in more detail below in the response to comments, but include the request of the parents, the request of the child, sibling attachment, the extraordinary physical, mental, or emotional needs of the child, and the unavailability of a suitable preferred placement. FR § 23.132(c). It also makes clear that a court may not depart from the preferences based on the socioeconomic status of any placement relative to another placement or based on the ordinary bonding or attachment that results from time spent in a non-preferred placement that was made in violation of ICWA. FR § 23.132(d), (e).

The final rule also recognizes that there may be extraordinary circumstances where there is good cause to deviate from the placement preferences based on some reason outside of the five specifically-listed factors. Thus, the final rule says that good cause ''should'' be based on one of the five factors, but leaves open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences because of some other reason. While the rule provides this flexibility, courts should only avail themselves of it in extraordinary circumstances, as Congress intended the good cause exception to be narrow and limited in scope.

As requested by commenters, the rules governing placement preferences recognize the importance of maintaining biological sibling connections. The placement preferences allow biological siblings to remain together, even if only one is an ''Indian child'' under the Act, because FR § 23.131(a) provides that the child must be placed in the least restrictive setting that most approximates a family, allows his or her special needs to be met, and is in reasonable proximity to his or her home, extended family, and/or siblings. The sibling placement preference does not mean ICWA applies to a sibling who is not an ''Indian child'' but rather makes clear that good cause can appropriately be found to depart from ICWA's placement preferences where doing so allows the ''Indian child'' to remain with his or her sibling. Because keeping biological siblings together contributes toward a setting that approximates a family, the final rule explicitly adds ''sibling attachment'' as a consideration in choosing a setting that most approximates a family. *See* FR § 23.131(a)(1). If for some reason it is not possible to place the siblings together, then FR § 23.131(a)(3) mandates that the Indian child should be placed, if possible, in a setting that is within a reasonable proximity to the sibling. In addition, if the sibling is age 18 or older, that sibling would qualify as a preferred placement, as extended family.

A number of commenters praised or questioned the provisions at PR § 23.128(b) requiring, in certain circumstances, a search to identify placement options that would satisfy the placement preferences. The final rule has been modified to include a requirement that, in order to determine that there is good cause to deviate from the placement preferences based on unavailability of a suitable placement, the court must determine that a diligent search was conducted to find placements meeting the preference criteria. *See* FR § 23.132(c)(5). This provision is required because the Department understands ICWA to require proactive efforts to comply with the placement preferences and requires more than a simple back-end ranking of potential placements. It is also consistent with the Federal policy for all children—not just Indian children—that States are to exercise ''due diligence'' to identify, locate, and notify relatives when children enter the foster care system. 42 U.S.C. 671(a)(19), (29).

ICWA requires that there be efforts to identify and assist preferred placements. Section 1915(a) directs that, in any adoptive placement of an Indian child under State law, a preference ''shall'' be given to the Indian child's family and Tribe. 25 U.S.C. 1915(a) (1)–(2). This language creates an obligation on State agencies and courts to implement the policy outlined in the statute. ''Giv[ing]'' a ''preference'' means more than mere prioritization—it connotes the active bestowal of advantages on some over others. *See* Black's Law Dictionary 1369 (10th ed. 2014) (defining ''preference'' as the ''quality, state, or condition of treating some persons or things more advantageously than others'' and the ''favoring of one person or thing over another''). Thus, section 1915(a) requires affirmative steps to give preferred placements certain advantages and a full opportunity to participate in the child-custody determination.

This conclusion is supported by other provisions of section 1915, which work in concert with section 1915(a) to require that State agencies and courts make efforts to identify and assist extended family and Tribal members with preferred placements. Section 1915(e) requires that, for each placement, the State must maintain records evidencing the *efforts to comply* with the order of preference specified in section 1915. 25 U.S.C. 1915(e). To allow oversight of such efforts, Congress further required that those records be made available at any time upon the request of the Secretary or the Indian child's tribe. *Id.* Thus, reading Sections 1915(a) and 1915(e) together, it is clear that Congress demanded documentable ''efforts to comply'' with the ICWA placement preferences.

Courts have recognized that State efforts to identify and assist preferred placements are critical to the success of the statutory placement preferences. *See Native Village of Tununak* v. *State,*

Dep't of Health and Soc. Servs. (Tununak II), 334 P.3d 165, 177–78 (Alaska 2014) (noting that before a court in which an adoption proceeding is pending can even ''entertain[] argument that there is good cause to deviate from section 1915(a)'s preferred placements, it must searchingly inquire about the existence of, and [the State's] efforts to comply with achieving, suitable section 1915(a) preferred placements''); *In re T.S.W.,* 276 P.3d 133, 142–44 (Kan. 2012) (rejecting a lower court's determination that there was good cause to deviate from the placement preferences based, in part, on the adoption agency's failure to make adequate efforts to identify potential preferred placements); *In re D.W.,* 795 N.W.2d 39, 44–45 (S.D. 2011) (carefully examining the sufficiency of the steps that the State took to find a suitable preferred placement); *In re Jullian B.,* 82 Cal. App. 4th 1337, 1347 (Cal. Ct. App. 2000) (emphasizing that ICWA requires the State to ''search diligently for a placement which falls within the preferences of the act''); *Pit River Tribe* v. *Superior Court,* No. C067900, 2011 WL 4062512, at *10, *12 (Cal. Ct. App. Sept. 14, 2011).

Finally, the final rule provides that a court may not consider, as the sole basis for departing from the preferences, ordinary bonding or attachment that flows from time spent in a non-preferred placement that was made in violation of ICWA. In response to commenters' concerns, the final rule adjusts the proposed provision stating that ''ordinary bonding'' is not within the scope of extraordinary physical, mental, or emotional needs. PR § 23.131(c)(3). The proposed provision may have inappropriately limited court discretion in certain limited circumstances.

1. When Placement Preferences Apply

Comment: Several commenters supported proposed PR § 23.128, emphasizing the need to follow the Act's placement preferences, and noted that it addresses one of the biggest problems in the Act's implementation—the failure to place Indian children in the homes of extended family and Tribal members. One commenter pointed to the repeated failure in one State to investigate preferred placements and the practice of relying on bonding with non-preferred placements as good cause to depart from the placement preferences. Another commenter asserted that States are not pursuing placement preferences even when the Tribe identifies a family that meets the requirements. Several commenters provided reasons for why the placement preferences are so important, including to minimize trauma by placing the child somewhere within their realm of comfort and to promote the best interests of the child by keeping the child with her family or within her Tribal community and culture.

Several opposed PR § 23.128, saying it gives higher priority to the Tribe than to the family, and prevents the court from weighing relative interests. These commenters stated that placement preferences should be secondary to the individual child's needs and welfare.

Response: The Act requires that States apply a preference for the listed placement categories. 25 U.S.C. 1915. As discussed above, Congress established preferred placements in ICWA that it believed would help protect Indian children's needs and welfare, while providing the flexibility to ensure that particular circumstances faced by individual Indian children can be addressed by courts. In enacting ICWA, Congress also recognized that State and private agencies and State courts sometimes apply their own biases in assessing what placement best meets the individual Indian child's needs and long-term welfare. The final rule reflects the statutory mandate.

Comment: A few Tribal commenters suggested the rule allow for such different orders as established by Tribal law or Tribal-State agreements.

Response: FR § 23.129(a), FR § 23.130(b), and FR § 23.131(c) reflect the statutory requirement that a Tribe may establish a different order of preference by resolution. *See* 25 U.S.C. 1915(c). The Department recognizes that an order of preference established as part of a Tribal-State agreement would constitute an order of preference established by ''resolution,'' 25 U.S.C. 1915(c), particularly as the statute specifically authorizes Tribal-State agreements respecting care and custody of Indian children. 25 U.S.C. 1919.

Comment: A commenter stated that PR § 23.128(a) omits language from section 1915(c) of the Act that the Tribe's order of preference should be followed only ''so long as the placement is the least restrictive setting appropriate to the particular needs of the child.'' According to this commenter, that omitted language is what makes clear that the best interest of the child must be considered and provides a basis for not following the placement preference order.

Response: FR § 23.131 adds the statutory language providing that the placement must be the least restrictive setting that most approximates a family, taking into consideration sibling attachment, allows the Indian child's special needs, if any, to be met, and is in reasonable proximity to his or her home, extended family, and/or siblings. The Department disagrees, however, that this language provides a basis for not following the preference order in the ordinary case.

Comment: A commenter opposed the language in PR § 23.128(a) stating that the placement preferences always apply without a cross-reference to the good cause provision. Likewise, a few commenters stated that PR § 23.129 and § 23.130 should both use the phrase ''in the absence of good cause to the contrary'' as qualifying language because Congress intended State courts to consider the unique circumstances affecting individual children and the statute includes the language ''in the absence of good cause to the contrary'' in each paragraph (section 1915(a) and (b)).

Response: The provision establishing that good cause must exist to depart from the placement preferences is located at FR § 23.129(c). Specific provisions regarding good cause are set out in FR § 23.132; it is not necessary to repeat ''in the absence of good cause to the contrary'' in FR §§ 23.130 or 23.131.

Comment: Several commenters supported requiring a diligent search for placements within ICWA's placement preferences (extended family, Tribal families, and other Indian families) and noted this is a best practice that is in the child's best interest. A commenter stated that the requirement for a diligent search is critically important because ICWA's requirements have been ignored and almost half the children continue to be placed in non-preferred placements. A few commenters suggested further emphasizing the need for States to identify preferred placements by working with Tribes to proactively recruit preferred placement homes.

A few commenters opposed requiring a diligent search, saying it is not required by ICWA and that Congress intended to rely on State family law to establish requirements for placement option searches.

Response: As discussed above, a diligent search is necessarily implied by the Act to comply with the placement preferences. The regulations make this requirement explicit in situations where a party seeks good cause to deviate from the placement preferences based on unavailability. *See* FR § 23.132(c)(5). Furthermore, State agencies generally search for a child's extended family as a matter of practice.

Comment: A commenter stated that the diligent search for foster placements including homes licensed, approved, or specified by the child's Tribe conflicts with the Act's requirement that the

child be placed within a reasonable proximity to his or her home (as well as other requirements associated with Federal funding).

Response: While the specific portion of PR § 23.128(b) that the commenter is addressing is not included in the final rule, FR § 23.131(a) reflects the Act's requirements for the child to be placed in the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met, and within reasonable proximity to the child's home. *See* 25 U.S.C. 1915(b), (c).

Comment: A commenter asked whether the showing as to the diligent search for placements has to be made at every hearing, or whether the rule is creating a requirement that a specific placement proceeding happen in each ICWA case that does not comply with the first placement preference. This State commenter also expressed concern regarding State resources this would require.

Response: The rule does not require a showing at every hearing that a diligent search for placements has been made or that a specific hearing be held to show why the first placement preference was not attainable. The rule requires that, if the agency relies on unavailability of placement preferences as good cause for deviating from the placement preferences, it must be able to demonstrate to the court on the record that it conducted a diligent search. *See* FR § 23.132(c)(5). This showing would occur at the hearing in which the court determines whether a placement or change in placement is appropriate.

Comment: Several commenters requested that the rule address the Alaska Supreme Court's limitation in *Native Village of Tununak* v. *Alaska* to define what a preferred placement family needs to do to demonstrate a willingness to adopt a particular child (*e.g.,* the individual, agency, or Tribe informs the court orally during a proceeding or in writing of willingness to adopt). Several other commenters stated that the rule ignores the Supreme Court's ruling that the preferences are inapplicable where no eligible placement has formally sought to adopt the child.

Response: As discussed above, ICWA requires that there be efforts to identify and assist preferred placements. As a recommended practice, the State agency should provide the preferred placements with at least enough information about the proceeding so they can avail themselves of the preference. Alaska itself has taken corrective action to address the ruling in *Tununak* by modifying its standards to facilitate more means by which to demonstrate willingness to adopt a particular child. We encourage other States to follow Alaska's lead in this regard.

Comment: A few commenters stated that it is impractical to notify each of the homes listed in PR § 23.128(b)(4) (institutions for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs). A commenter also pointed out that, practically, there are no accessible lists of every Indian foster home in the State or whether they would want such notification which could amount to hundreds of letters each year.

Response: The specific portion of the provision of proposed rule § 23.128(b) that commenters are addressing is not included in the final rule. As discussed above, however, the rule does include a requirement that, in order to determine that there is good cause to deviate from the placement preferences based on unavailability of a suitable placement, the court must determine on the record that a diligent search was conducted to find suitable placements meeting the preference criteria. *See* FR § 23.132(c)(5). A diligent search will almost always require some contact with those preferred placements that also meet the requirements for a least restrictive setting within a reasonable proximity, taking into account the child's special needs. It may also involve contacting particular institutions for children approved or operated by Indian Tribes if other preferred placements are not available.

Comment: A few commenters had suggested edits to PR § 23.128(b). For example, a State commenter requested clarifications in PR § 23.128(b) as to ''placement proceeding'' and ''explanation of the actions that must be taken to propose an alternative placement and to whom those are provided in the proceedings.''

Response: The final rule deletes this provision.

Comment: A commenter suggested changing the last preference to include Indian foster homes ''authorized'' by the Tribe rather than ''licensed'' by the Tribe.

Response: The rule includes ''licensed'' because that is the term the Act uses. *See* 25 U.S.C. 1915(b).

Comment: A commenter requested clarification of whether the agency must show why the higher preferences cannot be complied with instead of a lower preference.

Response: The final rule clarifies what the court will examine in determining whether the placement preferences were met or good cause exists to deviate from the placement preferences. *See* FR § 23.132. The agency must document its search for placement preferences and an explanation as to why each higher priority placement preference could not be met. *See* section 1915(e) (requiring that the State maintain documentation ''evidencing the efforts to comply with the order of preference specified in this section''); FR § 23.141.

Comment: One commenter stated that the mandate that placement must always follow the placement preferences is not practical because there are 17 States with no federally recognized Tribes, meaning the child would face a move to a location that would make reunification more difficult.

Response: The fact that a no federally recognized Tribe is located within a State does not mean that there are no family members or members of Tribes residing or domiciled in that State.

Comment: Some commenters requested that the placement preferences allow siblings to remain together even if only one child is an ''Indian child'' as defined by ICWA. One commenter noted that one State regularly finds that a placement with a minor sibling qualifies as a placement with extended family for purposes of the placement preferences.

Response: As discussed above, the rules governing placement preferences recognize and address the importance of maintaining biological sibling connections.

Comment: One commenter stated that the provision at PR § 23.128(c) stating that the request for anonymity does not relieve the obligation to comply with placement preferences is extremely important because many attorneys in voluntary proceedings advise their clients to request anonymity to avoid the placement preferences.

Response: The final rule includes a provision, discussed above, requiring the court to give weight to the request for anonymity in applying the preferences. *See* FR § 23.129(b).

Comment: A few commenters suggested the rule clarify the ability of State-court judges to issue placement orders under ICWA. These commenters stated that such a provision is necessary because some State codes prohibit a State judge from ordering placement, instead leaving the responsibility to the State social workers.

Response: While it may be the practice in some jurisdictions for judges to defer to State agencies, the statute contemplates court review of placements of Indian children. It requires, for example, court review of

whether active efforts were made (section 1912(d)) and an ''order'' for foster-care placement (section 1912(e)) and termination of parental rights (section 1912(f)). Further, the statute establishes a standard of evidence for foster-care-placement orders and termination-of-parental-rights orders (section 1912(e)-(f)), necessarily requiring court involvement.

Comment: A few commenters suggested adding a cross-reference in PR § 23.128(d) to the section delineating the good-cause criteria.

Response: The final rule adds the requested clarification. *See* FR § 23.129(c).

Comment: One commenter requested additional clarification on the requirements in PR § 23.128(e) for maintenance of records.

Response: The final rule moves the requirement regarding maintenance of records from PR § 23.128(e) to FR § 23.141. *See* comments on PR § 23.137, below.

2. What Placement Preferences Apply, Generally

Comment: Several commenters expressed their strong support of the placement preferences as assuring that the child's best interests are met by giving the child the opportunity to be placed with relatives. One commenter noted that traditional Indian spirituality, culture, and history cannot be fully taught by a non-Indian family. Commenters stated that studies reflect that placement of children within the ICWA preferences are more stable by half than placements that do not fall within ICWA's preferences.

A few commenters opposed the placement preferences. One stated that Federal law already seeks to place children within the same family and community. Another stated that the preferences are not a mandate, and that there are not enough Indian foster homes so in some cases children have to be placed in non-Indian homes.

One commenter stated that the rule should make the placement preferences discretionary because it may not always be possible to adhere to the placement preferences, and the rule must allow for flexibility to place a child where his or her physical and emotional needs are best met.

Response: As discussed above, Congress established preferred placements in ICWA that it believed would help protect Indian children's needs and welfare. The statute provides the flexibility to ensure that special circumstances faced by individual Indian children can be addressed by courts. The final rule reflects the child's best interests and the order of the preferred placements. The criteria applicable to foster-care placements allow for placements in which the child's special needs, if any, may be met.

Comment: A few commenters stated that the guidelines contradict the Multiethnic Placement Act (MEPA) to prevent discrimination based on race, color and/or national origin when making placements, and that some Indian children do not have an apparent existing connection to their traditional culture and are thus ''mainstream.''

Response: These comments are based on the misunderstanding that ICWA is a race-based statute. Congress established certain placement preferences based on, and in furtherance of, the political affiliation of Indian children and their parents with Tribes, and the government-to-government relationship between the United States and Tribes. Recognizing that the applicability of ICWA is based on political affiliation rather than race, Congress made clear that MEPA should not be construed to impact the application of ICWA. 42 U.S.C. 674(d)(4), 1996b(3) (each stating this subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978).

Comment: One commenter suggested adding language to clarify that the preferences are in descending order of preference. A commenter stated that States should not be allowed to skip steps in the preferences.

Response: FR §§ 23.130(a) and 23.131(b) state that the preferences are in descending order, reflecting that each placement should be considered (without being skipped) in that order; the preferences are in the order of most preferred to least preferred.

Comment: Several commenters suggested adding a provision to allow the court to consider the Tribe's recommended placement for an Indian child, to take into consideration Tribal custom, law, and practice when determining the welfare of Indian children, as authorized by section 1915(c), which states that the Tribe may establish a different order of preference.

Response: Congress established a method for the Tribe to express its preferences in section 1915(c). FR §§ 23.129(a), 23.130(b), and 23.131(c) are included in the final rule in recognition of that statutory requirement. State courts may also wish to consider a Tribe's recommended placement for a particular child.

Comment: A few commenters stated that the placement preferences should better protect the rights of biological fathers. One suggested including biological fathers in the list of placement preferences.

Response: The final rule's placement preferences reflect the statute. If the biological father meets the criteria for the placement preferences (for example, as a member of the Indian child's Tribe), he may avail himself of the placement preferences. In addition, the Act establishes that unwed fathers who have not acknowledged or established paternity are not considered ''parents'' under the Act; however, by acknowledging or establishing paternity, the father may become a ''parent'' under the Act, and avail himself of ICWA's protections.

Comment: A few commenters stated that the placement preferences should extend beyond the nuclear family to include extended family (aunts, uncles, grandparents) because ICWA was designed to keep Indians rooted to their Tribes and culture if the nuclear family breaks down.

Response: Members of the child's extended family are the first-listed preferred placement. *See* 25 U.S.C. 1915(a), (b); FR § 23.130(a)(1); § 23.131(b)(1).

3. Placement Preferences in Adoptive Settings

Comment: One commenter suggested adding licensed adoptive homes to the list of placement preferences in PR § 23.129 and PR § 23.130.

Response: The rule does not specify licensed adoptive homes in the list of placement preferences because the statute does not specify these homes, and this change would not comport with the intent of Congress to place Indian children, where possible, with extended family or Tribal members.

Comment: A State commenter requested clarification in PR § 23.129(b) of the phrase ''where appropriate'' and whether the child or parent's preference supersedes the placement preferences. A few commenters stated that the rule should use the word ''shall'' or ''must'' to require the court to consider the preference of the Indian child or parent, in accordance with section 1915. A few other commenters supported use of ''should'' in this provision, stating that otherwise the Indian child's or parent's preference would trump the placement preferences.

Response: The final rule reflects the language of the statute. This language does not require a court to follow a child or parent's preference, but rather requires that it be ''considered'' ''where appropriate.''

4. Placement Preferences in Foster or Preadoptive Proceedings

Comment: Several commenters expressed concern that unavailability of preferred placements will result in longer periods of instability for the child or delays in permanency for the child. A few commenters requested that timelines be imposed on finding preferred placements. For example, one commenter stated that once a Tribe is notified, it should have a certain timeframe to provide a permanent home for the child or an exception to ICWA should be made for the well-being of the child, otherwise the rule denies permanency for the child in the name of cultural preservation.

Response: The Department has not identified any authority in the statute for imposing timelines to find a placement; therefore, the rule does not do so. The unavailability of a suitable preferred placement is one of the bases for good cause to depart from the placement preferences, so long as a diligent search for a preferred placement was conducted. FR § 23.132(c)(5). Thus, so long as a prompt and diligent search is made for a preferred placement, these rules should not delay permanency.

Comment: A commenter suggested that a needs assessment by a qualified expert witness should be required in PR § 23.130(a)(2) where it references a child's needs.

Response: The statute explicitly refers to ''special needs'' but does not qualify it as requiring the input of a qualified expert witness, as the statute does in other places. Therefore, the rule does not impose this requirement.

5. Good Cause To Depart From Placement Preferences

Comment: A few commenters said the proposed rule requires a hearing on whether good cause exists and opposed the requirement for an agency to wait for a court to act in order to depart from the placement preferences. One commenter stated that this requirement is contrary to ICWA because while ICWA states that the court must determine there is good cause to deny transfer, it does not require the court to determine whether good cause to depart from placement preferences exists. A State commenter asserted that there will be significant workload increases for agencies if there must be an evidentiary hearing even when there is no objection from the Tribe or parents. This commenter also stated that requiring the judge to determine good cause in the absence of the parties' disagreement puts the court in the role of case administrator rather than arbiter.

Response: Where the requirements of 25 U.S.C. 1912(d)–(e) have been met, a court evidentiary hearing may not be required to effect a placement that departs for good cause from the placement preferences, if such a hearing is not required under State law. *See* section 1915(c). Regardless of the level of court involvement in the placement, however, FR § 23.132(a) requires that the basis for an assertion of good cause must be stated in the record or in writing and the statute requires a record of the placement be maintained. Section 1915(e), FR § 23.141.

Where a Tribe or other party objects, however, the final rule establishes the parameters for a court's review of whether there is good cause to deviate from the placement preferences and requires the basis for that determination to be on the record. *See* FR § 23.129(c). While the agency may place a child prior to or without any determination by the court, the agency does so knowing that the court reviews the placement to ensure compliance with the statute.

Comment: A few commenters supported the requirement in PR § 23.128(b) for ''clear and convincing evidence'' that the placement preferences were met, and in PR § 23.131(b) for ''clear and convincing evidence'' of good cause to depart from the placement preferences. Some of these commenters point out that the court in *Tununak II* overturned the initial application of only a ''preponderance of the evidence'' standard. One commenter stated that elevating the standard of proof to ''clear and convincing evidence'' is an important means of strengthening the statutory preferences, but recommended making it permissive because ICWA intended State courts to retain flexibility. *See* S. Rep. No. 95–597. A few other commenters opposed specifying ''clear and convincing evidence'' as exceeding the Department's authority.

Response: The final rule states that the party seeking departure from the placement preferences should prove there is good cause to deviate from the preferences by ''clear and convincing evidence.'' FR § 23.132(b). While this burden of proof standard is not articulated in section 1915 of the statute, courts that have grappled with the issue have almost universally concluded that application of the clear and convincing evidence standard is required as it is most consistent with Congress's intent in ICWA to maintain Indian families and Tribes intact. *See In re MKT,* 4368 P.3d 771 ¶ 47 (Okla. 2016); *Gila River Indian Cmty.* v. *Dep't. of Child Safety,* 363 P.3d 148, 152–53 (Ariz. Ct. App. 2015); *In re Alexandria P.* 176 Cal.Rptr.3d 468, 490 (Cal. Ct. App. 2014); *Native Vill. of Tununak* v. *Alaska,* 303 P.3d 431, 448, 453 (Alaska 2013) *vacated in part on other grounds by* 334 P.3d 165 (Alaska 2014); *People ex rel. S. Dakota Dep't of Soc. Servs.,* 795 N.W.2d 39, 44, ¶ 24 (S.D. 2011); *In re Adoption of Baby Girl B.,* 67 P.3d 359, 374, ¶ 78 (Okla. Civ. App. 2003); *In re Custody of S.E.G.,* 507 N.W.2d 872, 878 (Minn. Ct. App. 1993); *but see Dep't of Human Servs.* v. *Three Affiliated Tribes of Fort Berthold Reservation,* 238 P.3d 40, 50 n. 17 (Or. Ct. App. 2010) (addressing the issue in a footnote in response to a ''passing'' argument).

While the final rule advises that the application of the clear and convincing standard ''should'' be followed, it does not categorically require that outcome. However, the Department finds that the logic and understanding of ICWA reflected in those court decisions is convincing and should be followed. Widespread application of this standard will promote uniformity of the application of ICWA. It will also prevent delays in permanency that would otherwise result from protracted litigation over what the correct burden of proof should be. So, while the Department declines to establish a uniform standard of proof on this issue in the final rule, it will continue to evaluate this issue for consideration in any future rulemakings.

a. Support and Opposition for Limitations on Good Cause

Comment: Many commenters supported emphasizing the need to follow the placement preferences and limiting agencies' and courts' ability to deviate from the placement preferences based on subjective and sometimes biased factors. Commenters reasoned:

- One of ICWA's primary purposes is to keep Indian children connected to their families, Tribal communities and culture, and yet, currently more than 50% of Native American children adopted are placed into non-Native homes;
- Defining ''good cause'' is within DOI's authority under ICWA;
- Defining ''good cause'' will provide clarity to on-the-ground social workers and others because the phrase ''good cause'' has been interpreted differently among States;
- The provision explaining that the length of time a child is in a non-compliant placement is irrelevant is consistent with best practices in child welfare;
- Restrictions on good cause are necessary to ensure courts do not disregard ICWA's placement preferences

based on a non-Indian assessment of what is ''best'' for the child, such as through a generalized ''best interest'' analysis;

• Use of ''good cause'' to deviate from placement preferences has become so liberal that it has essentially swallowed ICWA's mandate; and

• Without the rule, ''good cause'' leaves so much discretion to State courts that the Tribe rarely prevails in moving a child to a preferred placement after initial placement elsewhere.

Many other commenters opposed the rule's definition of ''good cause.'' Among the reasons stated for this opposition were:

• The rule's basis for ''good cause'' is so narrow that it leaves courts with no flexibility, contrary to congressional intent;

• The rule is not a reasonable interpretation and will not receive deference because it predetermines good cause even though the legislative history explicitly states that the term ''good cause'' was intended to give State courts flexibility;

• The rule excludes ''best interest'' factors as a basis for good cause even though placements directly implicate a child's best interests;

• The rule could require placement in a home that every party to the proceeding, including the Tribe, believes is contrary to the best interests of the child; and

• The rule violates Indian children's rights to due process by limiting the factors and probative evidence a State court can consider as compared to non-Indian children.

One commenter expressed concern that courts may interpret the word ''must'' as requiring them to automatically find good cause when any of the listed circumstances exist.

Response: As discussed above, Congress established preferred placements in ICWA that it believed would help protect the long-term health and welfare of Indian children, parents, families, and Tribes. ICWA must be interpreted as providing meaningful limits on the discretion of agencies and courts to remove Indian children from their families and Tribes, since this is the very problem that ICWA was intended to address. Accordingly, the final rule identifies specific factors that should provide the basis for a finding of good cause to deviate from the placement preferences. These factors accommodate many of the concerns raised by commenters, and include the request of a parent, the child, sibling attachments, the extraordinary physical, mental, or emotional needs of a child, and the unavailability of suitable preferred placements. The final rule retains discretion for courts and agencies to consider any unique needs of a particular Indian child in making this determination.

b. Request of Parents as Good Cause

Comment: A commenter stated their support of PR § 23.131(c)(1), requiring both parents to request the deviation in order for it to qualify as good cause, because it will lessen instances where the rights of the child's mother are deemed more important than those of the father. A few commenters opposed requiring both parents to request because there are instances in which one parent is unavailable, cannot be found, is mentally disabled, or has been proven unfit. One stated that there may be instances where both parents do not agree, but the court should still be encouraged to consider each parent's request. A commenter also pointed to case law holding that a single parent's request can constitute good cause. According to this commenter, if a noncustodial parent may not invoke section 1912 to thwart an adoption, under *Adoptive Couple,* then a noncustodial parent has no right to be heard on placement preferences. A commenter stated that the ordinary meaning of section 1915(c) is that the preference of the parent—meaning one or both parents—be considered in applying or departing from the placement preferences, where appropriate.

Response: The final rule changes the requirement for both parents to make the request to ''one or both parents,'' in recognition that in some situations, both parents may not be available to make the request. This is also consistent with the statutory mandate that, where appropriate, the preference of the Indian child or parent [(singular)] shall be considered. 25 U.S.C. 1915(c). If the parents both take positions on the placement, but those positions are different, the court should consider both parents' positions.

Comment: A few commenters suggested the court should also consider the preference of the child's guardian ad litem in making the placement.

Response: The rule does not add that a guardian ad litem's request should be considered as good cause because Congress expressly allowed for consideration of the preference of the Indian child or parent, and did not include the guardian ad litem. *See* 25 U.S.C. 1915(c).

Comment: A few commenters opposed the provision allowing consideration of the request of parents in determining good cause because, they stated, parents are often pressured to accept placement and this provision encourages coercion. Another commenter stated that there is no rationale for acceding to a parental request for placement in the context of an involuntary removal of a child. Likewise, a few commenters stated that the parent's preference does not automatically show good cause to deviate and should only be a consideration. One commenter stated that parents who decided not to raise their child should not have unilateral authority to determine the child's placements and whether the child will have continued contact with relatives and the Tribe. One commenter supported including the parent's request as good cause, and asserted that a birthparent's preference should be considered unless otherwise proven not to be in the child's best interest.

Response: The statute explicitly provides that, where appropriate, preference of the parent must be considered. *See* 25 U.S.C. 1915(c). The regulation therefore provides that the request of the parent or parents should be a consideration in determining whether good cause exists. *See* FR § 23.132(c)(1). The request of the parent is not determinative, however. The final rule includes a provision requiring that the parent or parents attest that they have reviewed the placement options that comply with the order of preference are intended to help address concerns about coercion. *See* FR § 23.132(c)(1).

Comment: One commenter requested clarifying that the parent must attest that they have reviewed the actual families that meet the placement preferences, not just the categories. The commenter stated that if the parents still object after reviewing the preferences, the agency or court should first be required to explore other available preferred families before concluding there is good cause.

Response: The rule uses the term ''placement options'' to refer to the actual placements, rather than just the categories. *See* FR § 23.132(c)(1). A court or agency may consider in determining whether good cause exists whether a diligent search was conducted for placements meeting the placement preferences.

Comment: One commenter stated that the non-Indian foster parent should not be considered the de facto parent for the purposes of this provision.

Response: The definition of ''parent'' does not include foster-care providers. *See* FR § 23.2.

c. Request of the Child as Good Cause

Comment: One commenter opposed allowing consideration of the request of the child in determining ''good cause'' at PR § 23.131(c)(2) because children can be groomed to request a certain placement and it is subjective when a child is able to understand the issue.

Response: The statute explicitly provides that, where appropriate, preference of the Indian child must be considered. *See* 25 U.S.C. 1915(c). The rule adds that the child must be of ''sufficient age and capacity to understand the decision that is being made'' but leaves to the fact-finder to make the determination as to age and capacity. *See* FR § 23.132(c)(2). The rule also leaves to the fact-finder any consideration of whether it appears the child was coached to express a certain preference.

Comment: One commenter agreed with not restricting this provision to children age 12 or older, but recommended language that the consent be completely voluntary and that there be a determination that the child can understand the decision being made, to protect against the child being pressured. Two other commenters stated that the rule should set a baseline age because otherwise there will be starkly different treatments of Indian children (*e.g.,* reporting that South Carolina has found a 3-year-old competent to testify whereas in Oklahoma a 12-year old is presumed competent to state a preference).

Response: Each Indian child and their circumstances differ to a degree that it is not be appropriate to establish a threshold age for a child to express a preference. The rule leaves it to the fact finder to determine whether the child is of ''sufficient age and capacity'' to be able to understand the decision that is being made.

Comment: Several commenters suggested that the rule should provide that Tribal approval of the non-preferred placement constitutes good cause because the rule should defer to a Tribe's determination that a non-preferred placement is in the child's best interests.

Response: The statute provides that the preference of the parent or child should be considered and allows the Tribe to express its preference by establishing a different order of preference by resolution. 25 U.S.C. 1915(c). In addition, the statute and the rule make clear that a foster home specified by the Indian child's Tribe is a preferred placement. FR § 23.131(b)(2).

d. Ordinary Bonding and Attachment

Comment: Many commented on ordinary bonding and attachment. A high-level summary of these comments is provided here. Many commenters strongly supported PR § 23.131(c)(3), stating that ''ordinary bonding or attachment'' does not qualify as the extraordinary physical or emotional needs that may be a basis for good cause to deviate from the placement preferences. Some who supported the provision cited agencies' deliberate failure to identify preferred placements as reasons for a child being initially placed with a non-preferred placement. Among the reasons cited for support of this provision were:

- Ordinary bonding is not relevant to good cause to deviate from placement preferences because ordinary bonding shows that the child is healthy and can bond again.
- The proposed provision is limited in that it still allows for consideration of extraordinary bonding as good cause.
- Many Western bonding and attachment theories are not as relevant to Indian children because they are based on non-indigenous beliefs and psychological theories about connection with one or two individual parents.
- Allowing normal emotional bonding to be considered good cause would negate ICWA's presumption that the statutory placement preferences are in the Indian child's best interest.
- The proposed provision is needed to address the tactic of placing Indian children in non-preferred placements, delaying notification to the child's Tribe and family, then arguing good cause to deviate from the placement preferences based on the child's bonding with the caregivers (in other words, the proposed provision is necessary to remove incentives to place children in non-preferred placement families and removes rewards for non-compliance).
- The proposed provision is necessary to encourage diligent searches to identify preferred placements.
- The proposed provision supports the intent of ICWA to return a child to biological family even where there is a psychological parenting relationship between the placement family and child, and that Congress arrived at this approach after debate and ample testimony, including significant testimony from mental health practitioners.
- The proposed provision recognizes that the long-term best interests protected by ICWA outweigh short-term impacts of breaking an ordinary bond.
- Comparing emotional ties between the foster family and child to those with a biological family undermines the objective of reunification and preservation of families.
- Opposing arguments are unfounded.

Some interpreted the rule as establishing that ordinary bonding or attachment resulting from a non-preferred placement must not be the ''sole basis'' for a court refusing to return a child to his or her family and supported this interpretation.

Many commenters strongly opposed PR § 23.131(c)(3)'s exclusion of ''ordinary bonding or attachment'' as a basis for good cause to deviate from the placement preferences. According to these commenters, the main reason for initial non-preferred placements is unavailability of homes meeting the placement preferences, and that despite the best efforts of caseworkers to find preferred placements, it becomes necessary to put Indian children in non-preferred placements. Other cited reasons were that preferred placements were too far away or the Tribe delays finding a preferred placement. Among the reasons stated for opposition to the provision were:

- Ordinary bonding is relevant to whether there is good cause to deviate from the placement preferences because breaking ordinary bonds harms the child.
- The importance of bonding to children's well-being has been established by documented research.
- Indian children do not bond differently from other children.
- The proposed provision limits court discretion.
- The proposed provision violates children's constitutional rights, giving them less protection than other children to a stable, permanent placement that allows the caretaker to make a full emotional commitment to the child.
- The proposed provision violates precedent of a majority of State courts that have held they may consider the Indian child's attachment to, or bond with, current caregivers and the amount of time the child has been with caregivers.
- The proposed provision will increase resistance to ICWA.
- The proposed provision encourages breaking of ordinary bonds.
- The proposed provision will not address historical trauma.
- The proposed provision places Tribal interests above the child's interests.

Some commenters neither fully supported nor fully opposed the provision prohibiting consideration of ordinary bonding as good cause. A few agreed that a prolonged placement

arising out of a violation of ICWA should not constitute good cause, but expressed concern that the provision could preclude a court's consideration of the likelihood of severe emotional trauma to a child from a change in placement under any circumstance, placing an unnecessary constraint on State courts and disserving Indian children. One commenter stated that bonding should not be considered, whether ordinary or extraordinary. Some commenters suggested alternative approaches to the provision prohibiting consideration of ordinary bonding as good cause.

Response: The final rule provides that a court may not consider, as the sole basis for departing from the preferences, ordinary bonding or attachment that flows from time spent in a non-preferred placement that was made in violation of ICWA. In response to commenters' concerns, the final rule adjusts the proposed provision regarding ''ordinary bonding'' as not being within the scope of extraordinary physical, mental, or emotional needs. PR § 23.131(c)(3). The proposed provision may have inappropriately limited court discretion in certain circumstances. This is particularly the case, given the apparent ambiguity regarding the proposed provision's reference to ''placement[s] that do[ ] not comply with ICWA.'' *Id.*

The Department recognizes that the concepts of bonding and attachment can have serious limitations in court determinations. *See e.g.,* Comments of Casey Family Programs, et al., at 6 n.9 (citing literature including David E. Arrendondo & Leonard P. Edwards, Attachment, Bonding, and Reciprocal Connectedness, 2 J. Ctr. for Fam. Child. & Cts. 109, 110–111 (2000) (discussing the ways that bonding and attachment theory ''may mislead courts'')). The Department also recognizes that, as the Supreme Court has cautioned, courts should not '' 'reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation,' '' *Holyfield,* 490 U.S. at 54 (citation omitted), by treating relationships established by temporary, non-ICWA-compliant placements as good cause to depart from ICWA's mandates.

The final rule, therefore, adjusts the ''ordinary bonding'' provision, stating that ordinary bonding and attachment that flows from length of time in a non-preferred placement due to a violation of ICWA should not be the sole basis for departing from the placement preferences. This provision addresses concerns that parties may benefit from failing to identify that ICWA applies, conduct the required notifications, or identify preferred placements. While it can be difficult for children to shift from one custody arrangement to another, one way to limit any disruption is to mandate careful adherence to procedures that minimize errors in temporary or initial custodial placements. It can also be beneficial to facilitate connections between an Indian child and potential preferred placements. For example, if a child is in a non-preferred placement due to geographic considerations and to promote reunification with the parent, the agency or court should promote connections and bonding with extended family or other preferred placements who may live further away. In this way, the child has the opportunity to develop additional bonds with these preferred placements that will ease any transitions.

The comments reflected some confusion regarding what constitutes a ''placement that does not comply with ICWA.'' For clarity, the final rule instead references a ''violation'' of ICWA to emphasize that there needs to be a failure to comply with specific statutory or regulatory mandates. The determination of whether there was a violation of ICWA will be fact specific and tied to the requirements of the statute and this rule. For example, failure to provide the required notice to the Indian child's Tribe for a year, despite the Tribe having been clearly identified at the start of the proceeding, would be a violation of ICWA. By comparison, placing a child in a non-preferred placement would not be a violation of ICWA if the State agency and court followed the statute and applicable rules in making the placement, including by properly determining that there was good cause to deviate from the placement preferences.

Comment: A few commenters stated that the rule eradicates courts' ability to find ''good cause'' to deviate from the placement preferences by requiring that only qualified expert witnesses can demonstrate good cause based on ''extraordinary bonding.''

Response: The final rule does not require testimony from a qualified expert witness to establish a good cause determination based on the extraordinary physical, mental, or emotional needs of the child. *See* FR § 23.132(c).

e. Unavailability of Placement as Good Cause

Comment: One commenter supported PR § 23.131(c)(4) except for the reference to ''applicable agency'' because the placement preferences apply even when no agency is involved.

Response: The final rule deletes reference to ''applicable agency'' in this section.

Comment: A few commenters suggested clarifying that a ''diligent search'' for a preferred placement must be conducted, rather than requiring ''active efforts'' because ''active efforts'' is a term of art with specific statutory application.

Response: The final rule clarifies that a diligent search must be conducted, rather than using the phrase ''active efforts,'' because the statute uses the phrase ''active efforts'' in a different context. *See* FR § 23.132(c)(5).

Comment: A commenter objected to the language in PR § 23.131(c)(4) stating that a placement is not ''unavailable'' (as a basis for good cause to depart from the placement preferences) if the placement conforms to the prevailing social and cultural standards of the Indian community. The commenter stated that this language is not in ICWA and may lead to argument that good cause does not exist even where the placement does not pass a background check, potentially violating ASFA, which disqualifies people convicted of certain crimes from serving as a placement. This commenter asserted that inability to pass ASFA or State background check requirements is per se good cause.

Response: ICWA requires that the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community. *See* 25 U.S.C. 1915(d). Nothing in the rule eliminates other requirements under State or Federal law for determining the safety of a placement.

f. Other Suggestions Regarding Good Cause To Depart From Placement Preferences

Comment: One commenter stated that the rule should provide that ''good cause'' to deviate from the placement preferences exists if serious emotional or physical damage to the child is likely to result, to follow the line of reasoning in section 1912(e) that uses that standard for continued custody.

Response: The final rule provides that the extraordinary physical, mental, or emotional needs of the child may be the basis for a good cause determination. *See* FR § 23.132(c)(4). In addition, the final rule provides that the unavailability of a suitable placement may be the basis for a good cause determination. *See* FR § 23.132(c)(5). Both of these provisions would allow a court to address the commenter's

concern about preventing serious emotional or physical damage to a child. In addition, the final rule retains discretion for State courts to consider other factors when necessary.

6. Placement Preferences Presumed To Be in the Child's Best Interest

Many commented on the intersection of a ''best interests analysis'' with ICWA's placement preferences. A high-level summary of these comments is provided here. Several commenters stated that a ''best interest of the child'' analysis is not appropriate for Indian children, for the following reasons.

- ICWA compliance already presumptively furthers best interests of the child and represents best practices in child welfare generally.
- There is a movement in literature to replace the ''best interest'' consideration altogether in favor of the least detrimental among available alternatives for the child, to focus on causing no harm to the child, rather than an implication that courts or agencies are well-positioned to determine what is ''best.''
- ICWA was passed to overcome the bias, often subconscious, and lack of knowledge about Tribes and Indian children, and leaving ''best interests'' to be argued by individuals opposing ICWA's preferences evades ICWA's purposes. The ''best interests'' analysis is inherently open to bias.
- The ''best interests of the child'' analysis permits courts and agencies to ignore the placement preferences at will.
- The ''best interests of the child'' analysis is necessarily broader and richer for Indian children because it includes connection to Tribal community, identity, language and cultural affiliation.
- The ''best interests'' analysis is not appropriate in any determination of ''good cause'' because ''good cause'' and ''best interest'' appear in different parts of the statute, meaning Congress carefully and expressly ''cabined'' each concept, and as such should be treated separately.

Several commenters suggested adding language drawn from the Michigan Indian Family Preservation Act on how to determine a child's best interests.

Other commenters asked the Department to keep the focus on the best interests of the children and opposed having no independent consideration of the best interests of the Indian child for the following reasons:

- The presumption that ICWA compliance is in the child's best interest is not always true.
- The ''best interests of the child'' analysis is of paramount importance.
- The ''best interests of the child'' analysis is compatible with ICWA and should be explicitly allowed because ICWA was not enacted to ignore the physical and emotional needs of children and that every child should have all factors considered for the best possible outcome because not doing so would be treating them as possessions.
- The ''best interests of the child'' analysis is not different for Indian children.
- Case law establishes that the child's best interests must be considered and establishes that the child's best interests should be considered in ''good cause'' determinations.
- Not considering the child's best interest violates the constitutional rights of the children and parents.

Response: As discussed above, ICWA and this rule provide objective mandates that are designed to promote the welfare and short- and long-term interests of Indian children. Congress enacted ICWA to protect the best interests of Indian children. However, the regulations also provide flexibility for courts to appropriately consider the particular circumstances of the individual children and to protect those children. For example, courts do not need to follow ICWA's placement preferences if there is ''good cause'' to deviate from those preferences. The ''good cause'' determination should not, however, simply devolve into a free-ranging ''best interests'' determination. Congress was skeptical of using ''vague standards like 'the best interests of the child,' '' H.R. Rep. No. 95–1386 at 19, and intended good cause to be a limited exception, rather than a broad category that could swallow the rule.

N. Post-Trial Rights and Recordkeeping

The final rule describes requirements and standards for vacating an adoption based on consent having been obtained by fraud or duress. It also provides clarification regarding the application of 25 U.S.C. 1914, and the rights to information about adoptee's Tribal affiliations, while removing certain obligations the proposed rule imposed on agencies. The final rule provides procedures for how notice of a change in an adopted Indian child's status is to be provided, including provisions for waiver of this right to notice. The final rule also contains provisions regarding the transmittal of certain adoption records to the BIA, and the maintenance of State records.

1. Petition To Vacate Adoption

Comment: Several commenters opposed PR § 23.132(a) allowing a final decree of adoption to be set aside if the proceeding failed to comply with ICWA. These commenters pointed out that section 1913(d) of the Act only allows a collateral attack on an adoption decree if consent to the adoption was obtained through fraud or duress, not if the proceeding failed to comply with ICWA, while section 1914 allows for invalidation only of a foster-care placement or termination of parental rights if the proceeding failed to comply with ICWA.

Response: The final rule deletes ''the proceeding failed to comply with ICWA'' as a basis for vacating an adoption decree because FR § 23.136 implements section 1913(d) of the Act, which is limited to invalidation based on the parent's consent having been obtained through fraud or duress.

Comment: A commenter pointed out that PR § 23.133(a) refers generally to ICWA being violated, but the statute and PR § 23.133(b) both refer specifically to violations of Sections 1911, 1912, or 1913.

Response: The final rule specifies the appropriate sections of ICWA in FR § 23.137(a).

Comment: Several commenters stated that the two-year statute of limitations should not apply to section 1914 actions to invalidate foster-care placements and termination of parental rights. Some commenters asserted that State statutes of limitations should apply; others stated that State statutes of limitations should not apply because it would cause uncertainty and inconsistency. One commenter suggested adding a statute of limitation of 90 days. A few commenters suggested establishing a statute of limitations that allows minors three to five years after they turn age 18 to sue for violations of their rights under ICWA.

Response: The final rule clarifies that the two-year statute of limitations does not apply to actions to invalidate foster-care placements and terminations of parental rights, by clarifying that FR § 23.136 applies only to invalidation of adoptions based on parental consent having been obtained through fraud or duress. If a State's statute of limitations exceeds two years, then the State statute of limitations may apply; the two-year statute of limitations is a minimum timeframe. *See* 25 U.S.C. 1913. The statute does not establish a statute of limitations for invalidation of foster-care placements and termination of parental rights under section 1914, and the

Department declines to establish one at this time.

Comment: A few commenters noted that PR § 23.133 fails to provide the requirement in section 1916(a) that the best interests of the child be considered before determining whether to return the child if the court invalidates an adoption decree or adoptive couples voluntarily terminate their parental rights.

Response: Section 1916(a) addresses a narrow set of circumstances: When an adoption fails because the court invalidates the adoption decree or the adoptive couples voluntarily terminate their parental rights. The statute provides that, under this narrow set of circumstances, the best interests of the child must be considered in determining whether to return the child to biological parent or prior Indian custodian. The regulation does not address this narrow set of circumstances. FR § 23.136(b) requires notice to the parent or Indian custodian of the right to petition for return of the child, but the final rule does not set out the standard for determining whether to return the child to the parent's or Indian custodian's custody. FR § 23.136(c) implements section 1913(d) of the Act, which provides that the court ''shall'' return the child to the parent if it finds the parent's consent was obtained through fraud or duress.

2. Who Can Make a Petition To Invalidate an Action

Comment: A few commenters requested changing ''the court must determine whether it is appropriate to invalidate the action'' to ''the court must invalidate the action'' in PR § 23.133. These commenters stated that the plain language of section 1914 does not allow for court discretion. These commenters further asked how the court would determine appropriateness and under what standard of review.

Response: 25 U.S.C. 1914 does not require the court to invalidate an action, but allows certain parties to petition for invalidation. For this reason, the final rule states that the court must determine whether it is appropriate to invalidate the action under the standard of review applicable under State law. *See* FR § 23.137.

Comment: A few commenters supported PR § 23.133(c) as clarifying that the Indian child, parents, or Tribe may seek to invalidate an action to uphold the political status and rights of each child. One commenter stated that PR § 23.133(c) is important in that it clarifies that certain provisions of ICWA cannot be waived because any party may challenge based on violations of another party's rights. A few other commenters stated that the rule purports to convey standing to those who do not have a personal stake in the controversy. These commenters claim there is no evidence Congress intended to grant the Department authority to rewrite constitutional standing requirements and the fundamental principle of American jurisprudence that someone seeking relief must have standing.

Response: The final rule does not dictate that a court must find that the listed parties have constitutional standing; rather, it recognizes the categories of those who may petition. The statutory scheme allows one party to assert violations of ICWA requirements that may have impacted other parties rights (*e.g.,* a parent can assert a violation of the requirement for a Tribe to receive notice under section 1912(a)). There is no basis in the statute for the regulation to limit the parties' opportunities for redress for violations of ICWA. Through section 1914, ICWA makes clear that a violation of Sections 1911, 1912, or 1913 necessarily impacts the Indian child, Indian parent or custodian, and the Indian child's Tribe such that each is afforded a right to petition for invalidation of an action taken in violation of any of these provisions. The provision also makes clear that one party cannot waive another party's right to seek to invalidate such an action. Additionally, parties may have other appeal rights under State or other Federal law in addition to the rights established in ICWA.

Comment: A commenter requested deleting from PR § 23.133(a)(2) ''from whose custody such child was removed'' because it would prevent a noncustodial biological parent from petitioning to invalidate the action.

Response: The final rule continues to include the qualifying phrase ''from whose custody such child was removed'' because the statute includes this phrase, authorizing parents or Indian custodians ''from whose custody such child was removed'' the right to petition to invalidate an action. 25 U.S.C. 1914; FR § 23.137(a)(2).

Comment: A commenter requested adding a guardian ad litem to the list of persons in PR § 23.133(a) who may petition to invalidate an action. A commenter requested adding that the child must be a minimum age to petition to invalidate an action.

Response: The final rule does not add a guardian ad litem to the list of persons who may petition to invalidate an action because the statute does not list this category of persons. Nor does the final rule add a minimum age for a child to be able to petition to invalidate an action because the statute does not provide a minimum age. The statute allows an Indian child to petition, which necessarily means that someone with authority to act for the child may petition on the child's behalf. *See* 25 U.S.C. 1914.

Comment: One commenter suggested adding ''or was'' to read ''an Indian child who is or was the subject of any action'' to account for actions that occurred in the past.

Response: The final rule adds the requested clarification because it can be inferred from the statute that the action for foster-care placement or termination of parental rights need not be in process at the time the child petitions to invalidate the action. *See* FR § 23.136(a)(1).

Comment: A State commenter requested clarification of whether the ''court of competent jurisdiction'' may be a Tribal court, district court, or different court from where the original proceedings occurred.

Response: The court of competent jurisdiction may be a different court from the court where the original proceedings occurred.

Comment: A State commenter requested clarification of whether the ability to challenge the proceeding applies to the proceeding at issue or a subsequent proceeding and stated that, as written, it appears the adoption proceeding could be undone due to failures to follow ICWA in the underlying termination case. This commenter requested clarification that only the proceeding currently before the court may be invalidated.

Response: The ability to petition to invalidate an action does not necessarily affect only the action that is currently before the court. For example, an action to invalidate a termination of parental rights may affect an adoption proceeding. *See, e.g., In re the Adoption of C.B.M.,* 992 N.E.2d 687 (Ind. 2013) (where termination of parental rights has been overturned on appeal, ''letting the adoption stand would be an overreach of State power into family integrity''); *State ex rel. T.W.* v. *Ohmer,* 133 S.W.3d 41, 43 (Mo. 2004) (ordering lower court to set aside adoption decree where parent has appealed termination decision).

3. Rights of Adult Adoptees

Comment: A few commenters supported outlining post-trial rights to protect adopted Indian children, Tribes, parents, and family members. A few commenters opposed PR § 23.134(b) and (c) as undermining the established

practice in some jurisdictions of opening adoption-related records for Indian adoptees when they would otherwise be closed. These commenters expressed concern that PR § 23.134(b) and (c) could be interpreted to allow States to keep records sealed.

Response: The final rule addresses section 1917 of the Act at FR § 23.138 and addresses section 1951 at FR § 23.140. The rule clarifies that it is addressing certain specific rights of adult adoptees to information on Tribal affiliation, in accordance with the statute, rather than all rights of adult adoptees. States may provide additional rights. At FR § 23.71(b), the final rule replaces the proposed text with language restating the Secretary's duty under section 1951(b) of the Act.

Comment: A commenter suggested edits to PR § 23.134(b) and (c) to clarify that it is the court that must seek the assistance of BIA and communicate directly with the Tribe's enrollment office. A few commenters opposed PR § 23.134 to the extent it shifts responsibility to the States, particularly with regard to requiring agencies to communicate directly with Tribal enrollment offices. A few commenters stated that PR § 23.134(c) should include other offices designated by the Tribe, rather than just the Tribal enrollment office.

Response: The final rule deletes the provisions referenced by the commenters.

Comment: One commenter stated that the rule should require disclosure of information to allow adult adoptees to reunite with their siblings.

Response: The final rule does not add the requested requirement because it is beyond the scope of the statute; however, some States have registries that allow individuals to obtain information on siblings for purposes of reunification.

Comment: A few commenters stated that the final adoption decree should require adoptive parents to maintain ties to the Tribe for the benefit of the child or include Tribal affiliation in the adoption papers.

Response: The final rule does not include this requirement. The statute and the regulations, however, provide a range of provisions, including Sections 1917 and 1951, which are focused on promoting the relationship between the adoptee and the Tribe.

Comment: A few commenters noted that the Act provides for BIA to assist adult adoptees in securing information to establish their rights as Tribal citizens, and suggested the rule add a provision to this effect.

Response: The final rule includes a provision at FR § 23.71(b) that incorporates the statute's requirements for BIA assistance to adult adoptees.

4. Data Collection

Comment: A few commenters suggested minimizing non-preferred placements by saying the placement must be documented throughout the case.

Response: FR §§ 23.129(c) and 23.132(c) require that the court's good cause determination be on the record. FR § 23.141 also requires that the record of placement include information justifying the placement determination. This regulatory requirement ensures the statutory provision allowing the Department and Tribe to review State placement records for compliance with the placement preferences is fulfilled. *See* 25 U.S.C. 1915(e).

Comment: A State commenter requested clarification that the agency that places the child must maintain the records.

Response: FR § 23.141 clarifies that the State must maintain the records, but allows a State court or agency to fulfill that role.

Comment: A few commenters opposed PR § 23.136 to the extent it duplicates obligations already assigned to BIA under the current regulation at § 23.71.

Response: The commenters are correct that PR § 23.134 and PR § 23.136 duplicated the content in 25 CFR 23.71 to a large extent. The final rule addresses these comments by keeping those provisions that address BIA responsibilities in FR § 23.71, and moving those provisions that address State responsibilities to FR § 23.140. FR § 23.71 keeps provisions in former § 23.71(b) governing BIA, with minor modifications for readability and to replace the reference to the BIA ''chief Tribal enrollment officer'' with a general reference to BIA. Other provisions at former § 23.71(a) are contained in FR § 23.140.

Comment: Several commenters supported the proposed data-collection requirements as necessary to determine compliance with the Act. Some stated concern that the information is not currently being maintained and suggested BIA conduct mandatory compliance checks on each State to determine record maintenance and availability.

Response: The regulation is intended to strengthen the effectiveness of States' implementation of this important provision.

Comment: One commenter noted that the first sentence of PR § 23.136(a) uses the term ''child'' rather than ''Indian child.''

Response: The final rule specifies ''Indian child.'' *See* FR § 23.140(a).

Comment: A few commenters suggested adding that the documentation be sent to the child's Tribe, in addition to BIA.

Response: The statute, at section 1951(a), requires only that the State provide the Secretary with this information.

Comment: A few commenters opposed PR § 23.137, stating that the requirements for a single repository in each State and the seven-day timeframe are beyond the requirements of § 1915(e) and would be an administrative and fiscal burden on States. A commenter stated that the cost to courts in relocating the approximate 1,123 files throughout 58 counties to a single location would be significant and disruptive. Some claimed it would be an unfunded mandate. A few requested clarifications on how the records must be maintained in a single location. A commenter suggested a timeframe of 30 days would be more appropriate.

Response: The final rule deletes the requirement for storing records of placement in a single repository, but retains a timeframe. The statute provides that the State must make the record available at any time upon the request of the Secretary or the Indian child's Tribe. *See* 25 U.S.C. 1915(e). A timeframe is appropriate to ensure that the record is available upon request ''at any time,'' but the final rule ensures States have the flexibility to determine the best way to maintain their records to ensure that they can comply with the timeframe. In response to comments about the reasonableness of the timeframe, the final rule extends the timeframe to 14 days, which will generally allow two full working weeks to provide the record. *See* FR § 23.141.

Comment: A commenter requested clarification of whether copies or the original files must be maintained and provided.

Response: The regulation does not clarify whether the files must be originals or may be copies because as long as the copies are true copies of the originals, there is no need to specify.

Comment: A commenter requested clarification as to whether only court records are within the regulation's scope or if the regulation covers State agencies or private adoption agencies.

Response: FR § 23.141 directly addresses only court records because the court records must include all evidence justifying the placement determination. *See* 25 U.S.C. 1915, FR

§ 23.132. States may require that additional records be maintained.

Comment: One commenter suggested requiring States to submit annual reports assessing compliance with the regulations. Other commenters suggested BIA work closely with the U.S. Department of Health and Human Services to encourage broader data collection in AFCARS reporting and enforcement. A Tribal commenter stated that there are currently no reliable data sources for information on Indian children in State care and, without accurate numbers, it is difficult to ascertain with any precision the needs of Indian children in any State.

Response: The final rule does not requiring annual reporting. The Department is working closely with the Department of Health and Human Services on data collection regarding ICWA. *See* AFCARS Proposed Rule at 81 FR 20283 (April 7, 2016).

Comment: A commenter suggested the rule should address the records filed with the Secretary, including who may access them, the procedure for gaining access, and the timeframe for the Secretary to respond to requests for access.

Response: BIA has maintained a central repository of adoption decrees and responds to requests for access. The final rule, at FR § 23.71(b), incorporates section 1951(b) of the Act, to clarify that someone can request the records from the Secretary.

Comment: A commenter suggested adding a mechanism for securing the information required by PR § 23.136(a) when a State court fails to comply, for example, by requiring them to provide the information to the Secretary.

Response: FR § 23.140(a) implements section 1951(a) of the Act which establishes a State court responsibility to provide information to the Secretary. This provision was formerly located at 25 CFR 23.71(a).

Comment: A commenter suggested that the ''good cause'' basis stated on the record should be reported in the State database and reported to Tribes and adoptees.

Response: The regulation requires that the State record the basis for ''good cause'' to deviate from the preferred placements (*see* FR § 23.129(c)); this information and evidence must be included in the court record.

Comment: A commenter suggested that PR § 23.136 clarify that an affidavit requesting anonymity does not preclude disclosure of identifying information to the Tribe for the purpose of approving an application for Tribal membership, which the Tribe undertakes in its sovereign capacity. The commenter also suggested the rule clarify that all non-identifying information will still be disclosed, including for example, the name and Tribal affiliation of the Tribe and the identity of the court or agency with relevant information. The commenter also suggests the adoptive parents' identities may be disclosed.

Response: FR § 23.71(a) implements section 1951(a) of the Act, providing a role for the Secretary to provide information as may be necessary for the enrollment of an Indian child in the Tribe.

Comment: A commenter suggested that one parent's affidavit for anonymity should not extend anonymity to the other parent.

Response: An affidavit of one parent would not extend anonymity to the other parent.

Comment: A commenter suggested an affidavit requesting anonymity should not preclude disclosure of the adoptive parents' identities.

Response: The Act only addresses an affidavit of anonymity for the biological parent or parents. *See* 25 U.S.C. 1951(a).

Comment: A commenter suggested PR § 23.136 should provide for notification of foster and adoptive parents of their right and the right of their adoptive child upon reaching age 18 to apply for the adoption records held by the Secretary.

Response: Neither the statute nor the final rule require the Secretary to proactively reach out to adoptive and foster parents and adopted children regarding their records; rather, the Act at section 1917 and the final rule provide that the State court provides such information upon application.

Comment: The commenter suggested that, when there is an affidavit for anonymity, the Secretary notify the biological parent of the request and allow them the opportunity to withdraw anonymity if desired.

Response: The parent may have the right to withdraw or rescind an affidavit for anonymity under State law; the parent should contact the State court or agency for directions.

Comment: A commenter suggested adding a section to authorize release of records maintained by the Secretary to any Indian child, parent or Indian custodian, or child's Tribe upon a showing that the records are needed as evidence in an action to invalidate a placement in violation of Sections 1911, 1912, 1913 or 1915.

Response: Section 1951 of the Act provides that the Secretary may release such information as may be necessary for the enrollment of an Indian child . . . or for determining any rights or benefits associated with that membership. To the extent a party seeks evidence in an action to invalidate a placement in violation of Sections 1911, 1912, 1913, or 1915, the party would be able to seek that information from the State and through discovery.

O. Effective Date and Severability

The final rule includes a new section, FR § 23.143, that provides that the provisions of this rule will not affect a proceeding under State law for foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to 180 after the publication date of the rule, but will apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child. This is drawn from the language of 25 U.S.C. 1923.

This provision ensures that ongoing proceedings are not disrupted or delayed by the issuance of this rule and that there is an orderly phasing in of the effect of the rule. *See* H.R. Rep. No. 95–1386, at 25. Standards affecting pending proceedings should not be changed in midstream. This could create confusion, duplication, and delays in proceedings. And, by providing 180 days from the date of issuance for the rule to be fully effective, all parties affected—States courts, State agencies, Tribes, private agencies, and others—have ample time to adjust their practices, forms, and guidance as necessary.

FR § 23.144 states the Department's intent that if some portion of this rule is held to be invalid by a court of competent jurisdiction, the other portions of the rule should remain in effect. The Department has considered whether the provisions of the rule can stand alone, and has determined that they can. For example, the agency has considered whether particular provisions that are intended to be followed in both voluntary and involuntary proceedings should remain valid if a court finds the provision invalid as applied to one type of proceeding, and has concluded that they should. The Department has also considered whether the particular requirements of the rule (*e.g.,* requirements for notice, active efforts, consent, transfer, placement preferences) may each function independently if other requirements were determined to be invalid. The Department has determined that they can.

Comment: One commenter stated that the ICWA regulations should be retroactive to include all Indian

children currently involved in ICWA cases.

Response: As discussed above, the final rule includes a provision that mirrors 25 U.S.C. 1923, providing none of the provisions of this rule will affect a proceeding which was initiated or completed prior to 180 days from the date of issuance.

P. Miscellaneous

1. Purpose of Subpart

Comment: A few commenters supported PR § 23.101 and especially supported reiterating that the Indian canons of construction are to be used when interpreting ICWA. A few commenters suggested explaining in PR § 23.101, for the general public, that ICWA is not a race-based preference, but is a political decision because of the government-to-government relationship between Tribes and the Federal Government.

Response: The Department agrees that statutes are to be liberally construed to the benefit of Indians but determined it was not necessary to reiterate that canon here. Further, ICWA is based on an individual's political affiliation with a Tribe.

Comment: A few commenters suggested strengthening the provision stating that ICWA establishes minimum Federal standards. These commenters suggested adding reference to the national policy is that these standards define the best interests of Indian children.

Response: The statement that ICWA establishes minimum Federal standards is sufficient. Congress enacted ICWA to protect the best interests of Indian children.

2. Interaction With State Laws

Comment: A few commenters stated that PR § 23.105, providing that if applicable State law provides a higher standard of protection, then the State court must apply that standard, should specify that if the State imposes sanctions, that constitutes a higher standard of protection.

Response: It is unclear what the commenters mean by ''sanctions.'' ICWA provides that, where State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under [ICWA], the State or Federal court shall apply the State or Federal standard. 25 U.S.C. 1921. The final rule is designed to reflect that requirement.

Comment: One commenter stated that the regulation should emphasize that ICWA's provisions in Sections 1911 through 1917 and Sections 1920 through 1922 are mandatory standards that supplant State law. Other commenters requested clarification that minimum Federal standards do not supplant State laws and regulations and Tribal-State agreements applying standards beyond the minimum Federal standards, and that State law and Tribal-State agreements may expand upon or clarify ICWA consistent with the statute. A commenter recommended stating that the minimum Federal Standards preempt State laws that directly conflict with the Federal standards and do not provide heightened protections.

Response: Congress established minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture. 25 U.S.C. 1902. Congress's clear intent in ICWA is to displace State laws and procedures that are less protective. *See, e.g., In re Adoption of M.T.S.,* 489 NW. 2d 285, 288 (Minn. Ct. App. 1992) (ICWA preempted Minnesota State law because State law did not provide higher standard of protection to the rights of the parent or Indian custodian of Indian child). By establishing ''minimum'' standards for removal and placement of Indian children, Congress made clear that it was not preempting the entire field of child-custody or adoption law as to Indian children, including all State laws that provide greater protection to such children than those established by ICWA. *See e.g.,* H.R. Rep. No. 95–1386, at 19. ICWA specifically provides that, where State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under ICWA, the State or Federal court shall apply the State or Federal standard.'' 25 U.S.C. 1921.

Comment: A commenter suggested deleting ''in which ICWA applies'' from PR § 23.105(a) because ICWA is applicable to all child-custody proceedings, so this phrase is redundant and adds confusion.

Response: The final rule deletes the phrase ''and are applicable in all child-custody proceedings . . .'' because FR § 23.103 addresses applicability.

Comment: A few commenters stated that the new regulations conflict with various judicial decisions and asked whether the regulations will supersede existing case law.

Response: The regulations are intended to provide a binding, consistent, nationwide interpretation of the minimum requirements of ICWA. If State law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under ICWA, as interpreted by this rule, State law will still apply. *See* 25 U.S.C. 1921.

3. Time Limits and Extensions

Comment: One commenter stated that ICWA section 1912(a) allows ''up to 20 days'' whereas PR § 23.111(c)(4)(v) adds a burden of stating a specific number of days, and the regulation should mirror the Act because it is difficult to obtain continuances.

Response: FR § 23.111(c)(4)(v) deletes the requirement to specify a number of days and now reflects the statutory language allowing ''up to 20 days.'' Other provisions also now reflect that the extension may be ''up to an additional 20 days.''

Comment: One commenter suggested imposing timeframes on States for providing notice to Tribes.

Response: To promote the statute's intent, FR § 23.111(a) adds that the State must ''promptly'' provide notice to Tribes.

Comment: A commenter suggested splitting PR § 23.111(h), regarding time periods, into two subsections, one to address involuntary placements and one to address termination of parental responsibilities, and adding that findings and orders at involuntary placement proceedings are not binding on parties who did not receive notice but should have, and that courts will make diligent efforts to ensure timely notice.

Response: The statute and regulation provide a mechanism for addressing instances where parties who did not receive notice but should have can seek to invalidate the action, by filing a petition under section 1914 of the Act. *See* FR § 23.137.

Comment: A few commenters suggested that timeframes longer than those set out in PR § 23.112 are appropriate in Alaska, where a majority of villages are remote and subject to extreme weather conditions.

Response: The timeframes in FR § 23.112 are established by statute in section 1912(a). The minimum timeframes are to ensure that the parents or Indian custodians, and Indian child's Tribe have sufficient advance notice and time to prepare for a proceeding. State courts have discretion to allow for more time.

Comment: A few commenters expressed their support for PR § 23.112's timeframes as key accountability mechanisms. One commenter stated that additional extensions of time should not be allowed in PR § 23.112(a) unless it is for

good reason (*e.g.,* deployment in the military). Another suggested a good reason would be to allow for a child's participation.

Response: The final rule does not impose restrictions on additional extensions because the Act does not provide any parameters for additional extensions, thereby leaving such additional extensions to the discretion of State courts.

Comment: One commenter requested clarification in PR § 23.112(b) as to how many times a party may ask for an additional 20 days to prepare, and whether this is for each ''proceeding'' or each ''hearing.''

Response: The parent, Indian custodian, and Indian child's Tribe are entitled to one extension of up to 20 days for each proceeding. As discussed above, any extension beyond the initial extension up to 20 days is subject to the judge's discretion.

4. Participation by Alternative Methods (Telephone, Videoconferencing, etc.)

Comment: A few commenters suggested that the provision located throughout the proposed rule allowing for participation by alternative methods be moved into a separate section, applicable to all stages, instead of repeating the provision throughout the rule.

Response: The final rule consolidates provisions on alternative methods of participation into one section at FR § 23.133.

Comment: Many commenters supported the provisions throughout the regulations for the court to allow alternative methods of participation in State proceedings. Commenters noted that Tribes have citizens living in many States and allowing participation by phone or video allows Tribes and all stakeholders to participate when they are unable to travel or appear, whether due to financial constraints, distance, or otherwise. Several commenters suggested the rule require the court to allow alternative methods of participation, rather than making it discretionary, because the burden on States to allow such participation is low and the rights protected by allowing alternative methods of participation are important. One suggested the court must allow it if it has the capability.

Response: The final rule retains the word ''should'' rather than making the provision mandatory.

Comment: One State commenter stated that alternative methods of participation should not be available for testimony because the witness must be in person for the court to make credibility determinations. This commenter also noted that the proceedings are closed, confidential proceedings and the court would be unable to monitor who was present if alternative methods were allowed.

Response: Several courts allow judges to determine credibility by phone or video, including in criminal proceedings. The Department notes that requesting statements under oath, even by teleconference, as to who is present may provide sufficient safeguards to maintain control over who is present on the teleconference for the purposes of confidentiality.

Comment: One commenter suggested adding Skype as an example of an alternative method.

Response: A service such as Skype would be included in ''other methods.''

Comment: A few commenters requested adding parents, Indian custodians, presumed parents, Indian children, and qualified expert witnesses to the list of those who may participate by alternative methods.

Response: The final rule allows for participation by alternative methods generally, without specifying who may so participate.

Comment: A few commenters stated that the rule should specify that the State may not charge fees for participation by alternative methods, and noted that some courts are requiring fees of as much as $85 per hearing and continuing the hearing until the fees are paid. The commenters state that such fees are prohibitive for Tribes and families.

Response: This is not addressed in the proposed or final rule. However, in March 2016, the Department of Justice issued a Dear Colleague letter to State and local courts regarding their legal obligations (under the U.S. Constitution and/or other Federal Laws) with respect to the enforcement of fines and fees. States should review the letter as they consider the appropriateness of fees in this context.

5. *Adoptive Couple* v. *Baby Girl* and *Tununak II*

Comment: Many commented on how the rule should be interpreted in light of the Supreme Court's decision in *Adoptive Couple* v. *Baby Girl.* Some commenters stated that the regulations should explicitly address the *Adoptive Couple* holding in various ways. For example, several requested the rule clarify that the decision should not be applied outside of the private adoption context and to provide guidance on how it should be implemented to better serve Native children, families, and Tribes. A few commenters stated that, without such guidance, courts will use the ruling to evade ICWA. A few commenters stated that the rule should clarify that the *Adoptive Couple* ruling should not be applied as broadly as the Alaska Supreme Court applied it in *Tununak II,* in which the Alaska Supreme Court stated that the grandmother must have filed a formal adoption petition to enjoy the placement preference in an involuntary proceeding. Several commenters stated that the proposed rule is contrary to the Supreme Court's ruling in *Adoptive Couple.*

Response: Adoptive Couple addresses a specific individual factual scenario. The regulations do not explicitly address the *Adoptive Couple* holding because the regulation governs implementation of ICWA generally.

Comment: A few commenters suggested addressing the holding in *Tununak II,* to provide that in an involuntary proceeding, ICWA's placement preferences apply without regard to whether a preferred individual has come forward, sought to adopt, or filed a formal adoption petition. Commenters noted that, otherwise, the holding in *Tununak II* makes it harder for preferred parties to adopt by imposing procedural burdens. Another commenter stated the rule should expressly provide that preferred parties need not have sought to adopt the child in order to be eligible as a placement, because ICWA does not require formal attempts to adopt.

Response: The Department recommends that States provide clear guidance to preferred placements on how to assert their rights under ICWA and that States should work to eliminate obstacles to preferred placements doing so. For example, the State of Alaska issued an emergency regulation following the ruling in *Tununak* to consider certain actions a proxy for a formal petition for adoption. *See* Alaska Admin. Code tit. 7 § 54.600 (2015).

6. Enforcement

Comment: Multiple commenters asked how the regulations will be enforced or requested including an enforcement mechanism. Some suggested various enforcement mechanisms, such as imposing civil or criminal penalties or sanctions for agency and court noncompliance or tying compliance to State or Federal funding. Commenters stated that such penalties would better promote compliance with ICWA and the final rule. One commenter noted their experience in hearing excuses for noncompliance because there are no consequences for failure to comply with ICWA and, therefore, little incentive to

comply. Commenters had several additional suggestions for improving monitoring and compliance with ICWA.

Response: The final rule clarifies the right of particular parties to seek to invalidate a foster-care placement or termination of parental rights based on certain violations of ICWA. FR § 23.137. The final rule does not expressly address other enforcement mechanisms that may be available to the Federal government or other parties.

7. Unrecognized Tribes

Comment: A few commenters noted that some Indian Tribes are not federally recognized and that the rules leave those Tribes in danger of losing their children by addressing only children of federally recognized Indian Tribes. These commenters assert that the rule should apply to children of non-federally recognized Tribes, including but not limited to State-recognized Tribes.

Response: The statute defines ''Indian Tribe'' as federally recognized Tribes; therefore, the regulations address children who are members of federally recognized Tribes, or who are eligible for membership in a federally recognized Indian Tribe and whose parent is a member of a federally recognized Indian Tribe. *See* 25 U.S.C. 1903(8).

8. Foster Homes

Comment: Several commenters had suggestions for increasing the availability of Indian foster homes, including comments that the rule should:

- Require States to work with Tribes and families to break down obstacles to make it easier and faster to license Indian foster homes and to facilitate funding of those homes;
- Require acceptance of Tribal licensure of foster homes;
- Exclude individuals who are preferred placements from requirements necessary to become a foster home because they create barriers for Indian families;
- Require each State social services agency to publish its criteria to become a licensed foster home;
- Require each State social services agency to maintain a centralized registry containing all rejected foster-home applications for periodic review by Federal officials;
- Eliminate State requirements that contradict traditional practices and cause problems for Indian foster homes, such as the requirement for each child to have a separate bedroom.

Response: ICWA establishes Indian foster homes as preferred placements, but does not elaborate on how to increase the availability of such placements. The Department nevertheless encourages States and Tribes to collaborate to increase the availability of Indian foster homes. Organizations such as the National Resource Center for Diligent Recruitment at AdoptUSKids provide tools and resources for recruiting Indian homes. S*ee, e.g.,* National Resource Center for Diligent Recruitment, *For Tribes: Tool and Resources* (last visited Apr. 27, 2016), *http://www.nrcdr.org/for-tribes/tools-and-resources*.

9. Other Miscellaneous

Comment: A commenter suggested adding ''local'' to PR § 23.104(c), so it states that assistance may be sought ''from the BIA local, Regional Office and/or Central Office.''

Response: The final rule makes this addition for clarification at FR § 23.105(c).

Comment: A few commenters expressed concern that biological parents use ICWA as a tool to disrupt the child's placement. One commenter stated that if a child has been in a home for six months or more, they should not be forced to leave unless abuse is a factor.

Response: ICWA is designed to prevent the breakup of the Indian family and thereby focuses on maintaining the biological parents (or Indian custodian) with the Indian child, rather than the bond between the foster parents and the Indian child. Biological parents may avail themselves of their rights under ICWA and reunification with the biological parents or a change in placement may be appropriate even after many months or years, depending on the circumstances (as is true for non-Indian children as well).

Comment: One commenter suggested clarifying how immediate termination-of-parental-rights proceedings in cases involving shocking and heinous abuse or previous terminations as to other children should be handled to comply with ICWA.

Response: ICWA does not allow for ''immediate termination of parental rights'' because it requires certain timeframes for notice of the proceedings. *See* 25 U.S.C. 1912(a). Emergency removal and emergency placement may be appropriate for immediate action if the requirements of section 1922 of the Act are met, and the child may be placed in foster care pending the termination-of-parental-rights proceeding if the requirements of section 1912(e) of the Act are met.

Comment: A few commenters stated that Indian people should be removed from the State index for crimes if the crime was committed over five years ago, because States are refusing to place children with Indian relatives who are in the index.

Response: ICWA does not address restrictions on placements due to past criminal convictions.

Comment: A few commenters suggested the rule should provide for legal representation of Indian children through a guardian ad litem or equivalent to ensure the child's viewpoint is considered.

Response: ICWA addresses legal representation of Indian children in section 1912(b).

Comment: Several commenters stated that attorneys should be appointed to represent parents and extended family members as a matter of indigenous rights.

Response: ICWA states that the parent or Indian custodian has the right to court-appointed counsel in an ICWA proceeding. *See* 25 U.S.C. 1912(b).

Comment: A commenter stated that the regulations impermissibly attempt to shift Federal responsibility to the State courts and agencies.

Response: ICWA establishes minimum standards to be applied in State child-custody proceedings. The final rule is consistent with ICWA, and elaborates on these minimum standards. It does not shift Federal responsibilities to State courts and agencies.

Comment: Several commenters suggested making all provisions of the rule mandatory, rather than using the word ''should.''

Response: The final rule generally uses mandatory language, as it represents binding interpretations of Federal law. In a few instances, the Department did not use mandatory language, such as to indicate the best means of compliance with another statutory or regulatory requirement.

Comment: A commenter stated that the regulations should encourage States, in coordination with Tribes, to advance ICWA implementation beyond what is required by the regulations, to ensure that the ''minimum Federal standards'' do not become the maximum standards. One commenter suggested including standard forms to help guide States in which ICWA is less frequently used, to help familiarize States with ICWA and save time. The commenter suggested reviewing the forms at *www.nd.gov/dhs/Triballiaison/forms*.

Response: The Department underscores that these regulations are indeed minimum standards. The Department encourages States and Tribes to collaborate to advance ICWA implementation and suggests looking to

some of the tools developed by States to aid in implementation of ICWA. For example:

- New York has published a State guide to ICWA (*see A Guide to Compliance with the Indian Child Welfare Act* published by the New York Office of Children and Family Services at *http://ocfs.ny.gov/main/publications/pub4757guidecompliance.pdf*);
- Washington has established a State evaluation of ICWA implementation, which it performs in partnership with Tribes (*see 2009 Washington State Indian Child Welfare Case Review* at *https://www.dshs.wa.gov/sites/default/files/SESA/oip/documents/Region%202%20ICW%20CR%20report.pdf*).
- Michigan has established a ''bench card'' as a tool for judges implementing ICWA and the State counterpart law (*see 2014 Michigan Indian Family Preservation Act (MIFPA) Bench Card* (last visited Apr. 27, 2016), *http://courts.mi.gov/Administration/SCAO/OfficesPrograms/CWS/CWSToolkit/Documents/BC_ICWA_MIFPA.pdf*)
- Several States have established State-Tribal forums to discuss child-welfare policy and practice issues (*see* Montana, North Dakota, Oklahoma, Oregon, Utah, and Washington).
- Several States have established State-Tribal court improvement forums where court system representatives meet regularly to improve cooperation between their jurisdictions (*see* California, Michigan, New Mexico, New York, and Wisconsin).

In addition, several non-governmental entities offer tools for ICWA implementation, such as the National Council of Juvenile and Family Court Justices, National Indian Child Welfare Association, and Native American Rights Fund.

Comment: A few commenters stated their concerns over comments provided by adoption lawyers, stating that they are primarily concerned with making money from private adoptions of Indian children. These commenters noted that the private adoption industry profits in the billions of dollars annually and require fees for adopting Indian infants. A few other commenters stated their concern that Tribes are seeking more power through the regulations.

Response: The Department has considered the substance of each comment and without presuming the commenters' motivations.

Comment: A commenter suggested using ''or'' rather than ''and/or'' throughout the regulation.

Response: The final rule continues to use the term ''and/or'' in several places for clarity.

Comment: A commenter suggested Tribes and birth parents enter into ''Contract After Adoption'' agreements whereby non-Indian adoptive parents agree to register the child with the Tribe, stating that these agreements have been productive and protective of rights. Another commenter suggested requiring adoptive parents to enter a cultural outreach program as defined by the Tribe, to ensure continued connection that strengthens the culture.

Response: This is beyond the scope of this rule.

Comment: A commenter stated that State child-welfare agencies should include input from Tribes in their plans for implementing ICWA. Likewise, a commenter stated that States and Tribes should join forces to look at early intervention, prevention, and rehabilitative services to avoid ICWA situations, and work together for the good and welfare of our children.

Response: This is beyond the scope of this rule. The Department encourages States to collaborate with Tribes on implementation of ICWA.

Comment: A commenter suggested BIA ask Tribes whether State courts and agencies complied with ICWA because if BIA relies only on agency documentation, it will not receive the whole picture. This commenter provided an example of one State that claimed compliance but the Tribes in the State disagree.

Response: This is beyond the scope of this rule.

Comment: A commenter stated that guardian ad litems should have significant understanding of indigenous cultures and traditions so they can better interface with the children.

Response: State law governs the standards and procedures for appointing guardian ad litem. The Department encourages appointment of guardian ad litem with significant understanding of the Indian child's culture.

Comment: A commenter asserted that one of the greatest challenges State courts face is reconciling the ICWA provisions with other Federal statutes governing child-welfare matters, such as Title IV–E of the Social Security Act and suggests BIA and HHS work together to ensure there is no conflict.

Response: Interior and the Department of Health and Human Services are committed to working together to ensure harmonious implementation of the various Federal statutory requirements.

Comment: Many commenters noted the dire need for additional funding to Tribes, preferred placements, and others to better support ICWA implementation. A few commenters stated that there should be enforcement to ensure any ICWA funding provided to Tribes is used for that purpose.

Response: While the final rule cannot affect funding levels, the Department notes the importance of funding in implementation.

Comment: Many commenters noted the dire need for ICWA training and suggested requiring State social workers, attorneys, and judges to undergo training on ICWA. One commenter stated that education regarding legal, social, historical, and ethical components of ICWA would strengthen compliance. Other commenters suggested requiring non-Indian adoptive families to take certified training on the history of Native Americans and issues concerning Tribes today.

Response: ICWA does not establish requirements for training, but the Department notes the importance of training in implementation.

V. Summary of Final Rule and Changes From Proposed Rule to Final Rule

The following table summarizes changes made from the proposed rule to the final rule.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.2 Definitions	23.2 Definitions	Added definitions for emergency proceeding, hearing, Indian foster home, involuntary proceeding, proceeding, and voluntary proceeding. Revised definitions of active efforts, child-custody proceeding, continued custody, domicile, Indian child, Indian child's Tribe, Indian custodian, and upon demand. Deleted definitions of imminent physical damage or harm and voluntary placement.	Added definitions for active efforts, continued custody, custody, domicile, emergency proceeding, hearing, Indian foster home, involuntary proceeding, proceeding, status offenses, upon demand, and voluntary proceeding. Revised definitions of child-custody proceeding, extended family member, Indian child, Indian child's Tribe, Indian custodian, parent, reservation, Secretary, and Tribal court.
23.11 Notice	23.11 Notice	Revises current (a) to delete requirement to send a copy of the notice to BIA Central Office. Clarifies that notice must include the information specified in 23.111. Clarifies that certain BIA duties remain. Replaces ''certified mail'' with ''registered or certified mail.'' Specifies where notice should be sent.	Restates current 23.11, but deletes the requirement to send a copy of the notice that goes to the BIA Regional Director to the BIA Central Office, and replaces ''certified mail'' with ''registered or certified mail.'' Updates information on where notice should be sent. Moves provisions from § 23.11(b), (d), (e) to FR § 23.111.
N/A	23.71 Recordkeeping and information availability.	Deletes provisions of current § 23.71(a) because duplicative of § 23.140. Moves current § 23.71(b) to (a) as part of non-material changes to restructure the section Revises 23.71(b) to more closely match section 1951(b) of the Act. Deletes reference to BIA Tribal enrollment officer because position no longer exists.	Revises current 23.71 to more closely match section 1951(b) of the Act.
23.101 What is the purpose of this subpart?	23.101 What is the purpose of this subpart?	Deletes sentence on when the regulations apply because FR § 23.103 addresses when ICWA applies.	New section. Establishes the purpose of the new subpart.
23.102 What terms do I need to know?	23.102 What terms do I need to know?	Revises definition of ''agency''	New section. Defines ''agency'' and ''Indian organization'' for the purposes of this subpart only.
23.103 When does ICWA apply?	23.103 When does ICWA apply?	Clarifies what types of proceedings ICWA does and does not apply to. Revises text addressing ''existing Indian family'' exception. Moves provisions regarding the requirement to ask whether ICWA applies to FR § 23.107. Moves provision requiring treatment of a child as an Indian child pending verification to § 23.107. Clarifies that if ICWA applies at the commencement of a proceeding, it continues to apply even if the child reaches age 18.	New section. Delineates when ICWA's requirements may apply and do not apply. Establishes that there is no exception to the application of ICWA based on certain factors. Establishes that ICWA continues to apply even if the child reaches the age of 18.
N/A	23.104 What provisions of this subpart apply to each type of child-custody proceeding?	Adds a chart to clarify which type of proceeding each rule provision applies to.	New section. Delineates what type of proceeding the sections of the subpart apply to.
23.104 How do I contact a Tribe under the regulations in this subpart?	23.105 How do I contact a Tribe under the regulations in this subpart?	No significant changes	New section. Establishes how to contact a Tribe to provide notice or obtain information or verification.
23.105 How does this subpart interact with State laws?	23.106 How does this subpart interact with State and Federal laws?	Deletes provision regarding ICWA applicability because applicability is addressed in 23.103.	New section. Specifies that the regulations provide minimum Federal standards, and that more protective State or Federal laws apply.
23.106 When does the requirement for active efforts begin?	N/A	Deletes section	N/A.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.107 What actions must an agency and State court undertake to determine whether a child is an Indian child?	23.107 How should a State court determine if there is a reason to know the child is an Indian child?	Limits provision to standards applicable in State-court proceedings. Clarifies that inquiry is required in emergency, involuntary, and voluntary proceedings. Clarifies that if there is ''reason to know'' the child is an Indian child, this triggers certain obligations. Deletes list of information that the court may require the agency to provide. Replaces ''active efforts'' to identify Tribes with ''due diligence'' to identify Tribes. Moves provision requiring treatment of the child as an Indian child from proposed 23.103(d). Adds to the list of factors providing ''reason to know'' the child is an ''Indian child'' that the child is or has been a ward of Tribal court and that either parent or child possesses a Tribal identification card, but removes residency on an Indian reservation or in a predominantly Indian community. Adds that, where anonymity is requested in voluntary proceedings, the Tribe must keep the information confidential.	New section. Establishes that State courts must ask as a threshold question at the start of a proceeding whether there is reason to know the child is an Indian child. Establishes that, if there is reason to know the child is an Indian child, the State court must confirm the agency used due diligence to identify and work with Tribes to obtain verification, and must treat the child as an Indian child unless and until it is determined otherwise. Establishes what factors indicate a ''reason to know.'' Establishes that a court and Tribe must keep documents confidential if a consenting parent requested anonymity in a voluntary proceeding.
23.108 Who makes the determination as to whether a child is a member of a Tribe?	23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?	Adds that a Tribal determination of membership or eligibility may be reflected in facts of evidence, such as Tribal enrollment documentation.	New section. Establishes that only the Tribe may make determinations as to Tribal membership or eligibility, and that such determinations may be reflected in documentation issued by the Tribe.
23.109 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?	23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?	Deletes provision requiring notification by agencies. Clarifies process and considerations where more than one Tribe is involved. Deletes requirement for notifying all other Tribes that a particular Tribe was designated as the child's Tribe. Deletes statement that a Tribe can designate another Tribe to act as its representative.	New section. Incorporates statutory provisions for establishing the child's Tribe. Establishes that deference must be given to Tribe in which the child is already a member unless otherwise agreed to by the Tribes. Establishes that, where the child is a member in more than one Tribe or eligible for membership in more than one Tribe, the court must provide opportunity for the Tribes to determine which should be designated as the child's Tribe. Establishes what the State court should consider in determining which has ''more significant contacts'' if Tribes are unable to reach an agreement.
23.110 When must a State court dismiss an action?	23.110 When must a State court dismiss an action?	Adds that the provision is subject to agreements between States and Tribes pursuant to 25 U.S.C. 1919. Requires the Tribe be expeditiously notified of the pending dismissal and sent information regarding the child-custody proceeding.	New section. Establishes that a State court must determine its jurisdiction and when a State court must dismiss an action Requires State court to ensure the Tribal court is expeditiously notified and sent information on the proceeding.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?	23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?	Limited to standards to be applied in State-court proceedings. Clarifies that provision applies to involuntary foster-care-placement and termination-of-parental-rights proceedings. Adds ''certified mail'' as an option ..... Incorporates additional information from current 23.11 (e.g., maiden names, requirement to keep confidential information in the notice). Deletes provision stating that counsel is appointed only if authorized by State law. Deletes provision requiring a specific amount of additional time to be included in the request. Clarifies language-access requirements. Removes provision addressing Interstate Compact on Placement of Children. Moves provision regarding no rulings occurring until the waiting period has elapsed to 23.112(a).	New section. Establishes required contents of the notice. Allows notice to be sent by certified or registered mail, as long as return receipt is requested. Incorporates provisions of current 23.11. Incorporates statutory provision requiring court to inform a parent or Indian custodian who appears in court without an attorney of certain rights. Requires a State court to provide language-access services as required by Federal law.
23.112 What time limits and extensions apply?	23.112 What time limits and extensions apply?	Reorganizes section. States that no proceeding can be held until at least 10 days after the required notice is provided. Clarifies that extensions may be ''up to'' an additional 20 days. Moves provision regarding alternative methods of participation to 23.133. Clarifies that additional extensions of time may be granted.	New section. Incorporates statutory prohibition on foster care or termination-of-parental-rights proceedings being held until certain timelines are passed.
23.113 What is the process for the emergency removal of an Indian child?	23.113 What are the standards for emergency proceedings involving an Indian child?	Adds that emergency removal/placement must terminate immediately when no longer necessary to prevent imminent physical damage or harm. Clarifies what standards state court should apply in emergency proceedings involving an Indian child. Changes standard from whether emergency removal/placement is ''proper'' to whether it is ''necessary to prevent imminent physical damage or harm to the child.'' Removes certain requirements on the agency Clarifies that agency may terminate the emergency removal/placement. Requires additional statements in the petition or accompanying documents. Replaces provision requiring a hearing if emergency removal/placement is continued for more than 30 days with a requirement for a court determination that restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm, and the court cannot transfer jurisdiction to the Tribe, and that it is not possible to initiate a child-custody proceeding defined in § 23.2. Moves provision regarding alternative methods of participation to § 23.133.	New section. Incorporates statutory limitations on State emergency removals and emergency placements. Establishes what a petition, or accompanying documents, for emergency removal or emergency placement should include. Requires State court to determine at each hearing whether the emergency removal or emergency placement is no longer necessary. Establishes a 30-day deadline by which emergency removal and emergency placement should end unless the court determines that restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm, and the court cannot transfer jurisdiction to the Tribe, and that it is not possible to initiate a child-custody proceeding defined in § 23.2.
23.114 What are the procedures for determining improper removal?	23.114 What are the requirements for determining improper removal?	Changes ''reason to believe'' to ''reason to know'' of an improper removal. Changes ''immediately stay the proceeding until a determination can be made on the question of improper removal'' to ''expeditiously determine whether there was improper removal or retention''. Changes standard from ''imminent physical damage or harm'' to ''substantial and immediate danger or threat of such danger''.	New section. Establishes that the State court must expeditiously determine whether there was an improper removal or retention under certain circumstances. Requires the child to be returned immediately to parents if there has been an improper removal or retention, unless it would subject the child to substantial and immediate danger or threat of such danger.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.115 How are petitions for transfer of proceeding made?	23.115 How are petitions for transfer of a proceeding made?	Adds that a request for transfer may be made at any stage of each proceeding. Clarifies that provision applies to foster-care and termination-of-parental-rights proceedings.	New section. Establishes how petitions for transfer may be made.
23.116 What are the criteria and procedures for ruling on transfer petitions?	23.117 What are the criteria for ruling on transfer petitions?	Changes ''case'' to ''child-custody proceeding''. Clarifies that a court must make a determination when transfer is not appropriate. Moves provision for court to provide records related to the proceeding to Tribal court to § 23.119.	New section. Establishes that a State court must transfer a proceeding unless one or more of the listed criteria are met.
23.117 How is a determination of ''good cause'' not to transfer made?	23.118 How is a determination of ''good cause'' to deny transfer made?	Clarifies that the court ''must not'' consider certain factors, rather than ''may not''. Combines the two separate lists of factors that must not be considered into one list. Clarifies when court must not consider whether the proceeding is at an advanced stage. Adds that the court must not consider whether there have been prior proceedings involving the child for which no petition to transfer was filed. Changes the factor on whether the transfer ''would'' result in a change in placement to whether the transfer ''could'' affect placement. Changes the factor on the Indian child's ''contacts'' to Indian child's ''cultural connections''. Eliminates language regarding burden of proof. Requires the basis for denying transfer to be stated on the record or in a written opinion.	New section. Prohibits State court from considering certain factors in determining whether good cause to deny transfer exists. Requires the basis for denying transfer to be stated on the record or in a written opinion.
23.118 What happens when a petition for transfer is made?	23.116 What happens when a petition for transfer is made? 23.119 What happens after a petition for transfer is granted?	Splits the proposed section into two sections. Deletes provision stating the notice should specify how long the Tribal court has to make its decision and requiring at least 20 days for Tribal court to decide. Adds that the State court ''may request a timely response'' regarding whether the Tribe wishes to decline the transfer. Changes ''promptly provide the Tribal court with all court records'' to ''expeditiously provide the Tribal court with all records related to the proceeding.'' Adds language regarding coordination between State and Tribal courts.	New section. Establishes that the State court must ensure the Tribal court is promptly notified in writing of a transfer petition. New section. Establishes that State court should expeditiously provide the Tribal court with all records related to the proceeding if the Tribal court accepts transfer, and should coordinate the transfer with the Tribal court.
23.119 Who has access to reports or records?	23.134 Who has access to reports or records during a proceeding?	Deletes provision stating that decisions of the court must be based only upon what is in the record.	New section. Establishes rights of parties to examine records of proceedings.
23.120 What steps must a party take to petition a State court for certain actions involving an Indian child?	23.120 How does the State court ensure that active efforts have been made?	Deletes provision directly imposing requirements on any party petitioning for foster care or termination of parental rights; instead requires the court to conclude that active efforts have been made.	New section. Requires State court to conclude that active efforts to avoid the need to remove the Indian child from his or her parents or Indian custodian were made prior to ordering an involuntary foster-care placement or termination-of-parental-rights. Requires documentation of active efforts.
23.121 What are the applicable standards of evidence?	23.121 What are the applicable standards of evidence?	Clarifies that court ''must not issue an order'' absent the appropriate standard of evidence, rather than ''may not issue an order.'' Changes standard from ''seriously physical damage or harm'' to ''serious emotional or physical damage.'' Clarifies that a causal relationship is required for finding both clear and convincing evidence and evidence beyond a reasonable doubt. States that none of the listed factors may be the sole evidence without a causal relationship for both clear and convincing evidence and evidence beyond a reasonable doubt.	New section. Establishes standards of evidence in foster-care placement proceedings and termination-of-parental-rights proceedings. Requires the existence of a causal relationship between the particular conditions in the home and risk of serious emotional or physical damage to the child. Establishes that, without the causal relationship, certain factors may not be the sole factor for meeting the standard of evidence.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.122 Who may serve as a qualified expert witness?	23.122 Who may serve as a qualified expert witness?	Clarifies that expert witness must be able to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage, and should also have specific knowledge of the prevailing social and cultural standards of the Indian child's Tribe. Changes text from ''specific knowledge of the child's Indian Tribe's culture and customs'' to ''knowledge of the prevailing social and cultural standards of the Indian child's Tribe.'' Eliminates the list of persons presumed to meet the requirements to two categories, and states instead that a person may be designated by the Indian child's Tribe has having knowledge of the prevailing social and cultural standards of that Tribe.	New section. Establishes that a qualified expert witness should have knowledge of the prevailing social and cultural standards of the Indian child's Tribe.
N/A	23.123	Reserved for numbering purposes	Reserved for numbering purposes.
23.123 What actions must an agency and State court undertake in voluntary proceedings?	23.124 What actions must a State court undertake in voluntary proceedings?	Deletes requirements directed at agencies .... Clarifies that courts must ensure the party seeking placement has taken all reasonable steps to verify the child's status.. Adds that State courts must ensure that the placement complies 23.129–23.132.	New section. Requires State courts to ask whether the child is an ''Indian child'' in voluntary proceedings. Where there is reason to know that the child is an Indian child, requires State courts to ensure the party seeking placement has taken all reasonable steps to verify the child's status. Requires State courts to ensure that the placement complies 23.129–23.132.
23.124 How is consent obtained?	23.125 How is consent obtained?	Clarifies that the consent must be made before a judge, not necessarily in court. Clarifies what the court must explain to the parent/Indian custodian prior to accepting consent, and separates out the limitations applicable to each type of proceeding. Clarifies that the court's explanation must be on the record and in English (unless English is not the primary language of the parent/Indian custodian). Clarifies that consent need not be executed in open court but still must be made before a court of competent jurisdiction.	New section. Requires consent to voluntary termination of parental rights, foster-care placement, or adoption to be in writing and recorded before a court of competent jurisdiction. Requires court to explain the consequences of the consent in detail and certify that terms and consequences were explained in English or the language of the parent or Indian custodian.
23.125 What information should the consent document contain?	23.126 What information must the consent document contain?	Clarifies that the consent document must contain the identifying Tribal enrollment number ''where known'' rather than ''if any.'' Adds that the parent or Indian custodian's identifying information must be included, rather than definitively requiring their addresses.	New section. Establishes required contents of consent document.
23.126 How is withdrawal of consent achieved in a voluntary foster-care placement?	23.127 How is withdrawal of consent to a foster-care placement achieved?	Clarifies that a parent or Indian custodian may withdraw consent to foster-care placement at any time. Removes requirement for the withdrawal to be filed in the same court where the consent document was executed. Adds that State law may provide additional methods of withdrawing. Clarifies that the court must ensure the child is returned as soon as practicable.	New section. Establishes when and how consent of foster-care placement may be withdrawn. Establishes that the child must be returned to the parent or Indian custodian as soon as practicable.
23.127 How is withdrawal of consent to a voluntary adoption achieved?	23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?	Separates out provisions for withdrawing consent to a termination of parental rights from provisions for withdrawing consent to an adoption. Adds that withdrawal may be accomplished by testimony before the court. Adds that State law may provide additional methods of withdrawing. Changes ''clerk of the court'' to ''the court.''	New section. Establishes when and how consent to a termination of parental rights and an adoption may be withdrawn. Establishes that the child must be returned to the parent or Indian custodian as soon as practicable.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.128 When do the placement preferences apply?	23.129 When do the placement preferences apply?	Deletes provisions directed at agencies ..... Clarifies that the Tribe's placement preferences may apply. Clarifies that the court must consider requests for anonymity in voluntary proceedings. Moves provisions regarding documentation to 23.137 and 23.138.	New section. Establishes when placement preferences apply. Establishes that where a parent requests anonymity in a voluntary proceeding, the court must give weight to this request. Establishes that the placement preferences must be followed unless a determination is made on the record that good cause exists not to apply those preferences.
23.129 What placement preferences apply in adoptive placements?	23.130 What placement preferences apply in adoptive placements?	Clarifies that the Tribe's placement preferences may apply. Clarifies that the court ''must'' consider, where appropriate, the preferences of the Indian child or parent.	New section. Lists the placement preferences in adoptive placements. Establishes that the Tribe may establish a different order of preference by resolution.
23.130 What placement preferences apply in foster care or preadoptive placements?	23.131 What placement preferences apply in foster-care or preadoptive placements?	Clarifies that preferences apply to changes in placements. Adds that sibling attachment as a consideration in whether the placement approximates a family. Clarifies that the Tribe's placement preferences may apply. Deletes the provision ''whether on or off the reservation'' as superfluous. Clarifies that the Tribe's placement preferences established by order or resolution apply, so long as the placement is the least restricted setting appropriate to the particular needs of the child. Requires the court to consider the preference of the Indian child or parent.	New section. Lists the placement preferences in foster- care and preadoptive placements. Establishes that the Tribe may establish a different order of preference by resolution. Requires the court to consider the preference of the Indian child or parent.
23.131 How is a determination for ''good cause'' to depart from the placement preferences made?	23.132 How is a determination for ''good cause'' to depart from the placement preferences made?	Clarifies that the court must ensure reasons for good cause are on the record and available to the parties. Clarifies that a determination of good cause must be justified on the record or in writing. Changes the requirement for the court to base good cause on the listed considerations to a statement that the court ''should'' base good cause on the listed considerations. Clarifies that the request of one or both parents may be a consideration for good cause. Adds the presence of a sibling attachment as a consideration for good cause. Adds ''mental'' needs of the child ..... Deletes the provision stating that extraordinary needs does not include ordinary bonding and attachment. Deletes requirement for qualified expert witness. Changes unavailability of placements to unavailability of ''suitable'' placements, and clarifies that a placement may not be considered ''unavailable'' if it conforms to prevailing social and cultural standards of the Indian community. Changes requirement for active efforts to find placements to a ''diligent search'' to find placements.. Adds that the court may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.	New section. Requires the court to ensure the reasons for good cause are on the record and available to parties. Establishes that the standard for proving good cause is clear and convincing evidence. Requires the good cause determination to be in writing. Establishes considerations that the good cause determination should be based on. Prohibits court from departing from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.
N/A	23.133 Should courts allow participation by alternative methods?	New section, incorporating provisions previously at PR §§ 23.112, 23.113, and 23.115.	New section. Establishes that courts should allow, where they possess the capability, alternative methods of participation in proceedings.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.132 What is the procedure for petitioning to vacate an adoption?	23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?	Clarifies that this provision addresses vacating an adoption (deletes "termination of parental rights"). Deletes provision allowing an adoption decree to be vacated based on the proceeding failing to comply with ICWA.	New section. Establishes the procedure for vacating an adoption based on consent having been obtained through fraud or duress.
23.133 Who can make a petition to invalidate an action?	23.137 Who can make a petition to invalidate an action for certain ICWA violations?	Clarifies which sections of ICWA violations of may justify a petition to invalidate an action. Clarifies that an Indian child that was, in the past, the subject of an action for foster care or termination of parental rights may petition. Moves provision regarding alternative methods of participation to § 23.133.	New section. Establishes who can make a petition to invalidate an action based on a violation of certain statutory provisions.
23.134 What are the rights of adult adoptees?	23.138 What are the rights to information about adoptees' Tribal affiliations?	Narrows section to apply only to rights to information about adult adoptees' Tribal affiliations. Deletes provision regarding BIA helping adoptee obtain information because an updated version of this provision is at § 23.71. Deletes provision about closed adoptions ..... Deletes provision about Tribes identifying a Tribal designee to assist adult adoptees.	New section. Establishes how adult adoptees may receive information on Tribal affiliations.
23.135 When must notice of a change in child's status be given?	23.139 Must notice be given of a change in an adopted Indian child's status?	Clarifies that notice is required for Indian children who have been adopted. Deletes provision regarding change in placement. Adds that the notice must include the current name and any former names of the Indian child, and must include sufficient information to allow the recipient to participate in any scheduled hearings. Adds provisions requiring the court to explain the consequences of a waiver of the right to notice and certify that the explanation was provided. Adds that a waiver need not be made in a session of court open to the public but must be before a court. Clarifies that a revocation of the right to receive notice does not affect completed proceedings.	New section. Requires notice to be given to the child's biological parents or prior Indian custodians and Tribe of certain actions affecting an Indian child that has been adopted. Establishes the required content for the notice. Establishes provisions allowing the parent or Indian custodian to waive notice.
23.136 What information must States furnish to the Bureau of Indian Affairs?	23.140 What information must State courts furnish to the Bureau of Indian Affairs?	Clarifies applicability to voluntary and involuntary adoptions. Adds time period from 23.71 to provide that State court must provide a copy of the adoptive decree or order within 30 days. Adds requirement from 23.71 that the child's birthdate must be included in the information State courts provide to BIA. Incorporates provisions from 23.71(a) regarding marking information "confidential" and regarding State agencies assuming reporting responsibilities.	Incorporates some of § 23.71(a) regarding State requirement to provide a copy of the adoptive placement decree or order to BIA within 30 days, along with certain information.
23.137 How must the State maintain records?	23.141 What records must the State maintain?	Deletes requirement for State to establish a single location to maintain records. Increases the time in which the State must make the record available to the Tribe or Secretary from 7 days to 14 days. Adds requirement for the record to include document on efforts to comply with the placement preferences and the court order authorizing departure, if the placement departs from the placement preferences. Clarifies that records may be maintained by a State court or State agency.	New section. Requires States to maintain records of all placements made under the Act. Establishes a minimum of what each record must include.
23.138 How does the Paperwork Reduction Act affect this subpart?	23.139 How does the Paperwork Reduction Act affect this subpart.	Adds the OMB Control number	New section. Addresses information collection requirements in the subpart.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
NA	23.143 How does this subpart apply to pending proceedings?		New section. States that the provisions of the rule will not affect a child-custody proceeding initiated prior to 180 days after publication date of the rule.
NA	23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?		New section. States that if any portion of the rule is determined to be invalid by a court, the other portions of the rule remains in effect.

VI. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department has developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The rule directly affects courts that hear Indian child welfare proceedings, and indirectly affects public child welfare agencies and private placement agencies. All of these categories of affected entities likely include entities that qualify as small entities, so the Department has estimated that rule affects approximately 7,625 small entities in these categories. Therefore, the Department has determined that this rule will have an impact on a substantial number of small entities. However, the Department has determined that the impact on entities affected by the rule will not be significant because of the total economic impact of this rule's requirements on any given entity is likely to be limited to an order of magnitude that is minimal in comparison to the entity's annual operating budget. The Department's detailed review of the potential economic effects resulting from new regulatory requirements is available upon request.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an annual effect on the economy of $100 million or more. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. As noted above, the rule's requirements on any given entity is a minimal order of magnitude compared to an entity's annual operating budget. In cases where that is not true, the entity (such as a private adoption agency) may choose to pass their costs on to parties seeking placement and, on an individual level, the incremental increase in costs is minimal. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises because the rule affects only placement of domestic children who qualify as an ''Indian child'' under the Act. The Department has reviewed the potential increase in costs resulting from new regulatory requirements, and this analysis is available upon request.

D. Unfunded Mandates Reform Act

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

E. Takings (E.O. 12630)

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

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient Federalism implications to warrant preparation of a Federalism summary impact statement. The Department carefully reviewed comments regarding potential Federalism implications and determined that this rule complies with the fundamental Federalism principles and policymaking criteria established in EO 13132. Congress determined that the issue of Indian child welfare is sufficiently national in scope and significance to justify a statute that applies uniformly across States. This rule invokes the United States' special relationship with Indian Tribes and children by establishing a regulatory baseline for implementation to further the goals of ICWA. Such goals include protecting the best interests of Indian children and promoting 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 that reflect the unique values of Indian culture. States are required to comply with ICWA even in the absence of this rule, and that requirement has existed since ICWA's passage in 1978.

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

This rule complies with the requirements of Executive Order 12988. Specifically, this rule meets the criteria

of section 3(a) requiring all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation and meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

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

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will affect Tribes by promoting implementation of a Federal statute intended to promote the stability and security of Indian Tribes and families. These regulations are the outcome of recommendations made by Tribes during several listening sessions on the ICWA guidelines. The Department hosted several formal Tribal consultation sessions on the proposed rule, including on April 20, 2015, in Portland, Oregon; April 23, 2015, in Rapid City, South Dakota; May 5, 2015, in Albuquerque, New Mexico; May 7, 2015, in Prior Lake, Minnesota; May 11, 2015, by teleconference; and May 14, 2015, in Tulsa, Oklahoma. Many federally recognized Indian Tribes submitted written comments and nearly all, if not all, uniformly supported the regulations, though some had suggestions for improvements. The Department considered each Tribe's comments and their suggested improvements and has addressed them, where possible, in the final rule.

I. Paperwork Reduction Act

This rule contains information collection requirements and a submission to OMB under the Paperwork Reduction Act (PRA) is required. The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. OMB has approved the information collection for this rule and has assigned a control number:

OMB Control Number: 1076–0186.

Title: Indian Child Welfare Act (ICWA) Proceedings in State Court.

Brief Description of Collection: This collection addresses the reporting, third-party disclosure, and recordkeeping requirements of ICWA, which requires State courts and agencies and private businesses to provide notice to or contact Tribes and parents/custodians of any child custody proceeding that may involve an ''Indian child,'' and requires State courts and agencies to document certain actions and maintain certain records regarding the removal and placement of an ''Indian child.''

Type of Review: Existing collection in use without OMB control number.

Respondents: State and Tribal governments, businesses, and individuals.

Number of Respondents: 6,906 on average (each year).

Number of Responses: 98,069 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: Ranges from 15 minutes to 12 hours.

Estimated Total Annual Hour Burden: 301,811 hours.

Estimated Total Annual Non-Hour Cost: $309,630.

Section	Respondent	Information collection	Annual number of respondents	Frequency of responses	Annual number of responses	Completion time per response	Total annual burden hours
23.107	State court and/or agency.	Obtain information on whether child is ''Indian child''.	50	260	13,000	12	156,000
23.108, 23.109	Tribe	Respond to State regarding Tribal membership.	567	23	13,041	1	13,041
23.110	State court	Notify Tribal court of dismissal and provide records.	50	5	250	0.25	63
23.11, 23.111	State court and/or agency.	Notify Tribe, parents, Indian custodian of child custody proceeding.	50	273	13,650	6	81,900
23.11, 23.111	Private placement agency.	Notify Tribe, parents, Indian custodian of child custody proceeding.	1,289	2	2,578	6	15,468
23.113	State agency or State court.	Document basis for emergency removal/placement.	50	260	13,000	0.5	6,500
23.116, 23.119	State court	Notify Tribal court of transfer request, and provide records.	50	5	250	0.25	63
23.120	Agency	Document ''active efforts''	50	167	8,350	0.5	4,175
23.125, 23.126	Parent/Indian custodian.	Consent to termination or adoption (with required contents).	5,000	1	5,000	0.5	2,500
23.127, 23.128	State court	Notify placement of withdrawal of consent.	50	2	100	0.25	25
23.136	State court	Notify of petition to vacate	50	5	250	0.25	63
23.138	State court	Inform adult adoptee of Tribal affiliation upon request.	50	20	1,000	0.5	500
23.139	State court	Notify of change in status quo of adopted child.	50	4	200	0.25	63
23.140	State court	Provide copy of final adoption decree/order.	50	47	2,350	0.25	588
23.141	State court	Maintain records of each placement (including required documents).	50	167	8,350	0.5	4,175
23.141	State court or agency.	Provide placement records to Tribe or Secretary upon request within 14 days.	50	167	8,350	1.5	12,525

Section	Respondent	Information collection	Annual number of respondents	Frequency of responses	Annual number of responses	Completion time per response	Total annual burden hours
23.141	State court or State agency.	Notify where records maintained	50	167	8,350	0.5	4,175
			.....	.....	98,069	.....	301,811

The annual cost burden to respondents associated with providing notice by certified mail is $6.74 and the cost of a return receipt green card is $2.80. For each Indian child-custody proceeding, at least two notices must be sent—one to the parent and one to the Tribe, totaling $19.08. At an annual estimated 13,000 child welfare proceedings that may involve an ''Indian child,'' where approximately 650 of these include an interstate transfer (13,650), this totals: $260,442. In addition, there are approximately 2,578 voluntary proceedings for which parties may choose to provide notice, at a cost of $49,118. Together, the total cost burden is $309,630.

Comment was taken on this information collection in the proposed rule, as part of the public notice and comment period proposed rule, in compliance with OMB regulations. One commenter, the California Health and Human Services Agency, Department of Social Services (CHHS) submitted comments specifically in response to the request for comments on the information collection burden.

• *Comment on Proposed § 23.111:* The proposed rule states that notice must be by registered mail, whereas the current 23.11(a) allows for notice by certified mail. To require registered mail will increase costs that undermine noticing under ICWA. *Response:* The statute specifies ''registered mail with return receipt requested.'' 25 U.S.C. 1912(a). In response to these comments, the Department examined whether certified mail with return receipt requested is allowable under the statute, and determined that it is because certified mail with return receipt requested better meets the goals of prompt, documented notice. The final rule allows for certified mail.

• *Comment on Proposed § 23.104, providing information on how to contact a Tribe:* The rule should clarify BIA's obligation in gathering the information for the list of Tribe's designated agents and contact information because the current list is outdated, inefficient, and inconsistently maintained. The list is hampered by publication in the **Federal Register** and BIA should be required to publish updates on the Web. The list also no longer maintains the historical affiliations, which was helpful. *Response:* BIA is now publishing the list using historical affiliations, as requested, and making the list available on its Web site, where it can be updated more frequently. The rule does not address this because these are procedures internal to the BIA.

• *Comment on Proposed § 23.111(i), requiring notice by both States where child is transferred interstate:* Requiring both the originating State court and receiving State court to provide notice is duplicative and burdensome because notice should only be required in the State where the actual court proceeding is pending. Another commenter stated that the provision appears to apply to transfers between Tribes and States, where notice is unnecessary. *Response:* The final rule deletes this provision.

• *Comment on Proposed § 23.134, requiring BIA to disclose information to adult adoptees:* This section appears to be creating duplicative work of the BIA and States, because both sections require each to provide adult adoptees information for Tribal enrollment. *Response:* The Act imposes this responsibility on both BIA and the State. Section 1951(b) of the Act imposes the responsibility on BIA, which is in § 23.71(b) of the final rule. Section 1917 of the Act imposes the responsibility on States, which is addressed at § 23.134 of the final rule.

• *Comment on Proposed § 23.137, requiring the State to establish a single location for placement records:* This requirement would be an unfunded mandate with undue burden and would require relocating 1,145 files to a different location and require changes to existing recordkeeping systems. Another State agency commented that there is a significant fiscal and annual burden due to the staffing, costs for copying, packaging and transferring physical files to a different location. *Response:* The final rule deletes the provision requiring States to establish a single, central repository. The associated information collection request has also been deleted.

• *Comment on Proposed § 23.137, requiring providing records to the Department or Tribe upon request:* The 15-minute burden estimate allocated to this task is too low. The time to copy, package and mail the documents will be no less than one hour, but more realistically two hours. *Response:* The final rule updates the burden estimates to reflect 1.5 hours.

If you have comments on this information collection, please submit them to Elizabeth K. Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS–3071, Washington, DC 20240, or by email to *elizabeth.appel@bia.gov.*

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. *See,* 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act.

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

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

List of Subjects in 25 CFR Part 23

Administrative practice and procedure, Child welfare, Indians, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 23 in Title 25 of the Code of Federal Regulations as follows:

PART 23—INDIAN CHILD WELFARE ACT

■ 1. The authority citation for part 23 continues to read as follows: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901–1952.

■ 2. In § 23.2:

■ a. Add a definition for ''active efforts'' in alphabetical order;

■ b. Revise the definition of ''child-custody proceeding'';

■ c. Add definitions for ''continued custody'', ''custody'', and ''domicile'' in alphabetical order;

■ d. Add a definition for ''emergency proceeding'' in alphabetical order;
■ e. Revise the definition of ''extended family member'';
■ f. Add a definition for ''hearing'' in alphabetical order;
■ g. Revise the definitions of ''Indian child'', ''Indian child's Tribe'', and ''Indian custodian'';
■ h. Add a definition for ''Indian foster home'' in alphabetical order;
■ i. Add a definition of ''involuntary proceeding'' in alphabetical order;
■ j. Revise the definition of ''parent'';
■ k. Revise the definitions of ''reservation'' and ''Secretary'';
■ l. Add a definition for ''status offenses'' in alphabetical order;
■ m. Revise the definition of ''Tribal court''; and
■ n. Add definitions for ''upon demand'', and ''voluntary proceeding'' in alphabetical order.

The additions and revisions read as follows:

§ 23.2 Definitions.

* * * * *

Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;

(6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;

(11) Providing post-reunification services and monitoring.

* * * * *

Child-custody proceeding. (1) ''Child-custody proceeding'' means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes:

(i) *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, but where parental rights have not been terminated;

(ii) *Termination of parental rights,* which is any action resulting in the termination of the parent-child relationship;

(iii) *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

(iv) *Adoptive placement,* which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings. If a child is placed in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is a child-custody proceeding.

* * * * *

Continued custody means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law, that a parent or Indian custodian 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 custody or legal custody or both, 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 Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(2) For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.

Emergency proceeding means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

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 age 18 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.

* * * * *

Hearing means a judicial session held for the purpose of deciding issues of fact, of law, or both.

* * * * *

Indian child means any unmarried person who is under age 18 and either:

(1) Is a member or citizen of an Indian Tribe; or

(2) Is eligible for membership or citizenship in an Indian Tribe and is the

biological child of a member/citizen 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 described in § 23.109.

Indian custodian means any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.

Indian foster home means a foster home where one or more of the licensed or approved foster parents is an ''Indian'' as defined in 25 U.S.C. 1903(3).

Involuntary proceeding means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster-care, preadoptive, or adoptive placement under threat of removal of the child by a State court or agency.

* * * * *

Parent or *parents* means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under Tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.

Reservation means Indian country as defined in 18 U.S.C 1151 and any lands, not covered under that section, 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 and which is either 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 custodian can regain custody simply upon verbal request, without any formalities or contingencies.

* * * * *

Voluntary proceeding means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

■ 3. Revise § 23.11 to read as follows:

§ 23.11 Notice.

(a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include the requisite information identified in § 23.111, consistent with the confidentiality requirement in § 23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by § 23.111.

(b)(1) For child-custody proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, or any territory or possession of the United States, notices must be sent to the following address: Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214.

(2) For child-custody proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, or Wisconsin, notices must be sent to the following address: Minneapolis Regional Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401–2241.

(3) For child-custody proceedings in Nebraska, North Dakota, or South Dakota, notices must be sent to the following address: Aberdeen Regional Director, Bureau of Indian Affairs, 115 Fourth Avenue SE., Aberdeen, South Dakota 57401.

(4) For child-custody proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), or the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods or Woodward, notices must be sent to the following address: Anadarko Regional Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section.

(5) For child-custody proceedings in Wyoming or Montana (except for notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana), notices must be sent to the following address: Billings Regional Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(6) For child-custody proceedings in the Texas counties of El Paso and Hudspeth or in Colorado or New Mexico (exclusive of notices to the Navajo Nation from the New Mexico counties listed in paragraph (b)(9) of this section), notices must be sent to the following address: Albuquerque Regional Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Nation must be sent to the Navajo Regional Director at the address listed in paragraph (b)(9) of this section.

(7) For child-custody proceedings in Alaska (except for notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska), notices must be sent to the following address: Juneau Regional Director, Bureau of Indian

Affairs, 709 West 9th Street, Juneau, Alaska 99802–1219. Notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(8) For child-custody proceedings in Arkansas, Missouri, or the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Stephens, Tulsa, Wagoner, or Washington, notices must be sent to the following address: Muskogee Regional Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For child-custody proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi Tribe of Arizona and the San Juan Southern Paiute Tribe of Arizona) or Navajo (except for notices to the Hopi Tribe of Arizona); the New Mexico counties of McKinley (except for notices to the Zuni Tribe of the Zuni Reservation), San Juan, or Socorro; or the Utah county of San Juan, notices must be sent to the following address: Navajo Regional Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Southern Paiute Tribes of Arizona must be sent to the Phoenix Regional Director at the address listed in paragraph (b)(10) of this section. Notices to the Zuni Tribe of the Zuni Reservation must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6 of this section).

(10) For child-custody proceedings in Arizona (exclusive of notices to the Navajo Nation from those counties listed in paragraph (b)(9) of this section), Nevada, or Utah (exclusive of San Juan County), notices must be sent to the following address: Phoenix Regional Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For child-custody proceedings in Idaho, Oregon, or Washington, notices must be sent to the following address: Portland Regional Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders, must also be sent to the Portland Regional Director.

(12) For child-custody proceedings in California or Hawaii, notices must be sent to the following address: Sacramento Regional Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(c) Upon receipt of the notice, the Secretary will make reasonable documented efforts to locate and notify the child's Tribe and the child's parent or Indian custodian. The Secretary will have 15 days, after receipt of the notice, to notify the child's Tribe and parents or Indian custodians and to send a copy of the notice to the court. If within the 15-day period the Secretary is unable to verify that the child meets the criteria of an Indian child as defined in § 23.2, or is unable to locate the parents or Indian custodians, the Secretary will so inform the court and state how much more time, if any, will be needed to complete the verification or the search. The Secretary will complete all research efforts, even if those efforts cannot be completed before the child-custody proceeding begins.

(d) Upon request from a party to an Indian child-custody proceeding, the Secretary will make a reasonable attempt to identify and locate the child's Tribe, parents, or Indian custodians to assist the party seeking the information.

■ 4. Revise § 23.71 to read as follows:

§ 23.71 Recordkeeping and information availability.

(a) The Division of Human Services, Bureau of Indian Affairs (BIA), is authorized to receive all information and to maintain a central file on all State Indian adoptions. This file is confidential and only designated persons may have access to it.

(b) Upon the request of an adopted Indian who has reached age 18, the adoptive or foster parents of an Indian child, or an Indian Tribe, BIA will disclose such information as may be necessary for purposes of Tribal enrollment or determining any rights or benefits associated with Tribal membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, BIA must certify to the Indian child's Tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment under the criteria established by such Tribe.

(c) BIA will ensure that the confidentiality of this information is maintained and that the information is not subject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

■ 5. Add subpart I to read as follows:

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

Sec.

Pretrial Requirements

Petitions To Transfer to Tribal Court

Adjudication of Involuntary Proceedings

Voluntary Proceedings

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

§ 23.101 What is the purpose of this subpart?

The regulations in this subpart clarify the minimum Federal standards 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's intent in enacting the statute, and to promote the stability and security of Indian tribes and families.

§ 23.102 What terms do I need to know?

The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in § 23.2.

Agency means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.

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.

§ 23.103 When does ICWA apply?

(a) ICWA includes requirements that apply whenever an Indian child is the subject of:

(1) A child-custody proceeding, including:

(i) An involuntary proceeding;

(ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand; and

(iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster-care, preadoptive, or adoptive placement, or termination of parental rights.

(2) An emergency proceeding.

(b) ICWA does not apply to:

(1) A Tribal court proceeding;

(2) A proceeding regarding a criminal act that is not a status offense;

(3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or

(4) A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, chosen for the Indian child and that does not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand.

(c) If a proceeding listed in paragraph (a) of this section concerns a child who meets the statutory definition of ''Indian child,'' then ICWA will apply to that proceeding. In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

(d) If ICWA applies at the commencement of a proceeding, it will not cease to apply simply because the child reaches age 18 during the pendency of the proceeding.

§ 23.104 What provisions of this subpart apply to each type of child-custody proceeding?

The following table lists what sections of this subpart apply to each type of child-custody proceeding identified in § 23.103(a):

Section	Type of proceeding
23.101–23.106 (General Provisions)	Emergency, Involuntary, Voluntary.
Pretrial Requirements:	
23.107 (How should a State court determine if there is reason to know the child is an Indian child?).	Emergency, Involuntary, Voluntary.
23.108 (Who makes the determination as to whether a child is a member whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?).	Emergency, Involuntary, Voluntary.
23.109 (How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?).	Emergency, Involuntary, Voluntary.
23.110 (When must a State court dismiss an action?)	Involuntary, Voluntary.
23.111 (What are the notice requirements for a child-custody proceeding involving an Indian child?).	Involuntary (foster-care placement and termination of parental rights).
23.112 (What time limits and extensions apply?)	Involuntary (foster-care placement and termination of parental rights).
23.113 (What are the standards for emergency proceedings involving an Indian child?)	Emergency.
23.114 (What are the requirements for determining improper removal?)	Involuntary.
Petitions to Transfer to Tribal Court:	
23.115 (How are petitions for transfer of a proceeding made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).

Section	Type of proceeding
23.116 (What happens after a petition for transfer is made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.117 (What are the criteria for ruling on transfer petitions?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.118 (How is a determination of ''good cause'' to deny transfer made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.119 (What happens after a petition for transfer is granted?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
Adjudication of Involuntary Proceedings:	
23.120 (How does the State court ensure that active efforts have been made?)	Involuntary (foster-care placement and termination of parental rights).
23.121 (What are the applicable standards of evidence?)	Involuntary (foster-care placement and termination of parental rights).
23.122 (Who may serve as a qualified expert witness?)	Involuntary (foster-care placement and termination of parental rights).
23.123 Reserved	N/A.
Voluntary Proceedings:	
23.124 (What actions must a State court undertake in voluntary proceedings?)	Voluntary.
23.125 (How is consent obtained?)	Voluntary.
23.126 (What information must a consent document contain?)	Voluntary.
23.127 (How is withdrawal of consent to a foster-care placement achieved?)	Voluntary.
23.128 (How is withdrawal of consent to a termination of parental rights or adoption achieved?)	Voluntary.
Dispositions:	
23.129 (When do the placement preferences apply?)	Involuntary, Voluntary.
23.130 (What placement preferences apply in adoptive placements?)	Involuntary, Voluntary.
23.131 (What placement preferences apply in foster-care or preadoptive placements?)	Involuntary, Voluntary.
23.132 (How is a determination of ''good cause'' to depart from the placement preferences made?).	Involuntary, Voluntary.
Access:	
23.133 (Should courts allow participation by alternative methods?)	Emergency, Involuntary.
23.134 (Who has access to reports and records during a proceeding?)	Emergency, Involuntary.
23.135 Reserved.	N/A.
Post-Trial Rights & Responsibilities:	
23.136 (What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?).	Involuntary (if consent given under threat of removal), voluntary.
23.137 (Who can petition to invalidate an action for certain ICWA violations?)	Emergency (to extent it involved a specified violation), involuntary, voluntary.
23.138 (What are the rights to information about adoptees' Tribal affiliations?)	Emergency, Involuntary, Voluntary.
23.139 (Must notice be given of a change in an adopted Indian child's status?)	Involuntary, Voluntary.
Recordkeeping:	
23.140 (What information must States furnish to the Bureau of Indian Affairs?)	Involuntary, Voluntary.
23.141 (What records must the State maintain?)	Involuntary, Voluntary.
23.142 (How does the Paperwork Reduction Act affect this subpart?)	Emergency, Involuntary, Voluntary.
Effective Date:	
23.143 (How does this subpart apply to pending proceedings?)	Emergency, Involuntary, Voluntary.
Severability:	
23.144 (What happens if some portion of part is held to be invalid by a court of competent jurisdiction?).	Emergency, Involuntary, Voluntary.

Note: For purposes of this table, status-offense child-custody proceedings are included as a type of involuntary proceeding.

§ 23.105 How do I contact a Tribe under the regulations in this subpart?

To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:

(a) Many Tribes designate an agent for receipt of ICWA notices. The BIA 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.*

(b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.

(c) If you do not have accurate contact information for a Tribe, or the Tribe contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see *www.bia.gov*).

§ 23.106 How does this subpart interact with State and Federal laws?

(a) The regulations in this subpart provide minimum Federal standards to ensure compliance with ICWA.

(b) Under section 1921 of ICWA, 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 the State or Federal court to apply the higher State or Federal standard.

Pretrial Requirements

§ 23.107 How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) If there is reason to know the child is an Indian child, but the court does

not have sufficient evidence to determine that the child is or is not an ''Indian child,'' the court must:

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an ''Indian child'' in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an ''Indian child.'' A Tribe receiving information related to this inquiry must keep documents and information confidential.

§ 23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?

(a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.

(b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.

(c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an ''Indian child.'' An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.

§ 23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?

(a) If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child's Tribe.

(b) If the Indian child meets the definition of ''Indian child'' through more than one Tribe, deference should be given to the Tribe in which the Indian child is already a member, unless otherwise agreed to by the Tribes.

(c) If an Indian child meets the definition of ''Indian child'' through more than one Tribe because the child is a member in more than one Tribe or the child is not a member of but is eligible for membership in more than one Tribe, the court must provide the opportunity in any involuntary child-custody proceeding for the Tribes to determine which should be designated as the Indian child's Tribe.

(1) If the Tribes are able to reach an agreement, the agreed-upon Tribe should be designated as the Indian child's Tribe.

(2) If the Tribes are unable to reach an agreement, the State court designates, for the purposes of ICWA, the Indian Tribe with which the Indian child has the more significant contacts as the Indian child's Tribe, taking into consideration:

(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 the child's custodial parent or Indian custodian; and

(iv) Interest asserted by each Tribe in the child-custody proceeding;

(v) Whether there has been a previous adjudication with respect to the child by a court of one of the Tribes; and

(vi) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.

(3) A determination of the Indian child's Tribe for purposes of ICWA and the regulations in this subpart do not constitute a determination for any other purpose.

§ 23.110 When must a State court dismiss an action?

Subject to 25 U.S.C. 1919 (Agreements between States and Indian Tribes) and § 23.113 (emergency proceedings), the following limitations on a State court's jurisdiction apply:

(a) The court in any voluntary or involuntary child-custody proceeding involving an Indian child must determine 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 expeditiously notify the Tribal court of the pending dismissal based on the Tribe's exclusive jurisdiction, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

(b) If the child is a ward of a Tribal court, the State court must expeditiously notify the Tribal court of the pending dismissal, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

§ 23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or

termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (*see* § 23.105 for information on how to contact a Tribe);

(2) The child's parents; and

(3) If applicable, the child's Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(d) Notice must be in clear and understandable language and include the following:

(1) The child's name, birthdate, and birthplace;

(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;

(3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;

(4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);

(5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;

(6) Statements setting out:

(i) The name of the petitioner and the name and address of petitioner's attorney;

(ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, 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 parental rights to an Indian child.

(iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.

(v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.

(vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and § 23.115.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.

(viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.

(ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

(e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know 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. 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) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in § 23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.

§ 23.112 What time limits and extensions apply?

(a) No foster-care-placement or termination-of-parental-rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the Tribe (or the Secretary). The parent, Indian custodian, and Tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.

(b) Except as provided in 25 U.S.C. 1922 and § 23.113, no child-custody proceeding for foster-care placement or termination of parental rights may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child's Tribe are entitled have expired, as follows:

(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 of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(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 of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(3) Up to 30 days after the parent or Indian custodian has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the parent or Indian custodian has requested up to 20 additional days to prepare for the child-custody proceeding as provided in 25 U.S.C. 1912(a) and § 23.111; and

(4) Up to 30 days after the Indian child's Tribe has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the Indian child's Tribe has requested up to 20 additional days to prepare for the child-custody proceeding.

(c) Additional time beyond the minimum required by 25 U.S.C. 1912 and § 23.111 may also be available under State law or pursuant to extensions granted by the court.

§ 23.113 What are the standards for emergency proceedings involving an Indian child?

(a) Any emergency removal or placement of an Indian child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(b) The State court must:

(1) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and

(3) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(c) An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;

(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or

(3) Restoring the child to the parent or Indian custodian.

(d) A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain a statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain 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) The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;

(4) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director (see *www.bia.gov*);

(5) The residence and the domicile of the Indian child;

(6) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the Tribe affiliated with that reservation or village;

(7) The Tribal affiliation of the child and of the parents or Indian custodians;

(8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(9) 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 contact the Tribe and transfer the child to the Tribe's jurisdiction; and

(10) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

(e) An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:

(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and

(3) It has not been possible to initiate a ''child-custody proceeding'' as defined in § 23.2.

§ 23.114 What are the requirements for determining improper removal?

(a) If, in the course of any 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 expeditiously determine whether there was improper removal or retention.

(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 parent or Indian custodian, unless returning the child to his parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.

Petitions To Transfer to Tribal Court

§ 23.115 How are petitions for transfer of a proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's Tribe may request, at any time, orally on the record or in writing, that the State court transfer a foster-care or termination-of-parental-rights proceeding to the jurisdiction of the child's Tribe.

(b) The right to request a transfer is available at any stage in each foster-care or termination-of-parental-rights proceeding.

§ 23.116 What happens after a petition for transfer is made?

Upon receipt of a transfer petition, the State court must ensure that the Tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.

§ 23.117 What are the criteria for ruling on transfer petitions?

Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or Tribe, the State court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:

(a) Either parent objects to such transfer;

(b) The Tribal court declines the transfer; or

(c) Good cause exists for denying the transfer.

§ 23.118 How is a determination of ''good cause'' to deny transfer made?

(a) If the State court believes, or any party asserts, that good cause to deny transfer exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing on the record and to the parties to the child-custody proceeding.

(b) Any party to the child-custody 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 must not consider:

(1) Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;

(2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(3) Whether transfer could affect the placement of the child;

(4) The Indian child's cultural connections with the Tribe or its reservation; or

(5) Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

(d) The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order.

§ 23.119 What happens after a petition for transfer is granted?

(a) If the Tribal court accepts the transfer, the State court should expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record.

(b) The State court should work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

Adjudication of Involuntary Proceedings

§ 23.120 How does the State court ensure that active efforts have been made?

(a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail in the record.

§ 23.121 What are the applicable standards of evidence?

(a) The court must not order 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 by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) For a foster-care placement or termination of parental rights, the evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

(d) Without a causal relationship identified in paragraph (c) of this section, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

§ 23.122 Who may serve as a qualified expert witness?

(a) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. A person may be designated by the Indian child's Tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's Tribe.

(b) The court or any party may request the assistance of the Indian child's Tribe or the BIA office serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses.

(c) The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.

§ 23.123 [Reserved]

Voluntary Proceedings

§ 23.124 What actions must a State court undertake in voluntary proceedings?

(a) The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in § 23.107.

(b) If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status. This may include contacting the Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) to verify the child's status. As described in § 23.107, where a consenting parent requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential.

(c) State courts must ensure that the placement for the Indian child complies with §§ 23.129–23.132.

§ 23.125 How is consent obtained?

(a) A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain to the parent or Indian custodian:

(1) The terms and consequences of the consent in detail; and

(2) The following limitations, applicable to the type of child-custody proceeding for which consent is given, on withdrawal of consent:

(i) For consent to foster-care placement, the parent or Indian custodian may withdraw consent for any reason, at any time, and have the child returned; or

(ii) For consent to termination of parental rights, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of termination and have the child returned; or

(iii) For consent to an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, and have the child returned.

(c) The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or 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) Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(e) A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

§ 23.126 What information must a consent document contain?

(a) If there are any conditions to the consent, the written consent must clearly set out the conditions.

(b) A written consent to foster-care placement should contain, in addition to the information specified in paragraph (a) of this section, the name

and birthdate of the Indian child; the name of the Indian child's Tribe; the Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe; the name, address, and other identifying information of the consenting parent or Indian custodian; the name and address of the person or entity, if any, who arranged the placement; and the name and address of the prospective foster parents, if known at the time.

§ 23.127 How is withdrawal of consent to a foster-care placement achieved?

(a) The parent or Indian custodian may withdraw consent to voluntary foster-care placement at any time.

(b) To withdraw consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(c) When a parent or Indian custodian withdraws consent to a voluntary foster-care placement, the court must ensure that the Indian child is returned to that parent or Indian custodian as soon as practicable.

§ 23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?

(a) A parent may withdraw consent to voluntary termination of parental rights at any time prior to the entry of a final decree of termination.

(b) A parent or Indian custodian may withdraw consent to voluntary adoption at any time prior to the entry of a final decree of adoption.

(c) To withdraw consent prior to the entry of a final decree of adoption, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(d) The court in which the withdrawal of consent is filed must promptly notify the person or entity who arranged any voluntary preadoptive or adoptive placement of such filing, and the Indian child must be returned to the parent or Indian custodian as soon as practicable.

Dispositions

§ 23.129 When do the placement preferences apply?

(a) In any preadoptive, adoptive, or foster-care placement of an Indian child, the placement preferences specified in § 23.130 and § 23.131 apply.

(b) Where a consenting parent requests anonymity in a voluntary proceeding, the court must give weight to the request in applying the preferences.

(c) The placement preferences must be applied in any foster-care, preadoptive, or adoptive placement unless there is a determination on the record that good cause under § 23.132 exists to not apply those placement preferences.

§ 23.130 What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, 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) Other members of the Indian child's Tribe; or

(3) Other Indian families.

(b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.

(c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.

§ 23.131 What placement preferences apply in foster-care or preadoptive placements?

(a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least-restrictive setting that:

(1) Most approximates a family, taking into consideration sibling attachment;

(2) Allows the Indian child's special needs (if any) to be met; and

(3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.

(b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of this section, 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 that is licensed, approved, or specified by the Indian child's Tribe;

(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.

(c) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.

(d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.

§ 23.132 How is a determination of ''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 that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.

(b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is ''good cause'' to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

(1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

(2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(3) The presence of a sibling attachment that can be maintained only through a particular placement;

(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;

(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform 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) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

Access

§ 23.133 Should courts allow participation by alternative methods?

If it possesses the capability, the court should allow alternative methods of participation in State-court child-custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

§ 23.134 Who has access to reports and records during a proceeding?

Each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based.

§ 23.135 [Reserved]

Post-Trial Rights & Responsibilities

§ 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?

(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, the State court may invalidate the voluntary adoption upon finding that the parent's consent was obtained by fraud or duress.

(b) Upon the parent's filing of a petition to vacate the final decree of adoption of the parent's Indian child, the court must give notice to all parties to the adoption proceedings and the Indian child's Tribe and must hold a hearing on the petition.

(c) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the final decree of adoption, order the consent revoked, and order that the child be returned to the parent.

§ 23.137 Who can petition to invalidate an action for certain ICWA violations?

(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 under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:

(1) An Indian child who is or was 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) To petition for invalidation, there is no requirement that the petitioner's rights under ICWA were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 during the course of the child-custody proceeding.

§ 23.138 What are the rights to information about adoptees' Tribal affiliations?

Upon application by an Indian who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption 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.

§ 23.139 Must notice be given of a change in an adopted Indian child's status?

(a) If an Indian child has been adopted, the court must notify, by registered or certified mail with return receipt requested, the child's biological parent or prior Indian custodian and the Indian child's Tribe whenever:

(1) A final decree of adoption of the 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.

(b) The notice must state the current name, and any former name, of the Indian child, inform the recipient of the right to petition for return of custody of the child, and provide sufficient information to allow the recipient to participate in any scheduled hearings.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice and filing the waiver with the court.

(1) Prior to accepting the waiver, the court must explain the consequences of the waiver and explain how the waiver may be revoked.

(2) The court must certify that the terms and consequences of the waiver and how the waiver may be revoked were explained in detail in English (or 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.

(3) Where confidentiality is requested or indicated, execution of the waiver need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(4) The biological parent or Indian custodian may revoke the waiver at any time by filing with the court a written notice of revocation.

(5) A revocation of the right to receive notice does not affect any child-custody proceeding that was completed before the filing of the notice of revocation.

Recordkeeping

§ 23.140 What information must States furnish to the Bureau of Indian Affairs?

(a) Any State court entering a final adoption decree or order in any voluntary or involuntary Indian-child adoptive placement must furnish a copy of the decree or order within 30 days 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, in an envelope marked ''Confidential'':

(1) Birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian 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 Tribal membership or eligibility for Tribal membership of the adopted child.

(b) If a State agency has been designated as the repository for all State-court adoption information and is fulfilling the duties described in paragraph (a) of this section, the State courts in that State need not fulfill those same duties.

§ 23.141 What records must the State maintain?

(a) The State must maintain a record of every voluntary or involuntary foster-care, preadoptive, and adoptive

placement of an Indian child and make the record available within 14 days of a request by an Indian child's Tribe or the Secretary.

(b) The record must contain, at a minimum, the petition or complaint, all substantive orders entered in the child-custody proceeding, the complete record of the placement determination (including, but not limited to, the findings in the court record and the social worker's statement), and, if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.

(c) A State agency or agencies may be designated to be the repository for this information. The State court or agency should notify the BIA whether these records are maintained within the court system or by a State agency.

§ 23.142 How does the Paperwork Reduction Act affect this subpart?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0186. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

Effective Date

§ 23.143 How does this subpart apply to pending proceedings?

None of the provisions of this subpart affects a proceeding under State law for foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement that was initiated prior to December 12, 2016, but the provisions of this subpart apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Severability

§ 23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?

If any portion of this part is determined to be invalid by a court of competent jurisdiction, the other portions of the part remain in effect. For example, the Department has considered separately whether the provisions of this part apply to involuntary and voluntary proceedings; thus, if a particular provision is held to be invalid as to one type of proceeding, it is the Department's intent that it remains valid as to the other type of proceeding.

Dated: June 6, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–13686 Filed 6–13–16; 8:45 am]

BILLING CODE 4310–02–P

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Vol. 81 Tuesday,
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Part III

The President

Notice of June 10, 2016—Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons to Undermine Belarus's Democratic Processes or Institutions

Federal Register
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Presidential Documents

Title 3—

The President

Notice of June 10, 2016

Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons to Undermine Belarus's Democratic Processes or Institutions

On June 16, 2006, by Executive Order 13405, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus's democratic processes or institutions, manifested in the fundamentally undemocratic March 2006 elections, to commit human rights abuses related to political repression, including detentions and disappearances, and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

The actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2016. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
June 10, 2016.

[FR Doc. 2016–14224
Filed 6–13–16; 11:15 am]
Billing code 3295–F6–P

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