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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[FNS–2015–0029]

RIN 0584–AE36

SNAP Requirement for National Directory of New Hires Employment Verification and Annual Program Activity Reporting

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Interim final rule.

SUMMARY: The Food and Nutrition Service is codifying the requirement for State agencies to verify applicant employment data through the National Directory of New Hires (NDNH) for the determination of Supplemental Nutrition Assistance Program (SNAP) eligibility and correct amount of benefits, pursuant to section 4013 of the Agricultural Act of 2014. This interim final rule requires that State agencies access employment data through the NDNH at the time of SNAP certification, including recertification, and aims to improve Program integrity by reducing the risk of improper payments due to unreported or misreported income. This rule further amends regulations to change the reporting frequency requirement for the ''Program and Budget Summary Statement Part B—Program Activity Statement'' from an annual submission based on the State fiscal year to a quarterly submission based on the Federal fiscal year.

DATES: To be considered, written comments on this interim final rule must be received on or before March 28, 2016. This rule will become effective March 28, 2016.

Implementation Date: State agencies have already been instructed through FNS directive to implement this provision as required by the Agricultural Act of 2014.

ADDRESSES: Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Send written comments to Jane Duffield, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, VA 22302.
- All written comments submitted in response to this interim final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jane Duffield, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 818, Alexandria, VA 22302, by phone at (703) 305–2425 or via email at *Jane.Duffield@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

With this interim final rule, the Food and Nutrition Service (FNS) amends the SNAP regulations at 7 CFR part 272 to require State agencies to access employment data through the National Directory of New Hires (NDNH) at the time of certification, including recertification, to determine the eligibility status and correct benefit amount for SNAP applicants and participants. This requirement codifies section 4013 of the Agricultural Act of 2014 (Pub. L. 113–79). The legislation was effective on February 7, 2014, and FNS implemented the mandated requirements, including that associated with the NDNH requirement, by directive to all SNAP State agencies on March 21, 2014. This interim rule also amends regulations at 7 CFR 272.2 to change the requirement for State agency submission of the ''Program and Budget Summary Statement Part B—Program Activity Statement'' (FNS–366B, OMB #0584–0594, expiration date 6/30/2017) from an annual submission based on the State fiscal year to a quarterly submission based on the Federal fiscal year.

Implement National Directory of New Hires Employment Verification Requirement

Current regulations at § 273.2(f)(1)(i) require State agencies to verify gross non-exempt income for all households prior to certification or, in instances where the State's attempts to verify the income with the employer have been unsuccessful, use the best available information to determine benefits. Additionally, regulations at § 273.12(a) and § 273.21 establish the SNAP household's responsibility to report applicable changes in income while participating in the Program. Thus, the accuracy of Program benefits issued to a household relies on the accuracy of reported and verified information.

The NDNH is a repository of employment, unemployment insurance, and quarterly wage data maintained by the U.S. Department of Health and Human Services (HHS) Office of Child Support Enforcement (OCSE). The data residing in the NDNH includes W–4 (new hire) records from the State Directory of New Hires, quarterly wage and unemployment insurance data from the State workforce agencies, and new hire and quarterly wage data from Federal agencies. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) mandated the establishment of the NDNH in 1996. A major component of the Federal Parent Locator Service (FPLS), the NDNH was originally established for State Child Support Enforcement (CSE) Agencies to locate non-custodial parents in order to establish and enforce child support orders. As of February 2015, there were 64,571 employers and 33,610 subsidiaries listed in the NDNH. The number of employers and their subsidiaries listed in the NDNH generally increase each year. In 2014, over 4,320 new employers were added to the database.

The NDNH may only be accessed by authorized agencies with legislative authority. On July 27, 2006, Public Law 109–250 amended section 453(j) of Social Security Act (42 U.S.C. 653(j)) by the adding a new paragraph (10), which

authorized State agencies administering SNAP under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 *et seq.*] to access NDNH data for carrying out Program responsibilities. Prior to the amendment, State SNAP agencies could only access employment data made available through their own State Directory of New Hires for the determination of SNAP eligibility. Public Law 109–250 gave State SNAP agencies the option to access NDNH, thus providing an opportunity to receive employment data from other States, multi-State employers, and Federal agencies. Despite this change in legislation, few State agencies exercised the option to use it. Most State agencies instead opted to access employment data via their respective State Directory of New Hires, State Workforce Agency, and other data sources. By now requiring State agencies to access NDNH data for SNAP, FNS believes States will benefit from a reduction in improper payments due to unreported income.

This rule codifies in § 272.16 the requirement that each State agency must establish a system to compare identifiable information about each adult household member against data from the NDNH. Section 4013 of the Agricultural Act of 2014 mandates that States use NDNH to verify applicant and participant employment data and enter into a computer matching agreement with HHS pursuant to the authority in 42 U.S.C. 653(j)(10). State agencies must enter into a computer matching agreement with HHS in order to access the NDNH. States must continue to adhere to requirements § 272.12 addressing the use of information obtained from computer matching programs. The State agency may only use the required data matching to verify that the employment status of adult household members is accurately reported on the SNAP application. Because the NDNH does not include employment data on individuals under the age of 18, this verification requirement is limited to adult household members. The law further mandates the State agency to conduct matches against NDNH new hire data at the time of certification. FNS believes that conducting the match at both initial application and recertification will meet the intent of section 4013, and is therefore codifying the requirement for both certification and recertification.

The NDNH maintains three data sets. While this rule addresses the requirement for State agency matching against the NDNH new hire data set, States have the option to match against the quarterly wage and unemployment insurance data sets at their own discretion. Because the timeliness of quarterly wage and quarterly unemployment insurance data may not provide a true benefit to the State agency in determining eligibility and benefit levels, this rule only requires that States match against NDNH new hire data at minimum.

Data matching has provided many positive results for the efficient and effective administration of the program. However, it has come to the attention of FNS that there has been some confusion regarding reporting systems and integrity provisions for SNAP, specifically with regard to simplified reporting. Therefore, FNS wishes to clarify that in addition to the requirements of these integrity provisions, State agencies are also expected to comply with the requirements of the reporting system applicable to SNAP households provided at 7 CFR 273.12. State options for action on reported changes during the certification period must be followed, even for required data matches.

Data received through NDNH is not considered verified upon receipt. Consistent with requirements set forth in the Privacy Act (5 U.S.C. 552a(p)) and in SNAP regulation at 7 CFR 272.12(c), the State agency may not take any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or SNAP recipient based on information provided by the NDNH unless the match information has been independently verified and a Notice of Adverse Action or Notice of Denial has been sent to the household. The Privacy Act defines independent verification as the investigation and confirmation of specific information relating to an individual used as a basis for an adverse action against the individual. Should there be a delay in the State agency's ability to verify the NDNH new hire match results within the required application processing timeline, the State agency is expected to continue processing the application without the requested documentation verifying the information. If, after either certification or recertification is completed, the State agency receives verification of information obtained through the NDNH match indicating that the household is ineligible or was approved for the incorrect benefit amount, the State should deny, reduce or terminate benefits, as applicable, and establish a claim to collect any benefits that were overpaid, in accordance with regulations at § 273.18.

Change the Reporting Frequency of Program Activity Statement (FNS–366B)

With this rule, FNS is also modifying a reporting requirement of Stte agencies by increasing the frequency of submitting a Program Activity Statement from an annual submission based on the State fiscal year to a quarterly submission based on the Federal fiscal year. Section 16(a) of the Food and Nutrition Act of 2008 authorizes 50 percent Federal reimbursement for State agency costs to administer SNAP. SNAP regulations at 7 CFR 272.2(a) require that State agencies plan and budget Program operations and establish objectives for the next year. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement and the Program Activity Statement (7 CFR 272.2(a)(2)). Under current regulations at 7 CFR 272.2(c), the State agency is required to submit to FNS for approval a Budget Projection Statement (FNS–366A) which projects total Federal administrative costs for the upcoming fiscal year and a Program Activity Statement (FNS–366B) which provides Program activity data for the preceding fiscal year. Current regulations at 7 CFR 272.2(e)(2)(ii) require State agencies to submit the Program Activity Statement to FNS no later than 45 days after the end of the State agency's fiscal year, which is typically August 15 for most States. The Program Activity Statement was created to substantiate the costs the State agency expects to incur during the next fiscal year. It currently provides data on the number of SNAP applications the State agency processed, the number of fair hearings the State agency conducted, and the fraud control activities in which the State agency was engaged in the preceding year. FNS uses the data to monitor State agency activity levels and performance.

While originally intended only to support the States' annual SNAP budget request by providing a summary of State SNAP activities in the previous State fiscal year, the data reported on the Program Activity Statement has also become a vital tool for monitoring State operations related to application processing, fair hearings, and fraud prevention activities. The data reported on the Program Activity Statement enables FNS to identify areas that may need improvement and to provide more effective technical assistance to State agencies. The Agency believes an increase in reporting frequency will allow for greater and more timely access to Program data. It will help States, FNS, and other stakeholders identify

trends, inconsistencies and inefficiencies earlier in each fiscal year. A 2014 U.S. Government Accountability Office (GAO) performance audit of FNS (GAO–14–641, *Enhanced Detection Tools and Reporting Could Improve Efforts to Combat Recipient Fraud*) concluded that State-reported data on anti-fraud activities are not reliable for ensuring Program integrity and assessing States' performance. Additionally, the study warned that data inconsistencies could limit FNS' ability to identify more effective and efficient practices for State anti-fraud efforts. With more current data, States and other interested parties will be able to identify gaps and areas in need of greater attention, and allow States to respond more quickly to those gaps. This increased responsiveness, along with a concurrent FNS effort to update and improve the reliability of the data collected in the Program Activity Statement, will help to address directly the concerns raised by GAO. With this regulation, FNS is also aligning the new quarterly requirement to the Federal fiscal year. As most SNAP data is reported monthly, quarterly or annually based on the Federal fiscal year, this change will improve FNS' ability to conduct data analysis by using data collected over consistent periods of time.

II. Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This interim final rule has been designated as not significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this interim final rule would not have a significant impact on a substantial number of small entities. While there may be some impact on the State and local agencies that administer the Program in implementing this provision, the impact is not expected to be significant. Applicants and recipients may also be impacted to the extent that matching client information with records in the National Directory of New Hires may identify a client as ineligible for the Program, thus preventing them from Program participation.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This interim final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Department has considered the impact of this interim final rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this interim final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on Program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in SNAP.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FNS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. On February 18, 2015, the agency held a webinar for tribal participation and comments. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this interim final rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting an information collection under 0584–NEW, which contains the burden information in the rule for OMB's review and approval. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate action in the **Federal Register** announcing OMB's approval. Once approved the new provisions in this rule and the burden requirement associated with the National Directory of New Hires will be merged into the existing information collection for Supplemental Nutrition Assistance Program (SNAP) Forms: Applications, Periodic Reporting, Notices, OMB Control Number #0584–0064, expiration date 4/30/2016, which is currently under revision. New provisions and burden requirements in this rule associated with the Program Activity Statement (FNS–366B) will be merged into the existing information collection for the Food and Nutrition Service Food Programs Reporting System (FPRS), OMB Control Number #0584–0594, expiration date 6/30/2017, which is currently under revision.

Comments on this interim final rule must be received by March 28, 2016.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20403. Please also send a copy of your comments to Jane Duffield, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection, please contact Jane Duffield at the above address.

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 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.

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.

Title: Supplemental Nutrition Assistance Program: Requirement for National Directory of New Hires Employment Verification and Annual Program Activity Reporting.

OMB Number: 0584—NEW.

Expiration Date: N/A.

Type of Request: New Collection.

Abstract: This rule codifies section 4013 of the Agricultural Act of 2014, requiring State agencies to access employment data through the National Directory of New Hires (NDNH) at the time of certification, including recertification, to determine eligibility status and correct benefit amount for SNAP applicants. This rule also amends regulations at 7 CFR 272.2 to increase the frequency of the requirement for State agency submission of the Program Activity Statement from an annual requirement based on the State fiscal year to a quarterly requirement, unless otherwise directed by FNS, based on the Federal fiscal year.

272.2—Program Activity Statement (FNS–366B)

State agencies are required to submit (quarterly) to FNS a Program Activity Statement (FNS–366B) providing a summary of Program activity for the State agency's operations during the previous reporting period. The activity report provides data on the number of applications processed, number of fair hearings and fraud control activity. FNS uses the data to monitor State agency activity levels and performance.

272.16—National Directory of New Hires

Applicant and Recipient Screening: The State agency must compare identifiable information about each adult household member against information from the NDNH. States must make the comparison of matched data at the time of application and recertification and must independently verify any positive match results.

Verification of Match: The State agency must independently verify the information prior to taking any adverse action against an individual. Should the State agency receive employment information via the NDNH that was previously unreported by the household, the State agency may issue a Request for Contact to the household to verify the information or contact the employer directly, depending upon applicable reporting requirements as defined at 7 CFR 273.12.

Notice: The Notice of Adverse Action or Notice of Denial is issued by State agencies to participating households whose benefits will be reduced or terminated as the result of a change in household circumstances. Should the State agency independently verify unreported or underreported income discovered through NDNH, and that income results in a reduction of benefits or change in eligibility, the State agency must take action by issuing the household a Notice of Adverse Action or Notice of Denial and adjusting benefits accordingly.

Burden Estimates: Out of the 251,482.35 hours requested for this new information collection request and after OMB's approval, FNS will merge the total reporting burden estimates into 0584–0064 are 249,252.64 burden hours & 12,276,992 total annual responses; and, the total reporting burden into 0584–0594 is 2,229.71 burden hours and 159 total annual responses. After approval into these existing collection packages and there are no recordkeeping requirements with these new or changing provisions.

See the burden breakdown by affected public below. After OMB approval of this information collection request, the program plans to publish another notice in the **Federal Register** announcing OMB's approval.

Respondents: State and local agencies, households.

Estimated Number of Respondents: 891,125.

Estimated Number of Responses per Respondent: 13.78.

Estimated Total Annual Burden on Respondents: 252,432.64 hours. See the table below for estimated total annual burden for each type of respondent.

STATE AGENCIES

CFR	Action	Number of respondents	Frequency per respondent	Total annual responses	Burden hours per response	Total burden hours	Previous submission total hours	Difference due to program changes	Difference due to adjustments
272.2	Program Activity Statement (FNS 366B).	53	4	212	15	3,180	950.29	2,229.71	0.00
272.16	NDNH—Applicant/Recipient Screening.	53	1	9,158,240	0.017	155,690.08	0.00	155,690.08	0.00
272.16	NDNH—Verification of Match	53	1	1,237,600	0.03	37,128	0.00	37,128.00	0.00
272.16	NDNH—Notice of Adverse Action or Notice of Denial.	53	1	495,040	0.03	14,851.20	0.00	14,851.20	0.00
Total ..	.....	53	.....	10,891,092	0.019359792	210,849.28	950.29	209,898.99	0.00

HOUSEHOLDS

CFR	Action	Number of respondents	Frequency per respondent	Total annual responses	Burden hours per response	Total burden hours	Previous submission total hours	Difference due to program changes	Difference due to adjustments
272.16	NDNH—Request for Contact	891,072	1	891,072	0.03	26,732.16	0.00	26,732.16	0.00
272.16	NDNH—Notice of Adverse Action or Notice of Denial.	495,040	1	495,040	0.03	14,851.20	0.00	14,851.20	0.00
Total ..	.....	891,072	.....	1,386,112	0.03	41,583.36	0.00	41,583.36	0.00

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 272

Civil rights, Supplemental Nutrition Assistance Program, Grant programs—social programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 272 is amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 272.2, revise paragraphs (c)(1)(ii) and (e)(2)(ii) to read as follows:

§ 272.2 Plan of operation.

* * * * *

(c) * * *

(1) * * *

(ii) The Program Activity Statement, to be submitted quarterly (unless otherwise directed by FNS), solicits a summary of Program activity for the State agency's operations during the preceding reporting period.

* * * * *

(e) * * *

(2) * * *

(ii) The Program Activity Statement shall be submitted quarterly (unless otherwise directed by FNS) based on the Federal fiscal year.

* * * * *

■ 3. Add § 272.16 to read as follows:

§ 272.16 National Directory of New Hires.

(a) *General.* Each State agency shall establish a system to verify applicant employment data for the determination of SNAP eligibility and correct benefit amount.

(b) *Data source.* States shall use the U.S. Department of Health and Human Service (HHS) National Directory of New Hires (NDNH) and enter into a computer matching agreement with HHS pursuant to the authority in 42 U.S.C. 653(j)(10).

(c) *Use of match data.* In accordance with the procedural requirements and privacy protections required for computer data matching at 5 U.S.C. 552a(p), States shall provide a system for:

(1) Comparing identifiable information about each adult household member against data from the NDNH. States must, at minimum, match household members against new hire data available in the database. States shall make the comparison of matched data at the time of application and recertification.

(2) The reporting of instances where there is a match;

(3) The independent verification of match hits to determine their accuracy;

(4) Notice to the household of match results;

(5) An opportunity for the household to respond to the match prior to an adverse action to deny, reduce, or terminate benefits; and

(6) The establishment and collection of claims as appropriate.

Dated: January 14, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–01402 Filed 1–25–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1281; Directorate Identifier 2014–NM–241–AD; Amendment 39–18346; AD 2015–25–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all The Boeing Company Model 777 airplanes. Paragraph (i)(4) of the regulatory text contains a reference to a nonexistent paragraph. This

document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective January 28, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 28, 2016 (80 FR 80234, December 24, 2015).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1281.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Eric Lin, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6412; fax: 425–917–6590; email: *Eric.Lin@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2015–25–08, Amendment 39–18346 (80 FR 80234, December 24, 2015), currently requires repetitive inspections for any crack in the aft webs of the radial lap splices of the aft pressure bulkhead, and, if necessary, corrective actions, for all The Boeing Company Model 777 airplanes.

Need for the Correction

As published, paragraph (i)(4) of the regulatory text contains a reference to a nonexistent paragraph. Paragraph (i)(4) of the AD incorrectly references paragraph ''(l)(4)(ii)''; however, the correct reference is paragraph ''(i)(4)(ii).''

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014. This service information describes procedures for inspections of the lap splices in the web of the aft pressure bulkhead for cracking, and corrective actions. 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.

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). Although no other part of the preamble or regulatory information has been corrected, we are publishing the entire rule in the **Federal Register**.

The effective date of this AD remains January 28, 2016.

Since this action only corrects a paragraph reference, it has no adverse economic impact and imposes no additional burden on any person. Therefore, we have determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 [Corrected]

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

2015–25–08 The Boeing Company: Amendment 39–18346; Docket No. FAA–2015–1281; Directorate Identifier 2014–NM–241–AD.

(a) Effective Date

This AD becomes effective on January 28, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder indicating that the lap splices of the aft pressure bulkhead webs are subject to widespread fatigue damage on aging Model 777 airplanes that have accumulated at least 38,000 total flight cycles. We are issuing this AD to detect and correct fatigue cracking in the aft webs of the radial lap splices of the aft pressure bulkhead; such cracking could result in reduced structural integrity of the airplane, decompression of the cabin, and collapse of the floor structure.

(f) Compliance

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

(g) Inspection of Lap Splice in the Web of the Aft Pressure Bulkhead

Except as required by paragraph (h) of this AD: At the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014, do a medium frequency eddy current inspection for any cracking in the aft webs of the radial lap splices of the aft pressure bulkhead, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014. Repeat the inspection thereafter at intervals not to exceed 8,400 flight cycles from the previous inspection. If any crack is found during any inspection required by this AD, do the applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014. If a corrective action described in Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Exception to Service Information Specifications

Where Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if

requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9–ANM-Seattle-ACO–AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6412; fax: 425–917–6590; email: *Eric.Lin@faa.gov.*

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on January 28, 2016 (80 FR 80234, December 24, 2015).

(i) Boeing Alert Service Bulletin 777–53A0078, dated December 5, 2014.

(ii) Reserved.

(4) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206 766 5680; Internet *https://www.myboeingfleet.com.*

(5) You may view this service information at 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 January 19, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01441 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3585; Directorate Identifier 2015–NE–22–AD; Amendment 39–18384; AD 2015–28–01]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Engine Alliance (EA) GP7270 turbofan engines. This AD was prompted by the manufacturer informing us that the inspection criteria and repair procedures in the maintenance manual for aft bolt holes of the high-pressure compressor (HPC) cone shaft on the affected engines is incorrect. This AD requires inspection of the HPC cone shaft and repair of affected parts, if needed. We are issuing this AD to prevent failure of the HPC cone shaft, which could lead to uncontained engine failure and damage to the airplane.

DATES: This AD is effective March 1, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 1, 2016.

ADDRESSES: For service information identified in this AD, contact Engine Alliance, 400 Main St., East Hartford, CT 06108, M/S 169–10, phone: 800–565–0140; email: *help24@pw.utc.com;* Internet: *sp.engineallianceportal.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3585; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kyle Gustafson, Aerospace Engineer, Engine & Propeller Directorate, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: *kyle.gustafson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain EA GP7270 turbofan engines. The NPRM published in the **Federal Register** on October 1, 2015 (80 FR 59081). The NPRM was prompted by the manufacturer informing us that the inspection criteria and repair procedures in the maintenance manual for aft bolt holes of the HPC cone shaft, also referred to as the ''HPC forward stubshaft,'' for the affected engines is incorrect. The NPRM proposed to require inspection of the HPC cone shaft and repair of affected parts, if needed. We are issuing this AD to prevent failure of the HPC cone shaft, which could lead to uncontained engine failure and damage to the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 59081, October 1, 2015) and the FAA's response to each comment.

Request To Add Engine Models

EA requested that we expand the applicability to include the GP7272 and GP7277 engine models.

We disagree. There are no GP7272 or GP7277 engines in service nor have any been delivered. New engines would be delivered with corrected service

information and would not be impacted by this AD. We did not change this AD.

Request To Change the Unsafe Condition Statement

EA requested that the unsafe condition statement be changed from ''We are issuing this AD to prevent failure of the HPC cone shaft, which could lead to uncontained engine failure and damage to the airplane.'' to ''We are issuing this AD to prevent a hazardous engine condition.'' The reason for this request is that no HPC cone shaft failures have occurred in the field.

We disagree. The unsafe condition statement describes the condition we are trying to prevent and is the justification for this AD. It does not describe what has occurred in the past. We did not change this AD.

Request To Change Various Paragraphs

EA requested that we revise the part nomenclature in the Applicability, Compliance, and Installation Prohibition paragraphs and in the unsafe condition statement to include both ''cone shaft'' and ''forward stubshaft.'' The part is referenced as a ''cone shaft'' in this AD and engine and component manuals; however, it is referred to as a ''forward stubshaft'' in the service bulletins (SBs).

We disagree. The part nomenclature listed in the airworthiness limitations section and engine maintenance manual is ''cone shaft.'' The Discussion section of this AD explains that the terms ''cone shaft'' and ''forward stubshaft'' are synonymous. We consider including both terms throughout this AD unnecessary. We did not change this AD.

Request To Revise the Compliance

EA requested that the Compliance paragraph be revised to include the word ''pits'' when describing the inspection criteria.

We agree. We revised paragraph (e)(1) and (f)(1) of this AD from ''. . . nicks, dents, and scratches . . .'' to ''. . . nicks, dents, pits, and scratches. . . .''

Request To Change the Compliance

EA requested that we replace ''Do not reinstall the HPC cone shaft if the aft bolt hole has a nick, dent, or scratch that is greater than 0.002 inch in depth'' in paragraph (e)(1) of this AD with ''Comply with the Accomplishment Instructions in EA SB No. EAGP7–72–330 if the aft bolt hole has a nick, dent, pit, or scratch that is greater than the serviceable limit.''

We disagree. The current engine manual has an approved repair procedure for damage that is more severe than the installation requirements of this AD. It is not necessary to restate what is already allowed by the engine manual. We did not change this AD.

Request To Change Service Information

EA requested that the phrase ''or later'' be used when referring to SBs.

We disagree. We are only authorized to mandate use of SBs that we have reviewed and which are published. Since future revisions of SBs are not yet published, we are not authorized to mandate their use. We did not change this AD.

Request To Change the Installation Prohibition

EA requested that we change the Installation Prohibition paragraph to read: ''After the effective date of this AD, do not install an HPC cone shaft onto an engine: (1) that has accumulated more than 9,000 cycles since new that has not complied with this AD on an applicable part, and (2) has a nick, dent, or scratch in an HPC cone shaft aft bolt hole that is greater than the serviceable limit.''

We disagree. The intent of the Installation Prohibition paragraph is to mandate the new serviceable limit of 0.002 inch for damage to the inner diameter of the bolt holes for the entire GP7270 fleet. Any parts with damage beyond this limit may be repaired using the approved procedures listed in the engine manual, provided that you include shot peening as required by paragraph (f)(2) of this AD. We did not change this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

EA has issued SB No. EAGP7–72–329, dated July 21, 2015 and SB No. EAGP7–72–330, dated July 21, 2015. The service information describes procedures for shotpeening the HPC forward stubshaft and inspecting the HPC forward stubshaft bolt-hole inner diameter respectively. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this final rule.

Costs of Compliance

We estimate that this AD affects zero engines installed on airplanes of U.S. registry. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $0.

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

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 DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015–28–01 Engine Alliance: Amendment 39–18384; Docket No. FAA–2015–3585; Directorate Identifier 2015–NE–22–AD.

(a) Effective Date

This AD is effective March 1, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Engine Alliance (EA) GP7270 turbofan engines with a high-pressure compressor (HPC) cone shaft, part number 382–100–907–0, installed.

(d) Unsafe Condition

This AD was prompted by the manufacturer informing us that the inspection and repair criteria in the maintenance manual for aft bolt holes of the HPC cone shaft on the affected engines is incorrect. We are issuing this AD to prevent failure of the HPC cone shaft, which could lead to uncontained engine failure and damage to the airplane.

(e) Compliance

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

(1) For HPC cone shafts with serial numbers listed in EA Service Bulletin (SB) No. EAGP7–72–330, dated July 21, 2015, inspect the inner diameter of the HPC cone shaft aft bolt holes for nicks, dents, pits, and scratches before accumulating 9,000 cycles since new (CSN). Do not reinstall the HPC cone shaft if the aft bolt hole has any nicks, dents, pits, or scratches that are greater than 0.002 inch in depth.

(2) For HPC cone shafts with serial numbers listed in EA SB No. EAGP7–72–329, dated July 21, 2015, shot peen the HPC cone shaft aft bolt holes before accumulating 9,000 CSN. Use paragraph 1 of the Accomplishment Instructions in EA SB No. EAGP7–72–329 to do the shot peening.

(f) Installation Prohibition

After the effective date of this AD, do not install an HPC cone shaft on any engine with the following:

(1) any nicks, dents, pits, or scratches in an HPC cone shaft aft bolt hole that is greater than 0.002 inch in depth; or

(2) any repair of an HPC cone shaft aft bolt hole that did not include shot peening.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

For more information about this AD, contact Kyle Gustafson, Aerospace Engineer, Engine & Propeller Directorate, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: *kyle.gustafson@faa.gov.*

(i) Material Incorporated by Reference

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

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

(i) Engine Alliance (EA) Service Bulletin (SB) No. EAGP7–72–329, dated July 21, 2015.

(ii) EA SB No. EAGP7–72–330, dated July 21, 2015.

(3) For EA service information identified in this AD, contact Engine Alliance, 400 Main St., East Hartford, CT 06108, M/S 169–10; phone: 800–565–0140; email: *help24@pw.utc.com;* Internet: *sp.engineallianceportal.com.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on January 13, 2016.

Gaetano Sciortino,

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

[FR Doc. 2016–01268 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1429; Directorate Identifier 2014–NM–246–AD; Amendment 39–18382; AD 2016–02–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A319–113, A319–114, A320–211, and A320–212 airplanes. This AD was prompted by a report that the aft mount pylon bolts of the CFM56–5 engines may have been installed using the wrong torque values. This AD requires identification of engines that were installed using the wrong torque values and re-torque of the four aft mount pylon bolts of those engines. We are issuing this AD to detect and correct improper torque of the aft mount pylon bolts, which, if combined with any maintenance damage, could lead to aft engine mount failure, possibly resulting in engine detachment and consequent reduced control of the airplane.

DATES: This AD becomes effective March 1, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 1, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA–2015–1429;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this 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–2015–1429.

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.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A319–113, A319–114, A320–211, and A320–212 airplanes. The NPRM published in the **Federal Register** on June 15, 2015 (80 FR 34101). The NPRM was prompted by a report that the aft mount pylon bolts of the CFM56–5 engines may have been installed using the

wrong torque values. The NPRM proposed to require identification of engines that were installed using the wrong torque values and re-torque of the four aft mount pylon bolts of those engines. We are issuing this AD to detect and correct improper torque of the aft mount pylon bolts, which, if combined with any maintenance damage, could lead to aft engine mount failure, possibly resulting in engine detachment and consequent reduced control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2014–0258, dated November 28, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A319–113, A319–114, A320–211, and A320–212 airplanes. The MCAI states:

> In the Aircraft Maintenance Manual (AMM) revision dated May 2013, a wrong torque value was added in AMM task 71–00–00–400–040–A01 ''Installation of the power plant with Engine Positioner TWW75E''. Temporary Revisions (TR) dated March 2014 were published by Airbus to correct the information and with AMM revision dated May 2014, Task 71–00–00–400–040–A01 was corrected to include the correct values. Notwithstanding those actions, static and fatigue analyses have concluded that this undertorque scenario negatively impacts the assembly performance, reducing the aft mount capability.
>
> This condition, if not corrected and if combined with any maintenance damage, could lead to aft engine mount failure, possibly resulting in engine detachment and consequent reduced control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires identification of CFM56–5 engines (those listed in TCDS EASA.E.067 [*http://easa.europa.eu/document-library/typecertificates/easae067*]) that were installed by using the wrong torque data of AMM instructions mentioned above and re-torque of the four aft mount pylon bolts of those engines.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA–2015–1429–0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (80 FR 34101, June 15, 2015) and the FAA's response to each comment.

Request to Revise Paragraph (h) of the Proposed AD (80 FR 34101, June 15, 2015)

Delta Air Lines, Inc. (DAL) requested that we revise paragraph (h) of the proposed AD (80 FR 34101, June 15, 2015), by revising the wording to refer to the Aircraft Maintenance Manual (AMM), dated May 2013 instead of Airbus Service Bulletin A320–71–1063, including Appendix 01, dated August 13, 2014. DAL pointed out that paragraph (h) of the proposed AD required engine installation in accordance with Airbus Service Bulletin A320–71–1063, including Appendix 01, dated August 13, 2014. DAL also mentioned that Airbus Service Bulletin A320–71–1063, including Appendix 01, dated August 13, 2014, only has requirements for inspection and re-torque of the aft engine mount pylon bolts.

We agree to revise paragraph (h) of this AD because Airbus Service Bulletin A320–71–1063, including Appendix 01, dated August 13, 2014, does not contain installation instructions. We have revised paragraph (h) of this AD to specify that no person may install a CFM56–5 engine, on any airplane, unless accomplishing the actions specified in paragraph (g) of this AD.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (80 FR 34101, June 15, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 34101, June 15, 2015).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information under 1 CFR part 51

Airbus has issued Airbus Service Bulletin A320–71–1063, including Appendix 01, dated August 13, 2014. The service information describes procedures to detect and correct improper torque of the aft mount pylon bolts. 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.

Costs of Compliance

We estimate that this AD affects 126 airplanes of U.S. registry.

We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $21,420, or $170 per product.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-1429;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other

information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–02–03 Airbus: Amendment 39–18382. Docket No. FAA–2015–1429; Directorate Identifier 2014–NM–246–AD.

(a) Effective Date

This AD becomes effective March 1, 2016.

(b) Affected ADs

None.

(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.

(1) Airbus Model A319–113 and –114 airplanes.

(2) Airbus Model A320–211 and –212 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by a report that the aft mount pylon bolts of the CFM56–5 engines may have been installed using the wrong torque values. We are issuing this AD to detect and correct improper torque of the aft mount pylon bolts, which, if combined with any maintenance damage, could lead to aft engine mount failure, possibly resulting in engine detachment and consequent reduced control of the airplane.

(f) Compliance

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

(g) Inspection for Incorrect Torque Values

Within 6 months or 1,500 flight cycles, whichever occurs first after the effective date of this AD, inspect to determine the method used to install the engines, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1063, including Appendix 01, dated August 13, 2014. A review of airplane maintenance records is acceptable in lieu of this inspection if the method used to install the engines can be conclusively determined from that review. For any engine replaced as specified in the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM), Task 71–00–00–400–040–A01, ''Installation of the Power Plant with Engine Positioner TWW 75E,'' dated May 2013: Within 6 months or 1,500 flight cycles, whichever occurs first after the effective date of this AD, re-torque the 4 aft mount pylon bolts 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).

Note 1 to paragraph (g) of this AD: Additional guidance for the re-torque can be found in Airbus A318/A319/A320/A321 AMM Task 71–00–00–400–040–A01, ''Installation of the Power Plant with Engine Positioner TWW 75E,'' dated May 2014.

(h) Parts Installation Limitation

As of the effective date of this AD, no person may install a CFM56–5 engine, on any airplane, unless the inspection, and, as applicable, the re-torque, is done as specified in paragraph (g) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149. Information may be emailed to: *9-116-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.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2014–0258, dated November 28, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1429-0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–71–1063, including Appendix 01, dated August 13, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 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.*

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

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

Issued in Renton, Washington, on January 11, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01108 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1991; Directorate Identifier 2014–NM–251–AD; Amendment 39–18381; AD 2016–02–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, and –115 airplanes; Model A320–214

airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. This AD was prompted by reports of cracked cadmium-plated lock nuts that attach the hinge to the fan cowl door. This AD requires inspecting to determine the serial number of each engine fan cowl door, inspecting for cracking of the hinge lock nuts of any affected door, and replacing the lock nuts if necessary. We are issuing this AD to detect and correct cracking of the hinge lock nuts, which could result in separation of the hinge from the fan cowl door, in-flight loss of the door, and consequent damage to the airplane.

DATES: This AD becomes effective March 1, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 1, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-1991;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this final rule, contact the following:

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

For Goodrich service information contact Goodrich Aerostructures, 850 Lagoon Drive, Chula Vista, California, 91910–2098; telephone: 619–691–2719; email: *jan.lewis@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.*

You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1991.

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

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, and –115 airplanes; Model A320–214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. The NPRM published in the **Federal Register** on July 2, 2015 (80 FR 38036).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0276, dated December 19, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, and –115 airplanes; Model A320–214 airplanes; and Model A321–111, 112, –211, –212, and –213 airplanes. The MCAI states:

> In-service findings have been reported of cracked cadmium plated lock nuts. This cracking occurs shortly after installation. Investigation results attribute the cause to an improper manufacturing procedure of the nuts. It was determined that the affected batch of lock nuts was used on the fan cowl to attach hinges to the cowl doors on CFM56–5B engines only.
>
> This condition, if not corrected, could lead to separation of the hinge from the fan cowl door, possibly resulting in in-flight loss of a fan cowl door, with consequent damage to the aeroplane and/or injury to persons on the ground.
>
> For the reasons describes above, this [EASA] AD required identification of the affected fan cowl doors, a one-time inspection of the fan cowl door hinge nuts and, depending on findings, replacement of the affected nuts.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1991-0003.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 38036, July 2, 2015) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (80 FR 38036, July 2, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 38036, July 2, 2015).

Related Service Information under 1 CFR part 51

Airbus has issued Service Bulletin A320–71–1062, dated July 28, 2014. Goodrich Aerostructures has issued Service Bulletin RA32071–151, dated June 11, 2014. The service information describes procedures for inspection and replacement of the hinge nuts of the fan cowl door. 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.

Costs of Compliance

We estimate that this AD affects 437 airplanes of U.S. registry.

We also estimate that it takes about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $74,290, or $170 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA–2015–1991;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–02–02 Airbus: Amendment 39–18381. Docket No. FAA–2015–1991; Directorate Identifier 2014–NM–251–AD.

(a) Effective Date

This AD becomes effective March 1, 2016.

(b) Affected ADs

None.

(c) Applicability

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

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

(2) Airbus Model A319–111, –112, and –115 airplanes.

(3) Airbus Model A320–214 airplanes.

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

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports of cracked cadmium-plated lock nuts that attach the hinge to the fan cowl door. We are issuing this AD to detect and correct cracking of the hinge lock nuts, which could result in separation of the hinge from the fan cowl door, the in-flight loss of the door, and consequent damage to the airplane.

(f) Compliance

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

(g) Inspect to Determine Serial Number

Within 24 months after the effective date of this AD: Inspect to determine if any fan cowl door has a serial number 10029001 through 11092003 inclusive, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1062, dated July 28, 2014; or Goodrich Aerostructures Service Bulletin RA32071–151, dated June 11, 2014. A review of airplane maintenance records is acceptable in lieu of the inspection required by this paragraph, provided those records can be relied upon for that purpose and the serial number can be positively identified by that review.

(h) Inspection and Replacement

For any fan cowl door having any serial number identified in paragraph (g) of this AD: Within 24 months after the effective date of this AD, do a detailed inspection for cracking of the hinge lock nuts of the door, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1062, dated July 28, 2014; or Goodrich Aerostructures Service Bulletin RA32071–151, dated June 11, 2014. If any crack is found, before further flight, replace each cracked hinge lock nut, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1062, dated July 28, 2014; or Goodrich Aerostructures Service Bulletin RA32071–151, dated June 11, 2014.

(i) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: 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.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0276, dated December 19, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1991-0003.*

(l) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–71–1062, dated July 28, 2014.

(ii) Goodrich Aerostructures Service Bulletin RA32071–151, dated June 11, 2014.

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

(4) For Goodrich service information identified in this AD, contact Goodrich Aerostructures, 850 Lagoon Drive, Chula Vista, California, 91910–2098; telephone: 619–691–2719; email: *jan.lewis@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.*

(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 January 9, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00952 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2983; Directorate Identifier 2015–NE–20–AD; Amendment 39–18383; AD 2016–02–04]

RIN 2120–AA64

Airworthiness Directives; CFM International S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain CFM International S.A. (CFM) CFM56–5B series turbofan engines. This AD was prompted by a corrected lifing analysis by the engine manufacturer that shows the need to identify an initial and repetitive inspection threshold for certain part number (P/N) turbine rear frames (TRFs). This AD requires initial and repetitive inspections of certain P/N TRFs on the low-pressure turbine (LPT) frame assembly. We are issuing this AD to prevent failure of the TRF on the LPT frame assembly, which could lead to engine separation, damage to the engine, and damage to the airplane.

DATES: This AD is effective March 1, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 1, 2016.

ADDRESSES: For service information identified in this AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: 877–432–3272; fax: 877–432–3329; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2983.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2983; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: *kyle.gustafson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain CFM CFM56–5B series turbofan engines. The NPRM published in the **Federal Register** on October 2, 2015 (80 FR 59672). The NPRM was prompted by a corrected lifing analysis by the engine manufacturer that shows the need to identify an initial and repetitive inspection threshold for certain P/N TRFs. The NPRM proposed to require initial and repetitive inspections of certain P/N TRFs on the LPT frame assembly. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 59672, October 2, 2015) or on the determination of the cost to the public.

Clarification to the Repetitive Inspection Requirements

We have revised the Compliance, paragraph (e) of this AD, to clarify the repetitive inspection requirements for when the initial inspection is done prior to the initial inspection threshold.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for the changes described above. We have determined that the changes described above are minor changes, as they:

- Are consistent with the intent that was proposed in the NPRM (80 FR 59672, October 2, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 59672, October 2, 2015).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed CFM Service Bulletin (SB) No. CFM56–5B S/B 72–0850, dated December 19, 2012, which describes procedures for inspecting the TRF. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this final rule.

Other Related Service Information

We also reviewed CFM SB No. CFM56–5B S/B 72–0308. Operators subject to this AD are required to follow different initial and repetitive inspection intervals depending on whether CFM SB No. CFM56–5B S/B 72–0308 has been applied.

Costs of Compliance

We estimate that this AD affects about 94 engines installed on airplanes of U.S. registry. We also estimate that it will take about 3 hours per engine to do the inspection. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $23,970.

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

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 DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

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 *parthttp//www.continentalsanantonio.com* 39 continues to read as follows:

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

§ 39.13 [Amended]

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

2016–02–04 CFM International S.A.: Amendment 39–18383; Docket No. FAA–2015–2893; Directorate Identifier 2015–NE–20–AD.

(a) Effective Date

This AD is effective March 1, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International S.A. (CFM) CFM56–5B engines with turbine rear frame (TRF), part number (P/N) 338–102–907–0 or P/N 338–102–908–0, installed.

(d) Unsafe Condition

This AD was prompted by a corrected lifing analysis by the engine manufacturer that shows the need for an initial and repetitive inspection of certain P/N TRFs on the low-pressure turbine (LPT) frame assembly. We are issuing this AD to prevent failure of the TRF on the LPT frame assembly, which could lead to engine separation, damage to the engine, and damage to the airplane.

(e) Compliance

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

(1) For Engines that have Applied CFM Service Bulletin (SB) No. CFM56–5B S/B 72–0308:

(i) Prior to accumulating 25,000 cycles since new (CSN) on the TRF of the LPT frame assembly or within 150 cycles after the effective date of this AD, whichever occurs later, perform an initial eddy current inspection (ECI) or a fluorescent penetrant inspection (FPI) of the TRF mount struts on the LPT assembly.

(ii) For engines with unknown CSN on the TRF of the LPT frame assembly, perform the initial inspection required by this AD within 150 cycles-in-service (CIS) after the effective date of this AD.

(iii) Use paragraph 3.B. in the Accomplishment Instructions of CFM SB No. CFM56–5B S/B 72–0850, dated December 19, 2012, to do the ECI and paragraph 3.C. in the Accomplishment Instructions of CFM SB No. CFM56–5B S/B 72–0850, to do the FPI. Do not include TRF mount strut crack lengths towards the cumulative crack length after the cracks are repaired.

(iv) If no cracks are found on any of the three TRF mount struts, repeat the inspection within 1,670 cycles since last inspection (CSLI) or prior to accumulating 25,000 CSN on the TRF of the LPT assembly, whichever occurs later.

(v) If the cumulative length of all cracks found at any TRF mount strut location is less than 0.20 inches, repeat the inspection within 1,670 cycles CSLI.

(vi) If the cumulative length of cracks found at any TRF mount strut location is greater than or equal to 0.20 inches, but less than 0.25 inches, repeat the inspection within 280 CSLI.

(vii) If the cumulative length of cracks found at any TRF mount strut location is 0.25 inches or greater, replace the TRF with a part eligible for installation before further flight.

(2) For Engines that have Not Applied CFM SB No. CFM56–5B S/B 72–0308:

(i) Prior to accumulating 32,000 CSN on the TRF of the LPT frame assembly or within 150 cycles after the effective date of this AD, whichever occurs later, perform an initial ECI or FPI of the TRF mount struts on the LPT frame assembly.

(ii) For engines with unknown CSN on the TRF of the LPT frame assembly, perform the initial inspection required by this AD within 150 CIS after the effective date of this AD.

(iii) Use paragraph 3.B. in the Accomplishment Instructions of CFM SB No. CFM56–5B S/B 72–0850, dated December 19, 2012, to do the ECI and paragraph 3.C. in the Accomplishment Instructions of CFM SB No. CFM56–5B S/B 72–0850, to do the FPI. Do not include TRF mount strut crack lengths towards the cumulative crack length after the cracks are repaired.

(iv) If no cracks are found on any of the three TRF mount struts, repeat the inspection within 2,500 CSLI or prior to accumulating 32,000 CSN on the TRF of the LPT assembly, whichever occurs later.

(v) If the cumulative length of cracks found at any TRF mount strut location is less than 0.20 inches, repeat the inspection within 2,500 CSLI.

(vi) If the cumulative length of cracks found at any TRF mount strut location is greater than or equal to 0.20 inches and less than 0.25 inches, repeat the inspection within 370 CSLI.

(vii) If the cumulative length of cracks found at any TRF mount strut location is 0.25 inches or greater, replace the TRF with a part eligible for installation before further flight.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

(1) For more information about this AD, contact Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: *kyle.gustafson@faa.gov.*

(2) CFM SB No. CFM56–5B S/B 72–0308, which is not incorporated by reference in this AD, can be obtained from CFM, using the contact information in paragraph (h)(4) of this AD.

(h) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 1, 2016.

(i) CFM International S. A. (CFM) Service Bulletin No. CFM56–5B S/B 72–0850, dated December 19, 2012.

(ii) Reserved.

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

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(6) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call

202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on January 14, 2016.

Gaetano Sciortino,

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

[FR Doc. 2016–01266 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31051; Amdt. No. 3673]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 26, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 26, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South acArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFRs and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediaterelationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same

reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on December 4, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective January 26, 2016

Compliance Date 7 January 2016

Paso Robles, CA, Paso Robles Muni, RNAV (GPS) RWY 31, Orig
Oxford, CT, Waterbury-Oxford, RNAV (GPS) RWY 18, Amdt 2
Plymouth, IN, Plymouth Muni, RNAV (GPS) RWY 10, Orig
Plymouth, IN, Plymouth Muni, RNAV (GPS) RWY 28, Orig
Detroit, MI, Willow Run, ILS OR LOC RWY 23L, Amdt 8
Detroit, MI, Willow Run, RNAV (GPS) RWY 23L, Amdt 2
Lynchburg, VA, Falwell, RNAV (GPS) RWY 28, Orig-B

Effective 4 February 2016

Dillingham, AK, Dillingham, VOR/DME RWY 19, Amdt 7C, CANCELED
Middleton Island, AK, Middleton Island, VOR/DME RWY 20, Amdt 6B, CANCELED
Talladega, AL, Talladega Muni, VOR/DME RWY 4, Amdt 6A, CANCELED
Lake Village, AR, Lake Village Muni, VOR/DME–B, Amdt 6B, CANCELED
Marshall, AR, Searcy County, RNAV (GPS) RWY 5, Orig
Marshall, AR, Searcy County, RNAV (GPS) RWY 23, Orig
Marshall, AR, Searcy County, Takeoff Minimums and Obstacle DP, Orig
Walnut Ridge, AR, Walnut Ridge Rgnl, VOR–A, Amdt 16A, CANCELED
Santa Ynez, CA, Santa Ynez, Takeoff Minimums and Obstacle DP, Amdt 2
Denver, CO, Denver Intl, RNAV (GPS) Y RWY 8, Amdt 1B
Denver, CO, Denver Intl, RNAV (RNP) Z RWY 8, Orig-B
Apalachicola, FL, Apalachicola Rgnl-Cleve Randolph Field, NDB RWY 32, Amdt 2B, CANCELED
Fort Pierce, FL, St Lucie County Intl, NDB–A, Orig-D, CANCELED
Augusta, GA, Augusta Rgnl at Bush Field, VOR/DME RWY 17, Amdt 4A, CANCELED
Olney-Noble, IL, Olney-Noble, VOR/DME–A, Amdt 9A, CANCELED
Urbana, IL, Frasca Field, VOR/DME OR GPS–B, Amdt 6A, CANCELED
Anderson, IN, Anderson Muni-Darlington Field, VOR–A, Amdt 9A, CANCELED
Northampton, MA, Northampton, VOR–A, Amdt 5, CANCELED
Provincetown, MA, Provincetown Muni, ILS OR LOC RWY 7, Amdt 9
Provincetown, MA, Provincetown Muni, RNAV (GPS) RWY 7, Amdt 1
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, ILS OR LOC RWY 15L, Amdt 4 Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, ILS OR LOC RWY 28, Amdt 17
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, ILS OR LOC RWY 33R, Amdt 3
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (GPS) RWY 33R, Amdt 4
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (GPS) Y RWY 28, Amdt 2
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (RNP) Z RWY 28, Amdt 1
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, VOR RWY 28, Amdt 24, CANCELED
Presque Isle, ME, Northern Maine Regional Arpt At Presque Is, VOR/DME RWY 1, Amdt 12B, CANCELED
Gaylord, MI, Gaylord Rgnl, VOR RWY 9, Amdt 2A, CANCELED
Grand Rapids, MI, Gerald R. Ford Intl, VOR RWY 35, Amdt 1A, CANCELED
Muskegon, MI, Muskegon County, VOR–A, Amdt 21, CANCELED
Natchez, MS, Hardy-Anders Field Natchez-Adams County, VOR/DME RWY 13, Amdt 3, CANCELED
Beaufort, NC, Michael J Smith Field, RNAV (GPS) RWY 26, Amdt 3
Erwin, NC, Harnett Rgnl Jetport, VOR/DME RWY 5, Amdt 2B, CANCELED
Myrtle Beach, SC, Myrtle Beach Intl, ILS OR LOC RWY 18, Amdt 4
Myrtle Beach, SC, Myrtle Beach Intl, ILS OR LOC RWY 36, Amdt 4
Myrtle Beach, SC, Myrtle Beach Intl, RNAV (GPS) RWY 18, Amdt 4
Myrtle Beach, SC, Myrtle Beach Intl, RNAV (GPS) RWY 36, Amdt 4
Myrtle Beach, SC, Myrtle Beach Intl, RNAV (GPS)-A, Amdt 1
Port Angeles, WA, William R Fairchild Intl, ILS OR LOC RWY 8, Amdt 3
Port Angeles, WA, William R Fairchild Intl, RNAV (GPS) RWY 8, Amdt 1
Port Angeles, WA, William R Fairchild Intl, RNAV (GPS) RWY 26, Amdt 1

[FR Doc. 2016–00880 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31052; Amdt. No. 3674]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 26, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 26, 2016.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New

Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC, 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR § 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFRs, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC on December 4, 2015.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC number	FDC date	Subject
7–Jan–16	WA	Everett	Snohomish County (Paine Fld).	5/4281	11/2/15	This NOTAM, published in TL 16–01, is hereby rescinded in its entirety.
7-Jan-16	DC	Washington	Washington Dulles Intl	5/0756	11/24/15	ILS OR LOC/DME RWY 12, Amdt 9A.
7–Jan–16	DC	Washington	Washington Dulles Intl	5/0758	11/24/15	ILS OR LOC/DME RWY 1C, Amdt 2B.
7–Jan–16	DC	Washington	Washington Dulles Intl	5/0764	11/24/15	VOR/DME RWY 12, Amdt 9B.
7–Jan–16	DC	Washington	Washington Dulles Intl	5/0765	11/24/15	RNAV (GPS) RWY 12, Amdt 1A.
7–Jan–16	DC	Washington	Washington Dulles Intl	5/0766	11/24/15	RNAV (GPS) Y RWY 1C, Amdt 1A.
7–Jan–16	TN	Smithville	Smithville Muni	5/2872	11/23/15	RNAV (GPS) RWY 6, Amdt 3.
7–Jan–16	TN	Smithville	Smithville Muni	5/2873	11/23/15	RNAV (GPS) RWY 24, Amdt 3.
7–Jan–16	VA	Lynchburg	Lynchburg Rgnl/Preston Glenn Fld.	5/4424	11/23/15	RNAV (GPS) RWY 4, Orig.
7–Jan–16	VA	Lynchburg	Lynchburg Rgnl/Preston Glenn Fld.	5/4425	11/23/15	VOR RWY 4, Amdt 12.
7–Jan–16	VA	Lynchburg	Lynchburg Rgnl/Preston Glenn Fld.	5/4426	11/23/15	RNAV (GPS) RWY 22, Orig.
7–Jan–16	VA	Lynchburg	Lynchburg Rgnl/Preston Glenn Fld.	5/4427	11/23/15	VOR/DME RWY 22, Amdt 8B.
7–Jan–16	VA	Lynchburg	Lynchburg Rgnl/Preston Glenn Fld.	5/4428	11/23/15	ILS OR LOC RWY 4, Amdt 17.
7–Jan–16	SC	Charleston	Charleston Executive	5/8027	11/25/15	Takeoff Minimums and (Obstacle) DP, Amdt 1.
7–Jan–16	GA	Macon	Middle Georgia Rgnl	5/8992	11/24/15	RNAV (GPS) RWY 5, Amdt 1B.
7–Jan–16	GA	Macon	Middle Georgia Rgnl	5/8994	11/24/15	ILS OR LOC/DME RWY 5, Amdt 1B.

[FR Doc. 2016–00878 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM15–14–000]

Revised Critical Infrastructure Protection Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves seven critical infrastructure protection (CIP) Reliability Standards: CIP–003–6 (Security Management Controls), CIP–004–6 (Personnel and Training), CIP–006–6 (Physical Security of BES Cyber Systems), CIP–007–6 (Systems Security Management), CIP–009–6 (Recovery Plans for BES Cyber Systems), CIP–010–2 (Configuration Change Management and Vulnerability Assessments), and CIP–011–2 (Information Protection). The proposed Reliability Standards address the cyber security of the bulk electric system and improve upon the current Commission-approved CIP Reliability Standards. In addition, the Commission directs NERC to develop certain modifications to improve the CIP Reliability Standards.

DATES: This rule will become effective March 31, 2016.

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SUPPLEMENTARY INFORMATION:

Order No. 822

Final Rule

(Issued January 21, 2016)

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission approves seven critical infrastructure protection (CIP) Reliability Standards: CIP–003–6 (Security Management Controls), CIP–004–6 (Personnel and Training), CIP–006–6 (Physical Security of BES Cyber Systems), CIP–007–6 (Systems Security Management), CIP–009–6 (Recovery Plans for BES Cyber Systems), CIP–010–2 (Configuration Change Management and Vulnerability Assessments), and CIP–011–2 (Information Protection) (proposed CIP Reliability Standards). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted the seven proposed CIP Reliability Standards in response to Order No. 791.[2] The Commission also approves NERC's implementation plan and violation risk factor and violation severity level assignments. In addition, the Commission approves NERC's new or revised definitions for inclusion in the NERC Glossary of Terms Used in Reliability Standards (NERC Glossary),

[1] 16 U.S.C. 824o.

[2] *Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 78 FR. 72,755 (Dec. 3, 2013), 145 FERC ¶ 61,160 (2013), *order on clarification and reh'g,* Order No. 791–A, 146 FERC ¶ 61,188 (2014).

subject to modification. Further, the Commission approves the retirement of Reliability Standards CIP–003–5, CIP–004–5.1, CIP–006–5, CIP–007–5, CIP–009–5, CIP–010–1, and CIP–011–1.

2. The proposed CIP Reliability Standards are designed to mitigate the cybersecurity risks to bulk electric system facilities, systems, and equipment, which, if destroyed, degraded, or otherwise rendered unavailable as a result of a cybersecurity incident, would affect the reliable operation of the Bulk-Power System.[3] As discussed below, the Commission finds that the proposed CIP Reliability Standards are just, reasonable, not unduly discriminatory or preferential, and in the public interest, and address the directives in Order No. 791 by: (1) Eliminating the ''identify, assess, and correct'' language in 17 of the CIP version 5 Standard requirements; (2) providing enhanced security controls for Low Impact assets; (3) providing controls to address the risks posed by transient electronic devices (*e.g.,* thumb drives and laptop computers) used at High and Medium Impact BES Cyber Systems; and (4) addressing in an equally effective and efficient manner the need for a NERC Glossary definition for the term ''communication networks.'' Accordingly, the Commission approves the proposed CIP Reliability Standards because they improve the base-line cybersecurity posture of applicable entities compared to the current Commission-approved CIP Reliability Standards.

3. In addition, pursuant to FPA section 215(d)(5), the Commission directs NERC to develop certain modifications to improve the CIP Reliability Standards. First, NERC is directed to develop modifications to address the protection of transient electronic devices used at Low Impact BES Cyber Systems. As discussed below, the modifications developed by NERC should be designed to effectively address, in an appropriately tailored manner, the risks posed by transient electronic devices to Low Impact BES Cyber Systems. Second, the Commission directs NERC to develop modifications to CIP–006–6 to require protections for communication network components and data communicated between all bulk electric system Control Centers according to the risk posed to the bulk electric system. With regard to the questions raised in the Notice of Proposed Rulemaking (NOPR) concerning the potential need for additional remote access controls, NERC must conduct a comprehensive study that identifies the strength of the CIP version 5 remote access controls, the risks posed by remote access-related threats and vulnerabilities, and appropriate mitigating controls.[4] Third, the Commission directs NERC to develop modifications to its definition for Low Impact External Routable Connectivity, as discussed in detail below.

4. The Commission, in the NOPR, also proposed to direct that NERC develop requirements relating to supply chain management for industrial control system hardware, software, and services.[5] After review of comments on this topic, the Commission scheduled a staff-led technical conference for January 28, 2016, in order to facilitate a structured dialogue on supply chain risk management issues identified by the NOPR. Accordingly, this Final Rule does not address supply chain risk management issues. Rather, the Commission will determine the appropriate action on this issue after the scheduled technical conference.

I. Background

A. Section 215 and Mandatory Reliability Standards

5. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[6] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[7] and subsequently certified NERC.[8]

B. Order No. 791

6. On November 22, 2013, in Order No. 791, the Commission approved the CIP version 5 Standards (Reliability Standards CIP–002–5 through CIP–009–5, and CIP–010–1 and CIP–011–1).[9] The Commission determined that the CIP version 5 Standards improve the CIP Reliability Standards because, *inter alia,* they include a revised BES Cyber Asset categorization methodology that incorporates mandatory protections for all High, Medium, and Low Impact BES Cyber Assets, and because several new security controls should improve the security posture of responsible entities.[10] In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC to: (1) Remove the ''identify, assess, and correct'' language in 17 of the CIP Standard requirements; (2) develop enhanced security controls for Low Impact assets; (3) develop controls to protect transient electronic devices; (4) create a NERC Glossary definition for the term ''communication networks;'' and (5) develop new or modified Reliability Standards to protect the nonprogrammable components of communications networks.

7. The Commission also directed NERC to conduct a survey of Cyber Assets that are included or excluded under the new BES Cyber Asset definition and submit an informational filing within one year.[11] On February 3, 2015, NERC submitted an informational filing assessing the results of a survey conducted to identify the scope of assets subject to the definition of the term BES Cyber Asset as it is applied in the CIP version 5 Standards.

8. Finally, Order No. 791 directed Commission staff to convene a technical conference to examine the technical issues concerning communication security, remote access, and the National Institute of Standards and Technology (NIST) Risk Management Framework.[12] On April 29, 2014, a staff-led technical conference was held pursuant to the Commission's directive. The topics discussed at the technical conference included: (1) The adequacy of the approved CIP version 5 Standards' protections for bulk electric system data being transmitted over data networks; (2) whether additional security controls are needed to protect bulk electric system communications networks, including remote systems access; and (3) the functional differences between the respective methods utilized for the identification, categorization, and specification of appropriate levels of protection for cyber assets using the CIP version 5 Standards as compared with those employed within the NIST Cybersecurity Framework.

[3] *See* NERC Petition at 3.

[4] *Revised Critical Infrastructure Protection Reliability Standards,* Notice of Proposed Rulemaking, 80 FR 43354 (July 22, 2015), 152 FERC ¶ 61,054, at 60 (2015).

[5] *Id.* P 66.

[6] 16 U.S.C. 824o(e).

[7] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[8] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[9] Order No. 791, 145 FERC ¶ 61,160 at P 41.

[10] *Id.*

[11] *Id.* PP 76, 108, 136, 150.

[12] *Id.* P 225.

C. NERC Petition

9. On February 13, 2015, NERC submitted a petition seeking approval of Reliability Standards CIP–003–6, CIP–004–6, CIP–006–6, CIP–007–6, CIP–009–6, CIP–010–2, and CIP–011–2, as well as an implementation plan,[13] associated violation risk factor and violation severity level assignments, proposed new or revised definitions,[14] and retirement of Reliability Standards CIP–003–5, CIP–004–5.1, CIP–006–5, CIP–007–5, CIP–009–5, CIP–010–1, and CIP–011–1.[15] NERC states that the proposed Reliability Standards are just, reasonable, not unduly discriminatory or preferential, and in the public interest because they satisfy the factors set forth in Order No. 672 that the Commission applies when reviewing a proposed Reliability Standard.[16] NERC maintains that the proposed Reliability Standards ''improve the cybersecurity protections required by the CIP Reliability Standards[.]'' [17]

10. NERC avers that the proposed CIP Reliability Standards satisfy the Commission directives in Order No. 791. Specifically, NERC states that the proposed Reliability Standards remove the ''identify, assess, and correct'' language, which represents the Commission's preferred approach to addressing the underlying directive.[18] In addition, NERC states that the proposed Reliability Standards address the Commission's directive regarding a lack of specific controls or objective criteria for Low Impact BES Cyber Systems by requiring responsible entities ''to implement cybersecurity plans for assets containing Low Impact BES Cyber Systems to meet specific security objectives relating to: (i) Cybersecurity awareness; (ii) physical security controls; (iii) electronic access controls; and (iv) Cyber Security Incident response.'' [19]

11. With regard to the Commission's directive that NERC develop specific controls to protect transient electronic devices, NERC explains that the proposed Reliability Standards require responsible entities ''to implement controls to protect transient devices connected to their high impact and medium impact BES Cyber Systems and associated [Protected Cyber Assets].'' [20] In addition, NERC states that the proposed Reliability Standards address the protection of communication networks ''by requiring entities to implement security controls for nonprogrammable components of communication networks at Control Centers with high or medium impact BES Cyber Systems.'' [21] Finally, NERC explains that it has not proposed a definition of the term ''communication network'' because the term is not used in the CIP Reliability Standards. Additionally, NERC states that ''any proposed definition would need to be sufficiently broad to encompass all components in a communication network as they exist now and in the future.'' [22] NERC concludes that the proposed Reliability Standards ''meet the ultimate security objective of protecting communication networks (both programmable and nonprogrammable communication network components).'' [23]

12. Accordingly, NERC requests that the Commission approve the proposed Reliability Standards, the proposed implementation plan, the associated violation risk factor and violation severity level assignments, and the proposed new and revised definitions. NERC requests an effective date for the Reliability Standards of the later of April 1, 2016 or the first day of the first calendar quarter that is three months after the effective date of the Commission's order approving the proposed Reliability Standards, although NERC proposes that responsible entities will not have to comply with the requirements applicable to Low Impact BES Cyber Systems (CIP–003–6, Requirement R1, Part 1.2 and Requirement R2) until April 1, 2017.

D. Notice of Proposed Rulemaking

13. On July 16, 2015, the Commission issued a NOPR proposing to approve Reliability Standards CIP–003–6, CIP–004–6, CIP–006–6, CIP–007–6, CIP–009–6, CIP–010–2 and CIP–011–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[24] The NOPR stated that the proposed CIP Reliability Standards appear to improve upon the current Commission-approved CIP Reliability Standards and to address the directives in Order No. 791.

14. While proposing to approve the proposed Reliability Standards, the Commission also proposed to direct that NERC modify certain proposed standards or provide additional information supporting its proposal. First, the Commission directed NERC to provide additional information supporting the proposed limitation in Reliability Standard CIP–010–2 to transient electronic devices used at High and Medium Impact BES Cyber Systems. Second, the Commission stated that, while proposed CIP–006–6 would require protections for communication networks among a limited group of bulk electric system Control Centers, the proposed standard does not provide protections for communication network components and data communicated between all bulk electric system Control Centers. Therefore, the Commission proposed to direct that NERC develop modifications to Reliability Standard CIP–006–6 to require physical or logical protections for communication network components between all bulk electric system Control Centers. Third, while the Commission proposed to approve the new or revised definitions for inclusion in the NERC Glossary, it sought comment on the proposed definition for Low Impact External Routable Connectivity. The Commission noted that, depending on the comments received, it may direct NERC to develop modifications to this definition to eliminate possible ambiguities and ensure that BES Cyber Assets receive adequate protection.

15. In addition, the Commission raised a concern that changes in the bulk electric system cyber threat landscape, identified through recent malware campaigns targeting supply chain vendors, have highlighted a gap in the protections under the CIP Reliability Standards. Therefore, the Commission proposed to direct NERC to develop a new Reliability Standard or modified Reliability Standard to provide security controls for supply chain management for industrial control system hardware, software, and services associated with bulk electric system operations.[25]

16. In response to the NOPR, 41 entities submitted comments. A list of commenters appears in Appendix A.

[13] The proposed implementation plan is designed to match the effective dates of the proposed Reliability Standards with the effective dates of the prior versions of those Reliability Standards under the implementation plan for the CIP version 5 Standards.

[14] The six new or revised definitions proposed for inclusion in the NERC Glossary are: (1) BES Cyber Asset; (2) Protected Cyber Asset; (3) Low Impact Electronic Access Point; (4) Low Impact External Routable Connectivity; (5) Removable Media; and (6) Transient Cyber Asset.

[15] The proposed Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket No. RM15–14–000 and on the NERC Web site, *www.nerc.com.*

[16] *See* NERC Petition at 13 and Exhibit C (citing Order No. 672, FERC Stats. & Regs. ¶ 31,204 at PP 323–335).

[17] NERC Petition at 4.

[18] *Id.* at 4, 15.

[19] *Id.* at 5.

[20] *Id.* at 6.

[21] *Id.* at 8.

[22] *Id.* at 51–52.

[23] *Id.* at 52.

[24] NOPR, 152 FERC ¶ 61,054 (2015).

[25] *Id.* P 18.

The comments have informed our decision making in this Final Rule.

II. Discussion

17. Pursuant to section 215(d)(2) of the FPA, we approve Reliability Standards CIP–003–6, CIP–004–6, CIP–006–6, CIP–007–6, CIP–009–6, CIP–010–2 and CIP–011–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We find that the proposed Reliability Standards address the Commission's directives from Order No. 791 and are an improvement over the current Commission-approved CIP Reliability Standards. Specifically, the CIP Reliability Standards improve upon the existing standards by removing the ''identify, assess, and correct'' language and addressing the protection of Low Impact BES Cyber Systems. With regard to the directive to create a NERC Glossary definition for the term ''communication networks,'' we approve NERC's proposal as an equally effective and efficient method to achieve the reliability goal underlying that directive in Order No. 791. We also approve NERC's proposed implementation plan, and violation risk factor and violation severity level assignments. Finally, we approve NERC's proposed new or revised definitions for inclusion in the NERC Glossary, subject to certain modifications, discussed below.

18. In addition, pursuant to section 215(d)(5) of the FPA, we direct NERC to develop modifications to the CIP Reliability Standards to address our concerns regarding: (1) The need for mandatory protection for transient electronic devices used at Low Impact BES Cyber Systems in a manner that effectively addresses, and is appropriately tailored to address, the risk posed by those assets; and (2) the need for mandatory protection for communication links and data communicated between bulk electric system Control Centers in a manner that reflects the risks posed to bulk electric system reliability. In addition, we direct NERC to modify the definition of Low Impact External Routable Connectivity in order to eliminate ambiguities in the language. Finally, we direct NERC to complete a study of the remote access protections in the CIP Reliability Standards within one year of the implementation of the CIP version 5 Standards for High and Medium Impact BES Cyber Systems.

19. As noted above, in the NOPR, the Commission proposed to direct that NERC develop requirements on the subject of supply chain management for industrial control system hardware, software, and services. After review of comments on the subject, the Commission scheduled a staff-led technical conference for January 28, 2016. The Commission will determine the appropriate action on this issue after the scheduled technical conference.

20. Below, we discuss the following matters: (A) Protection of transient electronic devices; (B) protection of bulk electric system communication networks; (C) proposed definitions; and (D) NERC's implementation plan.

A. Protection of Transient Electronic Devices

NERC Petition

21. In its Petition, NERC states that the revised CIP Reliability Standards satisfy the Commission's directive in Order No. 791 by requiring that applicable entities: (1) Develop plans and implement cybersecurity controls to protect Transient Cyber Assets and Removable Media associated with their High Impact and Medium Impact BES Cyber Systems and associated Protected Cyber Assets; and (2) train their personnel on the risks associated with using Transient Cyber Assets and Removable Media. NERC states that the purpose of the proposed revisions is to prevent unauthorized access to and use of transient electronic devices, mitigate the risk of vulnerabilities associated with unpatched software on transient electronic devices, and mitigate the risk of the introduction of malicious code on transient electronic devices. NERC explains that the standard drafting team determined that the proposed requirements should only apply to transient electronic devices associated with High and Medium Impact BES Cyber Systems, concluding that ''the application of the proposed transient devices requirements to transient devices associated with low impact BES Cyber Systems was unnecessary, and likely counterproductive, given the risks low impact BES Cyber Systems present to the Bulk Electric System.'' [26]

22. NERC further explains that the controls required under Attachment 1 to CIP–010–2, Requirement R4 address the following areas: (1) Protections for Transient Cyber Assets managed by responsible entities; (2) protections for Transient Cyber Assets managed by another party; and (3) protections for Removable Media. NERC indicates that these provisions reflect the standard drafting team's recognition that the security controls required for a particular transient electronic device must account for the functionality of that device and whether the responsible entity or a third party manages the device. NERC also states that Transient Cyber Assets and Removable Media have different capabilities because they present different levels of risk to the bulk electric system.[27]

NOPR

23. In the NOPR, the Commission stated that proposed Reliability Standard CIP–010–2 appears to provide a satisfactory level of security for transient electronic devices used at High and Medium Impact BES Cyber Systems. The Commission noted that the proposed security controls required under proposed CIP–010–2, Requirement R4, taken together, constitute a reasonable approach to address the reliability objectives outlined by the Commission in Order No. 791. Specifically, the Commission stated that proposed security controls outlined in Attachment 1 should ensure that responsible entities apply multiple security controls to provide defense-in-depth protection to transient electronic devices in the High and Medium Impact BES Cyber System environments.[28]

24. The Commission raised a concern, however, that proposed CIP–010–2 does not provide adequate security controls to address the risks posed by transient electronic devices used at Low Impact BES Cyber Systems, including Low Impact Control Centers, due to the limited applicability of Requirement R4. The Commission stated that this omission may result in a gap in protection for Low Impact BES Cyber Systems where malware inserted at a single Low Impact substation could propagate through a network of many substations without encountering a single security control. The NOPR noted that ''Low Impact security controls do not provide for the use of mandatory anti-malware/antivirus protections within the Low Impact facilities, heightening the risk that malware or malicious code could propagate through these systems without being detected.'' [29]

25. The Commission also indicated that the burden of expanding the applicability of Reliability Standard CIP–010–2 to transient electronic devices at Low Impact BES Cyber Systems is not clear from the information in the record, nor is it clear what information and analysis led NERC to conclude that the application of the transient electronic device requirements to Low Impact BES Cyber

[26] NERC Petition at 34–35.

[27] *Id.* at 38.

[28] NOPR, 152 FERC ¶ 61,054 at P 41.

[29] *Id.* P 42.

Systems ''was unnecessary.'' Therefore, the Commission directed NERC to provide additional information supporting the proposed limitation in Reliability Standard CIP–010–2 to High and Medium Impact BES Cyber Systems, stating that the Commission ''may direct NERC to address the potential reliability gap by developing a solution, which could include modifying the applicability section of CIP–010–2, Requirement R4 to include Low Impact BES Cyber Systems, that effectively addresses, and is appropriately tailored to address, the risks posed by transient devices to Low Impact BES Cyber Systems.'' [30]

Comments

26. While two commenters support the Commission's proposal, most commenters, including NERC, advocate approval of CIP–010–2 without expanding the applicability provision of Requirement R4 to include Low Impact BES Cyber Systems. NERC questions the Commission's assertion that ''malware inserted via a USB flash drive at a single Low Impact substation could propagate through a network of many substations without encountering a single security control under NERC's proposal.'' [31] In particular, NERC and others commenters assert that the proposed security controls in CIP–003–6 adequately address the potential for propagation of malicious code or other unauthorized access by requiring: (1) All routable protocol communications between low impact assets be controlled through a Low Impact Electronic Access Point; (2) mandatory cyber security awareness activities; (3) physical security controls; (4) electronic access controls; and (5) incident response activities.[32] Trade Associations assert that all asset-to-asset routable communications must go through the security control of the Low Impact Electronic Access Point under the proposed controls, other than extremely time sensitive device-to-device coordination.[33] Trade Associations and NIPSCO suggest that the impact on reliability in the event of a successful compromise is inherently low.

27. NERC, Trade Associations, Arkansas, G&T Cooperatives, and ITC argue that any Commission proposal to expand the protections of CIP–010–2, Requirement R4 to transient electronic devices used at Low Impact BES Cyber Systems would contradict the underlying principles of the risk-based approach that was adopted in the Commission-approved CIP version 5 Standards. Likewise, these commenters argue that the resource burden to develop and implement security controls for low impact transient devices would be substantial. NERC, Consumers Energy, and G&T Cooperatives express concern that any requirements for transient electronic devices used at Low Impact BES Cyber Systems may divert resources from the protection of Medium and High Impact BES Cyber Systems.[34]

28. Trade Associations and Southern assert that developing security controls for low impact transient cyber assets would be difficult given that, under CIP–003–6, responsible entities are not required to identify Low Impact BES Cyber Assets. Trade Associations conclude that additional transient cyber asset protections would need to be at the asset level to avoid creating administrative burdens disproportionate to the risk. Arkansas and G&T Cooperatives claim that the Commission's proposal to modify CIP–010–2 could require the implementation of device level controls and assert that the cost for complying with such regulations would be unprecedented because they would be driven by the number of devices and the number of people interacting with those devices.[35]

29. ITC and NIPSCO state that the lack of specificity in CIP–010–2, Requirement R4 raises concerns with how responsible entities will demonstrate compliance, noting that the methods included are general and non-exclusive such that a responsible entity cannot be expected to know with reasonable confidence whether its plan will be deemed compliant. ITC states that, if the Commission intends to approve Standards that contain such broad latitude, it must also be prepared to accept a wide variety of plans as compliant.

30. NERC requests that, should the Commission determine that the risk associated with transient electronic devices used at Low Impact BES Cyber Systems requires expanding protections to those devices, it should recognize the varying risk levels presented by Low Impact BES Cyber Systems and the need to focus on higher risk issues. Other commenters, including Arkansas, KCP&L, and G&T Cooperatives, request that the Commission allow the implementation of the low impact controls in CIP–003–6 and the transient device controls in CIP–10–2 before directing further initiatives to expand the scope of the standards. Reclamation suggests that, if the Commission decides to direct NERC to address this potential reliability gap, the transient device and removable media controls for Low Impact BES Cyber Systems should be less stringent than the controls in CIP–010–2 given the facilities with which they are associated. Luminant and Reclamation also request that any new requirements for low impact transient electronic devices be placed in CIP–003–6.

31. APS and SPP RE generally express support for changes to CIP–010–2, Requirement R4 to address mandatory protection for transient devices used at Low Impact BES Cyber Systems. APS states that extending transient device protection to low impact systems would likely afford some additional security benefits, but notes that there may be cases where these controls would be unduly burdensome. SPP RE states that the burden of extending certain elements of the Attachment 1 requirements to environments containing Low Impact BES Cyber Systems is reasonable, with the benefit far outweighing the cost if the controls are carefully considered with risk and potential burden in mind. SPP RE suggests that the compliance burden could be reduced by allowing Transient Cyber Assets and Removable Media to be readily moved between assets containing only Low Impact BES Cyber Systems without having to re-perform the Attachment 1 requirements between sites. Finally, NIPSCO seeks clarification on how to determine the ''manager'' of a Transient Cyber Asset under CIP–010–2, Requirement R4, noting that the requirement appears to allow a Transient Cyber Asset to be owned by the responsible entity, but used by a vendor on a day-to-day basis.[36]

Commission Determination

32. After consideration of the comments received on this issue, we conclude that the adoption of controls for transient devices used at Low Impact BES Cyber Systems, including Low Impact Control Centers, will provide an important enhancement to the security posture of the bulk electric system by reinforcing the defense-in-depth nature of the CIP Reliability Standards at *all* impact levels. Accordingly, we direct

[30] *Id.* P 43.

[31] NERC Comments at 26 (quoting NOPR, 152 FERC ¶ 61,054 at P 42).

[32] *Id.* at 27. *See also* Trade Associations Comments at 12; Southern Comments at 5–6; Luminant Comments at 2; G&T Cooperatives Comments at 7.

[33] Trade Associations Comments at 12.

[34] NERC Comments at 24; Consumers Energy Comments at 3–4; G&T Cooperatives Comments at 5.

[35] Arkansas Comments at 2–3; G&T Cooperatives Comments at 5.

[36] NIPSCO Comments at 9–10.

that NERC, pursuant to section 215(d)(5) of the FPA, develop modifications to the CIP Reliability Standards to provide mandatory protection for transient devices used at Low Impact BES Cyber Systems based on the risk posed to bulk electric system reliability. While NERC has flexibility in the manner in which it addresses the Commission's concerns, the proposed modifications should be designed to effectively address the risks posed by transient devices to Low Impact BES Cyber Systems in a manner that is consistent with the risk-based approach reflected in the CIP version 5 Standards.

33. We are not persuaded by NERC and other commenters that the security controls in CIP–003–6 adequately address the potential for propagation of malicious code or other unauthorized access stemming from transient devices used at Low Impact BES Cyber Systems. CIP–003–6 requires responsible entities, for any Low Impact External Routable Connectivity, to implement a Low Impact Electronic Access Point to ''permit only necessary inbound and outbound bi-directional routable protocol access.'' In doing so, however, responsible entities may not foresee and configure their devices to limit all unwanted traffic. Firewalls only accept or drop traffic as dictated by a preprogrammed rule set. In other words, if a piece of malicious code were to leverage permissible traffic or protocol patterns, the firewall could not detect a malicious file signature. In short, under this requirement of CIP–003–6, responsible entities have discretion to determine what access and traffic are necessary, which does not provide enough certainty that the protocols used or ports targeted by future, as-yet-unknown malware would result in the firewall rules dropping the malicious traffic.

34. Second, the firewalls and other security devices installed at Low Impact Electronic Access Points for Low Impact BES Cyber Systems may not be actively monitored. The system security management controls in CIP–007–6 that require logging, alerting, and event review are not mandated for low impact BES Cyber Systems under CIP–003–6. As a result, even if a security device installed at a Low Impact Electronic Access Point successfully logged suspicious network traffic, there is no assurance that a responsible entity would have processes in place to take swift action to prevent malicious code from spreading to other Low Impact BES Cyber Systems.

35. In addition, we disagree with the assertion raised by some commenters that directing NERC to address the reliability gap created by the limited applicability of CIP–010–2 contradicts the risk-based approach adopted in the CIP version 5 Standards,[37] or will result in an unreasonable resource burden or diversion of resources from the protection of Medium and High Impact BES Cyber Systems. Rather, in the NOPR, the Commission noted that *one means* to address the identified reliability concern would be to modify the applicability section of CIP–010–2, Requirement R4 to include Low Impact BES Cyber Systems. This is not, however, the only means available to address the Commission's concerns. The Commission was clear that any proposal submitted by NERC should be designed to effectively address, in a manner that is ''appropriately tailored to address, the risks posed by transient devices to Low Impact BES Cyber Systems.'' [38] We intend that NERC's proposed modifications will be designed to address the risk posed by the assets being protected in accordance with the risk-based approach reflected in the CIP version 5 Standards, *i.e.,* the modifications to address Low Impact BES Cyber Systems may be less stringent than the provisions that apply to Medium and High Impact Cyber Systems—commensurate with the risk.

36. We agree with the Trade Associations that controls for low impact transient cyber assets could be adopted at the asset level (*i.e.,* facility or site-level) to avoid overly-burdensome administrative tasks that could be associated with identifying discrete Low Impact BES Cyber Assets.[39] While responsible entities are not explicitly required by the CIP standards to maintain a list of discrete Low Impact BES Cyber Assets, entities should be aware of where such assets reside in order to apply the existing protections already reflected in the policies required under CIP–003–6. As noted above, the Commission offered that one possible solution to address the reliability gap could be to modify the applicability section of CIP–010–2, Requirement R4. However, should modifying CIP–010–2 prove overly burdensome as asserted by Arkansas and G&T Cooperatives, NERC may propose an equally effective and efficient solution. For example, we believe it would be reasonable for NERC to consider modifications to CIP–003–6, as suggested by Luminant and Reclamation, since the existing low impact controls reside in that standard.

37. With respect to ITC and NIPSCO's comments regarding potential ambiguity in CIP–010–2, Requirement R4, we reiterate that CIP–010–2, Requirement R4 contains sufficiently clear control objectives to inform responsible entities about the activities that must be performed in order for a transient device program to be deemed compliant. We believe that the flexibility reflected in Requirement R4 will help responsible entities to develop secure and cost effective compliance solutions. To the extent that concerns arise in the implementation process, we encourage responsible entities to work with NERC and the Regional Entities to ensure that responsible entities will have reasonable confidence about compliance expectations. Finally, regarding NIPSCO's request for clarification, we clarify our understanding that the phrase ''managed by'' as it is used in CIP–010–2, Requirement R4, is intended to distinguish between situations where a responsible entity has complete control over a Transient Cyber Asset as opposed to situations where a third party shares some measure of control, as discussed in the Guidelines and Technical Basis section of CIP–010–2.

B. Protection of Bulk Electric System Communication Networks

NERC Petition

38. In its Petition, NERC states that the standard drafting team concluded that it need not create a new definition for communication networks because the term ''is generally understood to encompass both programmable and nonprogrammable components (*i.e.,* a communication network includes computer peripherals, terminals, and databases as well as communication mediums such as wires).'' [40] According to NERC, the revised CIP Reliability Standards contain reasonable controls to secure the types of equipment and components that responsible entities must protect based on the risk they pose to the bulk electric system, as opposed to a specific definition of communication networks. Further, NERC explains that the standard drafting team focused on nonprogrammable communication components at control centers with High or Medium Impact BES Cyber Systems because those locations present a heightened risk to the Bulk-Power System, warranting the increased protections.[41]

[37] *See* NERC Comments at 24; G&T Cooperatives Comments at 6.

[38] NOPR, 152 FERC ¶ 61,054 at P 43.

[39] Trade Associations Comments at 13.

[40] NERC Petition at 52 (citing *North American Electric Reliability Corp.,* 142 FERC ¶ 61,203, at PP 13–14 (2013)).

[41] *Id.* at 48.

39. NERC states that proposed Reliability Standard CIP–006–6 provides flexibility for responsible entities to implement the physical security measures that best suit their needs and to account for configurations where logical measures are necessary because the entity cannot effectively implement physical access restrictions. According to NERC, responsible entities have the discretion as to the type of physical or logical protections to implement pursuant to Part 1.10 of this Standard, provided that the protections are designed to meet the overall security objective.[42]

NOPR

40. In the NOPR, the Commission indicated that NERC's proposed alternative approach to addressing the Commission's Order No. 791 directive regarding the definition of communication networks adequately addresses part of the underlying concerns set forth in Order No. 791.[43] The Commission proposed to accept NERC's explanation that responsible entities must develop controls to secure the nonprogrammable components of communication networks based on the risk they pose to the bulk electric system, rather than develop a specific definition of communication networks to identify assets for protection.

41. However, the Commission also indicated that NERC's proposed solution for the protection of nonprogrammable components of communication networks does not fully meet the intent of the Commission's Order No. 791 directive, because proposed CIP–006–6, Requirement R1, Part 1.10 would only apply to nonprogrammable components of communication networks within the same Electronic Security Perimeter, excluding from protection other programmable and non-programmable communication network components that may exist outside of a discrete Electronic Security Perimeter.[44] Therefore, the Commission proposed to direct that NERC develop a modification to proposed Reliability Standard CIP–006–6 ''to require responsible entities to implement controls to protect, at a minimum, all communication links and sensitive bulk electric system data communicated between all bulk electric system Control Centers,'' including communication between two (or more) Control Centers, but not between a Control Center and non-Control Center facilities such as substations.[45] In addition, the Commission sought comments that address ''the value achieved if the CIP Standards were to require the incorporation of additional network segmentation controls, connection monitoring, and session termination controls behind responsible entity intermediate systems,'' including whether these or other steps to improve remote access protection are needed, and whether the adoption of any additional security controls addressing this topic would provide substantial reliability and security benefits.[46]

Comments

42. NERC and a number of commenters generally agree that inter-Control Center communications play a critical role in maintaining bulk electric system reliability and do not oppose further evaluation of the risks described by the Commission in the NOPR.[47] NERC states that timely and accurate communication between Control Centers is important to maintaining situational awareness and reliable bulk electric system operations, and notes that the interception or manipulation of data communicated between Control Centers ''could be used to carry out successful cyberattacks against the [bulk electric system].'' [48]

43. However, NERC and other commenters also assert that NERC should take steps to ensure that reliability is not adversely impacted with the adoption of any additional controls.[49] SPP RE and EnergySec indicate that latency should not be a concern for protecting Control Center communications. Specifically, SPP RE states that the latency introduced by encryption is typically not an operational issue for inter-Control Center communications, since regular inter-Control Center communications do not require the same millisecond response time as communications between protective relays in substations. In addition, SPP RE states that protections other than encryption are not as effective in protecting sensitive operational data from alteration or replay.

44. A number of commenters request that the Commission provide flexibility to the extent that it issues a directive on this topic. NERC, EnergySec, APS, and IESO state that the Commission should allow NERC the opportunity to develop an appropriate and risk informed approach to any new Reliability Standard or requirement, while APS and EnergySec also suggest that NERC be granted the flexibility to determine the placement of any new security controls in the body of standards.[50] Trade Associations and Arkansas state that NERC should determine the appropriate controls to implement to meet the Commission's objectives. Luminant, PNM Resources, and Southern suggest that any new standard or requirement should be results-based and not prescriptive, affording some measure of flexibility to responsible entities.

45. Trade Associations, Southern, Wisconsin, and NEI generally agree that protections should be applied to the High and Medium Impact BES Cyber System environment, but oppose extending mandatory protection to the Low Impact Control Center environment without additional study. Trade Associations and PNM also take issue with the blanket application of security controls over all bulk electric system Control Center data and believe that NERC should have the opportunity to determine what data is truly sensitive.

46. A number of commenters oppose the Commission's proposal to require responsible entities to implement controls to protect all communication links and sensitive bulk electric system data communicated between all bulk electric system Control Centers. NIPSCO and G&T Cooperatives argue that the risks posed by such communication networks do not justify the costs of implementing a new standard and, therefore, the standard should, at a minimum, not apply to Low Impact BES Cyber Systems. NIPSCO opines that the Commission's proposal may cause unintentional consequences since data and communications exchanged between Control Centers is often time-sensitive. SCE suggests that the Commission's proposal is premature and that the risks should be studied before taking further actions. Foundation opposes the Commission's proposal because it objects to the exclusion of secure connections to grid facilities other than Control Centers, stating that the Commission should do more to protect the grid.[51]

47. Other commenters request clarification of the Commission's proposal. KCP&L, PNM, UTC, TVA, Idaho Power, and NIPSCO seek

[42] *Id.* at 49–50.

[43] NOPR, 152 FERC ¶ 61,054 at P 53.

[44] *Id.* P 55.

[45] *Id.* P 59.

[46] *Id.* P 60.

[47] NERC Comments at 20. *See also* Comments of IRC, IESO and ITC.

[48] NERC Comments at 20.

[49] NERC Comments at 20. *See also* Arkansas Comments at 3–4; APS Comments at 4; EnergySec Comments at 4; IESO Comments at 4.

[50] NERC Comments at 20–21; EnergySec Comments at 4; APS Comments at 4; IESO Comments at 4.

[51] Foundation Comments at 47–48.

clarification whether Control Centers owned by multiple, different registered entities would be included in the Commission's proposal. TVA asks whether the Commission's proposal is focused on protecting the data link or the data itself. UTC questions the nature of the reliability gap described in the NOPR given the protections in CIP–005–5 for inbound and outbound communications. In addition, APS and EnergySec seek clarification regarding the term ''control center'' in the context of adopting controls to protect reliability-related data. APS and EnergySec note that transmission owner SCADA systems do not meet the current definition of control centers despite the fact that these systems contain identical reliability data as the systems operated by reliability coordinators, balancing authorities, and transmission operators. As a result, APS and EnergySec ask that the Commission clarify what constitutes a ''control center'' for the purposes of communication security.[52] Finally, Idaho Power, KCP&L, and UTC seek clarification whether responsible entities would be held individually accountable for implementing the controls adopted under the CIP Standards when there may be overlapping responsibilities associated with the protection of inter-entity control center communication.[53] For example, Idaho Power opines that two neighboring responsible entities with control centers that communicate with each other should both be equally responsible for implementing the CIP Standards, but states that it is unclear how compliance would be measured.

48. PNM and NIPSCO suggest that, if the NOPR proposal is aimed at protecting intra-control center communications, the Commission should consider modifications to Reliability Standard EOP–008–1. TVA requests that the Commission consider removing the requirement for protecting ''all communication links'' and focus on the ''sensitive bulk electric system data'' moving between Control Centers. TVA states that physical and logical protections for communications network components between bulk electric system Control Centers should be limited to only essential communications networks.

49. With regard to the Commission's question on the potential need for additional remote access protections, NERC and a number of commenters argue that there are not enough data to conclude that the proposed controls for remote access will be ineffective and suggest that the Commission delay consideration of additional remote access protections until after the CIP version 5 remote access provisions are implemented.[54] NERC and IRC provide a list of the relevant controls applied to remote access systems as evidence that there are substantial controls already in place to address threats associated with remote access. APS and Arkansas assert that the current Standards and industry-developed guidance provide sufficient tools for securing interactive remote access and, thus, additional controls would not provide significant reliability or security benefits. TVA claims that the current requirement language is too prescriptive because it precludes a registered entity's usage of specific technologies due to prejudices against certain ''architectures.'' [55]

50. Commenters supporting the development of additional remote access controls for the CIP Standards contend that the current suite of CIP Standards fails to adequately address specific threats and vulnerabilities. SPP RE and CyberArk note the lack of restrictions on what systems remote users can access after successfully logging on to the intermediate system.[56] CyberArk also asserts that there is a lack of protection for remote user credentials after successfully logging onto the intermediate system and a lack of controls to regulate encryption strength and key management. Waterfall states that the proposed controls lack methods to detect and prevent compromised endpoint devices, which, according to Waterfall and SPP RE, presents the opportunity for an attacker to access multiple remote sites from a compromised central site.

51. PNM agrees that some of the controls mentioned by panelists at the April 2014 FERC technical conference may improve reliability and security. However, PNM states that such controls may have only marginal benefits to reliability and security since the increased complexity of these steps would present problems with staff support for such systems.[57] AEP asserts that, while additional controls may enhance a defense-in-depth strategy, prescriptive requirements on intermediate systems may create a need for technical feasibility exceptions for situations where security could impede reliability.

Commission Determination

52. We adopt the NOPR proposal and find that NERC's alternative approach to addressing the Commission's Order No. 791 directive regarding the definition of communication networks adequately addresses part of the underlying concerns set forth in Order No. 791.[58] In accepting this alternative approach, we accept NERC's explanation that responsible entities must develop controls to secure the nonprogrammable components of communication networks at Control Centers with High or Medium Impact BES Cyber Systems.

53. As discussed in detail below, however, the Commission concludes that modifications to CIP–006–6 to provide controls to protect, at a minimum, communication links and data communicated between bulk electric system Control Centers are necessary in light of the critical role Control Center communications play in maintaining bulk electric system reliability. Therefore, we adopt the NOPR proposal and direct that NERC, pursuant to section 215(d)(5) of the FPA, develop modifications to the CIP Reliability Standards to require responsible entities to implement controls to protect, at a minimum, communication links and sensitive bulk electric system data communicated between bulk electric system Control Centers in a manner that is appropriately tailored to address the risks posed to the bulk electric system by the assets being protected (*i.e.,* high, medium, or low impact).

54. NERC and other commenters recognize that inter-Control Center communications play a critical role in maintaining bulk electric system reliability by, among other things, helping to maintain situational awareness and reliable bulk electric system operations through timely and accurate communication between Control Centers.[59] We agree with this assessment. In order for certain responsible entities such as reliability coordinators, balancing authorities, and transmission operators to adequately perform their reliability functions, their associated control centers must be capable of receiving and storing a variety of sensitive bulk electric system data from interconnected entities. Accordingly, we find that additional measures to protect both the integrity and availability of sensitive bulk electric

[52] *See* APS Comments at 4; EnergySec Comments at 3.

[53] Idaho Power Comments at 2; UTC Comments at 2; KCP&L Comments at 5.

[54] NERC Comments at 21–23. *See also* Trade Association Comments at 14; KCP&L Comments at 4; Southern Comments at 7; IRC Comments at 6.

[55] TVA Comments at 5.

[56] SPP RE Comments at 7–8; CyberArk Comments at 1–2.

[57] PNM Comments at 2.

[58] NOPR, 152 FERC ¶ 61,054 at P 53.

[59] NERC Comments at 20.

system data are warranted.[60] We also understand that the attributes of the data managed by responsible entities could require different information protection controls.[61] For instance, certain types of reliability data will be sensitive to data manipulation type attacks, while other types of reliability data will be sensitive to eavesdropping type attacks aimed at collecting operational information (such as line and equipment ratings and impedances). NERC should consider the differing attributes of bulk electric system data as it assesses the development of appropriate controls.

55. With regard to NERC's development of modifications responsive to our directive, we agree with NERC and other commenters that NERC should have flexibility in the manner in which it addresses the Commission's directive. Likewise, we find reasonable the principles outlined by NERC that protections for communication links and sensitive bulk electric system data communicated between bulk electric system Control Centers: (1) Should not have an adverse effect on reliability, including the recognition of instances where the introduction of latency could have negative results; (2) should account for the risk levels of assets and information being protected, and require protections that are commensurate with the risks presented; and (3) should be results-based in order to provide flexibility to account for the range of technologies and entities involved in bulk electric system communications.[62]

56. We disagree with the assertion of NIPSCO and G&T Cooperatives that the risk posed by bulk electric system communication networks does not justify the costs of implementing controls. Communications between Control Centers over such networks are fundamental to the operations of the bulk electric system, and the record here does not persuade us that controls for such networks are not available at a reasonable cost (through encryption or otherwise). Nonetheless, we recognize that not all communication network components and data pose the same risk to bulk electric system reliability and may not require the same level of protection. We expect NERC to develop controls that reflect the risk posed by the asset or data being protected, and that can be implemented in a reasonable manner. It is important to recognize that certain entities are already required to exchange necessary real-time and operational planning data through secured networks using a ''mutually agreeable security protocol,'' regardless of the entity's size or impact level.[63] NERC's response to the directives in this Final Rule should identify the scope of sensitive bulk electric system data that must be protected and specify how the confidentiality, integrity, and availability of each type of bulk electric system data should be protected while it is being transmitted or at rest.

57. With regard to Foundation's argument that the Commission should do more to promote grid security by mandating secure communications between all facilities of the bulk electric system, such as substations, the record in the immediate proceeding does not support such a broad requirement at this time. However, if in the future it becomes evident that such action is warranted, the Commission may revisit this issue.

58. Several commenters sought clarification whether Control Centers owned by multiple registered entities would be included under the Commission's proposal. We clarify that the scope of the directed modifications apply to Control Center communications from facilities at all impact levels, regardless of ownership. The directed modification should encompass communication links and data for intra-Control Center and inter-Control Center communications.

59. Idaho Power, KCP&L, and UTC seek clarification whether entities would be held individually accountable for implementing the Standard when there may be overlapping responsibilities. We clarify that responsible entities may be held individually accountable depending upon the security arrangements with their neighbors and functional partners. Many organizations currently use joint and coordinated functional registration agreements to assign accountability for reliability tasks with joint functional obligations.[64] These mechanisms could be leveraged to address responsibilities under the CIP Standards. For example, if several registered entities have joint responsibility for a cryptographic key management system used between their respective Control Centers, they should have the prerogative to come to a consensus on which organization administers that particular key management system.

60. UTC seeks further explanation regarding the nature of the reliability gap described in the NOPR given the protections in CIP–005–5 for inbound and outbound communications. We clarify that the reliability gap addressed in this Final Rule pertains to the lack of mandatory security controls to address how responsible entities should protect sensitive bulk electric system communications and data. As noted above, while responsible entities are required to exchange real-time and operational planning data necessary to operate the bulk electric system using mutually agreeable security protocols, there is no technical specification for how this transfer of information should incorporate mandatory security controls. Although the CIP Standards provide a measure of defense-in-depth for responsible entity information systems, the current security controls primarily focus on boundary protection controls. For instance, CIP–005–5 focuses on access control and malicious code prevention, which requires authentication of the user and ensuring that no malware is included in the communication, but does not provide for security of the actual data while it is being transmitted between Electronic Security Perimeters. Thus, the current CIP Reliability Standards do not adequately address how to protect the transfer of sensitive bulk electric system data between facilities at discrete geographic locations.

61. With respect to APS and EnergySec's request for clarification regarding the meaning of the term ''control center'' in the context of adopting controls to protect reliability-related data, we clarify that we are using here the NERC Glossary definition of a Control Center.[65] Whether particular

[60] Protecting the integrity of bulk electric system data involves maintaining and ensuring the accuracy and consistency of inter-Control Center communications. Protecting the availability of bulk electric system data involves ensuring that required data is available when needed for bulk electric system operations.

[61] Moreover, in order for certain responsible entities to adequately perform their Reliability Functions, the associated control centers must be capable of receiving and storing a variety of sensitive data as specified by the IRO and TOP Standards. For instance, pursuant to Reliability Standard TOP–003–3, Requirements R1, R3 and R5, a transmission operator must maintain a documented specification for data and distribute its data specification to entities that have data required by the transmission operator's Operational Planning Analyses, Real-time Monitoring and Real-time Assessments. Entities receiving a data specification must satisfy the obligation of the documented specification.

[62] *See* NERC Comments at 20–21.

[63] *See* Reliability Standards TOP–003–3, Requirement R5 and IRO–010–2, Requirement R3.

[64] *See* NERC Compliance Public Bulletin #2010–004, available on the NERC Web site at *www.NERC.com.*

[65] The NERC Glossary defines Control Center as ''One or more facilities hosting operating personnel that monitor and control the Bulk Electric System (BES) in real-time to perform the reliability tasks, including their associated data centers, of: (1) A Reliability Coordinator, (2) a Balancing Authority, (3) a Transmission Operator for transmission Facilities at two or more locations, or (4) a

Continued

facilities meet or do not meet this definition should be determined outside of this rulemaking. However, the proposed modification will apply to Control Centers at all impact levels (high, medium, or low).

62. Several commenters addressed encryption and latency. Based on the record in this proceeding, it is reasonable to conclude that any lag in communication speed resulting from implementation of protections should only be measureable on the order of milliseconds and, therefore, will not adversely impact Control Center communications. Several commenters raise possible technical implementation difficulties with integrating encryption technologies into their current communications networks. Such technical issues should be considered by the standard drafting team when developing modifications in response to this directive, and may be resolved, *e.g.,* by making certain aspects of the revised CIP Standards eligible for Technical Feasibility Exceptions.

63. We reject the suggestion of two commenters that any efforts to protect intra-Control Center communications should be considered through modifications in Reliability Standard EOP–008–1. As an initial matter, Reliability Standard EOP–008–1 focuses on backup functionality in the event that primary control center functionality is lost.[66] Reliability Standard EOP–008–1 also does not provide security for communication links or data and, therefore, does not provide for the protection of communication links and sensitive bulk electric system data communicated between bulk electric system Control Centers.

64. Finally, with regard to the NOPR discussion regarding the potential need for additional protections related to remote access,[67] we are persuaded by commenters' suggestions that it would be prudent to assess the extent to which the CIP version 5 Standards provide effective controls for remote access before pursuing additional revisions to the CIP Standards.[68] Therefore, we direct NERC to conduct a study that assesses the effectiveness of the CIP version 5 remote access controls, the risks posed by remote access-related threats and vulnerabilities, and appropriate mitigating controls for any identified risks. NERC should consult with Commission staff to determine the general contents of the directed report. We direct NERC to submit a report on the above-outlined study within one year of the implementation of the CIP version 5 Standards for High and Medium Impact BES Cyber Systems.

C. Proposed Definitions

NERC Petition

65. In its Petition, NERC proposes the following definition for Low Impact External Routable Connectivity:

> Direct user-initiated interactive access or a direct device-to-device connection to a low impact BES Cyber System(s) from a Cyber Asset outside the asset containing those low impact BES Cyber System(s) via a bidirectional routable protocol connection. Point-to-point communications between intelligent electronic devices that use routable communication protocols for time-sensitive protection or control functions between Transmission station or substation assets containing low impact BES Cyber Systems are excluded from this definition (examples of this communication include, but are not limited to, IEC 61850 GOOSE or vendor proprietary protocols).[69]

66. NERC explains that the proposed definition describes the scenarios where responsible entities are required to apply Low Impact access controls under Reliability Standard CIP–003–6, Requirement R2 to their Low Impact assets. Specifically, if Low Impact External Routable Connectivity is used, a responsible entity must implement a Low Impact Electronic Access Point to permit only necessary inbound and outbound bidirectional routable protocol access.[70]

NOPR

67. In the NOPR, the Commission sought comment on the proposed definition for Low Impact External Routable Connectivity. First, the Commission sought comment on the purpose of the meaning of the term ''direct'' in relation to the phrases ''direct user-initiated interactive access'' and ''direct device-to-device connection'' within the proposed definition.[71] In addition, the Commission sought comment on the implementation of the ''layer 7 application layer break'' contained in certain reference diagrams in the Guidelines and Technical Basis section of proposed Reliability Standard CIP–003–6, noting that the guidance provided in the Guidelines and Technical Basis section of the proposed standard may conflict with the plain reading of the term ''direct.''[72] The Commission noted a concern that a conflict in the reading of the term ''direct'' could lead to complications in the implementation of the proposed CIP Reliability Standards, hindering the adoption of effective security controls for Low Impact BES Cyber Systems. The Commission indicated that, depending upon the responses received, the final rule may direct NERC to develop a modification to the definition of Low Impact External Routable Connectivity to eliminate ambiguities.

Comments

68. NERC and other commenters do not oppose a modification of the Low Impact External Routable Connectivity definition, so long as it remains consistent with the Guidelines and Technical Basis for section for CIP–003–6.[73] NERC, referencing the Guidelines and Technical Basis section of proposed CIP–003–6, explains that the purpose of the term ''direct'' is to distinguish between the scenarios where an external user or device could electronically access the Low Impact BES Cyber System without a security break (*i.e.,* direct access) from those situations where an external user or device could only access the Low Impact BES Cyber System following a security break (*i.e.,* indirect access).

69. NERC explains further that Low Impact External Routable Connectivity would exist and a Low Impact Electronic Access Point would be required if an entity's implementation of a layer 7 application layer break does not provide a sufficient security break (*i.e.,* the layer 7 application does not prevent direct access to the Low Impact BES Cyber System).[74] Southern states that it believes that the Low Impact External Routable Connectivity definition, when combined with the language in the Guidelines and Technical Basis section for CIP–003–6, is sufficiently clear.

70. SPP RE, EnergySec, and APS recommend that the Commission direct NERC to revise the Low Impact External Routable Connectivity definition because the definition, as drafted, would permit transitive connections through out of scope cyber assets at sites

Generator Operator for generation Facilities at two or more locations.''

[66] *See http://www.nerc.com/files/eop-008-1.pdf.*

[67] *See* NOPR, 152 FERC ¶ 61,054 at P 60.

[68] *See* NERC Comments at 21–23; Trade Association Comments at 14; KCP&L Comments at 4; Southern Comments at 7; IRC Comments at 6.

[69] NERC Petition at 28.

[70] *Id.* at 29.

[71] *See* NOPR, 152 FERC ¶ 61,054 at P 70.

[72] *See* CIP–003–6 Guidelines and Technical Basis Section, Reference Model 6 at p. 39. The layer 7 application layer break concept appears to permit a responsible entity to log into an intermediate application or device to access the Low Impact BES Cyber System or device to avoid implementing Low Impact Electronic Access Point security controls under CIP–003–6, Attachment 1, Section 3.

[73] NERC Comments at 31. *See also* Trade Associations Comments at 15; Southern Comments at 8.

[74] NERC Comments at 30.

containing Low Impact BES Cyber Systems with no required security controls.[75] SPP RE posits that indirect access, through an intervening or intermediate system such as the non-BES Cyber Asset on the same network segment, should also be considered Low Impact External Routable Connectivity because this kind of access would enable ''pivot attacks'' on low impact networks.

71. SPP RE, EnergySec, TVA, and APS assert that any electronic remote access into a routable network containing BES Cyber Systems should be construed as External Routable Connectivity and protected.[76] SPP RE suggests that the layer 7 application layer break language is not well understood by industry, as some responsible entities currently hold the view that a security gateway appliance effectively serves as the layer 7 protocol break eliminating Low Impact External Routable Connectivity. SPP RE asserts that the security gateway appliance acting in this way does not maintain two independent conversations and, as a result, should still be considered as externally routable connected.

72. ITC states that it considers the layer 7 application layer break referenced in Model 6 of the Guidelines and Technical Basis section to be an illustrative example that in no way requires integrity of the data stream down to layer 7 for compliance with CIP–003–6.[77] ITC notes that the illustrative example referenced by the Commission is contained within the non-binding Guidelines and Technical basis section, and does not believe that the controlling language of CIP–003–6 requires such a control.

Commission Determination

73. Based on the comments received in response to the NOPR, the Commission concludes that a modification to the Low Impact External Routable Connectivity definition to reflect the commentary in the Guidelines and Technical Basis section of CIP–003–6 is necessary to provide needed clarity to the definition and eliminate ambiguity surrounding the term ''direct'' as it is used in the proposed definition. Therefore, pursuant to section 215(d)(5) of the FPA, we direct NERC to develop a modification to provide the needed clarity, within one year of the effective date of this Final Rule. We agree with NERC and other commenters that a suitable means to address our concern is to modify the Low Impact External Routable Connectivity definition consistent with the commentary in the Guidelines and Technical Basis section of CIP–003–6.[78]

74. As discussed above, NERC clarifies that the purpose of the ''direct'' language in the Low Impact External Routable Connectivity definition is to distinguish between scenarios where an external user or device could electronically access a Low Impact BES Cyber System without a security break (direct access) from those situations where an external user or device could only access a Low Impact BES Cyber System following a security break (indirect access); therefore, in order for there to be no Low Impact External Routable Connectivity, the security break must be ''complete'' (*i.e.,* it must prevent allowing access to the Low Impact BES Cyber Systems from the external cyber asset). NERC's clarification on this issue resolves many of the concerns raised by EnergySec, APS, and SPP RE regarding the proposed definition, as a complete security break would not appear to permit transitive connections through one or more out of scope cyber assets to go unprotected under the definition, and would appear to require the assets to maintain ''separate conversations'' as suggested by SPP RE.

75. We decline to adopt the recommendations from EnergySec and APS that the Commission direct NERC to modify the standards to utilize the concept of Electronic Security Perimeters for low impact systems and to leverage existing definitions for Electronic Access Point and External Routable Connectivity. The Commission believes that the electronic security protections developed by the standard drafting team for Low Impact BES Cyber Systems will provide sufficient protection to these systems with the modifications that we are directing to the Low Impact External Routable Connectivity definition. However, we may revisit this decision in the future if we determine that CIP–003–6, Requirement R2 and the Low Impact External Routable Connectivity definition provide insufficient electronic access protection for Low Impact BES Cyber Systems.

D. Implementation Plan

NERC Petition

76. In its Petition, NERC explains that the proposed implementation plan for the revised CIP Reliability Standards is designed to match the effective dates of the proposed Reliability Standards with the effective dates of the prior versions of the related Reliability Standards under the implementation plan of the CIP version 5 Standards. NERC states that the purpose of this approach is to provide regulatory certainty by limiting the time, if any, that the CIP version 5 Standards with the ''identify, assess, and correct'' language would be effective. Specifically, NERC explains that, pursuant to the CIP version 5 implementation plan, the effective date of each of the CIP version 5 Standards is April 1, 2016, except for the effective date for Requirement R2 of CIP–003–5 (*i.e.,* controls for Low Impact BES Cyber Systems), which is April 1, 2017. NERC explains further that the proposed implementation plan provides that: (1) Each of the proposed reliability Standards shall become effective on the later of April 1, 2016 or the first day of the first calendar quarter that is three months after the effective date of the Commission's order approving the proposed Reliability Standard; and (2) responsible entities will not have to comply with the requirements applicable to Low Impact BES Cyber Systems (CIP–003–6, Requirement R1, Part 1.2 and Requirement R2) until April 1, 2017.[79]

77. NERC also explains that the proposed implementation plan includes effective dates for the new and modified definitions associated with: (1) Transient devices (*i.e.,* BES Cyber Asset, Protected Cyber Asset, Removable Media, and Transient Cyber Asset); and (2) Low Impact controls (*i.e.,* Low Impact Electronic Access Point and Low Impact External Routable Connectivity). Specifically, NERC proposes that: (1) The definitions associated with transient device become effective on the compliance date for Reliability Standard CIP–010–2, Requirement R4; and (2) the definitions addressing the Low Impact controls become enforceable on the compliance date for Reliability Standard CIP–003–6, Requirement R2. Lastly, NERC proposes that the retirement of Reliability Standards CIP–003–5, CIP–004–5.1, CIP–006–5, CIP–007–5, CIP–009–5, CIP–010–1 and CIP–011–1 become effective on the effective date of the proposed Reliability Standards.

NOPR

78. In the NOPR, the Commission proposed to approve NERC's

[75] SPP RE Comments at 14–18; EnergySec Comments at 2–3; APS Comments at 7.

[76] SPP RE Comments at 14–18; EnergySec Comments at 2–3; TVA Comments at 1–2; APS Comments at 7.

[77] ITC Comments at 10–11.

[78] *E.g.,* NERC Comments at 31; Trade Associations Comments at 15.

[79] NERC Petition at 53–54.

implementation plan for the proposed CIP Reliability Standards.[80]

Comments

79. A number of commenters request that the Commission act on the proposed revisions to the CIP Standards in a manner that avoids a different implementation date than the CIP version 5 Standards (*i.e.,* April 1, 2016) in order to avoid confusion and unnecessary burdens.[81] Trade Associations encourage the Commission to take alternative actions to avoid unnecessary burden if a Final Rule facilitating an April 1, 2016 effective date for the revised CIP Standards is not feasible. Reclamation suggests that the Commission update and extend the standards implementation plan for each of the CIP version 5 Standards to April 1, 2017, except for the effective date for Requirement R2 of CIP–003–5, which Reclamation argues should be updated to April 1, 2018. ITC contends that April 1, 2016 is an unreasonably aggressive compliance deadline and urges the Commission to consider extending the deadline by one year to April 1, 2017.

Commission Determination

80. The Commission approves NERC's proposed implementation plan. As a result, the proposed CIP Reliability Standards will be effective the first day of the first calendar quarter that is three months after the effective date of the Commission's order approving the proposed Reliability Standard (*i.e.,* July 1, 2016). Responsible entities must comply with the requirements applicable to Low Impact BES Cyber Systems (CIP–003–6, Requirement R1, part 1.2 and Requirement R2) beginning April 1, 2017, consistent with NERC's proposed implementation plan.

81. We recognize the concerns raised by Trade Associations and other commenters regarding the potential burden of implementing two versions of certain CIP Reliability Standards within a short period of time. The Commission is willing to consider a request to align the implementation dates of certain CIP Reliability Standards or another reasonable alternative approach to addressing potential implementation issues, should NERC or another interested entity submit such a proposal.[82]

III. Information Collection Statement

82. The FERC–725B information collection requirements contained in this Final Rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[83] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[84] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

83. The Commission solicited comments on the need for and purpose of the information contained in the proposed CIP Reliability Standards, including whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The Commission received no comments regarding the need for the information collection or the burden estimates associated with the proposed CIP Reliability Standards as described in the NOPR.

84. *Public Reporting Burden:* The Commission based its paperwork burden estimates on the changes in paperwork burden presented by the proposed CIP Reliability Standards as compared to the CIP version 5 Standards. The Commission has already addressed the burden of implementing the CIP version 5 Standards.[85] As discussed above, the immediate rulemaking addresses four areas of modification to the CIP version 5 Standards: (1) Removal of the ''identify, assess, and correct'' language from 17 CIP requirements; (2) development of enhanced security controls for low impact assets; (3) development of controls to protect transient electronic devices (*e.g.,* thumb drives and laptop computers); and (4) protection of communications networks. We do not anticipate that the removal of the ''identify, assess, and correct'' language will impact the reporting burden, as the substantive compliance requirements would remain the same, while NERC indicates that the concept behind the deleted language continues to be implemented within NERC's compliance function. The development of controls to protect transient devices and protection of communication networks (as proposed by NERC) have associated reporting burdens that will affect a limited number of entities, *i.e.,* those with Medium and High Impact BES Cyber Systems. The enhanced security controls for Low Impact assets are likely to impose a reporting burden on a much larger group of entities.

85. The NERC Compliance Registry, as of June 2015, identifies approximately 1,435 U.S. entities that are subject to mandatory compliance with Reliability Standards. Of this total, we estimate that 1,363 entities will face an increased paperwork burden under the proposed CIP Reliability Standards, and we estimate that a majority of these entities will have one or more Low Impact assets. In addition, we estimate that approximately 23 percent of the entities have assets that will be subject to Reliability Standards CIP–006–6 and CIP–010–2. Based on these assumptions, we estimate the following reporting burden for entities with Medium and/or High Impact Assets:

Registered entities	Number of entities	Total burden hours in year 1	Total burden hours in year 2	Total burden hours in year 3
Entities subject to CIP–006–6 and CIP–010–2 with Medium and/or High Impact Assets	313	75,120	130,208	130,208
Totals	313	75,120	130,208	130,208

[80] NOPR, 152 FERC ¶ 61,054 at P 73.

[81] Trade Associations Comments at 6; SCE Comments at 4–5; Reclamation Comments at 2–3; Wisconsin Comments at 3; Luminant Comments at 2–3; NextEra Comments at 4.

[82] Given the upcoming April 1, 2016 implementation date for the CIP version 5 Standards, NERC or another interested entity may wish to consider seeking expedited action for any request to address potential implementation issues. The Commission would be cognizant, in considering any request, of the need to provide adequate notice of any changes prior to April 1, 2016.

[83] 44 U.S.C. 3507(d).

[84] 5 CFR 1320.11.

[85] *See* Order No. 791, 145 FERC ¶ 61,160 at PP 226–244.

86. The following shows the annual cost burden for the group with Medium and/or High Impact Assets, based on the burden hours in the table above:

- Year 1: Entities subject to CIP–006–6 and CIP–010–2 with Medium and/or High Impact Assets: 313 entities × 240 hours/entity * $76/hour = $5,709,120.
- Years 2 and 3: 313 entities × 416 hours/entity * $76/hour = $9,895,808 per year.
- The paperwork burden estimate includes costs associated with the initial development of a policy to address requirements relating to transient electronic devices, as well as the ongoing data collection burden. Further, the estimate reflects the assumption that costs incurred in year 1 will pertain to policy development, while costs in years 2 and 3 will reflect the burden associated with maintaining logs and other records to demonstrate ongoing compliance.

Based on the assumptions, we estimate the following reporting burden for entities with Low Impact Assets:

Registered entities	Number of entities	Total burden hours in year 1	Total burden hours in year 2	Total burden hours in year 3
Entities subject to CIP–003–6 with Low Impact Assets	1,363	163,560	283,504	283,504
Totals	1,363	163,560	283,504	283,504

87. The following shows the annual cost burden for the group with Low Impact Assets, based on the burden hours in the table above:

- Year 1: Entities subject to CIP–003–6 with Low Impact Assets: 1,363 entities × 120 hours/entity * $76/hour = $12,430,560.
- Years 2 and 3: 1,363 entities × 208 hours/entity * $76/hour = $21,546,304 per year.
- The paperwork burden estimate includes costs associated with the modification of existing policies to address requirements relating to low impact assets, as well as the ongoing data collection burden, as set forth in CIP–003–6, Requirements R1.2 and R2, and Attachment 1. Further, the estimate reflects the assumption that costs incurred in year 1 will pertain to revising existing policies, while costs in years 2 and 3 will reflect the burden associated with maintaining logs and other records to demonstrate ongoing compliance.

88. The estimated hourly rate of $76 is the average (rounded) loaded cost (wage plus benefits) of legal services ($129.68 per hour), technical employees ($58.17 per hour) and administrative support ($39.12 per hour), based on hourly rates and average benefits data from the Bureau of Labor Statistics.[86]

89. *Title:* Mandatory Reliability Standards, Revised Critical Infrastructure Protection Standards.

Action: Proposed Collection FERC–725B.

OMB Control No.: 1902–0248.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule approves the requested modifications to Reliability Standards pertaining to critical infrastructure protection. As discussed above, the Commission approves NERC's proposed revised CIP Reliability Standards pursuant to section 215(d)(2) of the FPA because they improve the currently-effective suite of cyber security CIP Reliability Standards.

Internal Review: The Commission has reviewed the proposed Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA.

90. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

91. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–0710, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov*. Comments submitted to OMB should include Docket Number RM15–14–000 and OMB Control Number 1902–0248.

IV. Regulatory Flexibility Act Analysis

92. The Regulatory Flexibility Act of 1980 (RFA) generally requires a description and analysis of Proposed Rules that will have significant economic impact on a substantial number of small entities.[87] The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[88] The SBA revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from the prior standard based on megawatt hour sales).[89] Proposed Reliability Standards CIP–003–6, CIP–004–6, CIP–006–6, CIP–007–6, CIP–009–6, CIP–010–2, and CIP–011–2 are expected to impose an additional burden on 1,363 U.S. entities [90] (reliability coordinators, generator operators, generator owners, interchange coordinators or authorities, transmission operators, balancing authorities, transmission owners, and certain distribution providers).

93. Of the 1,363 affected entities discussed above, we estimate that 444 entities are small entities. We estimate that 399 of these 444 small entities do not own BES Cyber Assets or BES Cyber Systems that are classified as Medium or High Impact and, therefore, will only be affected by the proposed modifications to Reliability Standard CIP–003–6. As discussed above, proposed Reliability Standard CIP–003–6 enhances reliability by providing criteria against which NERC and the Commission can evaluate the sufficiency of an entity's protections for Low Impact BES Cyber Assets. We estimate that each of the 399 small entities to whom the proposed modifications to Reliability Standard CIP–003–6 applies will incur one-time costs of approximately $149,358 per

[86] *See http://bls.gov/oes/current/naics2_22.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm.* Hourly figures as of June 1, 2015.

[87] 5 U.S.C. 601–12.

[88] 13 CFR 121.101.

[89] SBA Final Rule on ''Small Business Size Standards: Utilities,'' 78 FR 77343 (Dec. 23, 2013).

[90] Public utilities may fall under one of several different categories, each with a size threshold based on the company's number of employees, including affiliates, the parent company, and subsidiaries. For the analysis in this NOPR, we are using a 500 employee threshold for each affected entity to conduct a comprehensive analysis.

entity to implement this standard, in addition to the ongoing paperwork burden reflected in the Information Collection Statement (a total of $40,736 per entity over Years 1–3), giving a total one-time cost of $190,094 per entity. We do not consider the estimated one-time costs for these 399 small entities a significant economic impact.

94. In addition, we estimate that 14 small entities own Medium Impact substations and that 31 small transmission operators own Medium or High impact control centers. These 45 small entities represent 10.1 percent of the 444 affected small entities. We estimate that each of these 45 small entities may experience an economic impact of $50,000 per entity in the first year of initial implementation to meet proposed Reliability Standard CIP–010–2 and $30,000 in ongoing annual costs.[91] In addition, those 45 small entities will have paperwork burden (reflected in the Information Collection Statement) of $81,472 per entity over Years 1–3. Therefore, we estimate that each of these 45 small entities will incur a total of $191,472 in costs over the first three years. We conclude that 10.1 percent of the total 444 affected small entities does not represent a substantial number in terms of the total number of regulated small entities.

95. Based on the above analysis, the Commission certifies that the proposed Reliability Standards will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

V. Environmental Analysis

96. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[92] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[93] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Effective Date and Congressional Notification

97. This Final Rule is effective March 31, 2016. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

VII. Document Availability

98. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

99. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

100. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By the Commission.

Issued: January 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: the following Appendix will not appear in the *Code of Federal Regulations.*

Appendix

COMMENTERS

Abbreviation	Commenter
AEP	American Electric Power Service Corporation.
ACS	Applied Control Solutions, LLC.
APS	Arizona Public Service Company.
Arkansas	Arkansas Electric Cooperative.
BPA	Bonneville Power Administration.
CEA	Canadian Electricity Association.
Consumers Energy	Consumers Energy Company.
CyberArk	CyberArk.
EnergySec	Energy Sector Security Consortium, Inc.
Ericsson	Ericsson.
Foundation	Foundation for Resilient Societies.
G&T Cooperatives	Associated Electric Cooperative, Inc., Basin Electric Power Cooperative, and Tri-State Generation and Transmission Association, Inc.
Gridwise	Gridwise Alliance.
Idaho Power	Idaho Power Company.
Indegy	Indegy.
IESO	Independent Electricity System Operator.
IRC	ISO/RTO Council.
ISO New England	ISO New England Inc.
ITC	ITC Companies.
Isologic	Isologic, LLC.
KCP&L	Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company.
Luminant	Luminant Generation Company, LLC.
NEMA	National Electrical Manufacturers Association.

[91] Estimated annual cost for year 2 and forward.

[92] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[93] 18 CFR 380.4(a)(2)(ii).

COMMENTERS—Continued

Abbreviation	Commenter
NERC	North American Electric Reliability Corporation.
NextEra	NextEra Energy, Inc.
NIPSCO	Northern Indiana Public Service Co.
NWPPA	Northwest Public Power Association.
Peak	Peak Reliability.
PNM	PNM Resources.
Reclamation	Department of Interior Bureau of Reclamation.
SIA	Security Industry Association.
SCE	Southern California Edison Company.
Southern	Southern Company Services.
SPP RE	Southwest Power Pool Regional Entity.
SWP	California Department of Water Resources State Water Project.
TVA	Tennessee Valley Authority.
Trade Associations	Edison Electric Institute, American Public Power Association, National Rural Electric Cooperative Association, Electric Power Supply Association, Transmission Access Policy Study Group, and Large Public Power Council.
UTC	Utilities Telecom Council.
Waterfall	Waterfall Security Solutions, Ltd.
Wisconsin	Wisconsin Electric Power Company.
Weis	Joe Weis.

[FR Doc. 2016–01505 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–1124]

Drawbridge Operation Regulation; Upper Mississippi River, St. Paul, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Chicago and Northwestern Railroad Drawbridge across the Mississippi River, mile 839.2, at St. Paul, Minnesota. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge, and is scheduled in the winter when there is less impact on navigation. This deviation allows the bridge to be closed to navigation.

DATES: This deviation is effective without actual notice from January 26, 2016 until 11:59 p.m., February 6, 2016. For the purposes of enforcement, actual notice will be used from 12:01 a.m., January 18, 2016 until 11:59 p.m., February 6, 2016.

ADDRESSES: The docket for this deviation (USCG–2015–1124) is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

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

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad requested a temporary deviation for the Chicago and Northwestern Railroad Drawbridge, across the Upper Mississippi River, mile 839.2, at St. Paul, Minnesota to be closed to navigation from 12:01 a.m., January 18, 2016 until 11:59 p.m., January 23, 2016 and from 12:01 a.m., February 1, 2016 until 11:59 p.m., February 6, 2016 for a total of twelve days for scheduled maintenance and for replacement of the liftspan counter weight wire ropes on the bridge. This deviation is scheduled during the winter months causing the least impact on navigation under the bridge.

The Chicago and Northwestern Railroad Drawbridge currently operates in accordance with 33 CFR 117.671(b), which states the general requirement that the drawbridge shall open on signal except from December 15 through the last day of February drawbridge shall open on signal if at least 12 hours notice is given.

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

The Chicago and Northwestern Railroad Drawbridge provides a vertical clearance of 25.1 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: January 20, 2016.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2016–01444 Filed 1–25–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 34

[Docket No. CDC–2015–0045]

RIN 0920–AA28

Medical Examination of Aliens—Revisions to Medical Screening Process

AGENCY: Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is issuing this final rule (FR) to amend its regulations governing medical examinations that aliens must undergo before they may be admitted to the United States. Based on public comment received, HHS/CDC did not

make changes from the NPRM published on June 23, 2015. Accordingly, this FR will: Revise the definition of *communicable disease of public health significance* by removing chancroid, granuloma inguinale, and lymphogranuloma venereum as inadmissible health-related conditions for aliens seeking admission to the United States; update the notification of the health-related grounds of inadmissibility to include proof of vaccinations to align with existing requirements established by the Immigration and Nationality Act (INA); revise the definitions and evaluation criteria for mental disorders, drug abuse and drug addiction; clarify and revise the evaluation requirements for tuberculosis; clarify and revise the process for the HHS/CDC-appointed medical review board that convenes to reexamine the determination of a Class A medical condition based on an appeal; and update the titles and designations of federal agencies within the text of the regulation.

DATES: This rule is effective March 28, 2016.

FOR FURTHER INFORMATION CONTACT: Ashley A. Marrone, J.D., Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS E–03, Atlanta, Georgia 30329; telephone 1–404–498–1600.

SUPPLEMENTARY INFORMATION: The Preamble to this FR is organized as follows:

I. Public Participation

On October 6, 2008, HHS/CDC published an interim final rule (IFR) (73 FR 58047) to amend its regulations that govern medical examinations that aliens must undergo before they are admitted to the United States. HHS/CDC amended the definition of ''communicable disease of public health significance'' by adding (1) quarantinable diseases designated by Presidential Executive Order, and (2) those diseases that meet the criteria of a public health emergency of international concern which require notification to the World Health Organization (WHO) under the revised International Health Regulations (IHR) of 2005 (*http://www.who.int/ihr/en/*). These amendments to the definition of *communicable disease of public health significance* permitted a more flexible, risk-based approach to the medical examination, based on medical and epidemiologic factors. The IFR also updated the screening requirements for tuberculosis to be consistent with current medical knowledge and practice. The public was invited to comment on these amendments; the comment period ended December 5, 2008. On October 20, 2008, HHS/CDC published correcting amendments (73 FR 62210) that corrected an omission in the IFR. This document clarified that an alien of any age in the United States who applies for adjustment of status to permanent resident shall not be required to have a chest x-ray examination unless their tuberculin skin test, or an equivalent test that shows an immune response to *Mycobacterium tuberculosis,* is positive. HHS/CDC received three comments to the IFR, two comments from the public and one comment from a professional organization. A summary of those comments and a response to those comments are found at Section IV, below.

On June 23, 2015, HHS/CDC published a notice of proposed rulemaking (NPRM) (80 FR 35899) that proposed to amend its regulations to (1) revise the definition of *communicable disease of public health significance* by removing chancroid, granuloma inguinale, and lymphogranuloma venereum as inadmissible health-related conditions for aliens seeking admission to the United States; (2) update the notification of the health-related grounds of inadmissibility to include proof of vaccinations to align with existing requirements established by the Immigration and Nationality Act (INA) (8 U.S.C.A. 1101 *et seq.*); (3) revise the definitions and evaluation criteria for mental disorders, drug abuse and drug addiction; (4) clarify and revise the evaluation requirements for tuberculosis; (5) clarify and revise the process for the HHS/CDC-appointed medical review board that convenes to reexamine the determination of a Class A medical condition based on an appeal; and (6) update the titles and designations of federal agencies within the text of the regulation. Specifically, HHS/CDC sought comment on:

1. Whether infectious Hansen's disease (previously referred to in regulation as infectious leprosy), infectious syphilis and/or gonorrhea should be removed from the definition of communicable disease of public health significance;

2. Whether the definition of communicable disease of public health significance and the scope of the medical examination should be revised as proposed in this regulation;

3. Whether the statutory requirement that aliens demonstrate proof of vaccinations should be incorporated into the regulations as a notifiable medical condition. To further clarify this question, HHS/CDC did not request comment on the statutory language itself as HHS/CDC does not have the authority to alter statutory language. Rather, we were interested in comment on the advisability of incorporating statutory language into regulations;

4. Whether the requirement that immigrants demonstrate proof of vaccination against vaccine-preventable diseases recommended by the Advisory Committee on Immunization Practices (ACIP) should be limited to only those vaccines for which a public health need exists at the time of immigration or adjustment of status. CDC has previously published criteria for determining whether a public health need exists at the time of immigration or adjustment of status. *See* 74 FR 58634 (Nov. 13, 2009). HHS/CDC was not seeking comment on the criteria, but rather on the incorporation of this standard into the regulations;

5. Whether the definitions and evaluation criteria for mental disorders, drug abuse and drug addiction should be revised as proposed in this regulation;

6. Whether the requirements for evaluating the presence of tuberculosis in alien applicants should be clarified and revised as proposed in this regulation; and

7. Whether the process for convening a medical review board and reexamination of an alien by a medical review board should be revised as proposed in this regulation.

HHS/CDC received three public comments on the 2008 IFR and six comments on the 2015 NPRM, from individuals and associations. A summary of those comments and responses to those comments are found at Section IV, below.

II. Background

A. Legal Authority

HHS/CDC is amending the regulation under the authority of 42 U.S.C. 252 and 8 U.S.C. 1182 and 1222.

B. Legislative and Regulatory History

Beginning in 1952, the language of the Immigration and Nationality Act (INA) mandated that, among other grounds for inadmissibility, aliens ''who are afflicted with any dangerous contagious disease'' are ineligible to receive a visa and therefore are excluded from admission into the United States. In 1990, Congress amended the INA by revising the classes of excludable aliens to provide that an alien who is determined (in accordance with regulation prescribed by the Secretary of Health and Human Services) to have a *communicable disease of public health significance* shall be excludable from the United States. Immigration Act of 1990, Public Law 101–649, section 601, 104 Stat. 4978 January 23, 1990; INA section 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i) (effective June 1, 1991). At the time of the 1990 INA amendments, the following specific communicable illnesses rendered an alien inadmissible: Active tuberculosis, infectious syphilis, gonorrhea, infectious leprosy, chancroid, lymphogranuloma venereum, granuloma inguinale, and human immunodeficiency virus (HIV) infection. HHS/CDC subsequently published a proposed rule that would have removed from the list all diseases except for active tuberculosis. 56 FR 2484 (January 23, 1991). Based on the review and consideration of public comments received on this proposal, HHS published an interim final rule retaining all communicable diseases on the list and committed its initial proposal for further study. *See* 56 FR 25000 (May 31, 1991). On October 6, 2008, HHS/CDC published an Interim Final Rule (IFR) announcing a revised definition of *communicable disease of public health significance* and revised scope of the medical examination in 42 CFR part 34. This IFR addressed concerns regarding emerging and reemerging diseases in alien populations who are bound for the United States. *See* 73 FR 58047 and 73 FR 62210.

With the 2008 revision to 42 CFR part 34, the definition of *communicable disease of public health significance* was modified to include two disease categories: (1) Quarantinable diseases designated by Presidential Executive Order; and (2) a communicable disease that may pose a public health emergency of international concern in accordance with the International Health Regulations (IHR) of 2005, provided the disease meets specified criteria in addition to the list of specific illnesses. Specific illnesses remaining as a *communicable disease of public health significance* were active tuberculosis, infectious syphilis, gonorrhea, infectious Hansen's disease (previously referred to in regulation as infectious leprosy), chancroid, lymphogranuloma venereum, granuloma inguinale, and HIV infection.

In response to a 2008 amendment to the INA, on July 2, 2009, HHS/CDC published a Notice of Proposed Rulemaking (NPRM) (74 FR 31798), which proposed two regulatory changes: (1) The removal of HIV infection from the definition of *communicable disease of public health significance;* and (2) removal of references to serologic testing for HIV from the scope of examinations. On November 2, 2009, HHS/CDC published a final rule, effective on January 4, 2010 (74 FR 56547), that removed HIV infection and testing for HIV infection from part 34 regulations.

III. Summary of the Final Rule

HHS/CDC identified the need for this rulemaking through an annual retrospective review of its regulations. Executive Order 13563 ''Improving Regulation and Regulatory Review'' requires Federal agencies to periodically review existing regulations to eliminate those regulations that are obsolete, unnecessary, burdensome, or counterproductive or revise regulations to increase their effectiveness, efficiency, and flexibility.

Through this final rule, HHS/CDC will revise 42 CFR part 34 to reflect modern terminology and plain language commonly used in medicine and science by public health partners in the medical examination of aliens. Likewise, we are revising part 34 to include text that accurately reflects the statutory and administrative changes that have occurred within the Federal Government regarding agencies and/or departments responsible for this process. These revisions will ensure regulations that govern the medical examination of aliens are based upon accepted contemporary scientific principles as well as current medical practices.

The following is a section-by-section summary of the changes to part 34:

Section 34.1 Applicability

HHS/CDC is replacing the acronym ''INS'' within 34.1(c) with ''DHS'' to best reflect the administrative changes that have occurred within the Federal Government regarding agencies and/or departments responsible for the medical examination of aliens.

Section 34.2 Definitions

In this final rule, HHS/CDC is revising the definitions of: *CDC, Communicable disease of public health significance, Civil Surgeon, Class A medical notification, Class B medical notification, Director, Drug abuse, Drug addiction, Medical notification, Medical hold document, Medical officer, Mental disorder* and *Physical disorder.*

Additionally, HHS/CDC is adding definitions for *DHS* and *HHS* and removing the definition of *INS.*

Section 34.2(a) CDC

The definition of *CDC* is updated to reflect the current official title of the Agency: Centers for Disease Control and Prevention, Department of Health and Human Services. In doing so, we removed ''Public Health Services'' from the definition.

Section 34.2(b) Communicable Disease of Public Health Significance

This provision now defines *communicable disease of public health significance* as both a specific list of diseases and categories of diseases for which all aliens are inadmissible to the United States. This final rule removes three uncommon bacterial infections associated with genital ulcer disease: Chancroid, granuloma inguinale, and lymphogranuloma venereum, from the specific list of *communicable disease of public health significance* as provided for in 42 CFR 34.2(b).

Section 34.2(c) Civil Surgeon

HHS/CDC has removed the specific language of ''District Director'' and ''INS'' from the definition of *civil surgeon* to align with the specific language of the definition of *civil surgeon* as provided for in Department of Homeland Security (DHS) regulations in 8 CFR part 232. HHS/CDC is also removing ''with not less than 4 years' professional experience'' from the definition of *civil surgeon.* Through complimentary regulations promulgated by DHS at 8 CFR part 232, the requirement of 4 years' professional experience for civil surgeons will remain in effect. This change removes a redundancy found in HHS/CDC regulation and does not affect a substantive change in policy. HHS/CDC will continue to consult with the Department of Homeland Security (DHS)/United States Citizenship and Immigration Services (USCIS) as needed, regarding recommendations for

civil surgeon requirements. Therefore, the definition of *civil surgeon* means a physician designated by DHS to conduct medical examinations of aliens in the United States who are applying for adjustment of status to permanent residence or who are required by DHS to have a medical examination.

Section 34.2(d) Class A Medical Notification

HHS/CDC is amending the definition of Class A medical notification by incorporating statutory language requiring documentary proof of vaccination. This requirement is provided by section 341 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which amended Section 212 of the INA. Part 34 is updated to explicitly include the requirement for proof of vaccination as previously specified in the IIRIRA. *See* Public Law 104–208, Div. C, 110 Stat. 3009–546. Lack of proof of vaccination will result in the issuance of a Class A medical notification. This additional language will not change current practices, but simply reflects updated statutory language.

The definition also includes the vaccination exemption specifically provided in Section 212 of the INA for an adopted child who is 10 years of age or younger. This exemption is applicable if, prior to the admission of the child, an adoptive or prospective adoptive parent, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that the child will be vaccinated within 30 days of the child's admission, or at the earliest time that is medically appropriate. Execution of this affidavit will prevent a Class A medical notification from being generated for lack of proof of vaccination. This additional language does not change current practices, but reflects updated statutory language.

Section 34.2(f) Director

The final rule updates the definition of *Director* to reflect the current official title of the CDC Director, as well as his/her delegation authorities.

Section 34.2(g) DHS

We are adding *DHS* to the definitions in order to best reflect the administrative changes that have occurred within the Federal Government regarding agencies and/or departments responsible for the medical examination of aliens.

Section 34.2(h) Drug Abuse and Section 34.2(i) Drug Addiction

HHS/CDC is revising the definitions of *drug abuse* and *drug addiction* to align with the definitions of ''substance use disorders'' and ''substance-induced disorders,'' provided by the Diagnostic and Statistical Manual for Mental Disorders (DSM) published by the American Psychiatric Association (25). The DSM is the medical standard for the diagnosis of mental disorders and substance-related disorders and provides current diagnostic criteria based on the latest available evidence.

Section 34.2(k) Medical Hold Document

This final rule updates the definition of *Medical hold document* by replacing ''INS'' with ''DHS'', replacing ''Public Health Service'' with ''HHS/CDC'' and replacing ''quarantine inspector'' with ''quarantine officer.''

Section 34.2(l) Medical Notification

The final rule amends the definition of *medical notification* by adding proof of vaccination requirements as already provided by section 341 of the IIRIRA which amended Section 212 of the INA. This amendment updates part 34 to include the requirement for proof of vaccination that is currently specified in statute in the IIRIRA and for those ACIP-recommended vaccinations for which HHS/CDC determines, by applying criteria published in the **Federal Register**, a public health need exists at the time of immigration or adjustment of status. This is not a substantive change to the regulation, as it will not affect current practice.

Based on this update, *medical notification,* according to the INA, means a medical examination document issued to a consular authority or DHS by a medical examiner that includes the following additional language: ''(2) Documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the ACIP for which HHS/CDC determines, by applying criteria published in the **Federal Register**, there is a public health need at the time of immigration or adjustment of status.''

Section 34.2(m) Medical Officer

The final rule removes ''of the Public Health Service Commissioned Corps'' from the definition of *medical officer* to reflect that a medical officer for these purposes is not required to be a member of the U.S. Public Health Service Commissioned Corps.

Section 34.2(n) Mental Disorder and 34.2(p) Physical Disorder

The final rule clarifies *mental disorder* as a currently accepted psychiatric diagnosis, as defined by the most recent edition of the DSM published by the American Psychiatric Association (17) or in another authoritative source as approved by the Director. This revision adds ''most recent'' to qualify the version of the DSM referenced in this definition and clarifies the intent of HHS/CDC that such diagnoses align with current science and medical practice. This update also allows for the possibility of other authoritative sources to be used in the future based on the most current medical science and in the event that the DSM is no longer the accepted authoritative source for determining a psychiatric diagnosis.

The final rule defines *physical disorder* to mean a currently accepted medical diagnosis, as defined by the most recent edition of the Manual of the International Classification of Diseases, Injuries, and Causes of Death (ICD) published by the World Health Organization (26) or in another authoritative source as approved by the Director. HHS/CDC is adding ''most recent version'' to qualify the version of the ICD referenced in this definition and to be consistent with the current Section 212 of the INA. HHS/CDC also allows for the possibility of other authoritative sources to be used in the future based on the most current medical science and in the event that the ICD is no longer the accepted authoritative source for determining a physical diagnosis.

c. Section 34.3 Scope of Examinations

This section applies to those aliens who are required to undergo a medical examination for U.S. immigration purposes. The scope of the examination outlines those matters that relate to inadmissible health-related conditions and was revised in 2008 through an interim final rule. The 2008 interim final rule provided specific screening and testing requirements for those diseases that meet the current definition of *communicable disease of public health significance* in § 34.2(b) of 42 CFR part 34. This final rule further updates this section to incorporate

statutory language requiring documentation for vaccine-preventable disease and HHS/CDC's understanding that ACIP vaccine recommendations should only be applied in an immigration context when a public health need exists.

In 2009, HHS/CDC published a final notice in the **Federal Register**, adopting proposed criteria that HHS/CDC intended to use to determine which vaccines recommended by the ACIP for the general U.S. population should be required for immigrants seeking admission into the United States or seeking adjustment of status to that of an alien lawfully admitted for permanent residence based on public health needs (74 FR 58634). These criteria became effective on December 14, 2009. Since then, HHS/CDC has relied on such criteria to determine which vaccines aliens must receive as part of the immigration medical screening process.

The 2015 NPRM proposed to formally incorporate a reference to this criteria into this final rule. HHS/CDC did not receive public comment in opposition of the incorporation. Therefore, under this final rule, HHS/CDC has modified the regulatory text to reflect reference to these criteria where appropriate. We note that if there is a future need for HHS/CDC to reconsider these established criteria, HHS/CDC will solicit comments through publication in the **Federal Register**. In subsection (a)(2)(i), we have also inserted the word ''current'' in front of ''physical or mental disorder'' as stated in section 212 of INA.

Specific Proposed Revisions to Section 34.3(a)

The final rule revised § 34.3(a)(2) to include proof of vaccination requirements as provided by section 341 of IIRIRA of 1996 which amended Section 212 of the INA.

Specific Proposed Revisions to Section 34.3(e)

The final rule amends § 34.3(e)(1) to clarify the scope of examination requirements that apply to anyone who is required by DHS to have a medical examination for the purpose of determining their admissibility. The final rule adds § 34.3(e)(1)(v) ''Applicants required by DHS to have a medical examination in connection with the determination of their admissibility into the United States.''

The final rule includes the following changes to provide consistency in the required evaluation for tuberculosis: Replace all references to ''chest x-ray'' in § 34.3(e) with ''chest radiograph''; clarify that § 34.3(e)(3)(ii) applies to aliens in the United States; and to remove the specific size of chest radiograph provided in § 34.3(e)(5). These changes reflect current medical terminology and technical practice.

The final rule amends § 34.3(e)(2)(iii) by removing ''and HIV'' to correct the typographical error in the current rule language and reflect that testing for HIV is no longer required. The requirement for serologic testing for syphilis will remain and the final rule includes language to allow the Director to test for other communicable diseases of public health significance (as defined) through technical instructions.

The final rule amends §§ 34.3(e)(3)(i) and 34.3(e)(3)(ii) to reflect the scope of currently available medical tests. The final rule replaces ''positive tuberculin reaction'' with ''positive test of immune response to *Mycobacterium tuberculosis* antigens'' in §§ 34.3(e)(3)(i) and 34.3(e)(3)(ii).

To allow HHS/CDC discretion to apply appropriate medical screening procedures, the final rule amends §§ 34.3(e)(3)(iii) and 34.3(e)(3)(iv) regarding application of tests of immune response by adding ''as determined by the Director.''

To allow for additional testing in medically appropriate circumstances, the final rule revises § 34.3(e)(4) by removing ''subject to the chest radiograph requirement, and for whom the radiograph shows an abnormality suggestive of tuberculosis disease,'' replaces ''shall'' with ''may,'' and adds ''based on medical evaluation.'' Thus, in the final rule, this revision reads: ''All applicants may be required to undergo additional testing for tuberculosis based on the results of the medical evaluation.''

To reflect current practice and INA statutory language, the final rule amends § 34.3(b)(2) by adding ''or other relevant records'' to ensure that all appropriate available medical documentation may be considered. Thus, in the final rule, this revision reads: ''For the examining physician to reach a determination or conclusion about the presence or absence of a physical or mental abnormality, disease, or disability, the scope of the examination shall include any laboratory or additional studies that are deemed necessary, either as a result of the physical examination or pertinent information elicited from the alien's medical history or other relevant records.''

The final rule includes language under § 34.3(f), transmission of records, to ensure that electronic submissions may be acceptable as provided by the Director. Finally, the final rule amends § 34.3(g)(4) by replacing ''excludable'' with ''inadmissible'' in § 34.3(g)(4) to reflect modern terminology.

d. Section 34.4 Medical Notifications

The final rule revises § 34.4(b)(1)(ii) to include proof of vaccination requirements as provided by section 341 of the IIRIRA of 1996 which amended Section 212 of the INA and references criteria established by HHS/CDC and published in the **Federal Register** to determine which vaccines recommended by the ACIP will be required for U.S. immigration.

In addition, the final rule adds specific language regarding the exemption of vaccination requirements for an adopted child as provided in Section 212 of the INA.

e. Section 38.7 Medical and Other Care; Death

Under this section, the final rule replaces ''INS'' with ''DHS'' and replaces ''Public Health Services'' with ''HHS'' to reflect modern agency titles and appropriate authorities relating to this provision.

f. Section 34.8 Reexamination; Convening of Review Boards; Expert Witnesses, Reports

The final rule revises this section to clarify the reexamination and review board's process and improve the expediency of the process. The revisions include removing the requirement that one medical officer must be a board-certified psychiatrist in cases where the alien's mental health is a basis for inadmissibility. The requirement for a board-certified psychiatrist is replaced with a requirement that the review board consist of at least one medical officer who is experienced in the diagnosis and treatment of the physical or mental disorder, or substance-related disorder for which the medical notification was made. Additionally, the final rule adds failure to present documented proof of having been vaccinated against vaccine preventable diseases as a basis for reexamination by the review board and adds clarifying language that the reexamination may be conducted, at the board's discretion, based on the written record.

IV. Response to Public Comments

A. Summary of Public Comments to the 2008 IFR

On October 6, 2008, HHS/CDC published an interim final rule (IFR) (73 FR 58047) to amend its regulations that govern medical examinations that aliens must undergo before they are admitted to the United States. HHS/CDC

amended the definition of ''communicable disease of public health significance'' by adding (1) quarantinable diseases designated by Presidential Executive Order, and (2) those diseases that meet the criteria of a public health emergency of international concern which require notification to the World Health Organization (WHO) under the International Health Regulations of 2005. These amendments to the definition of ''communicable disease of public health significance'' permitted a more flexible, risk-based approach to the medical examination, based on medical and epidemiologic factors. The IFR also updated the screening requirements for tuberculosis to be consistent with current medical knowledge and practice. The public was invited to comment on these amendments; the comment period ended December 5, 2008. On October 20, 2008, HHS/CDC published correcting amendments (73 FR 62210) that corrected an omission in the IFR. The correcting amendments clarified that an alien of any age in the United States who applies for adjustment of status to permanent resident shall not be required to have a chest x-ray examination unless their tuberculin skin test, or an equivalent test that shows an immune response to *Mycobacterium tuberculosis,* is positive. HHS/CDC received three comments to the IFR, two comments from the public and one comment from a professional organization. A summary of those comments and a response to those comments are found below.

One commenter urged HHS/CDC to remove HIV infection from the definition of *communicable disease of public health significance,* stating that HIV has specific methods of transmission and that the likelihood that an HIV positive individuals would present an unusual risk of disease is extremely low.

Response: HHS/CDC thanks the commenter for this comment and notes that HHS/CDC removed HIV infection from the definition of *communicable disease of public health significance* by rulemaking in 2009. No changes were made to the final rule based on this comment.

A second commenter expressed concern that HHS/CDC was creating a double standard; an alien in the United States with a newly identified disease would not be found inadmissible, but an alien overseas with the same disease would be found inadmissible. With this double standard, aliens overseas would be encouraged to avoid overseas medical examinations and find ways to illegally enter the United States. The commenter suggested that the best way to avoid this situation would be to apply the same standards to medical examinations performed overseas and those performed in the United States. Finally, the commenter suggested that part 34 should be revised to clearly differentiate between overseas medical examinations and those in the United States.

Response: HHS/CDC notes that the final rule does make a distinction between the medical examinations performed for those aliens outside of the United States and those already in the United States applying for adjustment of status to that of a lawful permanent resident. The distinction applies only to additional screening requirements for certain *communicable diseases of public health significance* where these diseases exist and for which importation into the United States would pose a threat as determined by the risk-based approach criteria. We reemphasize that both groups are required to undergo medical screening and the requirements for both groups are outlined in the regulation. No changes were made to the final rule based on this comment.

A third commenter expressed concern that the interim final rule did not include a provision to ensure that the public and the panel physicians are adequately notified of new and emerging diseases which could render individuals inadmissible and subject to an additional medical assessment. The commenter urged HHS to work closely with the Department of State to promptly notify the public of any health emergency or changes or additions to medical examinations through consular Web sites. Finally, the commenter was disappointed that HHS did not remove HIV infection as an inadmissible condition in this rulemaking.

Response: HHS/CDC notes that the regulation does contain a provision that all applicable additional requirements for medical screening and testing will be posted at the following Internet address: *http://www.cdc.gov/immigrantrefugeehealth/exams/ti/index.html.* HHS/CDC also works closely with the Department of State to ensure that all changes or additions to the medical examination are communicated to affected consular posts, panel physicians, and to the public. Finally, HHS/CDC removed HIV infection from the definition of *communicable disease of public health significance* by rulemaking in 2009. No changes were made to the final rule based on this comment.

B. Summary of Public Comments to the 2015 NPRM

HHS/CDC received 6 comments from the public on this NPRM. A summary of the comments is provided here.

One commenter protested the proposal to remove the three STIs from the list of communicable diseases of public health significance. The commenter also disagreed with HHS/CDC's proposal to incorporate a more flexible, risk-based approach, based on medical and epidemiologic factors. The comment points to recent outbreaks of Ebola, Bird and Swine Flu and states that screening should be more vigilant, and that not having stricter screening risks an outbreak.

Response: HHS/CDC thanks the commenter for this comment and notes that in the 2008 IFR, HHS/CDC amended the definition of *communicable disease of public health significance* by adding (1) quarantinable diseases designated by Presidential Executive Order, and (2) those diseases that meet the criteria of a public health emergency of international concern which require notification to the World Health Organization (WHO) under the International Health Regulations of 2005 which allows for screening of diseases in these categories which includes viral hemorrhagic fevers (such as Ebola) and flu that can cause a pandemic (including Bird and Swine variants). The addition of these categories of diseases along with the risk based approach allows HHS/CDC the ability to rapidly respond to unanticipated emerging or re-emerging outbreaks of disease and provides the framework to be able to screen and test individuals during disease outbreaks. HHS/CDC is confident that these changes will improve the ability of the United States to prevent the introduction and spread of infectious diseases, and to protect public health of the United States. No changes were made to the final rule based on this comment.

One commenter expressed concern about any disease coming off the list as these immigrants may be a public ward, and stated that individuals with HIV should not be allowed to immigrate to the United States. The commenter also noted that there was no comment period when HIV was removed from the list. The commenter also asks why unvaccinated children under ten should be allowed to immigrate to the United States. Finally, the commenter states that Ebola should be added to the list and that CDC should start thinking about other diseases to add to the definition of *communicable diseases of public health significance.*

Response: HHS/CDC thanks the commenter for this comment and notes that HHS/CDC removed HIV infection from the definition of communicable disease of public health significance by rulemaking in 2009. As part of this process, HHS/CDC issued a notice of proposed rulemaking which received over 20,000 comments; the majority of which were in favor of removing HIV infection from the list.

Under the Immigration and Nationality Act (INA), children under 10 years of age who are adopted by U.S. citizens are exempt from vaccination requirements prior to entry into the United States. These children must receive vaccinations in the United States within thirty days upon arrival. The above exception and requirements are based on statutory language provided in the INA and cannot be changed by HHS/CDC regulations. This exception does not apply to any other children seeking an immigrant visa or adjustment of status to lawful permanent resident in the United States.

In the 2008 IFR, HHS/CDC amended the definition of ''communicable disease of public health significance'' by adding (1) quarantinable diseases designated by Presidential Executive Order, and (2) those diseases that meet the criteria of a public health emergency of international concern which require notification to the World Health Organization (WHO) under the International Health Regulations of 2005. This allows for screening of diseases in these categories to be conducted during outbreaks and responses. Ebola and other hemorrhagic viral fevers are included in the current list of quarantinable diseases, and therefore are considered in the list of *communicable diseases of public health significance.* No changes were made to the final rule based on this comment.

One commenter stated that removing the STIs from the list of *communicable diseases of public health significance* may lead to decreased use of effective measures to prevent infection. This commenter stated that it is currently ''too risky to the public good to downgrade the urgency of these types of preventable diseases.'' The commenter continued by stating that there have been countless occurrences of ''plagues taking over nations and killing off much of the populations,'' and the commenter states that ''there are many diseases that have not even been introduced yet and it is important to continue the current procedure in order to ensure nothing new 'plagues' the nation.''

The same commenter stated that all aliens should be required to receive the same vaccinations that Americans receive. Additionally, the commenter submits that all immigrants should be revaccinated, as proof of vaccination from an immigrant's home country may not be reliable. The commenter also provides two standards for vaccination. They are as follows:

(1) If immigrating to the United States for economic reasons, the alien's standard of health should be comparable to the average resident of the United States.

(2) if immigrating to the United States for medical treatment otherwise unobtainable in the alien's home country, the alien must be insured to prevent burden to the U.S. taxpayer.

Response: HHS/CDC notes that, according to the analysis provided in the notice of proposed rulemaking, the incidence and prevalence of these STIs is declining globally and so the potential for introduction and spread of these diseases to the U.S. population is considered to be low. By removing the three STIs which no longer pose a threat to public health, the medical examination will be able to focus on the other communicable diseases which are considered more serious risks to the United States. Removing these 3 STIs does not mean that persons will not be treated for these infections if the infections are found during the medical examination. Removing these 3 STIs means that persons who have these infections are no longer considered inadmissible to the United States. HHS/CDC has incorporated into its regulations the vaccination requirements that are included in statutory language provided in the Immigration and Nationality Act (INA). Please see the relevant text of the INA at *http://www.uscis.gov/iframe/ilink/docView/SLB/HTML/SLB/act.html.* No changes were made to the final rule based on these comments.

Two commenters raised similar concerns regarding a statement made by HHS/CDC in the preamble of the 2015 NPRM regarding the inconclusive correlation between male circumcision and HIV prevention. Both commenters expressed disdain over the ethical, legal and methodological issues surrounding male circumcision as it relates to communicable disease. One commenter stated that some men from traditionally non-circumcising cultures [*e.g.* Hispanic/Latino communities] may read the NPRM and feel compelled to have themselves, and male children, circumcised in the belief that it may help them gain admittance to the U.S. Finally, both commenters concluded that any reference to male circumcision should be removed from the regulation.

Response: HHS/CDC thanks these commenters for their input. We note first that today's final rule does not contain any reference to male circumcision. Second, we clarify that whether a male is circumcised does not—and will not under today's final rule—have an effect on his medical examination or eventual admission into the United States. In the preamble language of the June 2015 NPRM, HHS/CDC stated: ''. . . HIV prevention strategies such as male circumcision may be playing a role, although definitive studies of this effect are still pending.'' This statement was made in addition to several other hypotheses which supported the underlying fact that ''[D]eclining rates of these [STIs] are likely due to a variety of factors.'' Other factors considered and listed in the NPRM included: Improved living conditions, better sanitation (*e.g.,* availability of soap and water), condom use, educational efforts, improved recognition by physicians and treatment based on clinical presentation of sexually transmitted infections, treatment of sexual partners, as well as increased antibiotic usage for treatment of other unrelated conditions. No changes were made to the final rule based on these comments.

One commenter opposed the removal of the requirement that a board certified psychiatrist must be part of the review board for an alien seeking an appeal of mental disorder with associated harmful behavior. The commenter also supports updating the definitions of drug abuse, drug addiction and mental disorder to be made using current DSM standards and criteria. The commenter also indicated concerns about the policy behind the immigration medical examination and its likely discriminatory impact on those aliens with mental illness. The commenter further noted that the terms ''drug abuser'' and ''drug addict'' are obsolete and stigmatizing terms that require replacement in order to meet current scientific understanding of substance use disorders.

Response: HHS/CDC thanks the commenter for the comments and support for updating the definitions of drug abuse, drug addiction and mental disorder to reflect current DSM standards and criteria. As acknowledged by the commenter, changes to the medical examination as it relates to mental illness, including revising the terms ''drug abuser'' and ''drug addict,'' would require statutory language changes to the INA.

Regarding the comment about the requirement for a board certified psychiatrist to be a member of the

review board, HHS/CDC notes that nothing in the regulations prevent the review board from including a board certified psychiatrist in mental disorder cases. However, the change in the regulation allows for another qualified mental health specialist to be on the review board in the event a board certified psychiatrist is not readily available. This allows for the review board process to proceed without any unnecessary delay that may affect the alien's immigration process. No changes were made to the final rule based on this comment.

V. Alternatives Considered

This rulemaking is the result of HHS/CDC's annual retrospective regulatory review. Most of the amendments are administrative and will result in minor changes to current guidelines for overseas medical examinations required of persons seeking permanent entry to the United States. Therefore, alternatives to these administrative updates were not considered.

However, as we stated in the proposed rule, when considering updates to the definition of *communicable disease of public health significance,* HHS/CDC looked at all of the specific diseases listed in the definition. As stated previously in the Preamble, in this rulemaking, HHS/CDC is revising the definition of *communicable disease of public health significance* by removing these three uncommon health conditions: Chancroid; granuloma inguinale; and lymphogranuloma venereum.

We have decided not to remove infectious Hansen's disease (leprosy), gonorrhea, and/or infectious syphilis from the definition at this time. Our decision is based on epidemiological principles and current medical practice to assess these three diseases (infectious Hansen's disease, gonorrhea, and infectious syphilis). We believe that the medical examination provides the opportunity to screen for and treat these diseases, and, when identified in immigrants, provides a public health benefit to the United States as well as a health benefit to the individual. Further, while infection with these three diseases initially renders an alien inadmissible to the United States, treatment is available upon identification, and once appropriately treated, aliens with these conditions are no longer inadmissible. Continued screening for these three diseases during the medical examination provides an opportunity to identify and treat disease in alien populations and thus provide a measure of public health protection to the general U.S. population. HHS/CDC will continue to assess each of these remaining diseases as a communicable disease of public health significance through further scientific review.

VI. Required Regulatory Analyses

A. Executive Orders 12866 and 13563

HHS/CDC has examined the impacts of the proposed rule under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993) and Executive Order 13563, Improving Regulation and Regulatory Review (76 FR 3821, January 21, 2011) (1, 2). Both Executive Orders direct agencies to evaluate any rule prior to promulgation to determine the regulatory impact in terms of costs and benefits to United States populations and businesses. Further, together, the two Executive Orders set the following requirements: Quantify costs and benefits where the new regulation creates a change in current practice; define qualitative costs and benefits; choose approaches that maximize benefits; support regulations that protect public health and safety; and minimize the impact of regulation. HHS/CDC has analyzed the rule as required by these Executive Orders and has determined that it is consistent with the principles set forth in the Executive Orders and the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) and that the rule will create minimal impact (3, 4).

This rule is not being treated as a significant regulatory action as defined by Executive Order 12866. As such, it has not been reviewed by the Office of Management and Budget (OMB).

There are two main impacts of this rule. First, we have updated the current regulation to reflect modern terminology, plain language, and current practice. Because there is no change in the baseline from these updates, no costs can be associated with these administrative updates to align the regulation with current practice.

Second, we have removed three sexually transmitted bacterial infections, chancroid, granuloma inguinale and lymphogranuloma venereum, from the definition of communicable disease of public health significance (5). In doing this, aliens seeking permanent entry to the United States (immigrants, refugees and asylees) will no longer be examined for these diseases during the mandatory medical examinations that are part of the process of admission to the United States. The impact of dropping this portion of the examination is likely to be minimal. On the positive side, the physicians administering the exam will be able to focus on other areas of patient health. On the negative side, there is the potential for a negligible increase in the numbers of disease cases entering the United States. However, as we explain subsequently, this impact is likely to be small. Further, the costs associated with the current disease burden in the United States are also very limited. Therefore, the potential introduction of a very small number of cases will not change the current cost structure associated with the current disease burden.

As discussed in detail below, the three bacterial infections (chancroid, granuloma inguinale and lymphogranuloma venereum), are transmitted through sexual contact, have never been common in the United States and over the past two decades are observed to be increasingly rare throughout the world. Of the three conditions, only laboratory-diagnosed cases of chancroid are reportable in the United States, and since 2005 fewer than 30 chancroid cases annually were reported to CDC from the U.S. states and territories (6–23). While some U.S. cities (7) keep records of cases of granuloma inguinale and lymphogranuloma venereum, neither condition is included on the list of diseases reported to the CDC by clinicians and public health departments (6). Online searches and a few available publications indicate that both conditions most typically occur in tropical and impoverished settings (*i.e.,* with limited access to water, hygiene); and both conditions have become increasingly uncommon over time. A review of the literature published during the past five years identified only a handful of case reports on granuloma inguinale, and the vast majority of these cases were cases outside the United States (12–17). Sporadic small outbreaks of lymphogranuloma venereum have occurred over the past 10 years in Europe and the United States (18–20). The numbers of lymphogranuloma venereum cases are small, have been almost exclusively among men who have sex with men, and numbers are not systematically collected for country populations (18–20).

When HHS/CDC originally attempted to estimate the disease impact to calculate the cost associated with removing these three diseases, we tried to examine the disease rates in the regions or countries of origin of aliens seeking entry to the United States. In the most recent report from DHS, the Annual Yearbook of Immigration Statistics, DHS reports on the regions and countries of origin of aliens (24). Unfortunately, we have been unable to find disease data that correlates with

DHS population data for region of origination of aliens (24). Data on chancroid, granuloma inguinale and lymphogranuloma venereum are not systematically collected by any country outside of the United States either by specific countries or regions listed by DHS for aliens, or from the World Health Organization (WHO) (8, 22, 23). Ultimately, we were unable to correlate the originating regions of aliens entering the United States permanently (immigrants, refugees, and asylees) with the rates of the three diseases in the countries of origin.

Potential for onward transmission of these infections to the U.S. population is deemed to be extremely low. While we do not have country or region-specific rates for these diseases, our review of the literature supports the supposition that the potential introduction of additional cases into the United States by aliens is likely to have a negligible impact on the U.S. population. These primarily tropical infections can be prevented through improved personal hygiene (11) and protected sex (use of a condom) (12). New infections can be effectively treated and cured with a short, uncomplicated course of antibiotic therapy.

Economic analysis and cost results. HHS/CDC has determined that the costs associated with chancroid, granuloma inguinale and lymphogranuloma venereum are currently very low. Given the pattern of diminishing caseloads reported in the literature and available data (6–21), HHS/CDC projects that future costs will remain low. A more detailed analysis as required by E.O. 12866 and 13563 can be found in the docket for this NPRM. A summary follows below.

Summary. There is no international disease incidence data available for chancroid, granuloma inguinale or lymphogranuloma venereum. There is some data available for numbers of cases of chancroid observed in the United States over a number of years (6) and DHS also provides data regarding the numbers of legal foreign residents in the United States (24). In the full analysis we used the chancroid data to estimate a range of costs to treat chancroid in the United States (6) at the highest and lowest caseloads observed. An estimated component for granuloma inguinale and lymphogranuloma venereum was added by assumption because of lack of either domestic or international data. The costs were then prorated to reflect the foreign population residing in the United States using DHS data (24).

Cost estimates were derived for three alternatives titled Low, High, and Extreme. The Low and High alternatives were based on the lowest (most recent) and highest reported caseloads of chancroid (6). The Extreme alternative is six times the highest rate of chancroid ever reported in the United States. Finally, often chancroid, granuloma inguinale, and lymphogranuloma venereum are co-morbid with other STIs, *e.g.,* HIV, syphilis, or gonorrhea (6, 8, 21). Therefore costs are estimated to both treat cases with or without co-morbidity.

The results of the analysis are reported in Table 1. Because of a decreasing trend in reported cases, it is conservative to estimate the annualized burden of these diseases based on past reporting (*i.e.* the number of cases observed in the future are likely to continue decreasing). Further, it was assumed that all cases are detected and treated within the first year after arrival. As a result of these assumptions, monetized costs were unaffected by the choice of discount rate.

The results are not economically significant, *i.e.* more than $100 million of costs and benefits in a single year.

TABLE 1—ANNUAL COSTS OF CHANCROID, GRANULOMA INGUINALE, AND LYMPHOGRANULOMA VENEREUM IN LAWFUL PERMANENT RESIDENTS (LPRS): LOW, HIGH, AND EXTREMELY HIGH CASELOAD ALTERNATIVES, IN 2013 DOLLARS

	Alternatives		
Notes: (1) Per-case cost $263.51. (2) Assumes LPRs are 0.4% of total population.	LOW (less than 1 case a year).	HIGH	EXTREMELY HIGH.
LPR Total Annual Costs *50% comorbidity*	$18	$2,122	$12,731.
LPR Total Annual Costs *NO comorbidity*	$33	$3,858	$23,147.

Estimated benefits of this rule. The benefits to this rule are also qualitative. Aliens as well as the panel physicians and civil surgeons inherently benefit from having current, up-to-date regulations with modern terminology that reflects modern practice and plain language. The physicians administering the exam will be able to devote more time and training to other, more common and/or more serious health issues. The proposed changes do not impose any additional costs on aliens, panel physicians, or civil surgeons.

Comparison of costs and benefits. Given the potential impact of the rulemaking, we conclude that the benefits of the rule justify any costs. See Tables 2 and 3 below.

TABLE 2—SUMMARY OF THE QUANTIFIED AND NON-QUANTIFIED BENEFITS AND COSTS FOR UPDATES TO THE CURRENT REGULATION THAT REFLECT MODERN TERMINOLOGY, PLAIN LANGUAGE, AND CURRENT PRACTICE

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
BENEFITS				
Monetized benefits	$0 (7%) 0 (3%) 0 (0%)	$0 (7%) 0 (3%) 0 (0%)	$0 (7%) 0 (3%) 0 (0%)	RIA.
Annualized quantified, but unmonetized, benefits	None	N/A	N/A	RIA.

TABLE 2—SUMMARY OF THE QUANTIFIED AND NON-QUANTIFIED BENEFITS AND COSTS FOR UPDATES TO THE CURRENT REGULATION THAT REFLECT MODERN TERMINOLOGY, PLAIN LANGUAGE, AND CURRENT PRACTICE—Continued

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Qualitative (unquantified benefits)	Aliens as well as the panel physicians and civil surgeons inherently benefit from having current, up-to-date regulations with modern terminology that reflects modern practice and plain language.			RIA.
COSTS				
Annualized monetized costs (discount rate in parenthesis).[a]	$0 (7%) 0 (3%) 0 (0%)	$0 (7%) 0 (3%) 0 (0%)	$0 (7%) 0 (3%) 0 (0%)	RIA.
Annualized quantified, but unmonetized, costs	None	N/A	N/A	RIA.
Qualitative (unquantified) costs	None			RIA.

TABLE 3—SUMMARY OF THE QUANTIFIED AND NON-QUANTIFIED BENEFITS AND COSTS REMOVING CHANCROID, GRANULOMA INGUINALE, AND LYMPHOGRANULOMA VENEREUM FROM THE DEFINITION OF COMMUNICABLE DISEASE OF PUBLIC HEALTH SIGNIFICANCE

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
BENEFITS				
Monetized benefits	$0 (7%) 0 (3%) 0 (0%)	$0 (7%) 0 (3%) 0 (0%)	$0 (7%) 0 (3%) 0 (0%)	RIA.
Annualized quantified, but unmonetized, benefits	None	N/A	N/A	RIA.
Qualitative (unquantified benefits)	The physicians administering the exam will be able to devote more time and training to other, more common and/or more serious health issues.			RIA.
COSTS				
Annualized monetized costs (discount rate in parenthesis).[a] [b]	$3,858 (7%) 3,858 (3%) 3,858 (0%)	$3,858 (7%) 3,858 (3%) 18 (0%)	$3,858 (7%) 3,858 (3%) 23,147 (0%)	RIA.
Annualized quantified, but unmonetized, costs	None	N/A	N/A	RIA.
Qualitative (unquantified) costs	None			RIA.

[a] All costs of the rule are annual.

[b] It was assumed that all cases occur within one year of arrival. Further, given the decreasing trend in reported cases in the United States, these estimates are likely to be conservative. As a result of these assumptions, the results do not change as a function of the discount rate.

B. The Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), agencies are required to analyze regulatory options to minimize significant economic impact of a rule on small businesses, small governmental units, and small not-for-profit organizations. We have analyzed the costs and benefits of the final rule, as required by Executive Order 12866, and a preliminary regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. Based on the cost benefit analysis, we expect the rule to have little or no economic impact on small entities.

C. The Paperwork Reduction Act

The Paperwork Reduction Act applies to the data collection requirements found in 42 CFR part 34. The U.S. Department of State is responsible for providing forms to panel physicians, and the Department of Homeland Security is responsible for providing forms to civil surgeons to document the medical examination and screening information for aliens. The Office of Management and Budget (OMB) approved this data collection under OMB Control No. 1405–0113, which will expire on September 30, 2017. We note also that the medical examination form that civil surgeons use is the I–693 and the OMB control number provided on the I–693 is 1615–0033 (expiration date 3/31/2017).

D. National Environmental Policy Act (NEPA)

HHS/CDC has determined that the amendments to 42 CFR part 34 will not have a significant impact on the human environment.

E. Executive Order 12988: Civil Justice Reform

HHS/CDC has reviewed this rule under Executive Order 12988 on Civil Justice Reform and determines that this final rule meets the standard in the Executive Order.

F. Executive Order 13132: Federalism

Under Executive Order 13132, if the rule would limit or preempt State authorities, then a federalism analysis is required. The agency must consult with State and local officials to determine whether the rule would have a substantial direct effect on State or local Governments, as well as whether it would either preempt State law or impose a substantial direct cost of compliance on them.

HHS/CDC has determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. The Plain Language Act of 2010

Under 63 FR 31883 (June 10, 1998), Executive Departments and Agencies are required to use plain language in all proposed and final rules. HHS/CDC has attempted to use plain language in this rulemaking to make our intentions and rationale clear. We received no public comment regarding plain language.

VII. References

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List of Subjects in 42 CFR Part 34

Aliens, Health care, Medical examination, Passports and visas, Public health, Scope of examination.

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention, Department of Health and Human Services revises 42 CFR part 34 to read as follows:

PART 34—MEDICAL EXAMINATION OF ALIENS

Sec.

Authority: 42 U.S.C. 252; 8 U.S.C. 1182 and 1222.

§ 34.1 Applicability.

The provisions of this part shall apply to the medical examination of:

(a) Aliens applying for a visa at an embassy or consulate of the United States;

(b) Aliens arriving in the United States;

(c) Aliens required by DHS to have a medical examination in connection with the determination of their admissibility into the United States; and

(d) Aliens applying for adjustment of status.

§ 34.2 Definitions.

As used in this part, terms shall have the following meanings:

(a) *CDC.* Centers for Disease Control and Prevention, Department of Health and Human Services, or an authorized representative acting on its behalf.

(b) *Communicable disease of public health significance.* Any of the following diseases:

(1) Communicable diseases as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act. The current revised list of quarantinable communicable diseases is available at *http://www.cdc.gov* and *http://www.archives.gov/federal-register.*

(2) Communicable diseases that may pose a public health emergency of international concern if it meets one or more of the factors listed in § 34.3(d) and for which the Director has determined a threat exists for importation into the United States, and such disease may potentially affect the health of the American public. The determination will be made consistent with criteria established in Annex 2 of the International Health Regulations (*http://www.who.int/csr/ihr/en/*), as adopted by the Fifty-Eighth World Health Assembly in 2005, and as entered into effect in the United States in July 2007, subject to the U.S. Government's reservation and understandings:

(i) Any of the communicable diseases for which a single case requires notification to the World Health Organization (WHO) as an event that may constitute a public health emergency of international concern, or

(ii) Any other communicable disease the occurrence of which requires notification to the WHO as an event that may constitute a public health emergency of international concern. HHS/CDC's determinations will be announced by notice in the **Federal Register**.

(3) Gonorrhea.

(4) Hansen's disease, infectious.

(5) Syphilis, infectious.

(6) Tuberculosis, active.

(c) *Civil surgeon.* A physician designated by DHS to conduct medical examinations of aliens in the United States who are applying for adjustment of status to permanent residence or who are required by DHS to have a medical examination.

(d) *Class A medical notification.* Medical notification of:

(1) A communicable disease of public health significance;

(2) A failure to present documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines, by applying criteria published in the **Federal Register**, there is a public health need at the time of immigration or adjustment of status. Provided, however, that in no case shall a Class A medical notification be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in the requirement.

(3)(i) A current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(4) Drug abuse or addiction.

(e) *Class B medical notification.* Medical notification of a physical or mental health condition, disease, or disability serious in degree or permanent in nature.

(f) *DHS.* U.S. Department of Homeland Security.

(g) *Director.* The Director of the Centers for Disease Control and Prevention or a designee as approved by the Director or Secretary of Health and Human Services.

(h) *Drug abuse.* ''Current substance use disorder or substance-induced disorder, mild'' as defined in the most recent edition of the Diagnostic and Statistical Manual for Mental Disorders (DSM) as published by the American Psychiatric Association, or by another authoritative source as determined by the Director, of a substance listed in Section 202 of the Controlled Substances Act, as amended (21 U.S.C. 802).

(i) *Drug addiction.* ''Current substance use disorder or substance-induced disorder, moderate or severe'' as defined in the most recent edition of the Diagnostic and Statistical Manual for Mental Disorders (DSM), as published by the American Psychiatric Association, or by another authoritative source as determined by the Director, of a substance listed in Section 202 of the Controlled Substances Act, as amended (21 U.S.C. 802).

(j) *Medical examiner.* A panel physician, civil surgeon, or other physician designated by the Director to perform medical examinations of aliens.

(k) *Medical hold document.* A document issued to DHS by a quarantine officer of HHS at a port of entry which defers the inspection for admission until the cause of the medical hold is resolved.

(l) *Medical notification.* A medical examination document issued to a U.S. consular authority or DHS by a medical examiner, certifying the presence or absence of:

(1) A communicable disease of public health significance;

(2) Documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines, based upon criteria published in the **Federal Register**, there is a public health need at the time of immigration or adjustment of status. Provided, however, that in no case shall a Class A medical notification be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in the requirement;

(3)(i) A current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(4) Drug abuse or addiction; or

(5) Any other physical or mental condition, disease, or disability serious in degree or permanent in nature.

(m) *Medical officer.* A physician or other medical professional assigned by the Director to conduct physical and mental examinations of aliens on behalf of HHS/CDC.

(n) *Mental disorder.* A currently accepted psychiatric diagnosis, as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or by another authoritative source as determined by the Director.

(o) *Panel physician.* A physician selected by a United States embassy or consulate to conduct medical examinations of aliens applying for visas.

(p) *Physical disorder.* A currently accepted medical diagnosis, as defined by the current edition of the Manual of the International Classification of Diseases, Injuries, and Causes of Death published by the World Health Organization or by another authoritative source as determined by the Director.

§ 34.3 Scope of examinations.

(a) *General.* In performing examinations, medical examiners shall consider those matters that relate to the following:

(1) Communicable disease of public health significance;

(2) Documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines there is a public health need at the time of immigration or adjustment of status.

Provided, however, that in no case shall a Class A medical notification be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in the requirement;

(3)(i) A current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(4) Drug abuse or drug addiction; and

(5) Any other physical or mental health condition, disease, or disability serious in degree or permanent in nature.

(b) *Scope of all medical examinations.* (1) All medical examinations will include the following:

(i) A general physical examination and medical history, evaluation for tuberculosis, and serologic testing for syphilis.

(ii) A physical examination and medical history for diseases specified in §§ 34.2(b)(1), and 34.2(b)(4) through 34.2(b)(10).

(2) For the examining physician to reach a determination and conclusion about the presence or absence of a physical or mental abnormality, disease, or disability, the scope of the examination shall include any laboratory or additional studies that are deemed necessary, either as a result of the physical examination or pertinent information elicited from the alien's medical history or other relevant records.

(c) Additional medical screening and testing for examinations performed outside the United States.

(1) HHS/CDC may require additional medical screening and testing for medical examinations performed outside the United States for diseases specified in §§ 34.2(b)(2) and 34.2(b)(3) by applying the risk-based medical and epidemiologic factors in paragraph (d)(2) of this section.

(2) Such examinations shall be conducted in a defined population in a geographic region or area outside the United States as determined by HHS/CDC.

(3) Additional medical screening and testing shall include a medical interview, physical examination, laboratory testing, radiologic exam, or other diagnostic procedure, as determined by HHS/CDC.

(4) Additional medical screening and testing will continue until HHS/CDC determines such screening and testing is no longer warranted based on factors such as the following: Results of disease outbreak investigations and response efforts; effectiveness of containment and control measures; and the status of an applicable determination of public health emergency of international concern declared by the Director General of the WHO.

(5) HHS/CDC will directly provide medical examiners information pertaining to all applicable additional requirements for medical screening and testing, and will post these at the following Internet addresses: *http://www.cdc.gov/ncidod/dq/technica.htm* and *http://www.globalhealth.gov*.

(d) *Risk-based approach.* (1) HHS/CDC will use the medical and epidemiological factors listed in paragraph (d)(2) of this section to determine the following:

(i) Whether a disease as specified in § 34.2(b)(3)(ii) is a communicable disease of public health significance;

(ii) Which diseases in § 34.2(b)(2) and (3) merit additional screening and testing, and the geographic area in which HHS/CDC will require this screening.

(2) Medical and epidemiological factors include the following: (i) The seriousness of the disease's public health impact;

(ii) Whether the emergence of the disease was unusual or unexpected;

(iii) The risk of the spread of the disease in the United States;

(iv) The transmissibility and virulence of the disease;

(v) The impact of the disease at the geographic location of medical screening; and

(vi) Other specific pathogenic factors that would bear on a disease's ability to threaten the health security of the United States.

(e) *Persons subject to requirement for chest radiograph examination and serologic testing.* (1) As provided in paragraph (e)(2) of this section, a chest radiograph examination and serologic testing for syphilis shall be required as part of the examination of the following:

(i) Applicants for immigrant visas;

(ii) Students, exchange visitors, and other applicants for non-immigrant visas required by a U.S. consular authority to have a medical examination;

(iii) Applicants outside the United States who apply for refugee status;

(iv) Applicants in the United States who apply for adjustment of their status

under the immigration statute and regulations.

(v) Applicants required by DHS to have a medical examination in connection with determination of their admissibility into the United States.

(2) *Chest radiograph examination and serologic testing.* Except as provided in paragraph (e)(2)(iv) of this section, applicants described in paragraph (e)(1) of this section shall be required to have the following:

(i) For applicants 15 years of age and older, a chest radiograph examination;

(ii) For applicants under 15 years of age, a chest radiograph examination if the applicant has symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period;

(iii) For applicants 15 years of age and older, serologic testing for syphilis and other *communicable diseases of public health significance* as determined by the Director through technical instructions.

(iv) *Exceptions.* Serologic testing for syphilis shall not be required if the alien is under the age of 15, unless there is reason to suspect infection with syphilis. An alien, regardless of age, in the United States, who applies for adjustment of status to lawful permanent resident, shall not be required to have a chest radiograph examination unless their tuberculin skin test, or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, is positive. HHS/CDC may authorize exceptions to the requirement for a tuberculin skin test, an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, or chest radiograph examination for good cause, upon application approved by the Director.

(3) *Immune response to Mycobacterium tuberculosis antigens.* (i) All aliens 2 years of age or older in the United States who apply for adjustment of status to permanent residents, under the immigration laws and regulations, or other aliens in the United States who are required by DHS to have a medical examination in connection with a determination of their admissibility, shall be required to have a tuberculin skin test or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens. Exceptions to this requirement may be authorized for good cause upon application approved by the Director. In the event of a positive test of immune response, a chest radiograph examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(ii) Aliens in the United States less than 2 years of age shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, if there is evidence of contact with a person known to have tuberculosis or other reason to suspect tuberculosis. In the event of a positive test of immune response, a chest radiograph examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(iii) Aliens outside the United States required to have a medical examination shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to Mycobacterium tuberculosis antigens, and, if indicated, a chest radiograph.

(iv) Aliens outside the United States required to have a medical examination shall be required to have a tuberculin skin test, or an equivalent, appropriate test to show an immune response to *Mycobacterium tuberculosis* antigens, and a chest radiograph, regardless of age, if he/she has symptoms of tuberculosis, a history of tuberculosis, or evidence of possible exposure to a transmissible tuberculosis case in a household or other enclosed environment for a prolonged period, as determined by the Director.

(4) *Additional testing requirements.* All applicants may be required to undergo additional testing for tuberculosis based on the medical evaluation.

(5) *How and where performed.* All chest radiograph images used in medical examinations performed under the regulations to this part shall be large enough to encompass the entire chest.

(6) *Chest x-ray, laboratory, and treatment reports.* The chest radiograph reading and serologic test results for syphilis shall be included in the medical notification. When the medical examiner's conclusions are based on a study of more than one chest x-ray image, the medical notification shall include at least a summary statement of findings of the earlier images, followed by a complete reading of the last image, and dates and details of any laboratory tests and treatment for tuberculosis.

(f) *Procedure for transmitting records.* For aliens issued immigrant visas, the medical notification and chest radiograph images, if any, shall be placed in a separate envelope, which shall be sealed. When more than one chest radiograph image is used as a basis for the examiner's conclusions, all images shall be included. Records may be transmitted by other means, as approved by the Director.

(g) *Failure to present records.* When a determination of admissibility is to be made at the U.S. port of entry, a medical hold document shall be issued pending completion of any necessary examination procedures. A medical hold document may be issued for aliens who:

(1) Are not in possession of a valid medical notification, if required;

(2) Have a medical notification which is incomplete;

(3) Have a medical notification which is not written in English;

(4) Are suspected to have an inadmissible medical condition.

(h) The Secretary of Homeland Security, after consultation with the Secretary of State and the Secretary of Health and Human Services, may in emergency circumstances permit the medical examination of refugees to be completed in the United States.

(i) All medical examinations shall be carried out in accordance with such technical instructions for physicians conducting the medical examination of aliens as may be issued by the Director. Copies of such technical instructions are available upon request to the Director, Division of Global Migration and Quarantine, Mailstop E03, HHS/CDC, Atlanta GA 30333.

§ 34.4 Medical notifications.

(a) Medical examiners shall issue medical notifications of their findings of the presence or absence of Class A or Class B medical conditions. The presence of such condition must have been clearly established.

(b) *Class A medical notifications.* (1) The medical examiner shall report his/her findings to the consular officer or DHS by Class A medical notification which lists the specific condition for which the alien may be inadmissible, if an alien is found to have:

(i) A communicable disease of public health significance;

(ii) A lack of documentation, or no waiver, for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, of having received vaccination against vaccine-preventable diseases which shall include at least the

following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines, by applying criteria published in the **Federal Register**, there is a public health need at the time of immigration or adjustment of status. *Provided however,* that a Class A medical notification shall in no case be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive parent or prospective adoptive parent of the child, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that, within 30 days of the child's admission, or at the earliest time that is medically appropriate, the child will receive the vaccinations identified in the requirement;

(iii)(A) A current physical or mental disorder, and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(B) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(iv) Drug abuse or drug addiction. *Provided, however,* that a Class A medical notification of a physical or mental disorder, and behavior associated with that disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(c) *Class B medical notifications.* (1) If an alien is found to have a physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being, the medical examiner shall report his/her findings to the consular or DHS officer by Class B medical notification which lists the specific conditions found by the medical examiner. Provided, however, that a Class B medical notification shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality, the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(d) *Other medical notifications.* If as a result of the medical examination, the medical examiner does not find a Class A or Class B condition in an alien, the medical examiner shall so indicate on the medical notification form and shall report his findings to the consular or DHS officer.

§ 34.5 Postponement of medical examination.

Whenever, upon an examination, the medical examiner is unable to determine the physical or mental condition of an alien, completion of the medical examination shall be postponed for such observation and further examination of the alien as may be reasonably necessary to determine his/her physical or mental condition. The examination shall be postponed for aliens who have an acute infectious disease until the condition is resolved. The alien shall be referred for medical care as necessary.

§ 34.6 Applicability of Foreign Quarantine Regulations.

Aliens arriving at a port of the United States shall be subject to the applicable provisions of 42 CFR part 71, Foreign Quarantine, with respect to examination and quarantine measures.

§ 34.7 Medical and other care; death.

(a) An alien detained by or in the custody of DHS may be provided medical, surgical, psychiatric, or dental care by HHS through interagency agreements under which DHS shall reimburse HHS. Aliens found to be in need of emergency care in the course of medical examination shall be treated to the extent deemed practical by the attending physician and if considered to be in need of further care, may be referred to DHS along with the physician's recommendations concerning such further care.

(b) In case of the death of an alien, the body shall be delivered to the consular or immigration authority concerned. If such death occurs in the United States, or in a territory or possession thereof, public burial shall be provided upon request of DHS and subject to its agreement to pay the burial expenses. Autopsies shall not be performed unless approved by DHS.

§ 34.8 Reexamination; convening of review boards; expert witnesses; reports.

(a) The Director shall convene a board of medical officers to reexamine an alien:

(1) Upon the request of DHS for a reexamination by such a board; or

(2) Upon an appeal to DHS by an alien who, having received a medical examination in connection with the determination of admissibility to the United States (including examination on arrival and adjustment of status as provided in the immigration laws and regulations) has been certified for a Class A condition.

(b) The board shall reexamine an alien certified as:

(1) Having a communicable disease of public health significance;

(2) Lacking documentation of having received vaccination against ''vaccine-preventable diseases'' for an alien who seeks admission as an immigrant, or who seeks adjustment of status to one lawfully admitted for permanent residence, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenza* type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee for Immunization Practices (ACIP) for which HHS/CDC determines, by applying criteria published in the **Federal Register**, there is a public health need at the time of immigration or adjustment of status. *Provided, however,* that in no case shall a Class A medical notification be issued for an adopted child who is 10 years of age or younger if, prior to the admission of the child, an adoptive or prospective adoptive parent, who has sponsored the child for admission as an immediate relative, has executed an affidavit stating that the parent is aware of the vaccination requirement and will ensure that the child will be vaccinated within 30 days of the child's admission, or at

the earliest time that is medically appropriate.

(3)(i) Having a current physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(ii) Having a history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(iii) Having drug abuse or drug addiction;

(c) The board shall consist of the following:

(1) In circumstances covered by paragraph (b)(1) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the communicable disease for which the medical notification has been made;

(2) In circumstances covered by paragraph (b)(2) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the vaccine-preventable disease for which the medical notification has been made;

(3) In circumstances covered by paragraph (b)(3) of this section, the board shall consist of at least one medical officer who is experienced in the diagnosis and treatment of the physical or mental disorder, or substance-related disorder for which medical notification has been made.

(d) The decision of the majority of the board shall prevail, provided that at least two medical officers concur in the judgment of the board.

(e) Reexamination shall include:

(1) Review of all records submitted by the alien, other witnesses, or the board;

(2) Use of any laboratory or additional studies which are deemed clinically necessary as a result of the physical examination or pertinent information elicited from the alien's medical history;

(3) Consideration of statements regarding the alien's physical or mental condition made by a physician after his/her examination of the alien; and

(4) A physical or psychiatric examination of the alien performed by the board, at the board's discretion;

(f) An alien who is to be reexamined shall be notified of the reexamination not less than 5 days prior thereto.

(g) The alien, at his/her own cost and expense, may introduce as witnesses before the board such physicians or medical experts as the board may in its discretion permit; provided that the alien shall be permitted to introduce at least one expert medical witness. If any witnesses offered are not permitted by the board to testify (either orally or through written testimony), the record of the proceedings shall show the reason for the denial of permission.

(h) Witnesses before the board shall be given a reasonable opportunity to review the medical notification and other records involved in the reexamination and to present all relevant and material evidence orally or in writing until such time as the reexamination is declared by the board to be closed. During the course of the reexamination the alien's attorney or representative shall be permitted to question the alien and he/she, or the alien, shall be permitted to question any witnesses offered in the alien's behalf or any witnesses called by the board. If the alien does not have an attorney or representative, the board shall assist the alien in the presentation of his/her case to the end that all of the material and relevant facts may be considered.

(i) Any proceedings under this section may, at the board's discretion, be conducted based on the written record, including through written questions and testimony.

(j) The findings and conclusions of the board shall be based on its medical examination of the alien, if any, and on the evidence presented and made a part of the record of its proceedings.

(k) The board shall report its findings and conclusions to DHS, and shall also give prompt notice thereof to the alien if his/her reexamination has been based on his/her appeal. The board's report to DHS shall specifically affirm, modify, or reject the findings and conclusions of prior examining medical officers.

(l) The board shall issue its medical notification in accordance with the applicable provisions of this part if it finds that an alien it has reexamined has a Class A or Class B condition.

(m) If the board finds that an alien it has reexamined does not have a Class A or Class B condition, it shall issue its medical notification in accordance with the applicable provisions of this part.

(n) After submission of its report, the board shall not be reconvened, nor shall a new board be convened, in connection with the same application for admission or for adjustment of status, except upon the express authorization of the Director.

Dated: January 12, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–01418 Filed 1–25–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 151223999–6040–01]

RIN 0648–BF68

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This rule addresses how individual processing quota (IPQ) use caps apply to Bering Sea *Chionoecetes bairdi* Tanner crab fisheries: The eastern *C. bairdi* Tanner (EBT) and the western *C. bairdi* Tanner (WBT). This rule exempts EBT and WBT IPQ crab that is custom processed at a facility through contractual arrangements with the facility owners from being applied against the IPQ use cap of the facility owners. This rule applies to EBT and WBT IPQ crab received for custom processing during the 2015/2016 crab fishing year. Without this rule, substantial amounts of EBT and WBT Class A IFQ crab would remain unharvested, and fishermen, shoreside processors, and communities that participate in the EBT and WBT fisheries have no viable alternatives to mitigate the resulting significant, negative economic effects before the fisheries end for the season. This rule is necessary to temporarily relieve a restriction that is preventing the full harvest of EBT and WBT Class A IFQ crab. This rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable law.

DATES: Effective January 26, 2016 through June 30, 2016. Comments must be received by February 25, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2015–0168, by any of the following methods:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0168* click the ''Comment Now!'' icon, complete the

required fields, and enter or attach your comments.

• Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for this rule may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The Environmental Impact Statement (Program EIS), RIR (Program RIR), Final Regulatory Flexibility Analysis (Program FRFA), and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Council prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

This rule modifies regulations that specify how IPQ use caps apply to IPQ issued for EBT and WBT crab fisheries for the 2015/2016 crab fishing year. The 2015/2016 crab fishing year ends on June 30, 2016. The following sections describe (1) the BSAI crab fisheries, (2) general background on IPQ use caps and custom processing arrangements, (3) IPQ use caps applicable to the EBT and WBT crab fisheries, and (4) this rule and justification for emergency action.

The BSAI Crab Fisheries

The Crab Rationalization Program (Program) was implemented on March 2, 2005 (70 FR 10174). The Program established a limited access privilege program for nine crab fisheries in the BSAI, including the EBT and WBT crab fisheries, and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific time period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch to shoreside crab processors or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP license holders who harvested and processed their catch at sea; captains and crew on board catcher/processor vessels were issued catcher/processor crew QS; and captains and crew on board catcher vessels were issued catcher vessel crew QS. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch, called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. Quota share derived from deliveries made by catcher vessel owners (*i.e.,* CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a specific processor with IPQ. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

NMFS issued QS and PQS for the EBT and WBT crab fisheries. Unlike the QS and PQS issued for most other crab fisheries, the QS and PQS issued for the EBT and WBT crab fisheries are not subject to regional delivery and processing requirements, commonly known as regionalization. Therefore, the Class A IFQ that results from EBT and WBT QS, and the IPQ that results from EBT and WBT PQS, can be delivered to, and processed at, any otherwise eligible processing facility.

In addition, the PQS and resulting IPQ issued for the EBT and WBT crab fisheries are not subject to right-of-first-refusal (ROFR) provisions included in the Program. The ROFR provisions provide certain communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community holding the ROFR.

Because the EBT and WBT crab fisheries are not subject to regionalization or ROFR provisions, crab harvested under a Class A IFQ permit in these fisheries can be delivered to processors in a broad geographic area more easily than crab harvested under Class A IFQ permits in crab fisheries subject to regionalization and ROFR provisions. The rationale for exempting the EBT and WBT crab fisheries from regionalization and ROFR provisions is described in the Program EIS (see **ADDRESSES**), and in the final rule implementing the Program (March 2, 2005, 70 FR 10174).

General Background on IPQ Use Caps and Custom Processing Arrangements

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, and the resulting annual IFQ and IPQ. Excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the Program EIS (see **ADDRESSES**). To address these concerns, the Program limits the amount of QS that a person can hold, the amount of IFQ that a person can use, and the amount of IFQ that can be used on board a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

In each of the nine BSAI crab fisheries under the Program, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery and using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially issued PQS. The rationale for the IPQ use caps is described in the Program EIS (see **ADDRESSES**) and the final rule implementing the Program (70

FR 10174, March 2, 2005). According to information in section 6.1.1 of the RIR (see **ADDRESSES**), no person in the EBT or WBT crab fisheries received in excess of 30 percent of the initially issued PQS. Therefore, no person may use an amount of EBT or WBT IPQ greater than an amount resulting from 30 percent of the initially issued EBT or WBT PQS.

The Program is designed to minimize the potential for a single person to evade the PQS and IPQ use caps through the use of corporate affiliations or other legal relationships. To accomplish this, § 680.7(a)(7) prohibits an IPQ holder from using more IPQ than the maximum amount of IPQ that may be held by that person and states that a person's IPQ use cap is calculated by summing the total amount of IPQ that is held by that person and IPQ held by other persons who are affiliated with that person. The term ''affiliation'' is defined in § 680.2. Additional terms used in the definition of ''affiliation'' are described in § 680.2, and NMFS refers the reader to that section for additional detail.

Under § 680.7(a)(7), any IPQ crab that is ''custom processed'' at a facility an IPQ holder owns will be applied against the IPQ use cap of the facility owner, unless specifically exempted by § 680.42(b)(7). A custom processing arrangement exists when an IPQ holder has a contract with the owners of a processing facility to have his or her crab processed at that facility, and the IPQ holder (1) does not have an ownership interest in that processing facility, and (2) is not otherwise affiliated with the owners of that processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to that IPQ holder's specifications. Custom processing arrangements typically occur when an IPQ holder does not own a shoreside processing facility or cannot economically operate a stationary floating crab processor.

Shortly after implementation of the Program, the Council submitted and NMFS approved Amendment 27 to the Crab FMP (74 FR 25449, May 28, 2009). Amendment 27 was designed to improve operational efficiencies in crab fisheries with historically low total allowable catches or that occur in more remote regions by exempting certain IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of the owner of the facility at which IPQ crab are custom processed. For ease of reference, this preamble refers to this exemption as a ''custom processing arrangement exemption.'' NMFS refers the reader to the preamble to the final rule implementing Amendment 27 to the Crab FMP for additional information regarding the rationale for custom processing arrangement exemptions in specific BSAI crab fisheries. Section 680.42(b)(7) describes the BSAI crab fisheries and other requirements that qualify for a custom processing arrangement exemption.

Section 680.42(b)(7)(ii)(A) lists the six BSAI crab fisheries for which the custom processing arrangement exemption applies. These are: Bering Sea *C. opilio* with a North Region designation, Eastern Aleutian Islands golden king crab, Pribilof Island blue and red king crab, Saint Matthew blue king crab, Western Aleutian golden king crab processed west of 174° W. long., and Western Aleutian Islands red king crab. As described later in this preamble, the custom processing arrangement exemption implemented under Amendment 27 does not apply to custom processing arrangements in the EBT and WBT crab fisheries.

Under the custom processing arrangement exemption, NMFS does not apply any IPQ used at a facility through a custom processing arrangement against the IPQ use cap of the owners of that facility provided there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. Effectively, § 680.42(b)(7)(ii)(A) does not count IPQ crab that are custom processed at a facility owned by an IPQ holder against the IPQ use cap of the owner of the processing facility. In such a case, a person who holds IPQ and who owns a processing facility is credited only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps. In sum, these regulations allow processing facility owners who also hold IPQ to be able to use their facility, or facilities, to establish custom processing arrangements with other IPQ holders to process more crab, thereby improving throughput and providing a more economically viable processing operation.

Section 680.42(b)(7)(ii)(B) provides a custom processing arrangement exemption in the six BSAI crab fisheries described above provided that the facility, at which the IPQ crab are custom processed, meets specific requirements. Under the custom processing arrangement exemption, IPQ crab that are custom processed do not count against the IPQ use cap of persons owning the facility if the facility is located within the boundaries of a home rule, first class, or second class city in the State of Alaska on the effective date of regulations implementing Amendment 27 (June 29, 2009) and is either (1) a shoreside crab processor or (2) a stationary floating crab processor that is located within a harbor and moored at a dock, docking facility, or other permanent mooring buoy, with specific provisions applicable to the City of Atka. The specific provisions applicable to facilities operating within the City of Atka are not directly relevant to the EBT and WBT crab fisheries and this rule, and are not addressed further. Additional information on the facilities to which the custom processing arrangement exemption applies is found in the preamble to the final rule implementing Amendment 27 (74 FR 25449, May 28, 2009) and is not repeated here.

Finally, § 680.7(a)(8) prohibits a shoreside crab processor or a stationary floating crab processor in which no IPQ holder has a 10 percent or greater ownership interest in the processing facility from receiving more than 30 percent of the IPQ issued for a particular crab fishery. However, IPQ crab processed under a custom processing arrangement does not apply against the limit on the maximum amount of IPQ crab that can be processed at a facility. These regulations effectively allow more than 30 percent of the IPQ for the six BSAI crab fisheries to be processed at a facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility.

Regulations implementing Amendment 27 also modified the calculation of IPQ use caps for IPQ crab subject to ROFR provisions (see § 680.42(b)(7)(ii)(C)). However, as noted earlier in this preamble, ROFR requirements do not apply to EBT and WBT crab. Therefore, modifications to IPQ use cap calculations for IPQ crab subject to ROFR provisions are not described further in this rule.

IPQ Use Caps Applicable to the EBT and WBT Crab Fisheries

As noted earlier, EBT and WBT IPQ crab that are processed under a custom processing arrangement are not exempt from IPQ use caps and will apply against a person's IPQ use cap if that person owns the facility (*i.e.,* has a 10 percent or greater direct or indirect ownership interest) at which those IPQ crab are processed. Given the percentage at which the IPQ use caps are set, a minimum of four persons who are not affiliated with each other must receive and process EBT or WBT IPQ crab to ensure that all Class A IFQ can be delivered and processed with no person exceeding the IPQ use caps. Similarly, at least four facilities that are not

affiliated through common ownership (*i.e.,* a 10 percent or greater direct or indirect ownership interest) must be used to receive and process EBT and WBT IPQ crab to ensure that all Class A IFQ can be delivered and processed with no facility exceeding the IPQ use caps.

When the Council recommended and NMFS implemented Amendment 27, the Council and NMFS did not deem it necessary to grant the EBT and WBT crab fisheries a custom processing arrangement exemption. The preamble to the proposed rule implementing Amendment 27 explains that the Council and NMFS did not recommend a custom processing arrangement exemption for EBT and WBT IPQ crab because ''Bering Sea *C. bairdi* crab are not subject to regionalization and therefore the need to exempt custom processing arrangements from the IPQ use cap does not appear necessary because crab can be effectively delivered to any processor with matching IPQ in any location'' (73 FR 54351, September 19, 2008).

Since the implementation of Amendment 27, there has been additional consolidation in the BSAI crab processing sector. As Section 6.2.1 of the RIR describes (see ADDRESSES), during the 2015/2016 crab fishing year there appear to be only three unique unaffiliated persons (processors) who have received EBT and WBT IPQ crab at their facilities. These three processors are the Maruha-Nichiro Corporation, which includes Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and Unisea Seafoods. Information in section 6.2.1 indicates that these three processors also own and operate all facilities that have processed EBT and WBT IPQ crab during the 2015/2016 crab fishing year.

The net effect of this processor consolidation is that there are less than the required minimum of four unique and unaffiliated processors active in the EBT and WBT crab fisheries. Therefore, only 90 percent of the Class A IFQ can be delivered to, and only 90 percent of the IPQ may be used at, facilities owned and operated by Maruha-Nichiro Corporation, Trident Seafoods, and Unisea Seafoods without causing the IPQ use caps to be exceeded. The remaining 10 percent of the 2015/2016 EBT Class A IFQ/IPQ, or 826,322 pounds, and the remaining 10 percent of the 2015/2016 WBT Class A IFQ/IPQ, or 615,489 pounds, must be either delivered to processing facilities that are not affiliated with Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods or left unharvested (see Section 6.2.1 of the RIR for more detail). In total, 10 percent of the Class A IFQ/IPQ for both the EBT and WBT crab fisheries equals 1,441,811 pounds.

Sections 7.1 and 7.2 of the RIR indicate that developing or using an alternative processing facility not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods would not be a feasible processing option for the remainder of the 2015/2016 crab fishing year for several reasons. First, even though the 2015/2016 crab fishing year ends on June 30, 2016, under the Crab FMP, the Crab FMP authorizes the State of Alaska to establish specific regulations that define the length of a crab fishing season during a crab fishing year. By State of Alaska regulation, the EBT and WBT 2015/2016 crab fishing seasons end on March 31, 2016. This regulatory closure date of the EBT and WBT crab fisheries provides very limited time for IPQ holders to find an alternative processing facility.

Second, although there are alternative shoreside processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods, most of those facilities are located far from the Bering Sea crab fishing grounds, such as in Kodiak, Alaska. Transporting EBT or WBT crab to those locations would result in longer trips with increased fuel and operating costs for harvesters, result in lost fishing days while the crab are being transported, and increase the potential for deadloss (death) of crab, which becomes increasingly likely the longer that the crab are held in storage tanks and transported. In addition, alternative shoreside processing facilities, regardless of their location to the BSAI crab fishing grounds, have not provisioned and planned their processing operations to accommodate a relatively small proportion of the EBT and WBT IPQ allocations (*i.e.,* only 10 percent of the EBT and WBT IPQ). The costs of provisioning those alternative shoreside facilities for a relatively small amount of crab and without adequate planning would likely impose substantial additional costs relative to processing operations provisioned and planned prior to the start of the EBT and WBT crab fisheries. Deliveries to alternative shoreside processing facilities would impose a substantial burden and cost on Class A IFQ holders in terms of added delivery costs and time.

Third, sections 7.1 and 7.2 of the RIR indicate that using a stationary floating crab processor would not be a feasible processing option for the remainder of the 2015/2016 crab fishing year. Establishing a contract with a stationary floating crab processor, outfitting the vessel, and establishing a market for delivered Class A IFQ EBT and WBT crab in the short amount of time available before the end of the fisheries would present many of the same logistical challenges that are present for alternative shoreside processing facilities.

Finally, any IPQ holder hoping to secure an alternative shoreside processing facility or a stationary floating crab processor will have very little negotiating leverage with any unaffiliated processing facility given the amount of time remaining for the EBT and WBT crab season. That lack of negotiating leverage in establishing delivery terms and conditions could impose additional costs on IPQ holders and harvesters that may make such deliveries uneconomic. Sections 7.1 and 7.2 of the RIR conclude that there do not appear to be any viable delivery options available for 10 percent of the EBT and WBT Class A IFQ during the remainder of the 2015/2016 crab fishing year.

This Rule and Justification for Emergency Action

This rule temporarily suspends the existing § 680.42(b)(7)(ii) and adds a temporary § 680.42(b)(7)(iii) that includes EBT and WBT IPQ crab received during the 2015/2016 crab fishing year to the list of BSAI crab fisheries already receiving a custom processing arrangement exemption. This allows EBT and WBT IPQ crab received for custom processing by the three processors operating in these fisheries to qualify for a custom processing arrangement exemption and not apply against the IPQ use caps for these processors. With this rule, all EBT and WBT IPQ crab received during the 2015/2016 crab fishing year under custom processing arrangements at the facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods will not be counted against the IPQ use cap of the facility or the facility owners. The custom processing arrangement exemption implemented by this rule will allow the three processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters with Class A IFQ to fully harvest and deliver their allocations of EBT and WBT crab to IPQ holders with a custom processing arrangement at facilities operating in the these fisheries.

Section 305(c) of the Magnuson-Stevens Act provides authority for rulemaking to address an emergency. Under that section, a regional fishery management council may recommend

emergency rulemaking if it finds an emergency exists. NMFS' Policy Guidelines for the Use of Emergency Rules provide that the only legal prerequisite for such rulemaking is that an emergency must exist, and that NMFS must have an administrative record justifying emergency regulatory action and demonstrating compliance with the Magnuson-Stevens Act and the National Standards (see NMFS Instruction 01–101–07 (March 31, 2008) and 62 FR 44421, August 21, 1997). Emergency rulemaking is intended for circumstances that are ''extremely urgent,'' where ''substantial harm to or disruption of the . . . fishery . . . would be caused in the time it would take to follow standard rulemaking procedures.''

Under NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997), the phrase ''an emergency exists involving any fishery'' is defined as a situation that meets the following three criteria:

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The following sections review each of these criteria and describe why the Council and NMFS determined that allowing EBT and WBT IPQ crab to qualify for a custom processing arrangement exemption for the remainder of the 2015/2016 crab fishing year meets these criteria.

Criterion 1—Recent, Unforeseen Events or Recently Discovered Circumstances

The Council and NMFS recently discovered that the processors currently receiving EBT and WBT crab are constrained by the IPQ use caps from being able to fully process all Class A IFQ issued for the EBT and WBT crab fisheries in 2015/2016. The one processing facility that previously operated in the EBT and WBT crab fisheries, and that was not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods, recently terminated its 2015/2016 BSAI crab processing operations. Harvesters with the Intercooperative Crab Exchange (ICE) notified the Council and NMFS that given these operational factors, the application of IPQ use caps in the EBT and WBT fisheries could limit their ability to fully harvest their Class A IFQ allocations. ICE is a crab cooperative that represents most of the EBT and WBT QS holders and receives most of Class A IFQ in the EBT and WBT crab fisheries. ICE submitted a petition to the Council requesting that the Council recommend an emergency rule to provide a custom processing arrangement exemption for EBT and WBT IPQ crab on December 9, 2015. The Council recommended an emergency rule to provide that custom processing arrangement exemption on December 15, 2015.

Harvesters with EBT and WBT Class A IFQ and the Council noted that harvesters are not responsible for the operational decisions of processors, and harvesters were not aware until recently of the impact of this decision on IPQ use cap calculations and their ability to fully harvest and deliver their Class A IFQ. Harvesters with Class A IFQ have stated that they did not become aware of the lack of adequate processing capacity under the IPQ use caps until after the EBT and WBT crab fisheries were underway for the 2015/2016 crab fishing year. Consequently, harvesters with Class A IFQ did not foresee that the IPQ use cap would constrain them from delivering the full amount of their EBT and WBT Class A IFQ allocations.

Section 680.20(h) requires Class A IFQ holders to ''share match'' with processors holding available IPQ as a condition of making crab deliveries. Harvesters with Class A IFQ were able to share match their EBT and WBT Class A IFQ before the fishery start date of October 15, 2015, and reasonably concluded they would be able to deliver their Class A IFQ crab to specific IPQ holders operating at specific facilities. The application of the IPQ use caps in the EBT and WBT crab fisheries, the consolidation of processors receiving EBT and EBT Class A IFQ, and the lack of a custom processing arrangement exemption for EBT and WBT IPQ constrain the ability for Class A IFQ holders to fully harvest and deliver their crab given the processing options available in the EBT and WBT crab fisheries. The Council and NMFS determined that this is a recent and unforeseen event due to recently discovered circumstances outside of the control of Class A IFQ holders. The consolidation of processors below the minimum needed to process all of the EBT and WBT Class A IFQ without exceeding the IPQ use caps was not foreseen by the Council and NMFS and was recently discovered after the start of the 2015/2016 EBT and EBT crab fishing seasons.

Criterion 2—Presents Serious Conservation or Management Problems in the Fishery

The Council and NMFS determined that this criterion is met because without an emergency rule there will be a substantial adverse economic impact on harvesters, processors, and communities. Without an emergency rule, as much as 10 percent of the Class A IFQ for both the EBT and WBT crab fisheries, or 1,441,811 pounds of crab, will be unable to be harvested due to an insufficient number of adequate processing facilities that can receive Class A IFQ without IPQ holders exceeding their IPQ use caps. The lost revenue from this forgone harvest is estimated to be approximately $ 3.4 million in ex-vessel value and $ 4.95 million in first wholesale value based on estimated ex-vessel and wholesale values of EBT and WBT crab in 2015/2016 (see Sections 7.1 and 7.2 of the RIR for additional detail).

Without a custom processing arrangement exemption, harvesters with Class A EBT and WBT IFQ would be unable to harvest allocations provided to them due to limitations imposed on IPQ holders and processors that receive EBT and WBT crab would not be able to fully process the EBT and WBT crab resource. In addition to lost revenue to harvesters and processors, communities where EBT and WBT crab are delivered will not receive benefits from labor payments and tax revenue without this rule. This rule is the only mechanism to restore the forgone harvest and lost revenue because other BSAI crab fisheries that could substitute for this lost revenue are fully allocated and are not available to compensate EBT and WBT Class A IFQ holders. Section 7 of the RIR provides additional detail on the economic impacts of this rule.

The Council and NMFS also determined that implementation of this rule will not create conservation issues with regard to BSAI crab generally, or the EBT and WBT crab fisheries specifically. This rule will allow Class A IFQ holders in the EBT and WBT crab fisheries to fully harvest their IFQ allocations, but still limit the overall amount of harvest in these fisheries to the IFQ allocations authorized for the 2015/2016 crab fishing year.

Criterion 3—Can Be Addressed Through Emergency Rulemaking for Which the Immediate Benefits Outweigh the Value of Notice and Comment Rulemaking

NMFS and the Council have determined that the emergency situation created by the lack of adequate processing facilities that can be used to

receive all EBT and WBT IPQ crab can be addressed by emergency regulations. As explained earlier in this preamble, creating a temporary custom processing arrangement exemption through this rule will allow harvesters to fully harvest their Class A IFQ allocations in the EBT and WBT crab fisheries without creating conservation and management issues for the resource or direct users of BSAI crab resources, and is consistent with the goals of the Program (see Section 5 of the RIR for additional detail).

To address the emergency, NMFS must implement an emergency rule that waives the comment period and delay in effective date otherwise required by law. The benefits of these waivers will serve the public interest by allowing for the complete harvest of EBT and WBT crab within the relatively short amount of time remaining in the 2015/2016 EBT and WBT crab seasons. Any delay in effectiveness will preclude the ability to completely harvest and process EBT and WBT crab during the 2015/2016 crab fishing year.

Without the waivers, Class A IFQ holders in the EBT and WBT crab fisheries will not have sufficient time to prosecute these fisheries as intended. As noted earlier, the EBT and WBT crab fisheries close by State of Alaska regulation on March 31, 2016. Harvesters are currently prosecuting the EBT and WBT crab fisheries and due to the unique nature of the EBT and WBT crab fisheries, harvesters will need as much time as possible to harvest the 1,441,811 pounds of Tanner crab. Additionally, for the rule to be effective in providing relief, Class A IFQ holders need to know as soon as possible that they have available processors to deliver the remainder of their EBT and WBT Class A IFQ.

Harvesters in the EBT and WBT crab fisheries submitted a petition for emergency action to the Council shortly before the start of the Council's December 2015 meeting that began on December 9, 2015. They asked that the Council revise the custom processing arrangement exemption to include the EBT and WBT crab fisheries. The fisheries that receive a custom processing arrangement exemption are specified in the Crab FMP and applying the exemption to additional fisheries would require an amendment to the Crab FMP. In order for the Council to recommend an amendment to the Crab FMP, the Council would need to notice the public that such an action was being considered prior to a Council meeting consistent with established public notice requirements. Because the Council was not aware of this issue until shortly before its December 2015 meeting, no such notice could have been provided for the December 2015 Council meeting. The next scheduled meeting of the Council is February 2016, and that is the earliest date at which the Council could notice the public that it is considering amending the Crab FMP.

Secretarial review of fishery management plan (FMP) amendments must follow the process set forth in section 304 of the Magnuson-Stevens Act, which requires more time to complete than is available to provide relief for the EBT and WBT crab fishery participants given the regulatory closure of the EBT and WBT crab fisheries on March 31, 2016. While the normal rulemaking process is the preferred avenue for making regulatory changes, as it provides interested parties the full ability to comment, the Council and NMFS have determined that in this case, the cost of the forgone harvest opportunity outweighs the benefit of using the more protracted, standard process because it would be ineffective for addressing the immediate issue. The Council initiated a typical FMP amendment process in December 2015 to address this situation in a more permanent manner.

The purpose of this rule is to temporarily allow EBT and WBT IPQ crab to be subject to a custom processing arrangement exemption for the 2015/2016 crab fishing year, while allowing continued analysis of the issue in a separate, and standard, FMP amendment process. This rule is needed to allow the complete harvesting and processing of the EBT and WBT crab fisheries during the 2015/2016 crab fishing year and will temporarily ameliorate unforeseen adverse economic consequences due to the insufficient number of adequate processing facilities.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the National Standards, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This rule will allow for the full harvesting and processing of the EBT and WBT crab fisheries and should prevent economic losses from the limitations on the use of EBT and WBT IPQ created by the unforeseen lack of adequate processing capacity. This rule will avoid adverse economic impacts to harvesters, processors, and communities that would otherwise result if the EBT and WBT crab fisheries could not be fully harvested during the 2015/2016 crab fishing year. If this rule were delayed to allow for notice and comment, impacted entities would likely be prevented from harvesting 826,322 pounds of EBT crab and 615,489 pounds of WBT crab that would otherwise be available to impacted entities through the remainder of the 2015/2016 crab fishing year. The lost revenue from this forgone harvest is estimated to be approximately $3.4 million in ex-vessel value and $4.95 million in first wholesale value. In addition to lost revenue to harvesters and processors, communities where EBT and WBT crab are delivered will not receive benefits from labor payments and tax revenue without this rule. Fishermen, shoreside processors, and communities that participate in the EBT and WBT crab fisheries would have limited alternatives to mitigate this significant, negative economic impact. Providing relief through this rule as soon as possible is likely to ensure that these crab can be harvested before the regulatory closure of the EBT and WBT crab fisheries, provide the associated harvesting and processing revenues, and provide benefits to communities engaged in these crab fisheries. This rule promotes the goals and objectives of the Program, the Crab FMP, and the Magnuson-Stevens Act by removing a restriction that is preventing the otherwise authorized harvesting and processing of fishery resources.

As explained earlier, the lack of sufficient processing capacity in the EBT and WBT crab fisheries was not foreseen prior to or at the start of the EBT and EBT crab fisheries and was only recently discovered. Harvesters with Class A IFQ in the EBT and WBT crab fisheries are not responsible for the decisions of processors to cease operations of processing facilities, and were not aware of the impact of any operational decisions on their ability to harvest and deliver their Class A IFQ. Class A IFQ holders are not able to mitigate fishing operations in a manner that avoids the use of IPQ. Therefore, Class A IFQ holders cannot undertake actions that will allow them to fully harvest their EBT and WBT Class A IFQ without being constrained by regulations that require that IPQ use caps not be exceeded.

Finally, if required to go through notice-and-comment rulemaking, Class A IFQ holders would not have sufficient time to harvest their Class A IFQ prior to the closure of the EBT and WBT crab

fisheries on March 31, 2016. In addition to the notice-and-comment requirements under the Administrative Procedure Act, the Magnuson-Stevens Act FMP amendment process sets forth certain requirements that must be followed, such as a 60-day comment period on an FMP amendment. Because the EBT and WBT crab fisheries close by regulation on March 31, 2016, there is not enough time to follow the FMP amendment process prescribed by the Magnuson-Stevens Act and provide sufficient time for the harvest of EBT and WBT Class A IFQ. NMFS has no way other than this rule to amend IPQ use cap regulations to provide fishing opportunities for the EBT and WBT crab fisheries during the 2015/2016 crab fishing year that would otherwise be forgone. Amending IPQ use cap regulations in the EBT and WBT crab fisheries through this rule for the remainder of the 2015/2016 crab fishing year provides immediate economic benefits that outweigh the value of the deliberative notice-and-comment rulemaking process.

Similarly, for the reasons above that support the need to implement this rule in a timely manner, the Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness provision of the Administrative Procedure Act and make this rule effective immediately upon publication in the **Federal Register**. As stated above, this rule will allow for harvesting and processing of the remainder of the Class A IFQ in the EBT and WBT crab fisheries for the 2015/2016 crab fishing year, and will prevent economic losses from the inability to fully harvest and process Class A IFQ in the EBT and WBT crab fisheries.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from Office of Management and Budget review. The RIR prepared for this rule is available from NMFS (see **ADDRESSES**).

This rule is exempt from the procedures of the Regulatory Flexibility Act because this rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 20, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 680 is amended as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.42:

■ a. Suspend paragraph (b)(7)(ii) effective January 26, 2016 through June 30, 2016; and

■ b. Add paragraph (b)(7)(iii) effective January 26, 2016 through June 30, 2016.

The addition reads as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

* * * * *

(b) * * *

(7) * * *

(iii) The following conditions apply:

(A) The IPQ crab is:

(*1*) BSS IPQ crab with a North region designation;

(*2*) EAG IPQ crab;

(*3*) EBT IPQ crab received by an RCR during the 2015/2016 crab fishing year;

(*4*) PIK IPQ crab;

(*5*) SMB IPQ crab;

(*6*) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude;

(*7*) WAI IPQ crab; or

(*8*) WBT IPQ crab received by an RCR during the 2015/2016 crab fishing year; and

(B) That IPQ crab is processed at:

(*1*) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009; or

(*2*) Any stationary floating crab processor that is:

(*i*) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009;

(*ii*) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(*iii*) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on June 29, 2009 in which case that stationary floating crab processor is not required to be located within a harbor; or

(C) The IPQ crab is:

(*1*) Derived from PQS that is, or was, subject to a ROFR as that term is defined at § 680.2;

(*2*) Derived from PQS that has been transferred from the initial recipient of those PQS to another person under the requirements described at § 680.41;

(*3*) Received by an RCR who is not the initial recipient of those PQS; and

(*4*) Received by an RCR within the boundaries of the ECC for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.

* * * * *

[FR Doc. 2016–01406 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 16
Tuesday, January 26, 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 AGRICULTURE

Office of the Secretary

2 CFR Subtitle B, Ch. IV

5 CFR Ch. LXXIII

7 CFR Subtitle A; Subtitle B, Chs. I–XI, XIV–XVIII, XX, XXV–XXXVIII, XLII

9 CFR Chs. I–III

36 CFR Ch. II

48 CFR Ch. 4

Identifying and Reducing Regulatory Burdens

AGENCY: Office of the Secretary, USDA.

ACTION: Request for Information (RFI).

SUMMARY: In accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and Executive Order 13610, ''Identifying and Reducing Regulatory Burdens,'' the U.S. Department of Agriculture (USDA) is continuing to review its regulatory programs and evaluate their burdens and their effectiveness. As part of this effort, USDA welcomes public comment on which regulations should be modified, expanded, streamlined, or repealed to make the USDA's regulatory program more effective or less burdensome in achieving the regulatory objectives. The 2015 Fall Regulatory Agenda provides a summary of the USDA regulations under development or review during the coming year. Similarly, USDA's 2015 Statement of Regulatory Priorities provides a list of important regulatory actions that USDA is considering for issuance in proposed or final form during the 2016 fiscal year.

DATES: Comments and information are requested on or before March 28, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice. All submissions must refer to ''Retrospective Review'' to ensure proper delivery.

- *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* USDA strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, and ensures timely receipt by USDA. Commenters should follow the instructions provided on that site to submit comments electronically.
- *Submission of Comments by Mail, Hand delivery, or Courier.* Paper, disk, or CD–ROM submissions should be submitted to Michael Poe, Office of Budget and Program Analysis, USDA, Jamie L. Whitten Building, Room 101–A, 1400 Independence Ave. SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Poe, Telephone Number: (202) 720–3257.

SUPPLEMENTARY INFORMATION: USDA remains committed to minimizing the burdens on individuals businesses, and communities for participation in and compliance with USDA programs that promote economic growth, create jobs, and protect the health and safety of the American people. USDA's planned regulatory actions and retrospective review efforts were made available in the 2015 Fall Unified Regulatory Agenda (*http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=0500*) and the USDA Statement of Regulatory Priorities (*http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201510/Statement_0500.html*).

USDA programs are diverse and far reaching, as are the regulations and legislation that implement their delivery. The regulations range from nutrition standards for the school lunch program, natural resources and environmental measures governing national forest usage and soil conservation, emergency producer assistance as a result of natural disasters, to protection of American agriculture from the ravages of plant or animal pestilence. USDA regulations extend from farm to supermarket to ensure the safety, quality, and availability of the Nation's food supply. Regulations also specify how USDA conducts its business, including access to and eligibility for USDA programs. Finally, regulations specify the responsibilities of businesses, individuals, and State and local governments that are necessary to comply with their provisions.

I. Executive Orders 13563 and 13610

The overall intention of Executive Orders 13563 and 13610 is to create a continuing process of scrutiny of regulatory actions.

Executive Order 13563, ''Improving Regulation and Regulatory Review,'' was issued to ensure that Federal regulations use the best available tools to promote innovation that will reduce costs and burden while allowing public participation and an open exchange of ideas. These principles enhance and strengthen Federal regulations to allow them to achieve their regulatory objectives, most important among them protecting public health, welfare, safety, and the environment. In consideration of these principles, and as directed by the Executive Order, Federal agencies and departments need to periodically review existing regulations that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with what has been learned.

In addition, Executive Order 13610, ''Identifying and Reducing Regulatory Burdens,'' directed Federal agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the availability of new technologies. Executive Order 13610 directs Federal agencies to give priority, consistent with law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and the environment. For the regulatory requirements imposed on small businesses, it directs Federal agencies to give special consideration to initiatives that would simplify or harmonize the regulatory requirements.

II. Request for Information

USDA is seeking public comment on our effort: To identify and reduce regulatory burdens; to remove unintended regulatory obstacles to

participation in and compliance with USDA programs; and to improve current regulations to help USDA agencies advance the USDA mission. USDA is particularly interested in public comments that speak to areas in which we can reduce costs and reporting burdens on the public, through technological advances or other modernization efforts, and comments on regulatory flexibility.

III. Regulatory Flexibility

USDA is also seeking public input on measures that can be taken to reduce burdens and increase flexibility and freedom of choice for the public. Regulatory flexibility includes a variety of regulatory techniques that can help avoid unnecessary costs on regulated entities and avoid negative impacts. Regulatory flexibility techniques could include:

- Pilot projects, which can be used to test regulatory approaches;
- Safe harbors, which are streamlined modes of regulatory compliance and can serve to reduce compliance costs;
- Sunset provisions, which terminate a rule after a certain date;
- Trigger provisions, which specify one or more threshold indicators that the rule is designed to address;
- Phase-ins, which allow the rule to be phased-in for different groups at different times;
- Streamlined requirements, which provide exemptions or other streamlined requirements if a particular entity (for example, a small business) may otherwise experience disproportionate burden from a rule;
- State flexibilities, which provide greater flexibility to States or other regulatory partners, for example, giving them freedom to implement alternative regulatory approaches; and
- Exceptions, which allow exceptions to part of the rule, or the entire rule in cases where there is a potential or suspected unintended consequence.

IV. Existing USDA Regulations

In addition to retrospective review actions and other regulatory reforms identified in USDA's 2015 Fall Regulatory Agenda, we welcome comments from the public on any of USDA's existing regulations and ways to improve them to help USDA agencies advance the mission of the Department consistent with the Executive Order. USDA notes that this RFI is issued solely for information and program-planning purposes. While responses to this RFI do not bind USDA to any further actions, all submissions will be reviewed by the appropriate program office, and made publicly available on *http://www.regulations.gov.*

Dated: January 7, 2016.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2016–00693 Filed 1–25–16; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0338; Directorate Identifier 2014–CE–010–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Piper Aircraft, Inc. Model PA–31–350 airplanes. The NPRM proposed to require inspecting the fuel hose assembly and the turbocharger support assembly for proper clearance between them, inspecting each assembly for any sign of damage, and making any necessary repairs or replacements. The NPRM was prompted by a report of an engine fire caused by a leak in the fuel pump inlet hose. This action revises the NPRM by requiring the use of revised procedures in a new service bulletin. We are proposing this supplemental NPRM (SNPRM) to correct the unsafe condition on these products. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by March 11, 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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *www.piper.com/home/pages/Publications.cfm.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0338; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Gary Wechsler, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5575; fax: (404) 474–5606; email: *gary.wechsler@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0338; Directorate Identifier 2014–CE–010–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain Piper Aircraft, Inc. Model PA–31–350 airplanes. The NPRM published in the **Federal Register** on June 3, 2014 (79 FR 31888). The NPRM proposed to require inspecting the fuel hose assembly and the turbocharger support assembly for proper clearance between them, inspecting each assembly for any sign of damage, and making any necessary repairs or replacements.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM (79 FR 31888, June 3, 2014), Piper Aircraft, Inc. has revised the related service information to clarify which engines are part of the airplane applicability and to revise the accomplishment instructions for inspecting for proper clearance between the fuel hose assembly and the turbocharger support assembly, inspecting the fuel hose assembly and the turbocharger support assembly for any signs of damage, and taking all necessary corrective actions.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (79 FR 31888, June 3, 2014) and the FAA's response to the comment.

Request To Change the Applicability of the AD

Joe Miller of Werbelow's Air Ventures, Inc., requested that the Applicability section of the AD be changed so that it applies only to Piper Aircraft, Inc. Model PA–31–350 airplanes with TIO–540–J2B engine configurations.

The commenter stated that Model PA–31–350 airplanes configured with TIO–540–J2B engines have fuel pumps orientated such that their inlet fuel hose assemblies can adversely contact a nearby turbocharger support assembly. The commenter also stated that the other type certificated engine configurations of applicable Model PA–31–350 airplanes have engine fuel pumps orientated such that their inlet fuel hose assemblies cannot adversely contact the nearby turbocharger support assembly.

The commenter requested that the AD exclude Model PA–31–350 airplanes that have the fuel pump installed on a Lycoming (L)TIO–540–J2BD engine.

We partially agree with the commenter. We agree that there is more than one orientation for the engine fuel pump in the applicable Model PA–31–350 airplanes with (L)TIO–540 series engines because this is shown in the Lycoming parts catalog for the TIO, LTIO–540–J2B, and –J2BD engines, which were type certificated on the Model PA–31–350 airplane.

We disagree with the commenter's request to change the actions of the AD so that they apply only to the inlet hose assembly for the engine fuel pump of the TIO–540–J2B engine configuration of applicable Model PA–31–350 airplanes. We reviewed the Lycoming parts catalog for the TIO, LTIO–540–J2B, and –J2BD engines and applicable Model PA–31–350 airplanes with (L)TIO–540–J2BD engines and found that the TIO and LTIO–540–J2B and –J2BD engines each have a fuel pump with one fuel hose assembly (either and inlet or exit) that can be incorrectly installed so that it is in contact with the nearby turbocharger support assembly.

Related Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015. The service information describes procedures for the following. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this SNPRM.

—Inspecting for a minimum 3/16-inch clearance between the fuel hose assembly and the turbocharger support assembly and making any necessary adjustments.
—Inspecting the fuel hose assembly for any signs of damage and, if necessary, replacing with a serviceable part.
—Inspecting the turbocharger support assembly for any signs of damage and, if necessary, repairing or replacing with a serviceable part.
—Performing an engine run-up to check for any leaks.

FAA's Determination

We are proposing this SNPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. Certain changes described above expand the scope of the NPRM (79 FR 31888, June 3, 2014). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This SNPRM would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

Differences Between This SNPRM and the Service Information

There are differences between the compliance times for the corrective actions in this proposed AD and those in the related service information.

We based the compliance times in this proposed AD on risk analysis and cost impact to operators. There has only been one event of the reported incident in the operational history of Piper Model PA–31–350 airplanes. Cost was also a strong consideration due to the age of the fleet and the number of airplanes still in service.

The one-time inspection required in this proposed AD is very inexpensive and requires minimal time to accomplish. It is expected that almost all airplanes in service can be cleared with a single inspection, and no additional actions or costs would be incurred by the vast majority of the fleet.

We determined that a single inspection with any necessary corrective actions is an adequate terminating action for the unsafe condition. The risk related to future maintenance on the fuel line would be mitigated by the related service information and awareness from this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 773 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect for proper clearance between the fuel hose assembly and the turbocharger support assembly.	.5 work-hour × $85 per hour = $85.	N/A	$42.50	$32,852.50

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the fuel hose assembly for evidence of leaking, cracking, chafing, and any other sign of damage.	.5 work-hour × $85 per hour = $42.50.	N/A	42.50	32,852.50
Inspect the turbocharger support assembly for evidence of chafing and any other sign of damage.	.5 work-hour × $85 per hour = $42.50.	N/A	42.50	32,852.50
Engine run-up/leak check	1 work-hour × $85 = $85 (.5 work hour per engine).	N/A	85.00	65,705.00

We estimate the following costs to do any necessary follow-on actions that will be required based on the results of the inspection. We have no way of determining the number of airplanes that might need these corrective actions.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Adjust routing of fuel hose assembly for proper clearance between the fuel hose assembly and the turbocharger support assembly.	5.5 work-hours × $85 per hour = $467.50.	N/A	$467.50
Replace Piper fuel pump inlet hose assembly, part number 39995–34 (2 per airplane).	1 work-hour × $85 per hour = $85 ..	$1,068	1,153.00
Replace Lycoming turbocharger support assembly, part number LW–18302 (2 per airplane).	24 work-hours × $85 per hour = $2,040.	12,874	14,914.00

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Piper Aircraft, Inc.: FAA–2014–0338; Directorate Identifier 2014–CE–010–AD.

(a) Comments Due Date

We must receive comments by March 11, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. Model PA–31–350 airplanes, serial numbers 31–5001 through 31–5004, 31–7305005 through 31–8452024, and 31–8253001 through 31–8553002, certificated in any category, that are equipped with the following engines and fuel pump hose assemblies:

TABLE 1 TO PARAGRAPH (C) OF THIS AD—APPLICABLE ENGINES AND FUEL PUMP HOSE ASSEMBLIES

Engine	Manufacturer's hose name	Manufacturer's part No. (P/N)	Hose description
TIO–540–J2B (right wing)	Hose Assembly—Fuel	Piper 39995–034	Inlet fuel hose to engine fuel pump.
LTIO–540–J2B (left wing)	Hose, Fuel pump to Injector	Lycoming LW–12877–6S142	Exit fuel hose from engine fuel pump.
TIO540–J2BD (right wing)	Hose, Fuel pump to Injector	Lycoming LW–12877–6S142	Exit fuel hose from engine fuel pump.

TABLE 1 TO PARAGRAPH (C) OF THIS AD—APPLICABLE ENGINES AND FUEL PUMP HOSE ASSEMBLIES—Continued

Engine	Manufacturer's hose name	Manufacturer's part No. (P/N)	Hose description
LTIO–540–J2BD (left wing)	Hose Assembly—Fuel	Piper 39995–034	Inlet fuel hose to engine fuel pump.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 73: Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by a report of an engine fire caused by a leak in the fuel pump inlet hose. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified in paragraphs (g)(1) through (j)(2) of this AD, unless already done.

(g) Ensure Proper Clearance Between the Fuel Hose Assembly and the Turbocharger Support Assembly

(1) Within the next 60 hours time-in-service (TIS) after the effective date of this AD or within the next 6 months after the effective date of this AD, whichever occurs first, inspect to determine the clearance between the inlet and exit fuel hose assemblies listed in table 1 to paragraph (c) of this AD, and each turbocharger support assembly, Lycoming P/N LW–18302. There should be a minimum 3/16-inch clearance. Do the inspection following the INSTRUCTIONS section of Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015.

(2) Before further flight after the inspection required in paragraph (g)(1) of this AD, if the measured clearance is less than 3/16-inch, make all necessary adjustments to make the clearance a minimum of 3/16-inch between the inlet and exit fuel hose assemblies listed in table 1 to paragraph (c) of this AD and each turbocharger support assembly, Lycoming P/N LW–18302, following the INSTRUCTIONS section of Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015.

(h) Visually Inspect the Fuel Hose Assembly and Replace if Necessary

(1) Within the next 60 hours TIS after the effective date of this AD or within the next 6 months after the effective date of this AD, whichever occurs first, visually inspect the inlet and exit fuel hose assemblies listed in table 1 to paragraph (c) of this AD for evidence of leaking, cracking, chafing, and any other sign of damage. Do the inspection following the INSTRUCTIONS section of Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015.

(2) Before further flight after the inspection required in paragraph (h)(1) of this AD, if any evidence of leaking, cracking, chafing, or any other sign of damage is found in any inlet or exit fuel host assembly listed in table 1 to paragraph (c) of this AD, replace the fuel hose assembly with a serviceable part. Do the replacement following the INSTRUCTIONS section of Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015.

(i) Visually Inspect the Turbocharger Support Assembly and Replace if Necessary

(1) Within the next 60 hours TIS after the effective date of this AD or within the next 6 months after the effective date of this AD, whichever occurs first, visually inspect each turbocharger support assembly, Lycoming P/N LW–18302, for evidence of chafing and any other signs of damage. Do the inspection following the INSTRUCTIONS section of Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015.

(2) Before further flight after the inspection required in paragraph (i)(1) of this AD, if any evidence of chafing or any other sign of damage is found on any turbocharger support assembly, replace Lycoming P/N LW–18302 with a serviceable part. Do the replacement following the INSTRUCTIONS section of Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015.

(j) Engine Run-Up

(1) If any fuel line component was adjusted or replaced during any actions required in paragraphs (g)(1) through (i)(2) of this AD, before further flight, perform an engine run-up on the ground to check for leaks. Do the engine run-up following the INSTRUCTIONS section of Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015.

(2) If any leaks found during the engine run-up required in paragraph (j)(1) of this AD emanate from any fuel line component adjusted, repaired, or replaced during any actions required in paragraphs (g)(1) through (i)(2) of this AD, before further flight, take all necessary corrective actions following the INSTRUCTIONS section of Piper Aircraft, Inc. Service Bulletin No. 1257A, dated August 4, 2015.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

(1) For more information about this AD, contact Gary Wechsler, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5575; fax: (404) 474–5606; email: *gary.wechsler@faa.gov*.

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *www.piper.com/home/pages/Publications.cfm*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on January 16, 2016.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01380 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–1363; Directorate Identifier 2015–CE–040–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Mitsubishi Heavy Industries, Ltd. Models MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, and MU–2B–60 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as reports of cracks found in the attach fittings of the main landing gear oleo strut. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by March 11, 2016.

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

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

For service information identified in this proposed AD, contact Mitsubishi Heavy Industries America, Inc., c/o Turbine Aircraft Services, Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001; telephone: (972) 248–3108, ext. 209; fax: (972) 248–3321; Internet: *http://mu-2aircraft.com*. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–1363; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–1363; Directorate Identifier 2015–CE–040–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Japan Civil Aviation Bureau (JCAB), which is the aviation authority for Japan, has issued AD No. TCD–8595–2015, dated July 1, 2015 (referred to after this as ''the MCAI''), to correct an unsafe condition for certain Mitsubishi Heavy Industries, Ltd. (MHI) Models MU–2B–30, MU–2B–35, and MU–2B–36 airplanes. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–1363.

We have received reports of seven failures of the main landing gear oleo strut attach fitting on certain MHI Models MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, and MU–2B–60 airplanes. Investigation revealed that the failures resulted from improper lubrication and/or hard landings, which caused cracks to develop in the main landing gear oleo strut attach fitting.

Japan is the State of Design for MHI Models MU–2B–30, MU–2B–35, and MU–2B–36, which the MCAI AD applies to, and the United States is the State of Design for MHI Models MU–2B–36A and MU–2B–60 airplanes.

Related Service Information Under 1 CFR Part 51

Mitsubishi Heavy Industries, Ltd. has issued MU–2 Service Bulletin No. 243, dated June 30, 2015, and MU–2 Service Bulletin No. 105/32–017, dated September 29, 2015. These service bulletins describe procedures for visually inspecting the lugs of the oleo attach fittings on both sides for cracks, and if any visible cracks are found, replacing with a new fitting. Mitsubishi Heavy Industries, Ltd. has also issued MU–2 Service News JCAB T.C.: No. 171, FAA T.C.: No. 124/32–011, dated April 27, 2012, and MU–2 Service News JCAB T.C.: No. 176, FAA T.C.: No. 128/32–013, dated July 18, 2013. This service information specifies doing repetitive ultrasound inspections of the main landing gear oleo upper attach fittings for cracks and ensuring proper lubrication of the main landing gear oleo fitting. All the related service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI

We have determined that the repetitive visual inspections specified in the MCAI are not adequate for detecting cracks in the main landing gear oleo strut attach fitting. Repetitive ultrasonic inspections of the main landing gear oleo strut attach fitting have been added into the maintenance requirement manual for these airplanes, which is not considered mandatory in the FAA's airworthiness regulatory system. Therefore, we are proposing to incorporate that requirement through the rulemaking process.

Costs of Compliance

We estimate that this proposed AD will affect 95 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the visual inspection requirement of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the visual inspection requirements of this proposed AD on U.S. operators to be $40,375, or $425 per product.

We also estimate that it would take about 3 work-hours per product to comply with the ultrasound inspection requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the ultrasound inspection requirements of this proposed AD on U.S. operators to be $24,225, or $255 per product.

Owner/operators have the option to do an ultrasound inspection in lieu of the required visual inspection.

In addition, we estimate that any necessary follow-on actions would take

about 24 work-hours and require parts costing $5,220, for a cost of $7,260 per product to replace the left-hand main landing gear oleo strut. We have no way of determining the number of products that may need this action.

In addition, we also estimate that any necessary follow-on actions would take about 45 work-hours and require parts costing $5,220, for a cost of $9,045 per product to replace the right-hand main landing gear oleo strut. We have no way of determining the number of products that may need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

Mitsubishi Heavy Industries, Ltd.: Docket No. FAA–2016–1363; Directorate Identifier 2015–CE–040–AD.

(a) Comments Due Date

We must receive comments by March 11, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Mitsubishi Heavy Industries, Ltd. Models MU–2B–30, MU–2B–35, MU–2B–36 airplanes, serial numbers 502 through 696, except 652 and 661, and Models MU–2B–36A and MU–2B–60 airplanes, serial numbers 661SA, and 697SA through 1569SA, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as reports of cracks found in the fittings of the main landing gear oleo strut. We are issuing this proposed AD to prevent failure of the main landing gear oleo strut attach fitting, which could cause the landing gear to fail and result in loss of control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 6 months after the effective date of this AD, whichever occurs first, do a visual inspection of the main landing gear oleo upper attach fittings for cracks. Do the inspection following the INSTRUCTIONS section in Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 243, dated June 30, 2015, and the INSTRUCTIONS section in Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 105/32–017, dated September 29, 2015, as applicable.

(2) Before further flight after the inspection required in paragraph (f)(1) of this AD, if no signs of cracks are found, lubricate the pin assembly attached to the main landing gear oleo attach fitting as specified in Mitsubishi Heavy Industries, Ltd. MU–2 Service News JCAB T.C.: No. 171, FAA T.C.: No. 124/32–011, dated April 27, 2012.

(3) Within the next 100 hours TIS after doing the initial visual inspection required in paragraph (f)(1) of this AD or within the next 12 months after doing the initial visual inspection required in paragraph (f)(1) of this AD, whichever occurs first, do an ultrasound inspection of the main landing gear oleo upper attach fittings for cracks as specified in Mitsubishi Heavy Industries, Ltd. MU–2 Service News JCAB T.C.: No. 176, FAA T.C.: No. 128/32–013, dated July 18, 2013. This ultrasound inspection may also be done in place of the visual inspection required in paragraph (f)(1) of this AD if done within the next 100 hours TIS after the effective date of this AD or within the next 6 months after the effective date of this AD, whichever occurs first. Repetitively thereafter inspect every 600 hours TIS or 36 months, whichever occurs first, and any time a hard landing or overweight landing occurs.

(4) Before further flight after any inspection required in paragraph (f)(3) of this AD, if no signs of cracks are found, lubricate the pin assembly attached to the main landing gear oleo attach fitting as specified in Mitsubishi Heavy Industries, Ltd. MU–2 Service News JCAB T.C.: No. 171, FAA T.C.: No. 124/32–011, dated April 27, 2012, and Mitsubishi Heavy Industries, Ltd. MU–2 Service News JCAB T.C.: No. 176, FAA T.C.: No. 128/32–013, dated July 18, 2013.

(5) Before further flight after any inspection required in paragraph (f)(1) and (f)(3) of this AD where cracks are found, replace the main landing gear oleo upper attach fittings following the INSTRUCTIONS section in Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 243, dated June 30, 2015, and the INSTRUCTIONS sections in Mitsubishi Heavy Industries, Ltd. MU–2 Service Bulletin No. 105/32–017, dated September 29, 2015, as applicable. After replacement, continue with the repetitive ultrasound inspection requirements of paragraph (f)(3) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Japan Civil Aviation Bureau (JCAB) AD No. TCD–8585–2015, dated July 1, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–1363. For service information related to this AD, contact Mitsubishi Heavy Industries America, Inc., c/o Turbine Aircraft Services, Inc., 4550 Jimmy Doolittle Drive, Addison, Texas 75001; telephone: (972) 248–3108, ext. 209; fax: (972) 248–3321; Internet: *http://mu-2aircraft.com*. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on January 16, 2016.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–01381 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4133; Airspace Docket No. 15–ANM–27]

Proposed Revocation of Class D Airspace; Vancouver, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class D airspace at Pearson Field, Vancouver, WA. FAA Joint Order 7400.2K states that non-towered airports requiring a surface area will be designated Class E. Class E surface area airspace was established on December 10, 2015. The FAA is proposing this action due to the lack of an operating air traffic control tower at Pearson Field Airport, Vancouver, WA.

DATES: Comments must be received on or before March 11, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2015–4133; Airspace Docket No. 15–ANM–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–4133; Airspace Docket No. 15–ANM–27.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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

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

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available

as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing Class D airspace at Pearson Field Airport, Vancouver, WA. FAA Joint Order 7400.2K states that if non-towered airports requiring a surface area, the airspace will be designated Class E. There is no operating control tower at Pearson Field Airport, Vancouver, WA, which would remove the necessity of the Class D airspace.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ANM WA D Vancouver, WA [Removed]

Issued in Seattle, Washington, on January 19, 2016.

Mindy Wright,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–01415 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–134122–15]

RIN 1545–BN09

Special Enrollment Examination User Fee for Enrolled Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulation relating to the user fee for the special enrollment examination to become an enrolled agent. The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952. This document also contains a notice of public hearing on this proposed regulation. The proposed regulation affects individuals taking the enrolled agent special enrollment examination.

DATES: Written or electronic comments must be received by February 24, 2016. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for February 25, 2016, must be received by February 24, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–134122–15), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–134122–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–134122–15). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning this proposed regulation, Jonathan R. Black, (202) 317–6845; concerning submissions of comments and/or requests for a hearing, Regina Johnson (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Circular 230 is administered by the IRS Office of Professional Responsibility (OPR).

Section 10.4(a) of Circular 230 authorizes the IRS to grant status as enrolled agents to individuals who demonstrate special competence in tax matters by passing a written examination (Enrolled Agent Special Enrollment Examination (EA–SEE)) administered by, or under the oversight of, the IRS and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Starting in 2006, the IRS engaged the services of a third-party contractor to develop and administer the EA–SEE.

After becoming enrolled, an enrolled agent must, as provided in § 10.6(d), renew enrollment every three years to maintain active enrollment and to be able to practice before the IRS. To qualify for renewal, an enrolled agent must certify the completion of the continuing education requirements set forth in § 10.6(e). There are currently approximately 55,600 enrolled agents.

The EA–SEE is comprised of three parts, which are offered in a testing period that begins each May 1 and ends the last day of the following February. The EA–SEE is not available in March and April, during which period it is updated to reflect changes in the relevant law. When it determined the current fee, the IRS estimated that individuals would take 34,000 parts of the EA–SEE each year. That number of parts has not been reached in any year. In the testing periods beginning in 2012, 2013, and 2014, the contractor administered approximately 18,900, 19,500, and 22,400 parts of the EA–SEE, respectively. During the testing period beginning May 2016, the IRS estimates that individuals taking the EA–SEE will take 20,000 parts. More information on the EA–SEE, including content, scoring, and how to register, can be found on the IRS Web site at *www.irs.gov/Tax-Professionals/Enrolled-Agents/.*

The Independent Offices Appropriations Act (IOAA) of 1952, which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services they provide. These charges include user fees. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in the Office of Management and Budget Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular). The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the full cost of providing the special service, unless the Office of Management and Budget grants an exception.

As discussed above, Circular 230 § 10.4(a) provides that IRS will grant enrolled agent status to an applicant if the applicant, among other things, demonstrates special competence in tax matters by written examination. The EA–SEE is the written examination that tests special competence in tax matters for purposes of that provision, and an applicant must pass all parts of the EA–SEE to be granted enrolled agent status through written examination. The IRS confers a benefit on individuals who take the EA–SEE beyond those that accrue to the general public by providing them with an opportunity to demonstrate special competence in tax matters by passing a written examination and therefore satisfying one of the requirements for becoming an enrolled agent under Circular 230 § 10.4(a). Because the opportunity to take the EA–SEE is a special benefit, IRS charges a user fee to take the examination.

Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing examination services under the enrolled agent program. The proposed user fee will be implemented under the authority of the IOAA and the OMB Circular and will recover the full cost of overseeing the program. The current user fee is $11 to take each part of the EA–SEE. The contractor who administers the EA–SEE also charges individuals taking the EA–SEE an additional fee for its services. For the May 2015 to February 2016 testing period, the contractor's fee is $98 for each part of the EA–SEE.

Increased costs incurred by the IRS to implement the EA–SEE program require an increase in the EA–SEE user fee. These increased costs are primarily attributable to the following: (1) The cost for background checks required under Publication 4812, ''Contractor Security Controls,'' for individuals working at the contractor's testing centers increased by $270,000 per year; (2) the IRS estimates that the contractor will administer 14,000 fewer parts of the EA–SEE per year than the estimated number used to calculate the $11 fee, and the total costs are therefore being recovered from fewer individuals; and (3) the IRS's costs of verifying the contractor's compliance with the information technology security requirements necessary to protect the personally identifiable information of individuals taking the EA–SEE have increased, because Publication 4812 has strengthened those requirements.

In addition, IRS original estimates of the cost to oversee the contract did not cover all the work the IRS now performs. The proposed fee more accurately accounts for the time and personnel necessary to oversee the development and administration of the EA–SEE and to ensure the contractor complies with the terms of its contract. IRS costs for oversight include costs associated with: (1) Review and approval of materials used by the contractor in developing the EA–SEE; (2) review of surveys of existing enrolled agents, which help to determine the topics to be covered in the EA–SEE; (3) composition of potential EA–SEE questions in coordination with the contractor's external tax law experts; (4) Office of Chief Counsel review and revision of the potential questions for legal accuracy; and (5) analysis of the answers and raw scores of a testing population to determine what should be a passing score.

Further, IRS personnel ensure the contractor's compliance with its contract by reviewing the work of the contractor using an annual Work Breakdown Structure—a project management tool—and reviewing and verifying that the contractor is in compliance with its Quality Assurance Plan regarding customer satisfaction and accuracy. The IRS incurs additional costs associated with resolution of test-related issues such as cheating incidents, appeals regarding scores, refund requests, and customer service complaints that have not been resolved at the contractor level.

Taking into account the full amount of these costs, the user fee for the EA–SEE is proposed to be increased to $99 per part.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed regulation.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities because it primarily affects individuals who take the enrolled agent examination and does not directly affect small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. All comments

submitted will be made available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for February 25, 2016, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted 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 preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by February 24, 2016. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.4 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.4 Enrolled agent special enrollment examination fee.

* * * * *

(b) *Fee.* The fee for taking the enrolled agent special enrollment examination is $99 per part, which is the cost to the government for overseeing the development and administration of the examination and does not include any fees charged by the administrator of the examination.

* * * * *

(d) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**.

Karen M. Schiller,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–01629 Filed 1–25–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 60

RIN 2900–AP45

Fisher Houses and Other Temporary Lodging

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations concerning Fisher House and other temporary lodging furnished by VA while a veteran is experiencing an episode of care at a VA medical facility. Such lodging is generally furnished to veterans' relatives, close friends, and caregivers at no cost, because VA's experience has shown that veterans' treatment outcomes are improved by having loved ones nearby. The proposed rule updates current regulations and better describes the application process for this lodging. The proposed rule generally reflects current VA policy and practice.

DATES: *Comment Date:* Comments must be received by VA on or before March 28, 2016.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AP45, Fisher Houses and Other Temporary Lodging.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Michael T. Kilmer, Chief Consultant, Care Management and Social Work Services (10P4C), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6780. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA's program for providing temporary lodging for certain individuals is authorized by section 1708 of title 38, United States Code (U.S.C.). Under section 1708, VA ''may furnish [certain] persons . . . with temporary lodging in a Fisher [H]ouse or other appropriate facility in connection with the examination, treatment, or care of a veteran under [chapter 17].'' This authority to provide temporary lodging assists VA in providing appropriate treatment and care to veterans because patients often respond better when they are accompanied by relatives, close friends, or caregivers. Thus, providing temporary lodging is an important element of a veteran's treatment. VA implemented its authority under section 1708 in 38 CFR part 60. However, the current regulation no longer accurately describes the process by which VA approves requests for Fisher House or other temporary lodging. This proposed rule would amend the regulations to describe the current process.

The application process for Fisher House or other temporary lodging is described in 38 CFR 60.15. We propose to amend § 60.15, because the application process has substantially changed. Section 60.15(a) currently states that VA Form 10–0408A is ''the application for Fisher House and other temporary lodging.'' That section also gives instructions for obtaining and filing the specified form. Although we will continue to accept applications submitted on Form 10–0408A until this proposed regulation takes effect, VA has discontinued the use of this form in favor of a process that requires the requester to contact specified personnel directly for capture in the requester's electronic health record of all information that would have been included on the form.

This process has already improved the efficiency of evaluating requests for Fisher House and other temporary housing for several reasons. VA facilities cannot practicably store paper

forms, and electronic processing will save time and money compared to scanning paper forms into a veteran's medical record. Additionally, because the consult will become part of the veteran's electronic health record, VA staff can view it when future requests for temporary housing are received. This will save time for the veteran, who will need to provide only updated information to VA staff, rather than having to complete a new form. Accordingly, we propose to replace the existing language of § 60.15(a) by deleting the reference to Form 10–0408A and replacing it with a description of the new process.

Although VA continues to accept applications on Form 10–0408A, requests for Fisher House or other temporary lodging will no longer involve a separate formal application process once the present proposed rule becomes effective. Accordingly, VA believes that deleting references to an ''application'' or ''applications'' and replacing them with ''request'' or ''requests'' throughout part 60 more accurately reflects the process involved. We also propose to amend § 60.15(a) to describe the electronic consult request process. However, we would retain all other criteria in part 60 for processing requests that are received under the new CPRS-based process.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule contains no new provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). VA Form 10–0408A, referred to in current 30 CFR 60.15(a) was previously approved by the Office of Management and Budget (OMB) under control number 2900–0630, but as stated above, its use has been discontinued.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities because the proposed rule would apply only to patients receiving care at VA facilities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on January 20, 2016, for publication.

List of Subjects in 38 CFR Part 60

Health care, Housing, Reporting and recordkeeping requirements, Travel, Veterans.

Dated: January 21, 2016.

Michael P. Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 60 as follows:

PART 60—FISHER HOUSES AND OTHER TEMPORARY HOUSING

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 38 U.S.C. 501, 1708, and as noted in specific sections.

■ 2. Amend § 60.10 by removing in the word ''application'' each time it appears in the section and adding in its place the word ''request.''

■ 3. Amend § 60.15 by revising paragraphs (a), (b)(1), (b)(6) and (b)(7) to read as follows:

§ 60.15 Process for requesting Fisher House or other temporary lodging.

(a) *Submitting requests.* An accompanying individual requesting Fisher House or other temporary lodging must contact directly the provider, social worker, case manager, or Fisher House Manager at the veteran's VA health care facility of jurisdiction. Upon receiving a request, VA will determine the accompanying individual's eligibility for the requested housing, as provided in paragraph (b)(5) of this section.

(b) *Processing requests.* (1) Requests for all temporary housing are generally processed in the order that they are received by VA, and temporary lodging is then granted on a first come, first served basis; however, in extraordinary circumstances, such as imminent death, critical injury, or organ donation, requests may be processed out of order.

* * * * *

(6) If VA denies a request for one type of lodging, such as at a Fisher House, the request will be considered for other temporary lodging and vice versa, if the requester is eligible.

(7) If VA denies a request for temporary lodging, VA will refer the request to a VA social worker at the VA health care facility of jurisdiction to determine if other arrangements can be made.

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[FR Doc. 2016–01491 Filed 1–25–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0556, FRL–9941–54-Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of Montana to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act or CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, lead (Pb) on October 15, 2008, nitrogen dioxide (NO_2) on January 22, 2010, sulfur dioxide (SO_2) on June 2, 2010 and fine particulate matter ($PM_{2.5}$) on December 14, 2012. EPA is also proposing to approve 110(a)(2)(D)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is proposing to conditionally approve CAA section 110(a)(2)(C) and (J) with regard to PSD and element 3 of 110(a)(2)(D)(i)(II) for the 2008 ozone, 2008 Pb, 2010 NO_2, 2010 SO_2, and 2006 and 2012 $PM_{2.5}$ NAAQS. EPA is proposing to disapprove element 4 of CAA section 110(a)(2)(D)(i)(II) for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2006 and 2012 $PM_{2.5}$ NAAQS. EPA is proposing to approve SIP revisions the State submitted to update Montana's PSD program and provisions regarding state boards. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA.

DATES: Written comments must be received on or before February 25, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2013–0556 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: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to 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 on 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 submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- 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; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On March 12, 2008, EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436, March 27, 2008). Subsequently, on October 15, 2008, EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ($\mu g/m^3$) to 0.15 $\mu g/m^3$ (73 FR 66964, Nov. 12, 2008). On January 22, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb) while

retaining the annual standard of 53 ppb. The 2010 NO_2 NAAQS is expressed as the three-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. The secondary NO_2 NAAQS remains unchanged at 53 ppb (75 FR 6474, Feb. 9, 2010). On June 2, 2010, the EPA promulgated a revised primary SO_2 standard at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520, June 22, 2010). Finally, on December 14, 2012, the EPA promulgated a revised annual $PM_{2.5}$ standard by lowering the level to 12.0 μg/m^3 and retaining the 24-hour $PM_{2.5}$ standard at a level of 35 μg/m^3 (78 FR 3086, Jan. 15, 2013).

EPA promulgated a revised NAAQS for $PM_{2.5}$ on October 17, 2006, tightening the level of the 24-hour standard to 35 μg/m^3 and retaining the level of the annual $PM_{2.5}$ standard at 15 μg/m^3. EPA approved the CAA section 110(a)(2)(D)(i)(I) portion of Montana's infrastructure SIP for this NAAQS on July 30, 2013 (78 FR 45869). As discussed below, CAA section 110(a)(2)(D)(i)(I) covers elements 1 and 2 of ''interstate transport.'' In this proposed action, EPA is addressing only interstate transport elements 3 and 4 from CAA section 110(a)(2)(D)(i)(II) for the 2006 $PM_{2.5}$, 2008 ozone, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. We are not addressing elements 1 and 2 for the 2008 ozone, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS in this action. These elements will be addressed in a later rulemaking action.[1]

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance and enforcement of the

NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for $PM_{2.5}$, ozone, Pb, NO_2, and SO_2 already meet those requirements. EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo).

III. What is the Scope of this Rulemaking?

EPA is acting upon the SIP submissions from Montana that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2008 Pb, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA; ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[2] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

Examples of some of these ambiguities and the context in which EPA interprets the ambiguous portions of section 110(a)(1) and 110(a)(2) are discussed at length in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040 Dec. 1, 2014) under ''III. What is the Scope of this Rulemaking?''

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186,

[1] EPA proposed approval of elements 1 and 2 of Montana's SIP for the 2008 ozone NAAQS in a notice published November 23, 2015 (80 FR 72937).

[2] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 (''NSR Reform'').

IV. What infrastructure elements are required under sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) Section 110(a)(2)(C) to the extent it refers to permit programs (known as ''nonattainment NSR'') required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How did Montana address the infrastructure elements of sections 110(a)(1) and (2)?

The Montana Department of Environmental Quality (Department or MDEQ) submitted certification of Montana's infrastructure SIP for the 2008 Pb NAAQS on December 19, 2011, 2008 ozone NAAQS on January 3, 2013, 2010 NO_2 NAAQS on June 4, 2013, 2010 SO_2 NAAQS on July 15, 2013, and 2012 $PM_{2.5}$ on December 17, 2015. Montana's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. These plans reference the current Administrative Rules of Montana (ARM) and Montana Code Annotated (MCA). These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov.* The ARM and MCA referenced in the submittals are publicly available at *http://www.mtrules.org/* and *http://leg.mt.gov/bills/mca_toc/index.htm.* Montana's SIP, air pollution control regulations, and statutes that have been previously approved by EPA and incorporated into the Montana SIP can be found at 40 CFR 52.1370.

VI. Analysis of the State Submittals

1. Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

Specific control measures adopted in Board of Environmental Review (BER) orders and multiple SIP-approved state air quality regulations within the ARM and cited in Montana's certifications provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications.

First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Montana's certifications (contained within this docket) generally list provisions and enforceable control measures within its SIP which regulate pollutants through various programs, including its stationary source permit program which requires sources to demonstrate emissions will not cause or contribute to a violation of any NAAQS (ARM 17.8.749). This suffices, in the case of Montana, to meet the requirements of section 110(a)(2)(A) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

Second, as previously discussed, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states, including Montana, have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM of operations at a facility. A number of states, including Montana, have SSM provisions which are contrary to the CAA and existing EPA guidance [3] and the agency is addressing such state regulations separately (80 FR 33840, June 12, 2015).

Therefore, EPA is proposing to approve Montana's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(A) to include enforceable emission limitations and other control measures, means, or techniques to meet the applicable requirements of this element.

2. Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to ''(i) monitor, compile, and analyze data on

[3] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, ''State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown.'' (September 20, 1999).

ambient air quality, and (ii) upon request, make such data available to the Administrator.''

On an annual basis, the Department evaluates trends in industrial and economic development, meteorology, and population growth, and conducts other scientific, social, and geographic observations regarding areas of the State which may be adversely affected by the impact of criteria pollutants. The Department, with participation and input from local county air pollution control program staff and other interested persons, develops decisions regarding monitor type, location, and schedules for monitoring air quality in these hotspots. Montana's annual monitoring network plan (AMNP), is made available by the Department for public review and comment prior to submission to EPA. EPA approved 2015 network changes through an AMNP response letter (contained within the docket) mailed to the Department on November 25, 2015.

Further, in accordance with 40 CFR 58.10, beginning in July 2008, and every five years thereafter, Montana develops a periodic network assessment to ensure the effective implementation of an adequate ambient air quality surveillance system. The periodic network assessment is made available by the Department for public review and comment prior to submission to EPA.

Pursuant to its Quality Assurance Project Plans, the Department makes arrangements to operate and maintain federal reference monitors and establishes federally-approved protocols for sample collection, handling, and analysis. Air monitoring data is submitted to EPA's national ''AIRS'' database.

The provisions in state law for the collection and analysis of ambient air quality data are contained in the MT CAA, 75–2–101 *et seq.*, MCA, and specifically, 75–2–112, MCA, Powers and Responsibilities of Department.

Montana's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B). Therefore, EPA is proposing to approve Montana's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirements in section 110(a)(2)(B).

3. Program for enforcement of control measures: Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure NAAQS are achieved, including a permit program as required in parts C and D.

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. As explained elsewhere in this action, EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

PSD Requirements

With respect to Elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Montana has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway'' sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

The EPA is planning to take additional steps to revise federal PSD rules in light of the Supreme Court opinion and subsequent D.C. Circuit judgment. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

At present, the EPA has determined the State's SIP is sufficient to satisfy Elements (C), (D)(i)(II) element 3, and (J) with respect to GHGs. This is because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to ''anyway sources'' contain limitations on GHG emissions based on the application of BACT. The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from ''anyway sources'' that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of Montana's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) element 3 and (J).

In our July 22, 2011 rulemaking titled ''Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Montana'' (76 FR 43918) we disapproved the Montana infrastructure SIP for the 1997 ozone

NAAQS for elements (C) and (J) on the basis that Montana's SIP-approved PSD program did not properly regulate nitrogen oxides as an ozone precursor. For the same reason, we later disapproved Montana's infrastructure SIP for the 1997 and 2006 $PM_{2.5}$ NAAQS for elements (C) and (J) in our July 30, 2013 rulemaking titled ''Promulgation of State Implementation Plan Revisions; Infrastructure requirements for the 1997 and 2006 P.M.$_{2.5}$ National Ambient Air Quality Standards; Montana'' (78 FR 45864). On January 29, 2015, (80 FR 4793), we approved a Montana SIP revision that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (70 FR 71612). As a result, the approved Montana PSD program meets current requirements for ozone.

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) and on October 20, 2010 EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA*, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 implementation rule addressed by the court decision, ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, EPA's proposed approval of Montana's infrastructure SIP as to elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On August 21, 2012, Montana submitted revisions to EPA which addressed the requirements of the 2008 $PM_{2.5}$ NSR Implementation Rule and the 2010 Increment Rule. Portions of the 2010 Increment rule were vacated by the Federal Courts (*Sierra Club* v. *EPA).* EPA subsequently revised the affected NSR-PSD rules accordingly (78 FR 73698, Dec. 9, 2013). On March 24, 2015, Montana submitted revisions which addressed the Court's decision and supersedes and replaces these aspects of the August 21, 2012 submittal. These submittals are available within this docket.

In this action, we propose to approve the necessary portions of Montana's August 21, 2012 and March 24, 2015 submittals to reflect the 2008 $PM_{2.5}$ Implementation Rule and the 2010 $PM_{2.5}$ Increment Rule; specifically 40 CFR part 166, paragraphs (b)(14)(i), (ii), (iii), (b)(15)(i), (ii), (b)(23)(i), (b)(49)(i), (vi), and paragraph (c)(1). EPA is proposing to approve revisions to: ARM 17.8.801(3), 17.8.801(21), 17.8.801(27), 17.8.804(1), ARM 17.8.818(7)(a)(iv)–(xi), 17.8.822(9), 17.8.822(10), 17.8.822(11), 17.8.822(12), and 17.8.825(4) from the August 21, 2012 submittal. We propose no action on revisions to ARM 17.8.818(7)(a)(iii) and 17.8.820(2) because they were superseded by the March 24, 2015 submittal. We are not proposing to act on any other portions of the August 21, 2012 submittal.

EPA is proposing to approve revisions from the March 24, 2015 submittal to ARM 17.8.818(7)(a)(iii) on the condition that the State adopts and submits specific revisions within one year of EPA's final action on these infrastructure submittals; specifically to remove the phrase ''24-hour average'' in ARM 17.8.818(7)(a)(iii) .[4] We propose no action on ARM 17.8.820(2) because it deletes a section of the ARM which was never approved into the State's SIP. The submitted revisions make Montana's PSD program up to date with respect to current requirements for $PM_{2.5}$.

EPA is proposing to approve Montana's SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permit program in the SIP as required by part C of the Act on the condition that the State adopts and submits revisions to ARM 17.8.818(7)(a)(iii) as previously described.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program was originally approved by EPA on March 22, 1972. Since approval of the minor NSR program, the State and EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

EPA is proposing to approve Montana's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement, modification, and construction of any stationary source as necessary to assure that the NAAQS are achieved.

4. Interstate Transport: The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state

[4] *See* ''Section 128 and 2012 $PM_{2.5}$ Cover Letter and PSD Commitment Letter'' submitted to EPA on December 17, 2015, contained within this docket.

to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. The two elements under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (element 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (element 2) interfere with maintenance by any other state with respect to the same NAAQS. The two elements under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (element 3) to prevent significant deterioration of air quality or (element 4) to protect visibility. In this action, EPA is addressing all four elements of CAA section 110(a)(2)(D)(i) with regard to the 2008 Pb and 2010 NO_2 NAAQS. EPA is addressing only elements 3 and 4 of CAA section 110(a)(2)(D)(i)(II) for the 2008 ozone, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. We will also address elements 3 and 4 for the 2006 $PM_{2.5}$ NAAQS, because EPA did not address these elements as part of the July 30, 2013 action in which we approved elements 1 and 2 for the 2006 $PM_{2.5}$ NAAQS (78 FR 45869). We are not addressing elements 1 and 2 for the 2008 ozone [5] 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS in this action. These elements will be addressed in a later rulemaking.

A. Evaluation of Significant Contribution to Nonattainment and Interference With Maintenance

2008 Pb NAAQS

Montana's analysis of potential interstate transport for the 2008 Pb NAAQS discussed the lack of sources with significant Pb emissions near the State's borders. Montana's analysis is available in the docket for this action.

As noted in our 2011 Memo, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. For this reason, EPA found that the ''requirements of subsection (2)(D)(i)(I) (prongs 1 and 2) could be satisfied through a state's assessment as to whether or not emissions from Pb sources located in close proximity to their state borders have emissions that impact the neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state.'' [6] In that guidance document, EPA further specified that any source appeared unlikely to contribute significantly to nonattainment unless it was located less than 2 miles from a state border and emitted at least 0.5 tons per year of Pb. Montana's 110(a)(2)(D)(i)(I) analysis specifically noted that there are no sources in the State that meet both of these criteria. EPA concurs with the State's analysis and conclusion that no Montana sources have the combination of Pb emission levels and proximity to nearby nonattainment or maintenance areas to contribute significantly to nonattainment in or interfere with maintenance by other states for this NAAQS. Montana's SIP is therefore adequate to ensure that such impacts do not occur. We are proposing to approve Montana's submission in that its SIP meets the requirements of section 110(a)(2)(D)(i) for the 2008 Pb NAAQS.

2010 NO_2 NAAQS

Montana's 2010 NO_2 transport analysis for elements 1 and 2 of 110(a)(2)(D)(i) describes how sources in the State are subject to various permitting requirements. Montana asserts that these requirements prevent sources from emitting NO_2 in amounts that would contribute significantly to nonattainment or interfere with maintenance of the NAAQS in other states. The State's analysis is available in the docket for this action.

EPA concurs with the conclusion of Montana's 2010 NO_2 transport analysis. Due to Montana's limited technical analysis, EPA considered additional factors before reaching this conclusion, specifically NO_2 monitoring data from Montana and surrounding states. EPA notes that the highest monitored NO_2 design values in each state bordering or near Montana are significantly below the NAAQS (see Table 1). This fact supports the State's contention that significant contribution to nonattainment or interference with maintenance of the NO_2 NAAQS from Montana is unlikely. As shown in Table 1, the maximum design values in states bordering Montana are well below the 2010 NO_2 NAAQS. In addition, no areas in the U.S. have been designated nonattainment for the 2010 NO_2 NAAQS. As the states near Montana are not only attaining, but also having no trouble maintaining the NAAQS, there are no areas to which Montana could significantly contribute to nonattainment or interfere with maintenance of the 2010 NO_2 NAAQS.

TABLE 1—HIGHEST MONITORED 2010 NO_2 NAAQS DESIGN VALUES

State	2012–2014 Design value	% of NAAQS (100 ppb)
Idaho	43 ppb [7]	43
North Dakota	35 ppb	35
South Dakota	38 ppb	38
Wyoming	35 ppb	35

* Source: *http://www.epa.gov/airtrends/values.html*.

[5] EPA proposed approval of elements 1 and 2 of Montana's SIP for the 2008 ozone NAAQS in a notice published November 23, 2015 (80 FR 72937).

[6] 2011 Memo, at pg 8.

[7] Idaho's maximum design value was calculated using EPA's AirData Web site, at *http://www.epa.gov/airquality/airdata/ad_rep_mon.html.*

In addition to the monitored levels of NO_2 in states near Montana being well below the NAAQS, Montana's highest official design value from 2012–2014 was also significantly below this NAAQS (7 ppb).[8]

Based on all of these factors, EPA concurs with the State's conclusion that Montana does not contribute significantly to nonattainment or interfere with maintenance of the 2010 NO_2 NAAQS in other states. EPA is therefore proposing to determine that Montana's SIP includes adequate provisions to prohibit sources or other emission activities within the State from emitting NO_2 in amounts that will contribute significantly to nonattainment in or interfere with maintenance by any other state with respect to the NO_2 NAAQS.

B. Evaluation of Interference With Measures To Prevent Significant Deterioration (PSD)

With regard to the PSD portion of CAA section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated new source review (NSR) pollutants and that satisfies the requirements of EPA's PSD implementation rules.[9] As noted in the discussion for infrastructure element (C) earlier in this notice, EPA is proposing to conditionally approve CAA section 110(a)(2) element (C) for Montana's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS with respect to PSD requirements. As discussed in detail in that section, Montana's PSD program will meet the current structural requirements of 110(a)(2)(C) for $PM_{2.5}$ on the condition that the State adopts and submits specific revisions within one year of EPA's final action on these infrastructure submittals to correct the language in ARM 17.8.818(7)(a)(iii). We are also proposing to conditionally approve Montana's infrastructure SIP as meeting the 110(a)(2)(D)(i)(II) element 3 (PSD) requirements for 2006 24-hour $PM_{2.5}$ NAAQS.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy element 3 with respect to these sources is by citing an air agency's EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Montana has a SIP-approved nonattainment NSR program which ensures regulation of major sources and major modifications in nonattainment areas, and therefore satisfies element 3 with regard to this requirement.[10]

EPA is proposing to conditionally approve the infrastructure SIP submission with regard to the requirements of element 3 of section 110(a)(2)(D)(i) for the 2006 24-hour $PM_{2.5}$, 2008 Pb, 2008 Ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

C. Evaluation of Interference With Measures To Protect Visibility

The determination of whether the CAA section 110(a)(2)(D)(i)(II) requirement for visibility is satisfied is closely connected to EPA's regional haze program. Under the regional haze program, each state with a Class I area is required to submit a regional haze SIP with reasonable progress goals for each such area that provides for an improvement in visibility for the most impaired days and ensures no degradation of the best days. CAA section 169A.

Because of the often significant impacts on visibility from the interstate transport of pollutants, we interpret the provisions of CAA section 110(a)(2)(D)(i)(II) described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. This is consistent with the requirements in the regional haze program which explicitly require each state to address its share of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas. 64 FR 35714, 35735 (July 1, 1999).

Montana did not submit a regional haze SIP to EPA, which in turn required EPA to promulgate a federal implementation plan (FIP) to satisfy the regional haze requirements for the State. EPA finalized its regional haze FIP for Montana in a rule published September 18, 2012 (77 FR 57864). Several parties filed petitions for review of the Montana regional haze FIP. In Nat'l Parks Conservation Ass'n v. EPA, 788 F.3d 1134 (9th Cir. 2015), the U.S. Court of Appeals for the Ninth Circuit vacated and remanded to EPA certain portions of the regional haze FIP setting NO_X and SO_2 emission limits at two facilities in Montana. EPA is currently working to address the remand of these portions of the Montana regional haze FIP in accordance with the court's decision.

In its 2008 ozone, 2010 SO_2 and 2010 NO_2 NAAQS infrastructure certifications, Montana asserted that each of these pollutants was ''generally insignificant'' related to impacts on visibility impairment, emitted in limited amounts in the state, and that significant impacts from each of these pollutants are ''mostly located away'' from state borders. In its February 10, 2010 certification for the 2006 $PM_{2.5}$ NAAQS, the State did not directly address visibility impacts from Montana to other states, and instead generally addressed element 110(a)(2)(D)(i).

In its 2008 Pb NAAQS certification, Montana cited the 2011 Memo in noting the general insignificance of Pb-related impacts on visibility impairment, and stated that significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source. Montana affirmed that it did not contain sources with 0.5 tpy or greater lead emissions located within two miles of the State's border and therefore concluded that it met the requirements of 110(a)(2)(D)(i)(II) with respect to visibility for the 2008 Pb NAAQS.

In its 2012 $PM_{2.5}$ NAAQS certification, Montana asserted that their Visibility Plan and FIP, which is in place to satisfy requirements of the EPA Regional Haze Program (77 FR 57863, Sept. 18, 2012), demonstrate that sources in Montana do not interfere with visibility protection in other states. However, they acknowledge that, in accordance with EPA's 2013 infrastructure SIP guidance, a FIP cannot be relied upon to meet the requirements of element 110(a)(2)(D)(i)(II) related to visibility and therefore the requirements of element 4 are not met.

EPA disagrees with the State's assertions that NO_2, SO_2 and ozone are generally insignificant in their impacts on visibility impairment. See 77 FR at 23995, 24053–54 (EPA determined in its regional haze FIP rulemaking that Montana emissions have impacts at Class I areas in other states). Montana's claim that significant impacts from these three pollutants are located away from state borders is conclusory and not supported by relevant information or analysis. As the State does not have a fully approved regional haze SIP, and has not otherwise demonstrated that its SIP satisfies the visibility requirement of section 110(a)(2)(D)(i)(II), EPA proposes

[8] *http://www.epa.gov/airtrends/values.html.*

[9] See 2013 Memo.

[10] See ARM 17.8.901–906.

to disapprove this portion of Montana's SIP for the 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2 and 2010 SO_2 NAAQS. Because EPA in the Montana regional haze FIP has and will continue to address visibility impairment from Montana sources in Class I areas outside of the State, this disapproval will not require further action from the State, and does not create a new FIP obligation for EPA.

Regarding the 2008 Pb NAAQS, EPA agrees that significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source and most, if not all, Pb stationary sources are located at distances from Class I areas such that visibility impacts would be negligible. Further, when evaluating the extent to which Pb could impact visibility, EPA has found Pb-related visibility impacts insignificant (*e.g.,* less than 0.10 percent).[11] Montana does not have any major sources of Pb located within ten miles of a neighboring state's Class I area. EPA proposes to approve Montana's conclusion that it does not have any significant sources of lead emissions within 2 miles of its border and that it therefore does not have emissions of Pb that would interfere with the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

EPA agrees with Montana's assertion that its SIP does not satisfy the visibility requirements of section 110(a)(2)(D)(i)(II) for the 2012 $PM_{2.5}$ NAAQS. EPA proposes to disapprove this portion of the Montana SIP.

5. Interstate and International transport provisions: CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

Section 126(a) of the CAA requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator of the EPA (Administrator) regarding sources violating the ''interstate transport'' provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), Montana's SIP-approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD.[12] This suffices to meet the notice requirement of section 126(a).

Montana has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii), and EPA is therefore proposing approval of this element for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. EPA is also proposing to approve the Montana SIP as meeting the requirements of section 110(a)(2)(D)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Montana submitted an infrastructure certification generally addressing CAA section 110(a)(2)(D) for the 1997 and 2006 $PM_{2.5}$ NAAQS on February 10, 2010.

6. Adequate resources: Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires states to ''provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.''

a. Sub-Elements (i) and (iii): Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

The provisions contained in 75–2–102, MCA, 75–2–111, MCA, and 75–2–112, MCA, provide adequate authority for the State of Montana and the DEQ to carry out its SIP obligations with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Montana's SIP requirements.

With respect to section 110(a)(2)(E)(iii), the regulations cited by Montana in their certifications (75–2–111 and 75–2–112, MCA) and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve Montana's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. Sub-Element (ii): State Boards

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In our July 30, 2013 action, we disapproved Montana's February 10, 2010 infrastructure SIP submission for the 1997 and 2006 $PM_{2.5}$ NAAQS for CAA Section 110(a)(2)(E)(ii) because the Montana SIP did not contain provisions meeting requirements of CAA section 128. On December 17, 2015, EPA received a submission from the State of Montana to address the requirements of section 128. The Montana BER approved new rule language on October 16, 2015. A copy of New Rule I (ARM 17.8.150), II (ARM 17.8.151), and III (ARM 17.8.152) is available within this docket. New Rule II Board Action addresses board composition requirements of section 128(a)(1) and New Rule III Reporting addresses conflict of interest requirements of section 128(a)(2). We propose to approve this new rule language as meeting the requirements of section 128 for the reasons explained in more detail below. Because this revision meets the requirements of section 128, we also propose to approve the State's infrastructure SIP submissions for element 110(a)(2)(E)(ii). The State made these infrastructure SIP submissions in connection with the 2012 $PM_{2.5}$ NAAQS, but section 128 is not NAAQS-specific and once the State has met the requirements of section 128 that is sufficient for purposes of infrastructure SIP requirements for all NAAQS. If we finalize this proposed approval for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS, this will also resolve the prior disapproval for element 110(a)(2)(E)(ii) for the1997 and 2006 $PM_{2.5}$ NAAQS.

[11] 2013 Memo at 33.

[12] See Administrative Rule of Montana (''ARM'') 17.8.826(2)(d).

We are proposing to approve the State's December 17, 2015 SIP submission as meeting the requirements of section 128 because we believe that it complies with the statutory requirements and is consistent with EPA's guidance recommendations concerning section 128. In 1978, EPA issued a guidance memorandum recommending ways states could meet the requirements of section 128, including suggested interpretations of certain key terms in section 128.[13] In this proposal notice, we discuss additional relevant aspects of section 128. We first note that, in the conference report on the 1977 amendments to the CAA, the conference committee stated, ''[i]t is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128].'' [14] This legislative history indicates that Congress intended states to have some latitude in adopting SIP provisions with respect to section 128, so long as states meet the statutory requirements of the section. We also note that Congress explicitly provided in section 128 that states could elect to adopt more stringent requirements, as long as the minimum requirements of section 128 are met.

In implementing section 128, the EPA has identified a number of key considerations relevant to evaluation of a SIP submission. EPA has identified these considerations in the 1978 guidance and in subsequent rulemaking actions on SIP submissions relevant to section 128, whether as SIP revisions for this specific purpose or as an element of broader actions on infrastructure SIP submissions for one or more NAAQS.

Each state must meet the requirements of section 128 through provisions that EPA approves into the state's SIP and are thus made federally enforceable. Section 128 explicitly mandates that each SIP ''shall contain requirements'' that satisfy subsections 128(a)(1) and 128(a)(2). A mere narrative description of state statutes or rules, or of a state's current or past practice in constituting a board or body and in disclosing potential conflicts of interest, is not a requirement contained in the SIP and does not satisfy the plain text of section 128.

Subsection 128(a)(1) applies only to states that have a board or body that is composed of multiple individuals and that, among its duties, approves permits or enforcement orders under the CAA. It does not apply in states that have no such multi-member board or body that performs these functions, and where instead a single head of an agency or other similar official approves permits or enforcement orders under the CAA. This flows from the text of section 128, for two reasons. First, as subsection 128(a)(1) refers to a majority of members of the board or body in the plural, we think it reasonable to read subsection 128(a)(1) as not creating any requirements for an individual with sole authority for approving permits or enforcement orders under the CAA. Second, subsection 128(a)(2) explicitly applies to the head of an executive agency with ''similar powers'' to a board or body that approves permits or enforcement orders under the CAA, while subsection 128(a)(1) omits any reference to heads of executive agencies. We infer that subsection 128(a)(1) should not apply to heads of executive agencies who approve permits or enforcement orders.

Subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. Although the title of section 128 is ''State boards,'' the language of subsection 128(a)(2) explicitly applies where the head of an executive agency, rather than a board or body, approves permits or enforcement orders. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where statutory authority to approve permits or enforcement orders is nominally vested in another state official, the requirement to adequately disclose potential conflicts of interest still applies. In other words, EPA interprets section 128(a)(2) to apply to all states, regardless of whether a state board or body approves permits or enforcement orders under the CAA or whether a head of a state agency (or his/her delegates) performs these duties. Thus, all state SIPs must contain provisions that require adequate disclosure of potential conflicts of interest in order to meet the requirements of subsection 128(a)(2). The question of which entities or parties must be subject to such disclosure requirements must be evaluated by states and EPA in light of the specific facts and circumstances of each state's regulatory structure.

A state may satisfy the requirements of section 128 by submitting for adoption into the SIP a provision of state law that closely tracks or mirrors the language of the applicable provisions of section 128. A state may take this approach in two ways. First, the state may adopt the language of subsections 128(a)(1) and 128(a)(2) verbatim. Under this approach, the state will be able to meet the continuing requirements of section 128 without any additional, future SIP revisions, even if the state adds or removes authority, either at the state level or local level, to individual or to boards or bodies to approve permits or enforcement orders under the CAA so long as the state continues to meet section 128 requirements.

Second, the state may modify the language of subsections 128(a)(1) (if applicable) and 128(a)(2) to name the particular board, body, or individual official with approval authority. In this case, if the state subsequently modifies that authority, the state may have to submit a corresponding SIP revision to meet the continuing requirements of section 128. If the state chooses to not mirror the language of section 128, the state may adopt state statutes and/or regulations that functionally impose the same requirements as those of section 128, including definitions for key terms such as those recommended in EPA's 1978 guidance. While any of these approaches would meet the minimum requirements of section 128, the statute also explicitly authorizes states to adopt more stringent requirements, for example to impose additional requirements for recusal of board members from decisions, above and beyond the explicit board composition requirements. Although such recusal alone does not meet the requirements of section 128, states have the authority to require that over and above the explicit requirements of section 128. These approaches give states flexibility in implementing section 128, while still ensuring consistency with the statute.

EPA has evaluated the New Rule I Definitions, II Board Action, and III Reporting (available within this docket) from the State in light of the requirements of section 128, these key considerations previously noted, and the recommendations in the 1978 guidance. The Montana Code creates a Board of Environmental Review (BER) which consists of seven members appointed by the Governor. A person who is directly and adversely affected by the Montana DEQ's approval or denial of a permit to construct an air pollution source may request a hearing before the BER and the BER may uphold, alter, or reverse decisions of the Montana DEQ. Similarly, a person who participated in the comment period on Montana DEQ's issuance, renewal, amendment, or modification of a title V operating permit may request a hearing

[13] Memorandum from David O. Bickart, Deputy General Counsel, to Regional Air Directors, Guidance to States for Meeting Conflict of Interest Requirements of Section 128 (Mar. 2, 1978).

[14] H.R. Rep. 95–564 (1977), reprinted in 3 *Legislative History of the Clean Air Act Amendments of 1977*, 526–27 (1978).

before the BER and the BER may uphold, alter, or reverse decisions of the Montana DEQ. Finally, a person who receives an enforcement order from Montana DEQ under Chapter 2 of Title 75, Air Quality, may request a hearing before the BER and the BER may uphold, alter, or reverse decisions of the Montana DEQ.

As EPA has explained in other rulemaking actions, *e.g.,* 78 FR 32613 (May 31, 2013), we interpret section 128(a)(1) to mean that boards that are the potential final decisionmaker via permit and enforcement order appeals ''approve'' those permits and enforcement orders. For example, by being the final decisionmaker with respect to questions such as whether a source receives a permit and the specific contents of such a permit, the board is an entity that approves the permit within the meaning of 128(a)(1). Thus, the BER is subject to the requirements of 128(a)(1).

Montana's New Rule II Board Action, provides that the BER must be composed in conformance with requirements of section 128 of the CAA for all permits and enforcement orders initiated under Montana's air pollution control authority. In essence, the rule prohibits the BER from taking action if the BER does not meet the requirements of section 128(a)(1). The State has submitted New Rule II (ARM 17.8.151) to EPA for adoption into their SIP, thus making a legally binding requirement that the BER be comprised of a majority of members that represent the public interest and do not derive a significant portion of their income from parties subject to permit requirements or enforcement orders under the CAA. The definitions of ''regulated person,'' ''represent the public interest,'' and ''significant portion of income'' are consistent with the recommendations in our 1978 guidance. We believe Montana's submission of New Rule II satisfies the requirements of subsection 128(a)(1).

To meet the requirements of subsection 128(a)(2), the State's New Rule III (ARM 17.8.152) Reporting, includes disclosure requirements applying to members of the BER. At the first meeting each calendar year, members of the BER must file with the BER secretary a written certification that they ''represent the public interest [15]'' and do not derive a ''significant portion of income'' from ''regulated persons'' as defined in New Rule I (ARM 17.8.150) Definitions (4)(a), (b) and (c). The board member must file with the BER a written withdrawal of certification if they no longer represent the public interest or has begun to derive a ''significant portion of income [16]'' from ''regulated persons,'' as defined in New Rule I (5) and (3)(a) and (b). Furthermore, board members must file with the BER a written disclose of any ''potential conflicts of interest'' as defined in New Rule I (2)(a) and (b). New Rule I defines ''potential conflict of interest'' as ''(a) any income from a regulated person; or (b) any interest or relationship that would preclude the individual having the interest or relationship from being considered one who represents the public interest.'' This definition is consistent with the suggested definition in the 1978 guidance. We believe Montana's submission of New Rule I and III satisfies the requirements of subsection 128(a)(2).

For the foregoing reasons, the EPA believes that the New Rules I (ARM 17.8.150), II (ARM 17.8.151), and III (ARM 17.8.152) adopted by the BER on October 16, 2015 and submitted to EPA for inclusion in the SIP on December 17, 2015 contains provisions that meet the requirements of section 128(a)(1) and section 128(a). Accordingly, we are proposing approval of that submission and also proposing approval of the infrastructure SIP submission as meeting the requirements of section 128 for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

7. Stationary source monitoring system: Section 110(a)(2)(F) requires: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) Periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) Correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

The provisions cited by Montana (ARM 17.8.105 and 17.8.106) pertain to testing requirements and protocols. Montana also incorporates by reference 40 CFR part 51, appendix P, regarding minimum monitoring requirements. (See ARM 17.8.103(1)(D)). In addition, Montana provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting

Furthermore, Montana is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar-year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Montana made its latest update to the NEI in April 2013. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we propose to approve the Montana SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

8. Emergency powers: Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA section 303] and adequate contingency plans to implement such authority.''

Under CAA section 303, the EPA Administrator has authority to bring suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public

[15] New Rule I defines ''represent the public interest'' as a person who ''(4) does not: (a) Own a controlling interest in or have five percent or more of his or her capital invested in a regulated person; (b) serve as attorney for, act as consultant for, or serve as an officer or director of a regulated person; or (c) hold any other official or contractual relationship with a regulated person.''

[16] New Rule I defines ''significant portion of income'' as ''(5) ten percent or more of gross personal income for a calendar year, including retirement benefits, consulting fees, and stock dividends, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement. For purposes of this section, income derived from mutual-fund payments, or from other diversified investments as to which the recipient does not know the identity of the primary sources of income, shall be considered part of the recipient's gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders under the Clean Air Act.''

health or welfare, or the environment.[17] If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if EPA subsequently files a civil suit. We propose to find that Montana's infrastructure SIP submittals and certain State statutes provide for authority for the State comparable to that granted to the EPA Administrator to act in the face of an imminent and substantial endangerment to the public's health or welfare, or the environment.

Montana's SIP submittals with regard to the section 110(a)(2)(G) emergency order requirements explain that Montana has an EPA approved Emergency Episode Avoidance Plan (EEAP) (71 FR 19, Jan. 3, 2006). According to the EEAP, ''the Department shall take the necessary precautions to protect public health as set forth in 75–2–402 ,[18] MCA, ''Emergency Powers.'' These precautions include, but are not limited to, ordering a halt or curtailment of any operations, activities, processes, or conditions the Department believes are contributing to the air pollutant emergency episode.'' Additionally, under 75–2–111(3) MCA ,[19] Montana's environmental review board has broad authority to ''issue orders necessary to effectuate the purposes'' of Chapter 2. Also, under 75–2–112(2)(a) [20] MCA, the DEQ has the authority to use ''appropriate administrative and judicial proceedings'' to enforce orders issued by the board. Any air pollution discharge that created an emergency situation would constitute a violation of the chapter and its purposes, therefore providing the BER and the DEQ authority to issue administrative orders to stop discharges that cause emergencies effecting welfare and the environment .[21]

While no single Montana statute mirrors the authorities of CAA section 303, we propose to find that the combination of MCA provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain and issue emergency orders for applicable emergencies to take prompt administrative action against any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. Consistent with EPA's 2013 Infrastructure SIP Guidance, the narratives provided in Montana's SIP submittals about the State's authorities applying to emergency episodes (as discussed above), plus additional Montana statutes that we have considered, we propose that they are sufficient to meet the authority requirement of CAA section 110(a)(2)(G).

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as discussed above). This can be done by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations. EPA approved Montana's EEAP in 71 FR 19 (Jan. 3, 2006). We find that Montana's air pollution emergency rules include PM_{10}, ozone, NO_2, and SO_2; establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episode) for particulate matter, ozone, NO_2, and SO_2.

As noted in the October 14, 2011 guidance,[22] based on EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. Accordingly, EPA believes the central components of a contingency plan would be to reduce emissions from the source at issue and communicate with the public as needed. We note that 40 CFR part 51, subpart H (51.150–51.152) and 40 CFR part 51, Appendix L do not apply to Pb.

Based on the above analysis, we propose approval of Montana's SIP as

[17] A discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''VI. Analysis of State Submittals, 8. Emergency powers.''

[18] 75–2–402 MCA, Emergency Procedure:

''(1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the start of the hearing and without adjournment, the board shall confirm, modify, or set aside the order of the department.

(2) Except as provided in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 75–2–401. In this event, the requirements for hearing and confirmation, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power that the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or the constitution or is inherent to the office.''

[19] 75–2–111, MCA. Powers of board:

''The board shall, subject to the provisions of 75–2–207:

(1) Adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:

(a) any agricultural activity or equipment that is associated with the use of agricultural land or the planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or

(c) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.

(3) issue orders necessary to effectuate the purposes of this chapter;

(4) by rule require access to records relating to emissions;

(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;

(6) have the power to issue orders under and in accordance with 42 U.S.C. 7419.''

[20] 75–2–112, MAC, Powers and responsibilities of department.

''(1) The department is responsible for the administration of this chapter.

(2) The department shall:

(a) by appropriate administrative and judicial proceedings, enforce orders issued by the board;''

[21] *See* email from David Klemp, Montana State Air Director to EPA, Dec. 12, 2015, contained within this docket.

[22] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS).'' Steve Page, OAQPS Director, October 14, 2011, at p 13.

meeting the requirements of CAA section 110(a)(2)(G) for the 2008 Pb, 2008 ozone, and 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

9. Future SIP revisions: Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) From time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard; and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

Montana's statutory provisions in the Montana CAA at 75–2–101 *et seq.,* give the BER sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve Montana's SIP as meeting the requirements of CAA section 110(a)(2)(H).

10. Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).''

The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121 (see 59 FR 2988, Jan. 20, 1994). Furthermore, Montana's Emergency Episode Avoidance Plan, approved into the SIP (71 FR 19, Jan. 3, 2006), meets the general requirements of CAA section 127.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the Act, EPA has evaluated this requirement in the context of infrastructure element (C) in section VI.3 above. As discussed there, EPA proposes to conditionally approve Montana's infrastructure SIP for the requirement in 110(a)(2)(C) that the SIP include a permit program as required in part C, on the condition that the State adopts and submits specific revisions within one year of EPA's final action on these infrastructure submittals; specifically to remove the phrase ''24-hour average'' in ARM 17.8.818(7)(a)(iii). For the same reason, EPA proposes to conditionally approve Montana's infrastructure SIP with regard to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I the Act.

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the Montana SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with regard to sections 121 and 127 of the CAA, and conditional approval of section 110(a)(2)(J) with regard to meeting the applicable requirements of part C relating to PSD.

11. Air quality and modeling/data: Section 110(a)(2)(K) requires each SIP provide for: (i) The performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS; and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

Montana's PSD program (see ARM 17.8.821(1)) requires estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, pertaining to the Guidelines on Air Quality Models. Additionally, MCA 75–2–211. Powers of board and MCA 75–2–112. Powers and responsibilities of department, provide Montana with the broad authority to develop and implement an air quality control program that includes conducting air quality modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated.[23] As a result, the SIP provides for such air quality modeling as the Administrator has prescribed with respect to the SIP outside of the nonattainment areas.

Therefore, we propose to approve the Montana SIP as meeting the CAA section 110(a)(2)(K) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

12. Permitting fees: Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit; and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Montana requires an applicant proposing to construct or modify an air pollution source to pay an application fee, ARM 17.8.504 (State rule only). Sources must also pay an annual operation fee, ARM 17.8.505 (State rule only). Under ARM 17.8.823(1), Source Information for PSD of air quality, ''(1) The owner or operator of a proposed source or modification shall submit the permit application fee required pursuant to ARM 17.8.504 and all information necessary to perform any analysis or make any determination required under procedures established in accordance with this subchapter.'' ARM 17.8.823 was adopted into Montana's SIP on August 13, 2001 (66 FR 42427). Additionally, ARM 17.8.1704, Registration Fees, for oil and gas facilities states that ''(1) The registration fee required by ARM 17.8.504 must be submitted to the department with each registration submitted under this subchapter. No fee is required for notifying the department, pursuant to ARM 17.8.1703(4), of changes to registration information. (2) The registration fee must be paid in its entirety at the time the registration form is submitted to the department.'' ARM 17.8.1703 was adopted into the Montana SIP on November 19, 2013 (78 FR 69296).

We also note that all the State SIPs we are proposing to approve in this action cite the regulation that provides for collection of permitting fees under Montana's approved title V permit program (65 FR 37049, June 13, 2000). As discussed in that approval, the State demonstrated that the fees collected were sufficient to administer the program.

[23] *See* email from David Klemp, Montana State Air Director, to EPA on Dec. 12, 2015, contained within this docket.

Therefore, based on the State's experience in relying on the funds collected through application and processing fees at ARM 17.8.504 and ARM 17.8.505, and the use of title V fees to implement and enforce PSD permits once they are incorporated into title V permits, we propose to approve the submissions as supplemented by the State for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

13. Consultation/participation by affected local entities: Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

The statutory and other provisions cited in Montana's SIP submittals (Section 75–2–112(2)(j) of the MT CAA, ARM 17.8.140, 17.8.141 and 17.8.142, contained within this docket) meet the requirements of CAA section 110(a)(2)(M), so we propose to approve Montana's SIP as meeting these requirements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is EPA taking?

In this action, EPA is proposing to approve infrastructure elements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 1997, 2006 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 2. EPA is proposing conditional approval of elements (C), D(i)(II) element 3 and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title 1 of the Act as shown in Table 3. Elements we propose no action on are reflected in Table 5. EPA is proposing to disapprove (D)(i)(II) element 4 for the 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS (Table 4). As noted, finalization of this disapproval would not require further action from the State, and does not create a new FIP obligation for EPA. We also propose to approve revisions to the ARM from the August 21, 2012 submittal (Table 2) and conditionally approve a revision from the March 24, 2015 submittal (Table 3) to bring Montana's PSD program up to date with respect to current requirements for $PM_{2.5}$. If Montana does not submit a SIP revision to correct the language in ARM 17.8.818(7)(a)(iii) within one year of EPA's final action on these infrastructure submittals, conditional approvals will automatically revert to disapprovals for ARM 17.8.818(7)(a)(iii), and elements (C), D(i)(II) element 3 and (J) with respect to PSD requirements. Finally, EPA is proposing to approve new ARM submitted on December 17, 2015 to satisfy requirements of element (E)(ii), state boards.

A comprehensive summary of infrastructure elements, and revisions and additions to the ARM organized by EPA's proposed rule action are provided in Table 2, Table 3, Table 4 and Table 5.

TABLE 2—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT EPA IS PROPOSING TO APPROVE

Proposed for approval
February 10, 2010 submittal—1997 and 2006 $PM_{2.5}$ NAAQS:
(D)(ii) for both the 1997 and 2006 $PM_{2.5}$ NAAQS.
December 19, 2011 submittal—2008 Pb NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4, (D)(ii), (E), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
January 3, 2013 submittal—2008 Ozone NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(ii), (E), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
June 4, 2013 submittal—2010 NO_2 NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(i)(I) elements 1 and 2, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
July 15, 2013 submittal—2010 SO_2 NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(A), (B), (C) with respect to minor NSR requirements, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
August 21, 2012 submittal—Revisions to ARM, Prevention of Significant Deterioration:
ARM 17.8.801(3), 17.8.801(21), 17.8.801(27), 17.8.804(1), 17.8.818(7)(a)(iv)–(xi), 17.8.822(9), 17.8.822(10), 17.8.822(11), 17.8.822(12) and 17.8.825(4).
December 17, 2015 submittal—New Rules to ARM, CAA Section 128
New Rule I (ARM 17.8.150), II (ARM 17.8.151) and III (ARM 17.8.152).

TABLE 3—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT EPA IS PROPOSING TO CONDITIONALLY APPROVE

Proposed for conditional approval
February 10, 2010 submittal—1997 and 2006 $PM_{2.5}$ NAAQS:
(D)(i)(II) element 3 for the 2006 $PM_{2.5}$ NAAQS.
December 19, 2011 submittal—2008 Pb NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
January 3, 2013 submittal—2008 Ozone NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
June 4, 2013 submittal—2010 NO_2 NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
July 15, 2013 submittal—2010 SO_2 NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.

TABLE 3—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT EPA IS PROPOSING TO CONDITIONALLY APPROVE—Continued

Proposed for conditional approval
March 24, 2015 submittal—Revisions to ARM, Prevention of Significant Deterioration:
ARM 17.8.818(7)(a)(iii).

TABLE 4—LIST OF MONTANA INFRASTRUCTURE ELEMENTS THAT EPA IS PROPOSING TO DISAPPROVE

Proposed for disapproval
February 10, 2010 submittal—1997 and 2006 $PM_{2.5}$ NAAQS:
(D)(i)(II) element 4 for the 2006 $PM_{2.5}$ NAAQS.
January 3, 2013 submittal—2008 Ozone NAAQS:
(D)(i)(II) element 4.
June 4, 2013 submittal—2010 NO_2 NAAQS:
(D)(i)(II) element 4.
July 15, 2013 submittal—2010 SO_2 NAAQS:
(D)(i)(II) element 4.
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(D)(i)(II) element 4.

TABLE 5—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT EPA IS PROPOSING TO TAKE NO ACTION ON

[Proposed for no action]

Revised section	Reason for proposed "No Action"			
	Revision to be made in future rulemaking action	Revision made in a separate rulemaking action (80 FR 72937)	Revision deletes section of the ARM never approved into State's SIP	Revision superseded by revision in March 24, 2015 State submittal
January 3, 2013 submittal—2008 Ozone NAAQS:				
(D)(i)(I) elements 1 and 2		x		
July 15, 2013 submittal—2010 SO_2 NAAQS:				
(D)(i)(I) elements 1 and 2	x			
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:				
(D)(i)(I) elements 1 and 2	x			
August 21, 2012 submittal—Revisions to ARM, Prevention of Significant Deterioration:				
ARM 17.8.818(7)(a)(iii)				x
ARM 17.8.820(2)				x
March 24, 2015 submittal—Revisions to ARM, Prevention of Significant Deterioration:				
ARM 17.8.820(2)			x	

VIII. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Administrative Rules of Montana pertaining to major source permitting and $PM_{2.5}$ emission limits discussed in section VI. 3. *Program for enforcement of control measures* and section VI. b. *Sub-element (ii): State boards,* of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IX. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 12, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2016–01403 Filed 1–25–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2015–0747; FRL–9941–59–OAR]

RIN 2060–AS13

Oil and Natural Gas Sector: National Emission Standards for Hazardous Air Pollutants; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for information; extension of comment period.

SUMMARY: On November 27, 2015, the Environmental Protection Agency (EPA) requested information related to hazardous air pollutant emissions from sources in the oil and natural gas production and natural gas transmission and storage segments of the oil and natural gas sector. The deadline to respond to our request was January 26, 2016. In response to requests from several stakeholders, the EPA is extending the period to respond to our request for information to March 11, 2016.

DATES: The public comment period for the request for information published in the **Federal Register** on November 27, 2015 (80 CFR 74068), is being extended. Written comments must be received on or before March 11, 2016.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0747, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Avenue 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. A reasonable fee may be charged for copying. The official public docket for this rulemaking is Docket ID No. EPA–HQ–OAR–2015–0747.

World Wide Web. The EPA Web site for this rulemaking is at *http://www3.epa.gov/airquality/oilandgas/actions.html.*

FOR FURTHER INFORMATION CONTACT: For further information about this action, contact Mr. Matthew Witosky, Sector Policies and Programs Division (E143–05), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2865; facsimile number: (919) 541–3740; email address: *witosky.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

After considering the requests to extend the public comment period, the EPA has decided to extend the public comment period until March 11, 2016. This extension will provide the additional time requested by the public to review the request and gather data to respond.

Dated: January 14, 2016.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–01508 Filed 1–25–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

42 CFR Part 136

RIN 0905AC97

Catastrophic Health Emergency Fund

AGENCY: Indian Health Service, HHS.

ACTION: Proposed rule.

SUMMARY: The Indian Health Service (IHS) administers the Catastrophic Health Emergency Fund, The purpose of CHEF is to meet the extraordinary medical costs associated with the treatment of victims of disasters or

catastrophic illnesses who are within the responsibility of the Service. This proposed rule: Proposes definitions governing the CHEF; establishes that a Service Unit shall not be eligible for reimbursement for the cost of treatment until the episode of care's cost has reached a certain threshold; establishes a procedure for reimbursement for certain services exceeding a threshold cost; establishes a procedure for payment for certain cases; and, establishes a procedure to ensure payment will not be made from CHEF if other sources of payment (Federal, state, local, private) are available.

DATES: To be assured consideration, written comments must be received at the address below, no later than 5 p.m. on March 11, 2016. The IHS Area and program offices will send copies of this notice to each Tribe within their jurisdiction.

ADDRESSES: In commenting, please refer to file code 0905AC97. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. Electronically. You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a Comment'' instructions.

2. By regular mail. You may mail written comments to the following address only: Betty Gould, Regulations Officer, Indian Health Service, Office of Management Services, Division of Regulatory Affairs, 5600 Fishers Lane, Mailstop: 09E70, Rockville, Maryland 20857.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments to the above address.

4. By hand or courier. If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above.

If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443–1116 in advance to schedule your arrival with one of our staff members.

Comments will be made available for public inspection at the Rockville address from 8:30 a.m. to 5:00 p.m., Monday–Friday, two weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Carl Harper, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mailstop: 10E85C, Rockville, Maryland 20857, Telephone (301) 443–1553.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments as soon as possible after they have been received to the following Web site: *http://www.regulations.gov*. Follow the search instructions on the Web site to view public comments.

I. Background

The purpose of CHEF is to meet the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service. IHS administers CHEF to reimburse certain IHS and Tribal purchased/referred care (PRC) costs that exceed the cost threshold. Although CHEF was first established in 1988, a similar fund was authorized by Public Law 99–591, a Joint Resolution continuing appropriations for fiscal year (FY) 1987. IHS developed operating guidelines in August of 1987, which were approved by the Office of Management and Budget (OMB) for the management of CHEF. Those guidelines were developed with input from Tribal organizations and IHS personnel who work with the daily processing and management of Contract Health Services (CHS), now known as the Purchased/Referred Care (PRC) Program. Congress passed the Indian Health Care Improvement Reauthorization and Extension Act of 2009, S. 1790, 111th Cong. (2010) (IHCIREA), as section 10221(a) of the Patient Protection and Affordable Care Act, Public Law 111–148. Through IHCIREA, Congress permanently reauthorized and amended the Indian Health Care Improvement Act (IHCIA), Public Law 94–437. Section 202 of IHCIA [25 U.S.C. 1621a] establishes CHEF and directs the IHS to promulgate regulations for its administration. The operating guidelines and twenty-eight (28) years of experience (FYs 1987–2015) contributed to the design of this regulation.

II. Provisions of This Proposed Regulation

This regulation proposes to (1) establish definitions governing CHEF, including definitions of disasters and catastrophic illnesses; (2) establish that a Service Unit shall not be eligible for reimbursement for the cost of treatment from CHEF until its cost of treating any victim of such catastrophic illness or disaster has reached a certain threshold cost; (3) establish a procedure for reimbursement of the portion of the costs for authorized services that exceed such threshold costs; (4) establish a procedure for payment from CHEF for cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment; and, (5) establish a procedure that will ensure no payment will be made from CHEF to a Service Unit to the extent the provider of services is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible.

No part of CHEF, or its administration, shall be subject to contract or grant under any law, including the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93–638 [25 U.S.C. 450 *et seq.*] and may not be allocated, apportioned, or delegated to a Service Unit, Area Office, or any other organizational unit. Accordingly, the IHS Division of Contract Care within the Office of Resource Access and Partnerships at Headquarters shall remain responsible for administration of CHEF.

A. Definitions

IHS proposes establishing the following definitions for governing CHEF, including definitions of disasters and catastrophic illnesses:

1. Alternate Resources—any Federal, State, Tribal, local, or private source of coverage for which the patient is eligible. Such resources include health care providers and institutions and health care programs for the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.,* Medicare and Medicaid), other Federal health care programs, State, Tribal or local health care programs, Veterans Health Administration, and private insurance, including Tribal self-insurance.

2. Catastrophic Health Emergency Fund (CHEF)—the fund established by Congress to reimburse extraordinary medical expenses incurred for catastrophic illnesses and disasters covered by a PRC program of the IHS, whether such program is carried out by IHS or an Indian Tribe or Tribal organization under the Indian Self-Determination and Education Assistance Act.

3. Catastrophic Illness—a medical condition that is costly by virtue of the intensity and/or duration of its

treatment. Examples of conditions that frequently require multiple hospital stays and extensive treatment are cancer, burns, premature births, cardiac disease, end-stage renal disease, strokes, trauma-related cases such as automobile accidents and gunshot wounds, and some mental disorders. CHEF is intended to shield IHS and Tribal PRC operations from financial disruption caused by the intensity of high cost illnesses and/or events.

4. Disasters—situations that pose a significant level of threat to life or health or cause loss of life or health stemming from events such as tornadoes, earthquakes, floods, catastrophic accidents, epidemics, fires, and explosions.

5. Episode of Care—the period of consecutive days for a discrete health condition during which reasonable and necessary medical services related to the condition occur.

6. Purchased/Referred Care (PRC)—any health service that is—

(a) delivered based on a referral by, or at the expense of, an Indian health program; and

(b) provided by a public or private medical provider or hospital which is not a provider or hospital of the IHS health program.

7. Service Unit—an administrative entity of the Service or a Tribal health program through which services are provided, directly or by contract, to eligible Indians within a defined geographic area.

8. Threshold Cost—the designated amount above which incurred medical costs will be considered for CHEF reimbursement after a review of the authorized expenses and diagnosis.

B. Threshold Cost

IHCIA section 202 provides that a Service Unit shall not be eligible for reimbursement from CHEF until its cost of treating any victim of a catastrophic illness or event has reached a certain threshold cost. The Secretary is directed to establish the initial CHEF threshold at—

(1) the FY 2000 level of $19,000; and

(2) for any subsequent year, the threshold will not be less than the threshold cost of the previous year increased by the percentage increase in the medical care expenditure category of the Consumer Price Index (CPI) for all urban consumers (United States city average) for the 12-month period ending with December of the previous year.

IHS intends to set the initial threshold governed by this rule at $19,000 for FY 2016. In reaching this determination, IHS adopted the recommendation of the IHS Director's Workgroup on Improving PRC. The Workgroup, composed of Tribal leaders and Tribal and Federal representatives, voted 18–2 to recommend $19,000 as the initial threshold. For this recommendation, the Workgroup considered several factors, including (1) Tribal concerns regarding the lower threshold and the potential to exhaust CHEF earlier in the FY leaving PRC programs without the ability to recover costs for treating victims of catastrophic illnesses or disasters; and, (2) Tribal concerns about setting the threshold at the FY 2000 level and then applying the CPI for each year since FY 2000, which would have resulted in a $30,000 plus threshold requirement by FY 2013. At this higher level, PRC programs with limited budgets would be unable to access the CHEF to seek recovery for extraordinary medical costs. Accordingly, IHS intends to set the initial threshold at $19,000 for FY 2016, with increases in subsequent years based on the annual Consumer Price Index.

C. Compliance With PRC Regulations

IHS proposes to follow PRC regulations 42 CFR part 136 for payment from CHEF. For example, payment or reimbursement from CHEF may be made for the costs of treating persons eligible for PRC in accordance with 42 CFR 136.23 and authorized for PRC in accordance with 42 CFR 136.24. In cases where the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service Unit, authorization must be obtained in accordance with 42 CFR 136.24(c). For example, claims for reimbursement of services provided that do not meet the 72 hour emergency notification requirements found at 42 CFR 136.24(c) will be denied. The applicable Area PRC program shall review CHEF requests for CHEF reimbursement to ensure consistency with PRC regulations.

D. Alternate Resources

In accordance with section 202(d)(5) of IHCIA [25 U.S.C. 1621a (d)(5)], alternate resources must be exhausted before reimbursement is made from CHEF. No reimbursement shall be made from CHEF to any Service Unit to the extent the patient is eligible to receive payment for treatment from any other Federal, State, Tribal, local, or private source of reimbursement. Medical expenses incurred for catastrophic illnesses and events will not be considered eligible for reimbursement if they are payable by alternate resources, as determined by IHS, whether or not such resources actually make payment. IHS is the payor of last resort and, if the provider of services is eligible to receive payment from other resources, the medical expenses are only payable by PRC and reimbursable by CHEF to the extent IHS would not consider the other resources to be ''alternate resources'' under the applicable regulations and IHS policy. Expenses paid by alternate resources are not eligible for payment by PRC or reimbursement by CHEF. However, if the patient becomes eligible for alternate resources, the Service Unit shall return all funds reimbursed from CHEF to the Headquarters CHEF account.

E. Reimbursement Procedure

A patient must be eligible for PRC services and the Service Unit must adhere to regulations (42 CFR 136.23(a) through (f)) governing the PRC program to be reimbursed for catastrophic cases from CHEF. Once the catastrophic case meets the threshold requirement and the Service Unit has authorized PRC resources exceeding the threshold requirement, the Service Unit may qualify for reimbursement from CHEF. Reimbursable costs are those costs that exceed the threshold requirement after payment has been made by all alternate resources such as Federal, State, Tribal, local, private insurance, and other resources. Reimbursement of PRC expenditures incurred by the Service Unit and approved by the PRC program at Headquarters will be processed through the respective IHS Area Office. Reimbursement from CHEF shall be subject to availability of funds.

F. Recovery of CHEF Reimbursement Funds

In the event a PRC program has been reimbursed from CHEF for an episode of care and that same episode of care becomes eligible for and is paid by any Federal, State, Tribal, local, or private source (including third party insurance), the PRC program shall return all CHEF funds received for that episode of care to the CHEF at IHS Headquarters. These recovered CHEF funds will be used to reimburse other valid CHEF requests.

III. Collection of Information Requirements

Prior to implementing the rule, IHS may be required to develop new information collection forms that would require approval from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995, 44 United States Code 3507(d).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not

able to acknowledge or respond to them individually. We will consider all comments received by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a final rule, we will respond to the comments in the preamble to that rule.

V. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order (E.O.) 12866 on Regulatory Planning and Review (September 30, 1993); section 603 of the Regulatory Flexibility Act (RFA), Public Law 96–354 [5 U.S.C. 601–612], as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996, Public Law 104–121; the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4; E.O. 13132 on Federalism (August 4, 1999); the Congressional Review Act [5 U.S.C. 804(2)]; and E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

A. E.O. 12866

E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). In accordance with E.O. 12866, Agencies must submit a regulatory impact analysis for those regulatory actions that are ''significant'' within the meaning of ''economically significant.'' A regulatory action is economically significant if it is anticipated to ''(1) have an annual effect on the economy of $100 million or more'' or (2) to ''adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.'' This rule is not being treated as a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act (RFA)

RFA requires analysis of regulatory options that minimize any significant economic impact of a rule on small entities, unless it is certified that the proposed rule is not expected to have a significant economic impact on small entities. This rule is not expected to have a significant economic impact on small entities.

C. Unfunded Mandates Reform Act (UMRA)

Section 202 of UMRA (Pub. L. 104–4) requires an assessment of anticipated costs and benefits before proposing any rule that may result in expenditure by State, local, and Tribal governments, in aggregate, or by the private sector of $100 million in any one year. We have determined that this rule is consistent with the principles set forth in the executive orders and in these statutes and find that this rule will not have an effect on the economy that exceeds $100 million in any one year. The IHS FY 2015 annual appropriation for CHEF was $51.5 million. This final rule is not anticipated to have an effect on State, local, or Tribal governments in the aggregate, or by the private sector of $100 million or more. This rule does not impose any new costs on small entities, and it will not result in a significant economic impact on a substantial number of small entities. Thus, no further analysis is required.

D. Federalism

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of E.O. 13132 and have determined that this proposed rule would not have substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and governmental responsibilities among the various levels of the government(s). As this rule has no Federal implications, a Federalism summary impact statement is not required.

E. Congressional Review Act

This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2)—it does not or is not likely to result in:

(1) An annual effect on the economy of $100,000,000 or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

F. E.O. 13175 Consultation and Coordination With Indian Tribal Governments

This rule has Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would have a substantial direct and positive effect on one or more Indian Tribes.

These guidelines were developed with input from Tribes and IHS personnel who work with the daily processing and management of PRC resources. The IHS Director's Workgroup on Improving PRC met and discussed these guidelines on October 12–13, 2010, and June 1–2, 2011, in Denver, Colorado, and on January 11–12, 2012, in Albuquerque, New Mexico. Based on the recommendation of the Workgroup the threshold amount of $19,000 is proposed to be established for the current fiscal year. This proposed rule serves as Tribal consultation with affected Tribes by giving interested Tribes the opportunity to comment on the regulation before it is finalized. In addition, IHS issued ''Dear Tribal Leader'' letters related to the development of these regulations on February 9, 2011, and May 6, 2013. IHS intends to consult as fully as possible with Tribes prior to the publication of a final rule.

List of Subjects in 42 CFR Part 136

Alaska Natives, Contract Health Services, Health, Health facilities, Health service delivery areas, Indians.

Dated: November 10, 2015.

Robert G. McSwain,

Principal Deputy Director, Indian Health Service.

Dated: January 11, 2016.

Sylvia M. Burwell,

Secretary, Health and Human Services.

For the reasons set out in the preamble, the Indian Health Service proposes to amend 42 CFR chapter I as set forth below:

PART 136—INDIAN HEALTH

■ 1. The authority citation for part 136 is revised to read as follows:

Authority: 42 U.S.C. 2001 and 2003; 25 U.S.C. 13; and 25 U.S.C 1621a.

■ 2. Add new subpart L consisting of §§ 136.501–136.509 to read as follows:

Subpart L—Indian Catastrophic Health Emergency Fund

Sec.

Subpart L—Indian Catastrophic Health Emergency Fund

§ 136.501 Definitions.

As used in this subpart:

Alternate Resource means any Federal, State, Tribal, local, or private source of reimbursement for which the patient is eligible. Such resources include health care providers and institutions and health care programs for the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.,* Medicare and Medicaid), other Federal health care programs, State, Tribal or local health care programs, Veterans Health Administration, and private insurance.

Catastrophic Health Emergency Fund (CHEF) means the fund created by Congress to cover extraordinary medical expenses incurred for catastrophic illnesses and disasters covered by a purchased/referred care (PRC) program of the Indian Health Service (IHS), whether such program is carried out by IHS or an Indian Tribe or Tribal organization under the Indian Self-Determination and Education Assistance Act.

Catastrophic Illness refers to a medical condition that is costly by virtue of the intensity and/or duration of its treatment. Examples of conditions that frequently require multiple hospital stays and extensive treatment are cancer, burns, premature births, cardiac disease, end-stage renal disease, strokes, trauma-related cases such as automobile accidents, and gunshot wounds, and some mental disorders. CHEF is intended to shield IHS and Tribal PRC operations from financial disruption caused by the intensity of high cost illnesses and/or events.

Disaster means a situation which poses a significant level of threat to life or health or causes loss of life or health stemming from events such as tornadoes, earthquakes, floods, catastrophic accidents, epidemics, fires, and explosions.

Episode of Care means the period of consecutive days for a discrete health condition during which reasonable and necessary medical services related to the condition occur.

Purchased/Referred Care means any health service that is—

(1) Delivered based on a referral by, or at the expense of, an Indian health program; and

(2) Provided by a public or private medical provider or hospital which is not a provider or hospital of the Indian health program.

Service Unit means an administrative entity of the Service or a Tribal health program through which services are provided, directly or by contract, to eligible Indians within a defined geographic area.

Threshold Cost means the designated amount above which incurred medical costs will be considered for CHEF reimbursement after a review of the authorized expenses and diagnosis.

§ 136.502 Purpose of the regulations.

(a) The Indian Catastrophic Health Emergency Fund (hereafter referred to as ''CHEF'') is authorized by section 202 of the Indian Health Care Improvement Act (IHCIA) [25 U.S.C. 1621a]. CHEF is administered by the Secretary, Department of Health and Human Services (HHS) (''the Secretary'') acting through the Headquarters of the Indian Health Service (IHS) (''the Service''), solely for the purpose of meeting extraordinary medical costs associated with treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service.

(b) These regulations:

(1) Establish definitions of terms governing CHEF, including definitions of disasters and catastrophic illnesses for which the cost of treatment provided under contract would qualify for payment from CHEF;

(2) Establish a threshold level for reimbursement for the cost of treatment;

(3) Establish procedures for reimbursement of the portion of the costs incurred by Service Units that exceeds such threshold costs, including procedures for when the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

(4) Establish procedures for reimbursements pending the outcome or payment by alternate resources.

§ 136.503 Threshold cost.

A Service Unit shall not be eligible for reimbursement from CHEF until its cost of treating any victim of a catastrophic illness or disaster for an episode of care has reached a certain threshold cost.

(a) The threshold cost shall be established at the level of $19,000.

(b) The threshold cost in subsequent years shall be calculated from the threshold cost of the previous year, increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year. The revised threshold costs shall be published yearly in the **Federal Register**.

§ 136.504 Reimbursement procedure.

Service Units whose scope of work and funding include the purchase of medical services from private or public vendors under PRC are eligible to participate. CHEF payments shall be based only on valid PRC expenditures, including expenditures for exigent medical circumstances without prior PRC authorization. Reimbursement from CHEF will not be made if applicable PRC requirements are not followed.

(a) *Claim Submission.* Requests for reimbursement from CHEF must be submitted to the appropriate IHS Area Office. Area PRC programs will review requests for reimbursement to ensure compliance with PRC requirements, including but not limited to: Patient eligibility, medical necessity, notification requirements for emergent and non-emergent care, medical priorities, allowable expenditures, and eligibility for alternate resources.

(b) *Content of Claims.* All claims submitted for reimbursement must include:

(1) A fully completed Catastrophic Health Emergency Fund Reimbursement Request Form.

(2) A statement of the provider's charges in paper form. The paper form must comply with the format required for the submission of claims under title XVIII of the Social Security Act. For example, charges may be printed on forms such as the Centers for Medicare & Medicaid Services (CMS) 1450, American Dental Association (ADA) dental claim form, CMS 1500, or National Council for Prescription Drug Program (NCPDP) universal claim forms. The forms submitted for review must include specific appropriate diagnostic and procedure codes.

(3) An explanation of benefits or statement of payment identifying how much was paid to the provider by the Service Unit for the Catastrophic Illness or Disaster. Payments to the patient or any other entity are ineligible for CHEF reimbursement.

(4) The Division of Contract Care may request additional medical documentation describing the medical treatment or service provided, including but not limited to discharge summaries and/or medical progress notes. Cases may be submitted for 50% reimbursement of eligible expenses pending discharge summaries. Medical

documentation must be received to close the CHEF case.

(c) *Limitation of Funds and Reimbursement Procedure.* Because of the limitations of funds, full reimbursement cannot be guaranteed on all requests and will be based on the availability of funds at the time IHS processes the claim. To the extent funds are available, CHEF funds may not be used to cover the cost of services or treatment for which the funds were not approved. Unused funds, including but not limited to, funds unused due to overestimates, alternate resources, and cancellations must be returned to CHEF.

§ 136.505 Reimbursable services.

The costs of catastrophic illnesses and disasters for distinct episodes of care are eligible for reimbursement from CHEF in accordance with the medical priorities of the Service. Only services that are related to a distinct episode of care will be eligible for reimbursement.

(a) Some of the services that may qualify for reimbursement from the fund are:

(1) Emergency treatment.

(2) Emergent and acute inpatient hospitalization.

(3) Ambulance services; air and ground (including patient escort travel costs).

(4) Attending and consultant physician.

(5) Functionally required reconstructive surgery.

(6) Prostheses and other related items.

(7) Reasonable rehabilitative therapy exclusive of custodial care not to exceed 30 days after discharge.

(8) Skilled nursing care when the patient is discharged from the acute process to a skilled nursing facility.

(b) Reserved.

§ 136.506 Alternate resources.

(a) Expenses paid by alternate resources are not eligible for payment by PRC or reimbursement by CHEF. No payment shall be made from CHEF to any Service Unit to the extent that the provider of services is eligible to receive payment for the treatment from any other Federal, State, Tribal, local, or private source of reimbursement for which the patient is eligible. A patient shall be considered eligible for such resources and no payment shall be made from CHEF if:

(1) The patient is eligible for alternate resources, or

(2) The patient would be eligible for alternate resources if he or she were to apply for them, or

(3) The patient would be eligible for alternate resources under Federal, State, Tribal or local law or regulation but for the patient's eligibility for PRC, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(b) The determination of whether a resource constitutes an alternate resource for the purpose of CHEF reimbursement shall be made by the Headquarters of the Indian Health Service, irrespective of whether the resource was determined to be an alternate resource at the time of PRC payment.

§ 136.507 Program integrity.

(a) All CHEF records and documents will be subject to review by the respective Area and by Headquarters.

(b) Internal audits and administrative reviews may be conducted as necessary to ensure compliance with PRC regulations and CHEF policies.

§ 136.508 Recovery of reimbursement funds.

In the event a Service Unit has been reimbursed from CHEF for an episode of care and that same episode of care becomes eligible for and is paid by any Federal, State, Tribal, local, or private source (including third party insurance) the Service Unit shall return all CHEF funds received for that episode of care to the CHEF at IHS Headquarters. These recovered CHEF funds will be used to reimburse other valid CHEF requests.

§ 136.509 Reconsideration and appeals.

(a) Any Service Unit to whom payment from CHEF is denied will be notified of the denial in writing together with a statement of the reason for the denial. In order to seek review of the denial decision, the Service Unit must follow the procedures set forth in paragraphs (b) and (c) of this section.

(b) Within 30 days from the receipt of the denial provided in paragraph (a) the Service Unit may submit a request in writing for reconsideration of the original denial to the Division of Contract Care. The request for reconsideration must include, as applicable, corrections to the original claim submission necessary to overcome the denial; or a statement and supporting documentation establishing that the original denial was in error. If no additional information is submitted the original denial will stand.

(c) If the original decision is affirmed on reconsideration, the Service Unit will be notified in writing and advised that an appeal may be taken to the Director, Indian Health Service, within 30 days of receipt of the denial. The appeal shall be in writing and shall set forth the grounds supporting the appeal. The decision of the Director, Indian Health Service, shall constitute the final administrative action.

[FR Doc. 2016–01138 Filed 1–25–16; 8:45 am]

BILLING CODE 4165–16–P

Notices

Federal Register
Vol. 81, No. 16
Tuesday, January 26, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2015–0092]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Wooden Handicrafts From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and 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 a revision to and extension of approval of an information collection associated with the regulations for the importation of wooden handicrafts from China.

DATES: We will consider all comments that we receive on or before March 28, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0092.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0092, 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-2015-0092* 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 on the regulations for the importation of wooden handicrafts from China, contact Mr. J. Tyrone Jones, Trade Director, PIM, PHP, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 851–2344. 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 Wooden Handicrafts From China.

OMB Control Number: 0579–0357.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of wooden handicrafts from China are contained in ''Subpart—Logs, Lumber, and Other Wood Articles'' (7 CFR 319.40–1 through 319.40–11).

Section 319.40–5 of the regulations provides the requirements for the importation of wooden handicrafts from China. The regulations require the use of an identification tag, which is considered an information collection activity. All packages that are used to ship wooden handicrafts must be labeled with a merchandise tag containing the identity of the product manufacturer. This tag must be applied to each shipping package in China prior to export and remain attached to the package until it reaches the location at which the wooden handicraft will be sold in the United States.

However, additional information collection activities, such as a fumigation certificate and an application for an import permit are also required for the importation of wooden handicrafts from China. Fumigation certificates are required to verify that the articles have been treated in accordance with 7 CFR part 305. In addition, an import permit must be issued by the Animal and Plant Health Inspection Service, and to receive an import permit, importers must complete an application for an import permit. We are adding these two activities to this information collection. As a result, the overall estimates of burden have increased.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our 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 0.002 hours per response.

Respondents: Exporters of wooden handicrafts from China and national plant protection organization officials of China.

Estimated annual number of respondents: 361.

Estimated annual number of responses per respondent: 7,258.17.

Estimated annual number of responses: 2,620,198.

Estimated total annual burden on respondents: 5,250 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 20th day of January 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–01439 Filed 1–25–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee (RAC) will meet in Winona, Missouri. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_page?id=001t0000002JcvzAAC.*

DATES: The meeting will be held February 23, 2016, at 6:30 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Twin Pines Conservation Education Center, U.S. Highway 60, Route 1, Box 1998, Winona, Missouri.

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 Mark Twain National Forest (NF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Hall, RAC Coordinator, by phone at 573–341–7404 or via email at *rrhall@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review proposed forest management projects; and

2. Make project recommendations to the Forest Service to be funded through Title II of the Act.

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 February 17, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Richard Hall, Mark Twain NF Supervisor's Office, 401 Fairgrounds Road, Rolla, Missouri 65401; by email to *rrhall@fs.fed.us,* or via facsimile to 573–364–6844.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: January 20, 2016.

William B. Nightingale,

Forest Supervisor.

[FR Doc. 2016–01543 Filed 1–25–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Davy Crockett Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Davy Crockett Resource Advisory Committee (RAC) will meet in Ratcliff, Texas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (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. The meeting is open to the public. The purpose of the meeting is to discuss Title II projects, Stewardship projects and the implications of the Farm Bill.

DATES: The meeting will be held from 2:00 p.m. to 5:00 p.m. on Thursday, March 3, 2016.

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 Davy Crockett National Forest (NF) Ranger Station, Conference Room, 18551 State Highway 7 East, Kennard, Texas. If you would like to attend via teleconference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Davy Crockett NF Ranger Station. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Michelle Rowe, RAC Coordinator, by phone at 936–655–2299 extension 230, or via email at *lrowe@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: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvhAAC.* 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 February 13, 2016 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Gerald Lawrence, Jr., Designated Federal Officer, 18551 State Highway 7 East, Kennard, Texas 75847; by email to *glawrence@fs.fed.us* or via facsimile to 936–655–2817.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices

or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: January 15, 2016.

Gerald Lawrence, Jr.,

Designated Federal Officer,

Davy Crockett National Forest RAC.

[FR Doc. 2016–01436 Filed 1–25–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Submission for OMB Review; Comment Request

January 20, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) 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) the accuracy of the agency's estimate of burden 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 25, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: Small Business Innovation Research (SBIR) Program

OMB Control Number: 0524–NEW

Summary Of Collection: The Small Business Innovation Research (SBIR) program at the U.S. Department of Agriculture (USDA) makes competitively awarded grants to qualified small businesses to support high quality, advanced concepts research related to important scientific problems and opportunities in agriculture that could lead to significant public benefit if successful. The objectives of the SBIR Program are to: stimulate technological innovation in the private sector; strengthen the role of small businesses in meeting Federal research and development needs; increase private sector commercialization of innovations derived from USDA-supported research and development efforts; and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovation. The USDA SBIR Program is administered by the National Institute of Food and Agriculture (NIFA) of the USDA.

Need And Use Of The Information: The USDA SBIR Program Office proposes to contact Phase II awardees to determine their success in achieving commercial application of a market ready technology that was funded under the USDA SBIR Program. The survey would collect information from Phase II companies that received funding during the years of 1994 to 2014. Data from the survey will be used to provide information that currently does not exist. The data will be used internally by the USDA SBIR Office to identify past and current activities of Phase II grantees in the areas of technology development, commercialization success, product development or services, and factors that may have prevented the technology from entering into the marketplace.

Description of Respondents: Business or other for-profit

Number of Respondents: 499

Frequency of Responses: Reporting: On occasion

Total Burden Hours: 499

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–01389 Filed 1–25–16; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by March 28, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5159 South Building, Washington, DC 20250–1522. FAX: (202)720–8435. Telephone: (202) 690–4492. Email: *thomas.dickson@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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 will 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 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. FAX: (202)720–8435.

Title: Review Rating Summary, RUS Form 300, 7 CFR part 1730.

OMB Control Number: 0572–0025.

Type of Request: Extension of a currently approved information collection.

Abstract: RUS manages loan programs in accordance with the RE Act of 1936, as amended (7 U.S.C. 901 *et seq.*). An important part of safeguarding loan security is to see that RUS financed facilities are being responsibly used, adequately operated, and adequately maintained. Future needs must be anticipated to ensure that facilities will continue to produce revenue and loans will be repaid as required by the RUS mortgage. A periodic operations and maintenance (O&M) review, using the RUS Form 300, in accordance with 7 CFR part 1730, is an effective means for RUS to determine whether the Borrower's systems are being properly operated and maintained, thereby protecting the loan collateral. The O&M review is also used to rate facilities and can be used for appraisals of collateral as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Taxable Receivables.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 217.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 868.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–01437 Filed 1–25–16; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee for a Meeting to Discuss Preparations for a Public Hearing Regarding the Civil Rights Impact of Civil Forfeiture Practices in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Tuesday, February 09, 2016, at 10:00 a.m. EST for the purpose of discussing preparations for a public hearing regarding the civil rights impact of civil asset forfeiture in the State.

This meeting is available to the public through the following toll-free call-in number: 888–359–3624, conference ID: 6714810. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement at the end of the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines according to their wireless plan, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=255.* Click on the ''Meeting Details'' and ''Documents'' links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
Donna Budnick, Chair

Preparatory Discussion for Public Hearing; Civil Rights Impact of Civil Forfeiture Practices in Michigan

Future plans and actions
Open Comment
Adjournment

DATES: The meeting will be held on Tuesday, February 09, 2016, at 10:00 a.m. EST.

Public Call Information:
Dial: 888–359–3624
Conference ID: 6714810

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski at *mwojnaroski@usccr.gov* or 312–353–8311.

Dated: January 20, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–01413 Filed 1–25–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i State Advisory Committee for the Purpose of Considering Its Report on Micronesian Immigration to Hawai'i

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Hawai'i State Advisory Committee (Committee) to the Commission will be held at 2:00 p.m. HST on Wednesday, February 17, 2016, for the purpose of considering the Committee's report on Micronesian immigration to Hawai'i.

This meeting is available to the public through the following toll-free call-in

number: 888–430–8709, conference ID: 1935434. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments. The comments must be received in the Western Regional Office of the Commission by Thursday, March 17, 2016. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Peter Minarik, Regional Director, Western Regional Office, at *pminarik@usccr.gov.* Persons who desire additional information should contact the Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *pminarik@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=263* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

Agenda: Committee discussion of the Committee's report on Micronesian immigration
Public comment
Adjournment

DATES: Wednesday, February 17, 2016

FOR FURTHER INFORMATION CONTACT: Peter Minarik, DFO, at (213) 894–3437 or *pminarik@usccr.gov.*

Dated January 21, 2016.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2016–01440 Filed 1–25–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Generic Clearance for 2020 Census Field Tests to Automate Field Data Collection Activities.

OMB Control Number: 0607–0971.

Form Number(s): TBD.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Number of Respondents: 36,000.

Average Hours per Response: 0.167.

Burden Hours: 6000.

Needs and Uses: All activities described directly support the Census Bureau's efforts to maintain or improve quality while controlling costs in the 2020 Census. The information collected from households during these tests is to research new technologies to plan the 2020 Census and motivating messages to encourage respondents to participate. The Census Bureau will not publish any tabulations or population estimates from the substantive results of tests conducted under this clearance. However, methodological papers may be written that include some tallies of response characteristics or problems, and responses may be used to inform future research studies building upon the results of these early tests.

Affected Public: Individuals and households.

Frequency: Once.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, Section 9.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2016–01395 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–4–2016]

Foreign-Trade Zone 287—Tunica County, Mississippi; Application for Subzone; FTZ Networks, Inc., Olive Branch, Mississippi

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Tunica County, Mississippi, grantee of FTZ 287, requesting subzone status for the facility of FTZ Networks, Inc., located in Olive Branch, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on January 19, 2016.

The proposed subzone (3.767 acres) is located at 5755 FedEx Lane, Suite 110, Olive Branch. The proposed subzone would be subject to the existing activation limit of FTZ 287. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 7, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 21, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: January 19, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–01562 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–03–2016]

Foreign-Trade Zone 30—Salt Lake City, Utah; Application for Subzone, Cabela's Inc.; Tooele, Utah

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Salt Lake City Corporation, grantee of FTZ 30, requesting subzone status for the facility of Cabela's Inc., located in Tooele, Utah. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on January 20, 2016.

The proposed subzone (32.4 acres) is located at 2000 West Cabela's Way, Tooele, Utah. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is March 7, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 21, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: January 20, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–01575 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–151–2015]

Approval of Subzone Status; CNH Industrial America LLC; Benson, Minnesota

On November 9, 2015, the Acting Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of FTZ 119, requesting subzone status subject to the existing activation limit of FTZ 119 on behalf of CNH Industrial America LLC in Benson, Minnesota.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (80 FR 70752, November 16, 2015). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 119L is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 119's 2,000-acre activation limit.

Dated: January 20, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–01574 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Ribway Airlines Company Limited, 54 Kairaba Avenue, Kanifing Municipality, WRC, The Gambia

AF-Aviation Limited, Sebring House, 4 Newbridge Drive, Wolverhampton, WV6 ODF, United Kingdom

Andy Farmer, Sebring House, 4 Newbridge Drive, Wolverhampton, WV6 ODF, United Kingdom

John Edward Meadows, 50 St. Leonards Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom

Jeffrey John James Ashfield, 50 St. Leonards Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom

Respondents

Pursuant to Section 766.24 of the Export Administration Regulations (the ''Regulations'' or ''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I issue an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: Ribway Airlines Company Limited, Af-Aviation Limited, Andy Farmer, John Edward Meadows, and Jeffrey John James Ashfield.

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and 776.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

In its request, BIS has presented evidence that on or about December 30, 2015, Af-Aviation Limited, a United Kingdom company which holds itself out as providing aircraft ferry flight and trip planning services, intends to ferry/reexport two Boeing 737 aircraft, with manufacturer serial numbers 26458 and 26444, respectively, from Romania to Iran. [2] Moreover, publically available aviation databases corroborate that MSNs 26458 and 26444 are destined to Iran, and specifically to Caspian Airlines.[3] The reexport of these aircraft requires U.S. Government authorization

[1] The EAR are currently codified at 15 CFR parts 730–774 (2015). The EAR issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 FR 48,223 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (2006 & Supp. IV 2010).

[2] Both Boeing 737s are subject to the EAR and are classified under Export Control Classification Number (''ECCN'') 9A991.b and are controlled for anti-terrorism reasons.

[3] Pursuant to Executive Order 13324, Caspian Airlines was designated a Specially Designated Global Terrorist (''SDGT'') by the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') on August 29, 2014. *See* 79 FR 55,072 (Sep. 15, 2014).

pursuant to Sections 742.8 and 746.7 of the Regulations. No U.S. Government authorization has been applied for or authorized for the reexport of these two aircraft to Iran. United Kingdom corporate registration documents list Andy Farmer as the director of Af-Aviation Limited. Both aircraft are currently registered in Gambia bearing tail numbers C5–AMH (MSN 26458) and C5–AND (MSN 26444) and according to the registration documents are currently owned by Ribway Airlines Company Limited.

Finally, both aircraft were insured under a policy issued by a United Kingdom insurance company. On December 30, 2015, those insurance contracts were cancelled and the insurance company notified John Edward Meadows and Jeffrey John James Ashfield, both United Kingdom citizens, of the cancellation. OEE's evidence indicates that John Meadows and Jeffrey Ashfield were both involved in brokering the sale of MSNs 26458 and 26444 to Caspian Airlines. OEE's investigation also reveals prior business dealings between Meadows and Ashfield and Caspian Airlines.

I find that the evidence presented by BIS demonstrates that a violation of the Regulations is imminent in both time and degree of likelihood. As such, a temporary denial order (''TDO'') is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Ribway Airlines Company Limited, Af-Aviation Limited, Andy Farmer, John Edward Meadows, and Jeffrey John James Ashfield in export or reexport transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Accordingly, I find that an Order denying the export privileges of Ribway Airlines Company Limited, Af-Aviation Limited, Andy Farmer, John Edward Meadows, and Jeffrey John James Ashfield is necessary, in the public interest, to prevent an imminent violation of the EAR.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 of the Regulations.

It is therefore ordered:

First, that RIBWAY AIRLINES COMPANY LIMITED, 54 Kairaba Avenue, Kanifing Municipality, WCR, The Gambia; AF–AVIATION LIMITED, Sebring House, 4 Newbridge Drive, Wolverhampton, WV6 ODF, United Kingdom; ANDY FARMER, Sebring House, 4 Newbridge Drive, Wolverhampton, WV6 ODF, United Kingdom, JOHN EDWARD MEADOWS, 50 St. Leonards Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom; and JEFFREY JOHN JAMES ASHFIELD, 50 St. Leonards Road, Bexhill on Sea, East Sussex, TN40 1JB, United Kingdom, and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of Section 766.24(e) of the EAR, Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on Respondents and shall be published in the **Federal Register.**

This Order is effective upon issuance and shall remain in effect for 180 days.

Dated: January 19, 2016.

David W. Mills,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2016–01438 Filed 1–25–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Correction to the Final Results of the 2013–2014 Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice of Correction.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345.

SUPPLEMENTARY INFORMATION: On January 12, 2016, the Department of Commerce (the Department) published in the **Federal Register** the final results of the 2013–2014 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.[1] The period of review is June 1, 2013, through May 31, 2014. In the *Final Results,* the Department incorrectly assigned a weighted-average dumping margin of 0.91 percent to the company ''Changshan Peer Bearing Co., Ltd./ Shanghai General Bearing Co., Ltd.'' [2] However, the weighted-average dumping margin should have been assigned, instead, to Changshan Peer Bearing Co., Ltd. alone.[3] As a result, we now correct the final results of the 2013–2014 administrative review as noted above.

This correction to the final results of administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: January 19, 2016.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2016–01499 Filed 1–25–16; 8:45 am]

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[1] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013–2014,* 81 FR 1396 (January 12, 2016) (*Final Results*).

[2] *Id.,* at 1397.

[3] *Id.,* at Comment 1 in the accompanying Issues and Decision Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964; A–201–838]

Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Preliminary Results of the Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') preliminarily finds that revocation of the antidumping duty orders on seamless refined copper pipe and tube (''copper pipe and tube'') from the People's Republic of China (''PRC'') and Mexico would likely lead to continuation or recurrence of dumping, at the levels indicated in the ''Preliminary Results of Sunset Reviews'' section of this notice.

DATES: *Effective Date:* January 26, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2923.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2010, the Department published the antidumping duty orders on copper pipe and tube from the PRC and Mexico, as amended.[1] On October 1, 2015, the Department published the notice of initiation of the sunset reviews of the *Orders* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[2] The Ad Hoc Coalition for Domestically Produced Seamless Refined Copper Pipe and Tube and its individual members, Cerro Flow Products, LLC, Wieland Copper Products, LLC, Howell Metal Company, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, ''domestic interested parties''), submitted adequate and timely notices of intent to participate in these sunset reviews within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i). On November 2, 2015, domestic interested parties and respondent interested party Golden Dragon [3] submitted adequate substantive responses to the notice of initiation within the 30-day deadline specified in 19 CFR 351.218(d)(3). As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(ii), the Department is conducting full sunset reviews of the *Orders.*

Scope of the Orders

For the purpose of these *Orders,* the products covered are all seamless circular refined copper pipes and tubes. The products subject to the *Orders* are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Products subject to the *Orders* may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065 and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

For a full description of the scope of the *Orders,* see the ''Preliminary Decision Memorandum for the Full Sunset Reviews of the Antidumping Duty Orders on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico,'' dated concurrently with this notice (''Preliminary Decision Memorandum''). 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.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* Both the signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Preliminary Decision Memorandum. The issues discussed in the Preliminary Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Orders* were to be revoked.

Preliminary Results of Sunset Reviews

Pursuant to section 752(c)(3) of the Act, the Department determines that revocation of the *Orders* would likely lead to continuation or recurrence of dumping at weighted-average dumping margins up to 60.85 percent for the PRC and up to 27.16 percent for Mexico.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

[1] *See Seamless Refined Copper Pipe and Tube From Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico,* 75 FR 71070 (November 22, 2010) (''*Orders*'').

[2] *See Seamless Refined Copper Pipe and Tube From China and Mexico; Institution of Five-Year Reviews,* 80 FR 59186 (October 1, 2015) (''*Initiation FR Notice*'').

[3] In case number A–570–964 (the PRC), the substantive response was filed on behalf of Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., GD Copper Cooperatief UA, Golden Dragon Holding (Hong Kong) International, Ltd. and GD Copper (U.S.A.), Inc. In case number A–201–838 (Mexico), the substantive response was filed on behalf of GD Affiliates S. de R.L. de C.V., GD Copper S. de R.L. de C.V., Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., GD Copper Cooperatief UA, Golden Dragon Holding (Hong Kong) International, Ltd. and GD Copper (U.S.A.), Inc. The Department refers to all of these companies collectively as ''Golden Dragon''.

Dated: January 19, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2016–01498 Filed 1–25–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review; 2007–2008

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 21, 2015, the United States Court of International Trade (''CIT'' or ''Court'') issued its final judgment [1] sustaining the Department of Commerce's (the ''Department'') final results of redetermination [2] issued pursuant to the CIT's remand order in *Peer Bearing Company—Changshan* v. *United States,* 914 F. Supp. 2d 1343 (CIT 2013) (''*CPZ 07–08 II*''), with respect to the Department's final results [3] of the 2007–2008 administrative review of the antidumping duty order on certain tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* and is amending the *Final Results* with respect to the dumping margin determined for the sole mandatory respondent in the underlying review, Peer Bearing Company—Changshan (''CPZ'').

DATES: *Effective Date:* December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Alex Rosen, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7814.

SUPPLEMENTARY INFORMATION: On November 21, 2011, the CIT issued its initial opinion on the underlying proceeding and remanded the *Final Results,* ordering that the Department: (1) Redetermine the surrogate value used to value bearing-quality steel bar inputs; (2) redetermine the surrogate value used to value bearing-quality steel wire rod inputs; and (3) reconsider, and modify as appropriate, its determination of the country of origin of merchandise finished and assembled into finished TRBs by a CPZ affiliate in Thailand from finished and unfinished TRB component parts manufactured in the PRC by CPZ.[4] Specifically, with respect to the latter issue of country of origin, the Court held that the Department's findings that the ''third-country processor's costs as compared to each product's COM {(Cost of Manufacture)} are not significant,'' is ''not supported by substantial evidence on the record, which contains evidence that the processing costs in Thailand accounted for 42 percent of the total cost of manufacturing.'' [5] The Court held that the Department ''may not disregard record evidence that detracts significantly from, and appears to refute, one of the findings on which the Department relied.'' [6] The Court instructed the Department ''to ensure that its redetermination. . . . is based on findings supported by substantial evidence on the record of this case.'' [7]

On April 10, 2012, pursuant to the Court's orders in *CPZ 07–08 I,* the Department: (1) Reconsidered the Indian data used to value bearing-quality steel bar inputs in the *Final Results* and instead valued CPZ's steel bar inputs using Thai import data, and (2) revised the surrogate value used to value CPZ's steel wire rod inputs using data corresponding to steel rod that is ''of circular cross-section.'' [8] With respect to the country of origin issue, the Department reconsidered its determination, applying its established criteria for determining whether merchandise is substantially transformed in another country. The Department expanded upon and further supported the existing findings as to the substantial transformation test employed in the *Final Results*.[9] The Department reconsidered one finding with respect to the significance of the quantitative value added by Thai processing (*i.e.,* one of six aspects of the underlying analysis in the First Remand Redetermination), finding that this prong of the analysis could support a determination that the Thai processing substantially transformed the merchandise in question.[10] However, because further analysis of the remaining substantial transformation criteria continued to support the initial finding from the *Final Results,* the Department ultimately determined that the totality of the circumstances indicated that the processing that took place in Thailand during the period of review (''POR'') did not constitute substantial transformation so as to confer a new country of origin of the merchandise in question for antidumping purposes.[11]

On June 6, 2013, the CIT issued *CPZ 07–08 II,* in which it sustained the Department's redetermination of the surrogate values for CPZ's steel bar and steel wire rod inputs,[12] but again remanded the Department's country of origin determination. Specifically, citing

[1] *See Peer Bearing Company (Changshan)* v. *United States,* Court No. 10–00013, Slip Op. 15–142 (CIT December 21, 2015) (''*CPZ 07–08 III*''), and accompanying judgment order.

[2] *See* Final Results of Redetermination Pursuant to Court Remand, *Peer Bearing Company—Changshan.* v. *United States,* Court No. 10–00013, Slip Op. 13–72 (CIT 2013), dated April 30, 2014 (''Second Remand Redetermination'').

[3] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007–2008 Administrative Review of the Antidumping Duty Order,* 75 FR 844 (January 6, 2010) (''*Final Results*'') and accompanying Issues and Decision Memorandum (''IDM'').

[4] *See Peer Bearing Company—Changshan* v. *United States,* 804 F. Supp. 2d 1337 (CIT 2011) (''*CPZ 07–08 I*''). While the third county in which the further processing took place was treated as business proprietary information in the underlying administrative review, along with the percentage cost of manufacture (discussed below), CPZ made this information public during the litigation.

[5] *See CPZ 07–08 I,* 804 F. Supp. 2d at 1342.

[6] *Id.*

[7] *Id.*

[8] *See* Final Results of Redetermination Pursuant to Court Remand, *Peer Bearing Company—Changshan* v. *United States,* Court No. 10–00013, Slip Op. 11–143 (CIT 2011), dated April 10, 2012 (''First Remand Redetermination''), at 4–6 and 28.

[9] *See* First Remand Redetermination, at 8–17.

[10] *Id.*

[11] *Id.*

[12] *See CPZ 07–08 II,* 914 F. Supp. 2d at 1347.

''flaws in the Department's analysis'' [13] with respect to each of the six criteria comprising the Department's substantial transformation test, the Court instructed the Department to ''reach a new country of origin determination because the record lacked substantial evidence to support the Department's determination that the TRBs which achieved final processing in Thailand were products of China for purposes of the antidumping duty order.'' [14] Consistent with the CIT's remand order, the Department under protest redetermined the country of origin for certain merchandise under review and revised the dumping margin calculations to exclude U.S. sales of TRBs further processed in Thailand.[15] In particular, the Department revised its findings with respect to five of the six criteria in its substantial transformation test, consistent with the Court's order. Along with the surrogate value changes sustained in *CPZ 07–08 II,* the Department calculated a weighted-average dumping margin for CPZ of 6.24 percent.[16]

On December 21, 2015, the CIT issued its decision in *CPZ 07–08 III,* in which it sustained the Department's Second Remand Redetermination. The Court concluded that though the Department made certain errors in construing the Court's opinion, the Department reached an ultimate determination that is supported by substantial evidence on the record and that accords with a reasonable, rather than expansive, interpretation of the scope of the antidumping duty order.[17]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 21, 2015, judgment in this case constitutes a final court decision that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision with respect to this case, the Department is amending the *Final Results* with respect to CPZ in this case. The revised weighted-average dumping margin for the June 1, 2007, through May 31, 2008, period of review is as follows:

Exporter	Final percent margin
Peer Bearing Company—Changshan	6.24

The Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the above listed exporters at the rate listed above.

Cash Deposit Requirements

In September 2008, Peer Bearing Company—Changshan was acquired by AB SKF, and the Department determined via a successor-in-interest analysis that the post-acquisition entity was not its successor in interest to the pre-acquisition exporter. As a consequence, Peer Bearing Company—Changshan effectively no longer exists, and its cash deposit rate does not need to be updated as a result of these amended final results.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: January 13, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–01573 Filed 1–25–16; 8:45 am]

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[13] *Id.,* 914 F. Supp. 2d at 1351. The Government subsequently moved for clarification regarding whether the Court in *CPZ 07–08 II* required the Department to find that TRBs were substantially transformed in Thailand, or whether the Court permitted the Department to make new findings under each of the substantial transformation criteria. On February 13, 2014, the Court responded to the Government's motion, though the Court did not modify its previous ruling or provide further clarification. *See Peer Bearing Company—Changshan* v. *United States,* Court No. 10–00013, Slip Op. 14–15 (CIT 2014).

[14] *See CPZ 07–08 II,* 914 F. Supp. 2d at 1356.

[15] *See* Second Remand Redetermination at 33.

[16] *Id.*

[17] *See CPZ 07–08 III,* at 30.

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 97–13A03]

Export Trade Certificate of Review

ACTION: Notice of Application for an Amended Export Trade Certificate of Review by Association for the Administration of Rice Quotas, Inc. (''AARQ''), Application No. 97–13A03.

SUMMARY: The Secretary of Commerce, through the International Trade Administration, Office of Trade and Economic Analysis (OTEA), has received an application for an amended Export Trade Certificate of Review (''Certificate'') from AARQ. This notice summarizes the proposed amendment and seeks public comments on whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2016). Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its application. Under 15 CFR 325.6 (a), interested parties may, within twenty days after the date of this notice, submit written comments to the Secretary through OTEA on the application.

Request For Public Comments: Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business

information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–13A03.''

Summary of the Application

Applicant: Association for the Administration of Rice Quotas, Inc.

Contact: c/o Matthew R. Elkin and Peter G. Mattocks, Morgan Lewis & Bockius LLP, 2020 K Street NW., Washington DC 20006.

Application No.: 97–13A03.

Date Deemed Submitted: January 11, 2016.

AARQ seeks to amend its Certificate by making the following changes to the list of Members covered by the Certificate:

1. Deleting the following Members from its Certificate:
   a. Family & Sons, Inc., Miami, Florida
   b. Noble Logistics USA, Inc., Portland Oregon
   c. Rickmers Rice USA, Inc., Knoxville, Tennessee
   d. Texana Rice, Inc., Louise, Texas
2. Changing Nishimoto Trading Co., Ltd., Santa Fe Springs, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan) to Nishimoto Trading Co., Ltd. dba Wismettac Asian Foods, Santa Fe Springs, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan)
3. Changing PS International, LLC dba PS International Ltd., Chapel Hill, North Carolina (jointly owned by Seaboard Corporation, Kansas City Missouri and PS Trading Inc., Chapel Hill, North Carolina) to Interra International, LLC, Chapel Hill, North Carolina
4. Changing TRC Trading Corporation, Roseville, California (a subsidiary of TRC Group Inc., Roseville, California) and its subsidiary Gulf Rice Arkansas II, LLC, Houston, Texas to TRC Trading Corporation, Roseville, California (a subsidiary of TRC Group Inc., Roseville, California) and its subsidiary Gulf Rice Arkansas II, LLC, Crawfordsville, Arkansas
5. Changing Veetee Rice, Inc., Great Neck, New York (a subsidiary of Veetee Investments Corporation (Bahamas)) to Veetee Foods Inc., Islandia, New York (a subsidiary of Veetee Investments Corporation (Bahamas))

AARQ's proposed amendment of its Export Trade Certificate of Review would result in the following entities as Members under the Certificate:

1. ADM Latin, Inc., Decatur, Illinois, ADM Grain Company, Decatur, Illinois, and ADM Rice, Inc., Tarrytown, New York (subsidiaries of Archer Daniels Midland Company)
2. American Commodity Company, LLC, Williams, California
3. Associated Rice Marketing Cooperative (ARMCO), Richvale, California
4. Bunge Milling, Saint Louis, Missouri (a subsidiary of Bunge North America, White Plains, New York), dba PIRMI (Pacific International Rice Mills), Woodland, California
5. Cargill Americas, Inc., and its subsidiary CAI Trading, LLC, Coral Gables, Florida
6. Farmers' Rice Cooperative, Sacramento, California
7. Farmers Rice Milling Company, Inc., Lake Charles, Louisiana
8. Far West Rice, Inc., Durham, California
9. Gulf Pacific Rice Co., Inc., Houston, Texas; Gulf Rice Milling, Inc., Houston, Texas; and Harvest Rice, Inc., McGehee, Arkansas (each a subsidiary of Gulf Pacific, Inc., Houston, Texas)
10. Gulf Pacific Disc, Inc., Houston, Texas
11. Itochu International Inc., Portland, Oregon (a subsidiary of Itochu Corporation (Japan))
12. JFC International Inc., Los Angeles, California (a subsidiary of Kikkoman Corp.)
13. JIT Products, Inc., Davis, California
14. Kennedy Rice Dryers, L.L.C., Mer Rouge, Louisiana
15. Kitoku America, Inc., Burlingame, California (a subsidiary of Kitoku Shinryo Co., Ltd. (Japan))
16. LD Commodities Rice Merchandising LLC, Wilton, Connecticut, and LD Commodities Interior Rice Merchandising LLC, Kansas City, Missouri (subsidiaries of Louis Dreyfus Commodities LLC, Wilton, Connecticut)
17. Louisiana Rice Mill, LLC, Mermentau, Louisiana
18. Nidera US LLC, Wilton, Connecticut (a subsidiary of Nidera BV (Netherlands))
19. Nishimoto Trading Co., Ltd. dba Wismettac Asian Foods, Santa Fe Springs, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan)
20. Producers Rice Mill, Inc., Stuttgart, Arkansas
21. Interra International, LLC, Chapel Hill, North Carolina
22. Riceland Foods, Inc., Stuttgart, Arkansas
23. Riviana Foods Inc., Houston, Texas (a subsidiary of Ebro Foods, S.A. (Spain)), for the activities of itself and its subsidiary, American Rice, Inc., Houston, Texas
24. Sinamco Trading Inc., Minneapolis, Minnesota
25. SunFoods LLC, Woodland, California
26. SunWest Foods, Inc., Davis, California
27. The Sun Valley Rice Co., LLC, Arbuckle, California
28. TRC Trading Corporation, Roseville, California (a subsidiary of TRC Group Inc., Roseville, California) and its subsidiary Gulf Rice Arkansas II, LLC, Crawfordsville, Arkansas
29. Veetee Foods Inc., Islandia, New York (a subsidiary of Veetee Investments Corporation (Bahamas))
30. Wehah Farm, Inc., dba Lundberg Family Farms, Richvale, California

Dated: January 20, 2016.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2016–01570 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–856]

Certain Corrosion-Resistant Steel Products From Taiwan: Postponement of Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is postponing the deadline for issuing the final determination in the less-than-fair-value (''LTFV'') investigation of certain corrosion-resistant steel products (''corrosion-resistant steel'') from Taiwan.

DATES: *Effective Date:* January 26, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Medley at (202) 482–4987, Antidumping and Countervailing Duty Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On June 30, 2015, the Department published a notice of initiation of the LTFV investigations of certain corrosion-resistant steel from Italy, India, the People's Republic of China, Korea, and Taiwan.[1] The period of investigation is April 1, 2014, through March 31, 2015. On January 4, 2016, the Department published its negative *Preliminary Determination* in the LTFV investigation of corrosion-resistant steel from Taiwan.[2] On December 28, 2015, AK Steel Corporation, with the concurrence of ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, and United States Steel Corporation (collectively ''Petitioners''), requested that the Department postpone its final determination to align with the deadlines of the other investigations of corrosion-resistant steel from the People's Republic of China, India, Italy, and Korea.[3]

Postponement of Final Determination

Section 735(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.210(b)(2)(i), provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. In accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i), because (1) our preliminary determination was negative; (2) the request was made by Petitioners; and (3) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of the *Preliminary Determination* (*i.e.,* to May 18, 2016), in alignment with the deadlines of the other investigations of corrosion-resistant steel from the People's Republic of China, India, Italy, and Korea.[4] Accordingly, we will issue our final determination no later than 135 days after the date of publication of the *Preliminary Determination.*

This notice is issued and published pursuant to section 735(a)(2)(B) of the Act and 19 CFR 351.210(g).

Dated: January 13, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–01566 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Corrosion-Resistant Steel Products From Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 37228 (June 30, 2015).

[2] *See Certain Corrosion-Resistant Steel Products from Taiwan: Negative Preliminary Determination of Sales at Less Than Fair Value,* 81 FR 72 (January 4, 2016), and accompanying Preliminary Decision Memorandum (''*Preliminary Determination*'').

[3] *See* the letter from AK Steel Corporation entitled, ''Certain Corrosion-Resistant Steel Products From Taiwan: Request For Postponement Of The Final Determination,'' dated December 28, 2015.

[4] *See, e.g., Certain Corrosion-Resistant Steel Products From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 69 (January 4, 2016), and accompanying Preliminary Decision Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative; 2008–2009

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 21, 2015, the United States Court of International Trade (''CIT'' or ''Court'') issued its final judgment [1] sustaining the Department of Commerce's (the ''Department'') final results of redetermination [2] issued pursuant to the CIT's remand order in *Peer Bearing Co.-Changshan* v. *United States,* 986 F. Supp. 2d 1389 (CIT 2014) (''*CPZ 08–09 II*''), with respect to the Department's final results [3] of the twenty-second administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from People's Republic of China (''PRC''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* and is amending the *Final Results* with respect to the dumping margins determined for Peer Bearing Company– Changshan and Changshan Peer Bearing Co., Ltd.[4]

DATES: *Effective Date:* December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Keith A. Haynes, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5139.

SUPPLEMENTARY INFORMATION: On December 21, 2012, the Court issued its initial opinion and remanded the *Final Results,* ordering that the Department: (1) redetermine the surrogate value (''SV'') applied to PBCD/CPZ's input of bearing-quality steel bar; (2) reconsider its determination to calculate the normal value (''NV'') of subject merchandise that was imported by PBCD/Peer prior to its acquisition by SKF, but sold by SKF/Peer subsequent to the acquisition, using SKF/CPZ's factors of production (''FOPs''); and (3) reconsider, and modify as appropriate, its determination of the country of

[1] *See, Peer Bearing Company—Changshan* v. *United States,* Consol. Court No. 11–00022, Slip Op. 15–143 (CIT 2015) (''*CPZ 08–09 III*''), and accompanying judgment order.

[2] *See* Final Results of Redetermination Pursuant to Court Remand, *Peer Bearing Company—Changshan* v. *United States,* Consol. Court No. 11–00022, Slip Op. 14–62 (CIT 2014) (''Second Remand Redetermination'').

[3] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 76 FR 3086 (January 19, 2011) (''*Final Results*'') and accompanying Issues and Decision Memorandum (''IDM'').

[4] Prior to September 11, 2008, Peer Bearing Company-Changshan was majority-owned by the Spungen family (''PBCD/CPZ''). On September 11, 2008, two and a half months into the period of review (''POR''), PBCD/CPZ, the sole respondent in the prior 2007–2008 POR, and its Illinois-based U.S. sales affiliate, Peer Bearing Company (''PBCD/Peer'') (collectively, ''PBCD''), were each purchased by certain companies owned by SKF. In the underlying review, we found that the post-acquisition respondent was not the successor-in-interest to the pre-acquisition respondent and, thus, were each legally distinct entities for the purposes of this antidumping duty (''AD'') review. The post-acquisition respondent is referred to as the SKF-owned Changshan Peer Bearing Company, Ltd. (''SKF/CPZ'') and its Illinois-based affiliate is referred to as Peer Bearing Company (''SKF/Peer'') (collectively ''SKF''). For ease of reference, the two respondents are referred to by their collective names ''PBCD'' and ''SKF'' throughout this document. For the purpose of generally referencing the physical facilities in question during the POR in its entirety, without consideration of ownership, the Changshan-based TRB production facility is referred to as ''CPZ'' and the Illinois-based U.S. sales affiliate is referred to as ''Peer.''

origin of TRBs that were finished, and assembled in Thailand from TRB component parts both finished (*i.e.,* cups and cones) and unfinished (*i.e.,* rollers and cages) initially produced in and subsequently exported from the PRC.[5]

In the First Remand Redetermination,[6] pursuant to *CPZ 08–09 I,* the Department: (1) determined that Thai import data under Harmonized Tariff Schedule subheading 7228.30.90 are the best available information on the record with which to value PBCD/CPZ's bearing-quality steel bar inputs, and adjusted the margin program accordingly; and (2) re-calculated the weighted-average dumping margin for SKF so that PBCD/CPZ's FOPs (not SKF/CPZ's FOPs) were used to determine the NV of SKF/Peer's post-acquisition sales of pre-acquisition inventory.[7] With respect to the Court's directive to reconsider the country of origin finding from the *Final Results* and modify its determination, as necessary, the Department reconsidered its determination in its entirety, applying its established criteria for determining whether merchandise is substantially transformed in another country. The Department expanded upon and further supported the existing findings as to the physical/chemical properties/essential character,[8] nature/sophistication of processing,[9] level of investment,[10] and cost of production (''COP'')/value-added,[11] finding that these factors continued to support an overall finding that the third-country processing was not substantial so as to confer Thai origin. Consistent with the Court's remand order, the Department also discussed and further explained the relevance of the class-kind/scope [12] and ultimate use [13] criteria used in the underlying analysis. The Department did not ''reach a determination as to whether circumvention has occurred or may occur and, thus, {found} that this element {did} not preclude or support a finding of substantial transformation.'' [14] Based on the totality of circumstances, the Department determined in the First Remand Redetermination that:

> {T}he Thai processing does not substantially transform the TRB parts and that the TRBs remain of PRC-origin. The nature and sophistication of processing indicate that the finishing processes in Thailand serve only to further refine the cup and cone's finished measurements, polish the raceway, and assemble the components together. The physical/chemical properties and essential component are imparted in the PRC, with the properties added in Thailand marginal in comparison. The COP/value added in Thailand is insignificant when compared to the COP of the finished TRB. The level of investment in Thailand was not as significant as the investment in the PRC. The ultimate use of TRB parts and final, finished TRBs is the same. These factors weigh in favor of a finding that the TRBs which are finished in Thailand are of PRC-origin. The class or kind/scope criterion is not determinative to our finding, although the fact that the upstream product is within the same class or kind and scope as the downstream product is relevant to our country-of-origin determination.[15]

On June 10, 2014, the CIT issued *CPZ 08–09 II,* in which it sustained the Department's re-determined SV for bearing-quality steel bar. However, the Court remanded, for a second time, the Department's country of origin determination.[16] Specifically, the Court found that ''the method and criteria applied in the Remand Redetermination caused Commerce to ignore critical record evidence'' and that ''the record lacked substantial evidence to support the ultimate finding Commerce reached in the {First} Remand Redetermination.''[17] The Court further noted that the product at issue (*i.e.,* merchandise completed or assembled in a third country, Thailand) was ''of a type Congress contemplated would be the subject of an anti-circumvention inquiry, without actually conducting such an inquiry.''[18] In so doing, the Court found that the Department ''exceeded its authority to interpret, without expanding, the scope language'' of the TRBs order.[19] Finally, though the Court held that the Department provided adequate reasoning for using PBCD/CPZ's FOP data to calculate the NV for pre-acquisition PBCD/CPZ-produced merchandise subsequently sold by SKF/Peer during the post-acquisition portion of the POR in the First Remand Redetermination, the Court remanded for further explanation the Department's use of PBCD/CPZ's FOP data from the twenty-second POR, rather than PBCD/CPZ's FOP data from the prior POR.[20]

In compliance with the Court's instructions, the Department under protest re-determined the country of origin for certain merchandise under review, and revised the dumping margin calculations to exclude U.S. sales of TRBs further processed in Thailand, finding those TRBs to be Thai-origin.[21] In particular, the Department explained that it ''did not conduct a circumvention analysis pursuant to section 781(b) of the {Tariff Act of 1930, as amended (''the Act'')}'' and thus could not ''find that the TRBs in question are of Chinse origin.''[22] With respect to the remaining issue on remand, the Department explained that it is consistent with section 773(c)(4) of the Act, to use production data from the POR in which the merchandise is sold, because this best reflects the producer's production experience from the period in which the Department is determining the margin of dumping; therefore, the Department did not find that PBCD/CPZ's FOP data from the prior POR is a more accurate reflection of PBCD's production of merchandise sold by SKF during the POR.[23] Therefore, to determine the margin for SKF/Peer's sales of merchandise produced by PBCD/CPZ, the Department continued to use PBCD/CPZ's POR-contemporaneous FOPs to calculate NV. Along with the SV changes sustained in *CPZ 08–09 II,* the Department calculated weighted-average dumping margins for PBCD of 21.65 percent and SKF of 19.45 percent.[24]

On December 21, 2015, the CIT issued its decision in *CPZ 08–09 III,* in which it sustained the Department's Second Remand Redetermination. Specifically, the Court sustained the Department's decision regarding selection of the FOP data used to value post-acquisition sales of pre-acquisition inventory.[25] Furthermore, with respect to the country of origin finding, the Court concluded that the Department reached an ultimate determination that is supported by substantial evidence on the record that accords with a reasonable, rather than expansive, interpretation of the scope of the antidumping duty order. The Court found that the Department's analysis presented in the Second Remand Redetermination, although suffering from some flaws in the interpretation of the Court's holding in *CPZ 08–09 II,* was

[5] *See Peer Bearing Company-Changshan* v. *United States,* 884 F. Supp. 2d 1313 (CIT 2012) (''*CPZ 08–09 I*'').

[6] *See* Final Results of Redetermination Pursuant to Remand, Consol. Court No. 11–00022, Slip Op. 12–125 (CIT 2012), dated May 13, 2013 (''First Remand Redetermination'').

[7] *See* First Remand Redetermination at 36–40.

[8] *Id.,* at 16–20.

[9] *Id.,* at 13–15.

[10] *Id.,* at 26–32.

[11] *Id.,* at 20–26.

[12] *Id.,* at 10–13.

[13] *Id.,* at 34–35.

[14] *Id.,* at 34.

[15] *Id.,* at 35–36.

[16] *See CPZ 08–09 II,* 986 F. Supp. 2d at 1414.

[17] *Id.,* at 1406.

[18] *Id.,* at 1402–03.

[19] *Id.,* at 1406.

[20] *Id.*

[21] *See* Second Remand Redetermination at 8.

[22] *Id.*

[23] *Id,* at 12–13.

[24] *Id.,* at 17.

[25] *See CPZ 08–09 III,* at 7.

sufficient to allow the Court to sustain the Department's ultimate determination.[26]

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 21, 2015, judgment in this case constitutes a final court decision that is not in harmony with the Department's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

As a result, of the Court's final decision with respect to this case, the Department is amending the *Final Results* with respect to PBCD/SKF and SKF/CPZ in this case. The revised weighted-average dumping margins for the June 1, 2008, through May 31, 2009, period of review are as follows:

Exporter	Final percent margin
Peer Bearing Company—Changshan (Spungen-owned, PBCD)	21.65
Changshan Peer Bearing Company, Ltd. (SKF-owned, SKF)	19.45

The Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the above listed exporters at the rate listed above.

Cash Deposit Requirements

Since the *Final Results,* the Department has established a new cash deposit rate for SKF/CPZ.[27] Therefore, the cash deposit rate for SKF does not need to be updated as a result of these amended final results.

[26] *Id.,* at 15–19.

[27] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012–2013,* 80 FR 4244 (January 27, 2015).

Since the *Final Results,* the Department has not established a new cash deposit rate for PBCD/CPZ. However, as explained above, in September 2008, PBCD/CPZ was acquired by AB SKF, and the Department determined via a successor-in-interest analysis that SKF/CPZ was not its successor in interest. As a consequence, PBCD/CPZ effectively no longer exists, and its cash deposit rate does not need to be updated as a result of these amended final results.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: January 13, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–01509 Filed 1–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 150302201–6024–02]

Award Competitions for Hollings Manufacturing Extension Partnership (MEP) Centers in the States of Alabama, Arkansas, California, Georgia, Louisiana, Massachusetts, Missouri, Montana, Ohio, Pennsylvania, Puerto Rico, Utah and Vermont

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce (DoC).

ACTION: Notice of funding availability.

SUMMARY: NIST invites applications from eligible organizations in connection with NIST's funding up to thirteen (13) separate MEP cooperative agreements for the operation of an MEP Center in the designated States' service areas and in the funding amounts identified in the corresponding Federal Funding Opportunity (FFO). NIST anticipates awarding one (1) cooperative agreement for each of the identified States. The objective of the MEP Center Program is to provide manufacturing extension services to primarily small and medium-sized manufacturers within the States designated in the corresponding FFO. The selected organization will become part of the MEP national system of extension service providers, currently located throughout the United States and Puerto Rico.

DATES: Electronic applications must be received no later than 11:59 p.m. Eastern Time on April 25, 2016. Paper applications will not be accepted. Applications received after the deadline will not be reviewed or considered. The approximate start date for awards under this notice and the corresponding FFO is expected to be October 1, 2016.

When developing your submission timeline, please keep in mind that (1) all applicants are required to have a current registration in the System for Award Management (SAM.gov); (2) the free annual registration process in the electronic System for Award Management (SAM.gov) may take between three and five business days, or as long as more than two weeks; and (3) electronic applicants are required to have a current registration in Grants.gov; and (4) applicants will receive a series of email messages from Grants.gov over a period of up to two business days before learning whether a Federal agency's electronic system has received its application. Please note that a federal assistance award cannot be issued if the designated recipient's registration in the System for Award Management (SAM.gov) is not current at the time of the award.

ADDRESSES: Applications must be submitted electronically through *www.grants.gov.* NIST will not accept applications submitted by mail, facsimile, or by email.

FOR FURTHER INFORMATION CONTACT: Administrative, budget, cost-sharing, and eligibility questions and other programmatic questions should be directed to Diane Henderson at Tel: (301) 975–5105; Email: *mepffo@nist.gov;* Fax: (301) 963–6556. Grants Rules and Regulation questions should be addressed to: Michael Teske, Grants Management Division, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1650, Gaithersburg, MD 20899–1650; Tel: (301) 975–6358; Email: *michael.teske@nist.gov;* Fax: (301) 975–6368. For technical assistance with Grants.gov submissions contact Christopher Hunton at Tel: (301) 975–5718; Email: *grants.gov@nist.gov;* Fax: (301) 975–8884. Questions submitted to NIST/MEP may be posted as part of an FAQ document, which will be periodically updated on the MEP Web site at *http://nist.gov/mep/ffo-state-competitions-03.cfm.*

SUPPLEMENTARY INFORMATION:

Electronic access: Applicants are strongly encouraged to read the corresponding FFO announcement available at *www.grants.gov* for complete information about this program, including all program

requirements and instructions for applying electronically. Paper applications or electronic applications submitted other than through *www.grants.gov* will not be accepted. The FFO may be found by searching under the Catalog of Federal Domestic Assistance Name and Number provided below.

Authority: 15 U.S.C. 278k, as implemented in 15 CFR part 290.

Catalog of Federal Domestic Assistance Name and Number: Manufacturing Extension Partnership—11.611.

Webinar Information Session: NIST/MEP will hold one or more webinar information sessions for organizations that are considering applying for this funding opportunity. These webinars will provide general information regarding MEP and offer general guidance on preparing proposals. NIST/MEP staff will be available at the webinars to answer general questions. During the webinars, proprietary technical discussions about specific project ideas will not be permitted. Also, NIST/MEP staff will not critique or provide feedback on any specific project ideas during the webinars or at any time before submission of a proposal to MEP. However, NIST/MEP staff will provide information about the MEP eligibility and cost-sharing requirements, evaluation criteria and selection factors, selection process, and the general characteristics of a competitive MEP proposal during this webinar. The webinars will be held approximately fifteen (15) to thirty (30) business days after posting of this notice and the corresponding FFO. The exact dates and times of the webinars will be posted on the MEP Web site at *http://nist.gov/mep/ffo-state-competitions-03.cfm.* The webinars will be recorded, and a link to the recordings will be posted on the MEP Web site. In addition, the webinar presentations will be available on the MEP Web site. Organizations wishing to participate in one or more of the webinars must register in advance by contacting MEP by email at *mepffo@nist.gov.* Participation in the webinars is not required in order for an organization to submit an application pursuant to this notice and the corresponding FFO.

Program Description: NIST invites applications from eligible organizations in connection with NIST's funding up to thirteen (13) separate MEP cooperative agreements for the operation of an MEP Center in the designated States' service areas and in the funding amounts identified in section II.2 of the corresponding FFO. NIST anticipates awarding one (1) cooperative agreement for each of the identified States. The objective of the MEP Center Program is to provide manufacturing extension services to primarily small and medium-sized manufacturers within the States designated in the applications. The selected organization will become part of the MEP national system of extension service providers, located throughout the United States and Puerto Rico.

See the corresponding FFO for further information about the Manufacturing Extension Partnership and the MEP National Network.

The MEP Program is not a Federal research and development program. It is not the intent of the program that awardees will perform systematic research.

To learn more about the MEP Program, please go to *http://www.nist.gov/mep/.*

Funding Availability: NIST anticipates funding up to thirteen (13) MEP Center awards with an initial five-year period of performance in accordance with the multi-year funding policy described in section II.3 of the corresponding FFO. Initial funding for the awards listed below and in the corresponding FFO is contingent upon the availability of appropriated funds.

The table below lists the thirteen (13) States identified for funding as part of this notice and the corresponding FFO and the estimated amount of funding available for each:

MEP Center location and assigned geographical service area (by state) [1]	Anticipated annual Federal funding for each year of the award	Total Federal funding for 5 year award period
Alabama	$1,780,800	$8,904,000
Arkansas	971,218	4,856,065
California	14,046,449	70,232,245
Georgia	2,693,482	13,467,410
Louisiana	1,197,546	5,987,730
Massachusetts	2,467,879	12,339,395
Missouri	2,207,873	11,039,365
Montana	512,000	2,560,000
Ohio	5,246,822	26,234,110
Pennsylvania	5,280,586	26,402,930
Puerto Rico	643,133	3,215,665
Utah	1,147,573	5,737,865
Vermont	500,000	2,500,000

Applicants may propose annual Federal funding amounts that are different from the anticipated annual Federal funding amounts set forth in the above table, provided that the total amount of Federal funding being requested by an Applicant does not exceed the total amount of federal funding for the five-year award period as set forth in the above table. For example, if the anticipated annual Federal funding amount for an MEP Center is $500,000 and the total Federal funding amount for the five-year award period is $2,500,000, an Applicant may propose Federal funding amounts greater, less than, or equal to $500,000 for any year or years of the award, so long as the total amount of Federal funding being requested by the Applicant for the entire five-year award period does not exceed $2,500,000.

Multi-Year Funding Policy. When an application for a multi-year award is approved, funding will usually be provided for only the first year of the project. Recipients will be required to

[1] The States of Ohio and Utah were included in a prior round of MEP Center award competitions (*see* 80 FR 12451 (March 9, 2015) and NIST Funding Opportunity Number 2015–NIST–MEP–01), which did not result in an application being selected for funding. As a result, NIST is announcing competition for these two States as part of this round of MEP Center award competitions.

submit detailed budgets and budget narratives prior to the award of any continued funding. Continued funding for the remaining years of the project will be awarded by NIST on a non-competitive basis, and may be adjusted higher or lower from year-to-year of the award, contingent upon satisfactory performance, continued relevance to the mission and priorities of the program, and the availability of funds. Continuation of an award to extend the period of performance and/or to increase or decrease funding is at the sole discretion of NIST.

Potential for Additional 5 Years. Initial awards issued pursuant to this notice and the corresponding FFO are expected to be for up to five (5) years with the possibility for NIST to renew the award, on a non-competitive basis, for an additional 5 years at the end of the initial award period. The review processes in 15 CFR 290.8 will be used as part of the overall assessment of the recipient, consistent with the potential long-term nature and purpose of the program. In considering renewal for a second five-year, multi-year award term, NIST will evaluate the results of the annual reviews and the results of the 3rd Year peer-based Panel Review findings and recommendations as set forth in 15 CFR 290.8, as well as the Center's progress in addressing findings and recommendations made during the various reviews. The full process is expected to include programmatic, policy, financial, administrative, and responsibility assessments, and the availability of funds, consistent with Department of Commerce and NIST policies and procedures in effect at that time.

Kick-Off Conferences

Each recipient will be required to attend a kick-off conference, which will be held within 30 days post start date of award, to help ensure that the MEP Center operator has a clear understanding of the program and its components. The kick-off conference will take place at NIST/MEP headquarters in Gaithersburg, MD, during which time NIST will: (1) Orient MEP Center key personnel to the MEP program; (2) explain program and financial reporting requirements and procedures; (3) identify available resources that can enhance the capabilities of the MEP Center; and (4) negotiate and develop a detailed three-year operating plan with the recipient. NIST/MEP anticipates an additional set of site visits at the MEP Center and/or telephonic meetings with the recipient to finalize the three-year operating plan.

The kick-off conference will take up to approximately 3 days and must be attended by the MEP Center Director, along with up to two additional MEP Center employees. Applicants must include travel and related costs for the kick-off conference as part of the budget for year one (1), and these costs should be reflected in the SF–424A form. (*See* section IV.2.a(2) of the corresponding FFO). These costs must also be reflected in the budget table and budget narrative for year 1, which is submitted as part of the budget tables and budget narratives section of the Technical Proposal. (*See* section IV.2.a(6)(e) of the corresponding FFO.) Representatives from key subrecipients and other key strategic partners may attend the kick-off conference with the prior written approval of the Grants Officer. Applicants proposing to have key subrecipients and/or other key strategic partners attend the kick-off conference should clearly indicate so as part of the budget narrative for year one of the project.

MEP System-Wide Meetings

NIST/MEP typically organizes system-wide meetings approximately four times a year in an effort to share best practices, new and emerging trends, and additional topics of interest. These meetings are rotated throughout the United States and typically involve 3–4 days of resource time and associated travel costs for each meeting. The MEP Center Director must attend these meetings, along with up to two additional MEP Center employees.

Applicants must include travel and related costs for four quarterly MEP system-wide meetings in each of the five (5) project years (4 meetings per year; 20 total meetings over five-year award period). These costs must be reflected in the SF–424A form (*see* section IV.2.a(2).of the corresponding FFO). These costs must also be reflected in the budget tables and budget narratives for each of the project's five (5) years, which are submitted in the budget tables and budget narratives section of the Technical Proposal. (*See* section IV.2.a(6)(e) of the corresponding FFO).

Cost Share or Matching Requirement: Non-Federal cost sharing of at least 50 percent of the total project costs is required for each of the first through the third year of the award, with an increasing minimum non-federal cost share contribution beginning in year 4 of the award as follows:

Award year	Maximum NIST share	Minimum non-Federal share
1–3	1/2	1/2
4	2/5	3/5
5 and beyond	1/3	2/3

Non-Federal cost sharing is that portion of the project costs not borne by the Federal Government. The applicant's share of the MEP Center expenses may include cash, services, and third party in-kind contributions, as described at 2 CFR 200.306, as applicable, and in the MEP program regulations at 15 CFR 290.4(c). No more than 50% of the applicant's total non-Federal cost share for any year of the award may be from third party in-kind contributions of part-time personnel, equipment, software, rental value of centrally located space, and related contributions, per 15 CFR 290.4(c)(5). The source and detailed rationale of the cost share, including cash, full- and part-time personnel, and in-kind donations, must be documented in the budget tables and budget narratives submitted with the application and will be considered as part of the review under the evaluation criterion found in section V.1.c.ii of the corresponding FFO.

Recipients must meet the minimum non-federal cost share requirements for each year of the award as identified in the chart above. For purposes of the MEP Program, ''program income'' (as defined in 2 CFR 200.80, as applicable) generated by an MEP Center may be used by a recipient towards the required non-federal cost share under an MEP award.

As with the Federal share, any proposed costs included as non-Federal cost sharing must be an allowable/eligible cost under this program and under the Federal cost principles set forth in 2 CFR part 200, subpart E. Non-Federal cost sharing incorporated into the budget of an approved MEP cooperative agreement is subject to audit in the same general manner as Federal award funds. *See* 2 CFR part 200, subpart F.

As set forth in section IV.2.a(7) of the corresponding FFO, a letter of commitment is required from an authorized representative of the applicant, stating the total amount of cost share to be contributed by the applicant towards the proposed MEP Center. Letters of commitment for all other third-party sources of non-Federal cost sharing identified in a proposal are not required, but are strongly encouraged.

Eligibility: The eligibility requirements set forth here and in section III.1 of the corresponding FFO will be used in lieu of and to the extent they are inconsistent with will supersede those given in the MEP regulations found at 15 CFR part 290, specifically 15 CFR 290.5(a)(1). Each applicant for and recipient of an MEP award must be a U.S.-based nonprofit institution or organization. For the purpose of this notice and the corresponding FFO, nonprofit institutions include public and private nonprofit organizations, nonprofit or State colleges and universities, public or nonprofit community and technical colleges, and State, local or Tribal governments. Existing MEP awardees and new applicants that meet the eligibility criteria set forth here and in section III.1 of the corresponding FFO may apply. An eligible organization may work individually or may include proposed subawards to eligible organizations or proposed contracts with any other organization as part of the applicant's proposal, effectively forming a team. However, as discussed in section I.4 of the corresponding FFO, NIST generally will not fund applications that propose an organizational or operational structure that, in whole or in part, delegates or transfers to another person, institution, or organization the applicant's responsibility for MEP Core Management and Oversight functions. In addition, the applicant must have or propose an Oversight Board or Advisory Committee and Governance structure or plan for establishing a board structure within 90 days from the award start date (Refer to section I.3 of the corresponding FFO).

Application Requirements: Applications must be submitted in accordance with the requirements set forth in section IV of the corresponding FFO announcement, which are in lieu of and to the extent they are inconsistent with will supersede any application requirements set forth in 15 CFR 290.5. *See specifically* sections IV.2.b(1), IV.2.b(2), and IV.2.b(7) in the Full Announcement Text of the corresponding FFO.

Application/Review Information: The evaluation criteria, selection factors, and review and selection process provided in this section and in section V of the corresponding FFO will be used for this competition in lieu of and to the extent they are inconsistent with will supersede those provided in the MEP regulations found at 15 CFR part 290, specifically 15 CFR 290.6 and 290.7.

Evaluation Criteria: The evaluation criteria that will be used in evaluating applications and assigned weights, with a maximum score of 100, are listed below.

a. Executive Summary and Project Narrative. (40 points; Sub-criteria i through iv will be weighted equally) NIST/MEP will evaluate the extent to which the applicant's Executive Summary and Project Narrative demonstrates how the applicant's methodology will efficiently and effectively establish an MEP Center and provide manufacturing extension services to primarily small and medium-sized manufacturers in the applicable State-wide geographical service area identified in section II.2 of the corresponding FFO. Applicants should name the state to be covered in the first sentence of the Executive Summary and Project Narrative. Reviewers will consider the following topics when evaluating the Executive Summary and Project Narrative:

i. Center Strategy. Reviewers will assess the applicant's strategy proposed for the Center to deliver services that meet manufacturers' needs, generate client impacts (*e.g.,* cost savings, increased sales, etc.), and support a strong manufacturing ecosystem. Reviewers will assess the quality with which the applicant:

- Incorporates the market analysis described in the criterion set forth in subsection ii, below and in section V.1.a.ii(1) of the corresponding FFO to inform strategies, products and services;
- defines a strategy for delivering services that balances market penetration with impact and revenue generation, addressing the needs of manufacturers, with an emphasis on the small and medium-sized manufacturers;
- defines the Center's existing and/or proposed roles and relationships with other entities in the State's manufacturing ecosystem, including State, regional, and local agencies, economic development organizations and educational institutions such as universities and community or technical colleges, industry associations, and other appropriate entities;
- plans to engage with other entities in Statewide and/or regional advanced manufacturing initiatives; and
- supports achievements of the MEP mission and objectives while also satisfying the interests of other stakeholders, investors, and partners.

ii. Market Understanding. Reviewers will assess the strategy proposed for the Center to define the target market, understand the needs of manufacturers (especially Small and Medium Enterprises (SMEs)), and to define appropriate services to meet identified needs. Reviewers will evaluate the proposed approach for regularly updating this understanding through the five years. The following sub-topics will be evaluated and given equal weight:

(1) Market Segmentation. Reviewers will assess the quality and extent of the applicant's market segmentation strategy including:

- Segmentation of company size, geography, and industry priorities including some consideration of rural, start-up (a manufacturing establishment that has been in operation for five years or less) and/or very small manufacturers as appropriate to the state;
- alignment with state and/or regional initiatives; and
- other important factors identified by the applicant.

(2) Needs Identification and Product/Service Offerings. Reviewers will assess the quality and extent of the applicant's proposed needs identification and proposed products and services for both sales growth and operational improvement in response to the applicant's market segmentation and understanding assessed by reviewers under the preceding subsection ii(1) and in section V.1.a.ii.1 of the corresponding FFO. Of particular interest is how the applicant would leverage new manufacturing technologies, techniques and processes usable by small and medium-sized manufacturers. Reviewers will also consider how an applicant's proposed approach will support a job-driven training agenda with manufacturing clients. (To learn more about the White House job-driven training agenda, please go to: *https://www.whitehouse.gov/sites/default/files/docs/ready_to_work_factsheet.pdf*).

iii. Business Model. Reviewers will assess the applicant's proposed business model for the Center as the applicant provides in its Project Narrative, Qualifications of the Applicant; Key Personnel, Organizational Structure and Budget Tables and Budget Narratives sections of its Technical Proposal, submitted under section IV.2.a(6) of the corresponding FFO, and the proposed business model's ability to execute the strategy evaluated under criterion set forth in subsection ii(1), above, and in section V.1.a.i of the corresponding FFO, based on the market understanding evaluated under criterion set forth in subsection ii(2), above, and in section V.1.a.ii of the corresponding FFO. The following sub-topics will be evaluated and given equal weight:

(1) Outreach and Service Delivery to the Market. Reviewers will assess the extent to which the proposed Center is organized to:

- Identify, reach and provide proposed services to key market

segments and individual manufacturers described above;

• work with a manufacturer's leadership in strategic discussions related to new technologies, new products and new markets; and

• leverage the applicant's past experience in working with small and medium-sized manufacturers as a basis for future programmatic success.

(2) Partnership Leverage and Linkages. Reviewers will assess the extent to which the proposed Center will make effective use of resources or partnerships with third parties such as industry, universities, community/technical colleges, nonprofit economic development organizations, and Federal, State and Local Government Agencies in the Center's business model.

iv. Performance Measurement and Management. Reviewers will assess the extent to which the applicant will use a systematic approach to measuring and managing performance including the:

• Quality and extent of the applicant's stated goals, milestones and outcomes described by operating year (year 1, year 2, etc.);

• applicant's utilization of client-based business results important to stakeholders in understanding program impact; and

• depth of the proposed methodology for program management and internal evaluation likely to ensure effective operations and oversight for meeting program and service delivery objectives.

b. Qualifications of the Applicant; Key Personnel, Organizational Structure and Management; and Oversight Board or Advisory Committee and Governance (30 points; Sub-criteria i and ii will be weighted equally). Reviewers will assess the ability of the key personnel, the applicant's organizational structure and management and Oversight Board or Advisory Committee and Governance to deliver the program and services envisioned for the Center. Reviewers will consider the following topics when evaluating the qualifications of the applicant and of program management:

i. Key Personnel, Organizational Structure and Management. Reviewers will assess the extent to which the:

• Proposed key personnel have the appropriate experience and education in manufacturing, outreach, program management and partnership development to support achievements of the MEP mission and objectives;

• proposed management structure and organizational roles are aligned to plan, direct, monitor, organize and control the monetary resources of the proposed center to achieve its business objectives (Refer to section I.4 of the corresponding FFO);

• proposed organizational structure flows logically from the specified approach to the market and products and service offerings; and

• proposed field staff structure sufficiently supports the geographic concentrations and industry targets for the region.

ii. Oversight Board or Advisory Committee and Governance. Reviewers will assess the extent to which the:

• Proposed Oversight Board or Advisory Committee and its operations are complete, appropriate and will meet the program's objectives at the time of award, or, if such a Board or Committee does not exist at the time of application or is not expected to meet these requirements at the time of award, the extent to which the proposed plan for developing and implementing such an Oversight Board or Advisory Committee within 90 days of award start date (expected to be October 1, 2016) is feasible. (Refer to section I.3 of the corresponding FFO).

• Oversight Board or Advisory Committee and Governance is engaged with overseeing and guiding the Center and supports its own development through a schedule of regular meetings, and processes ensuring Board or Advisory Committee involvement in strategic planning, recruitment, selection and retention of board members, board assessment practices and board development initiatives (Refer to section I.3. of the corresponding FFO).

c. Budget and Financial Plan. (30 points; Sub-criteria i and ii will be weighted equally) Reviewers will assess the suitability and focus of the applicant's five (5) year budget. The application will be assessed in the following areas:

i. Budget. Reviewers will assess the extent to which:

• The proposed financial plan is aligned to support the execution of the proposed Center's strategy and business model over the five (5) year project plan;

• the proposed projections for income and expenditures are appropriate for the scale of services that are to be delivered by the proposed Center and the service delivery model envisioned within the context of the overall financial model over the five (5) year project plan;

• a reasonable ramp-up or scale-up scope and budget has the Center fully operational by the 4th year of the project; and

• the proposal's narrative for each of the budgeted items explains the rationale for each of the budgeted items, including assumptions the applicant used in budgeting for the Center.

ii. Quality of the Financial Plan for Meeting the Award's Non-Federal Cost Share Requirements over 5 Years. Reviewers will assess the quality of and extent to which the:

• Applicant clearly describes the total level of cost share and detailed rationale of the cost share, including cash and in-kind, in their proposed budget.

• applicant's funding commitments for cost share are documented by letters of support from the applicant, proposed sub-recipients and any other partners identified and meet the basic matching requirements of the program;

• applicant's cost share meets basic requirements of allowability, allocability and reasonableness under applicable federal costs principles set for in 2 CFR part 200, subpart E;

• applicant's underlying accounting system is established or will be established to meet applicable federal costs principles set for in 2 CFR part 200, subpart E; and

• the overall proposed financial plan is sufficiently robust and diversified so as to support the long term sustainability of the Center throughout the five (5) years of the project plan.

Selection Factors: The Selection Factors for this notice as set forth here and in section V.3 of the corresponding FFO are as follows:

a. The availability of Federal funds;

b. Relevance of the proposed project to MEP program goals and policy objectives;

c. Reviewers' evaluations, including technical comments;

d. The need to assure appropriate distribution of MEP services within the designated State;

e. Whether the project duplicates other projects funded by DoC or by other Federal agencies; and

f. Whether the application complements or supports other Administration priorities, or projects supported by DoC or other Federal agencies, such as but not limited to the National Network for Manufacturing Innovation and the Investing in Manufacturing Communities Partnership.

Review and Selection Process: Proposals, reports, documents and other information related to applications submitted to NIST and/or relating to financial assistance awards issued by NIST will be reviewed and considered by Federal employees, Federal agents and contractors, and/or by non-Federal personnel who enter into nondisclosure agreements covering such information as set forth here and in section V.2 of the corresponding FFO, which will be

used for this competition in lieu of and to the extent they are inconsistent with will supersede the review and selection process provided in the MEP regulations found at 15 CFR part 290, specifically 15 CFR 290.7.

(1) Initial Administrative Review of Applications. An initial review of timely received applications will be conducted to determine eligibility, completeness, and responsiveness to this notice and the corresponding FFO and the scope of the stated program objectives. Applications determined to be ineligible, incomplete, and/or non-responsive may be eliminated from further review. However, NIST, in its sole discretion, may continue the review process for an application that is missing non-substantive information that can easily be rectified or cured.

(2) Full Review of Eligible, Complete, and Responsive Applications. Applications that are determined to be eligible, complete, and responsive will proceed for full reviews in accordance with the review and selection processes below. Eligible, complete and responsive applications will be grouped by the State in which the proposed MEP Center is to be established. The applications in each group will be reviewed by the same reviewers and will be evaluated, reviewed, and selected as described below in separate groups.

(3) Evaluation and Review. Each application will be reviewed by at least three technically qualified individual reviewers who will evaluate each application based on the evaluation criteria (*see* section V.1 of the corresponding FFO). Applicants may receive written follow-up questions in order for the reviewers to gain a better understanding of the applicant's proposal. Each reviewer will provide a written technical assessment against the evaluation criteria and based on that assessment will assign each application a numeric score, with a maximum score of 100. If a non-Federal reviewer is used, the reviewers may discuss the applications with each other, but scores will be determined on an individual basis, not as a consensus.

Applicants whose applications receive an average score of 70 or higher out of 100 will be deemed finalists. If deemed necessary, finalists will be invited to participate with reviewers in a conference call and/or a video conference, and/or finalists will be invited to participate in a site visit that will be conducted by the same reviewers at the applicant's location. In any event, if there are two (2) or more finalists within a state, conference calls, video conferences or site visits will be conducted with each finalist. Finalists will be reviewed and evaluated, and reviewers may revise their assigned numeric scores based on the evaluation criteria (*see* section V.1 of the corresponding FFO) as a result of the conference call, video conference, and/or site visit.

(4) Ranking and Selection. Based upon an average of the technical reviewers' final scores, an adjectival rating will be assigned to each application in accordance with the following scale:

Fundable, Outstanding (91–100 points);
Fundable, Very Good (81–90 points);
Fundable (70–80 points); or
Unfundable (0–69 points).

For decision-making purposes, applications receiving the same adjectival rating will be considered to have an equivalent ranking, although their technical review scores, while comparable, may not necessarily be the same.

The Selecting Official is the NIST Associate Director for Innovation and Industry Services or designee. The Selecting Official makes the final recommendation to the NIST Grants Officer regarding the funding of applications under the corresponding FFO. The Selecting Official shall be provided all applications, all the scores and technical assessments of the reviewers, and all information obtained from the applicants during the evaluation, review and negotiation processes.

The Selecting Official will generally select and recommend the most meritorious application for an award based on the adjectival rankings and/or one or more of the six (6) selection factors described in section V.3 of the corresponding FFO. The Selecting Official retains the discretion to select and recommend an application out of rank order (*i.e.,* from a lower adjectival category) based on one or more of the selection factors, or to select and recommend no applications for funding. The Selecting Official's recommendation to the Grants Officer shall set forth the bases for the selection decision.

As part of the overall review and selection process, NIST reserves the right to request that applicants provide pre-award clarifications and/or to enter into pre-award negotiations with applicants relative to programmatic, financial or other aspects of an application, such as but not limited to the revision or removal of proposed budget costs, or the modification of proposed MEP Center activities, work plans or program goals and objectives. In this regard, NIST may request that applicants provide supplemental information required by the Agency prior to award. NIST also reserves the right to reject an application where information is uncovered that raises a reasonable doubt as to the responsibility of the applicant. The final approval of selected applications and issuance of awards will be by the NIST Grants Officer. The award decisions of the NIST Grants Officer are final.

Anticipated Announcement and Award Date. Review, selection, and award processing is expected to be completed in mid-late 2016. The anticipated start date for awards made under this notice and the corresponding FFO is expected to be October 1, 2016.

Additional Information

a. Application Replacement Pages. Applicants may not submit replacement pages and/or missing documents once an application has been submitted. Any revisions must be made by submission of a new application that must be received by NIST by the submission deadline.

b. Notification to Unsuccessful Applicants. Unsuccessful applicants will be notified in writing.

c. Retention of Unsuccessful Applications. An electronic copy of each non-selected application will be retained for three (3) years for record keeping purposes. After three (3) years, it will be destroyed.

Administrative and National Policy Requirements

Uniform Administrative Requirements, Cost Principles and Audit Requirements: Through 2 CFR 1327.101, the Department of Commerce adopted the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200, which apply to awards made pursuant to this notice and the corresponding FFO. Refer to *http://go.usa.gov/SBYh* and *http://go.usa.gov/SBg4.*

The Department of Commerce Pre-Award Notification Requirements: The Department of Commerce will apply the Pre-Award Notification Requirements for Grants and Cooperative Agreements dated December 30, 2014 (79 FR 78390). If the Department of Commerce publishes revised Pre-Award Notification Requirements prior to issuance of awards under this notice and the corresponding FFO, the revised Pre-Award Notification Requirements will apply. Refer to section VII of the corresponding FFO, Federal Awarding Agency Contacts, Grant Rules and Regulations for more information.

Unique Entity Identifier and System for Award Management (SAM): Pursuant to 2 CFR part 25, applicants and recipients (as the case may be) are required to: (i) Be registered in SAM before submitting its application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency, unless otherwise excepted from these requirements pursuant to 2 CFR 25.110. NIST will not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time that NIST is ready to make a Federal award pursuant to this notice and the corresponding FFO, NIST may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. MEP program-specific application requirements have been approved by OMB under Control Number 0693–0056.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Certifications Regarding Federal Felony and Federal Criminal Tax Convictions, Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns. In accordance with Federal appropriations law, an authorized representative of the selected applicant(s) may be required to provide certain pre-award certifications regarding federal felony and federal criminal tax convictions, unpaid federal tax assessments, and delinquent federal tax returns.

Funding Availability and Limitation of Liability: Funding for the program listed in this notice and the corresponding FFO is contingent upon the availability of appropriations. In no event will NIST or DoC be responsible for application preparation costs if this program fails to receive funding or is cancelled because of agency priorities. Publication of this notice and the corresponding FFO does not oblige NIST or DoC to award any specific project or to obligate any available funds.

Other Administrative and National Policy Requirements: Additional administrative and national policy requirements are set forth in section VI.2 of the corresponding FFO.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Proposals under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for matters relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Moreover, because notice and comment are not required under 5 U.S.C. 553, or any other law, for matters relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Richard R. Cavanagh,

Director, Special Programs Office.

[FR Doc. 2016–01405 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE355

Endangered and Threatened Species; Initiation of 5-Year Review for Southern Resident Killer Whales

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

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: We, NMFS, announce a 5-year review of Southern Resident killer whales (*Orcinus orca*) under the Endangered Species Act of 1973, as amended (ESA). The purpose of these reviews is to ensure that the listing classification of a species is accurate. The 5-year review will be based on the best scientific and commercial data available at the time of the review; therefore, we request submission of any such information on Southern Resident killer whales that has become available since their original listing as endangered in November 2005 or since the previous 5-year review completed in 2011. Based on the results of this 5-year review, we will make the requisite determination under the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than April 25, 2016. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit information on this document identified by NOAA–NMFS–2016–0006 by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the Federal e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2016–0006 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- Mail or hand-delivery: Lynne Barre, NMFS West Coast Region, 7600 Sand Point Way NE., Seattle, WA 98115.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Lynne Barre, West Coast Regional Office, 206–526–4745.

SUPPLEMENTARY INFORMATION: Under the ESA, the U.S. Fish and Wildlife Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be delisted or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Southern Resident killer whale distinct population segment (DPS) currently listed as endangered (70 FR 69903; November 18, 2005).

Background information on Southern Resident killer whales including the endangered listing, critical habitat designation, recovery planning and protective regulations is available on the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/.* Below is a brief list of several significant actions since the endangered listing of the Southern Resident killer whale DPS. Critical habitat was designated in November 2006 (71 FR 69054) and includes 2,560 square miles (6,630 sq km) of marine habitat in Haro Strait and waters around the San Juan Islands, Puget Sound, and the Strait of Juan de Fuca. The final Recovery Plan was released in January 2008 (73 FR 4176), and contains detailed information on status, threats and recovery actions for Southern Residents. Regulations to protect Southern Resident killer whales from vessel effects were released in April 2011 (76 FR 20870). A five year review was completed in 2011 and concluded that no change was needed to the endangered status (NMFS 2011). In 2014 we released a report summarizing research and recovery efforts over the last 10 years. The report and other supporting documents and media are available on our Web site at *http://www.nwfsc.noaa.gov/news/features/killer_whale_report/index.cfm.* In 2015 Southern Resident killer whales were named as a Species in the Spotlight, one of eight species among the most at risk of extinction in the near future. For more information on the Species in the Spotlight program, please visit our Web site at *http://www.nmfs.noaa.gov/stories/2015/05/05_14_15species_in_the_spotlight.html.*

Determining if a Species Is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of Southern Resident killer whales. The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; (5) need for additional conservation measures or updates to the Recovery Plan, (6) adequacy of the recovery criteria, including information on recovery criteria that have or have not been met; and (7) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list of endangered and threatened species, and improved analytical methods for evaluating extinction risk.

Any new information will be considered during the 5-year review and may also be useful in evaluating the ongoing recovery program for Southern Resident killer whales. For example, information on conservation measures will assist in tracking implementation of actions in the Recovery Plan. Habitat information received during the 5-year review process may also be useful in our consideration of a revision to the designated critical habitat for Southern Resident killer whales. In February 2015, we published a 12-month finding notice on a petition requesting that we revise critical habitat (80 FR 9682). The 12-month finding describes how we intend to proceed with the requested revision and lays out a timeline. The critical habitat designation process is separate from this 5-year review and will include a separate opportunity for public comment.

If you wish to provide information for this 5-year review, you may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 20, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–01400 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Mail Survey to Collect Economic Data from Federal Gulf of Mexico and South Atlantic For-Hire Permit Holders.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 1,000.

Average Hours per Response: 12 minutes.

Burden Hours: 200.

Needs and Uses: This request is for a new information collection.

The National Oceanic and Atmospheric Administration's (NOAA) Fisheries, Southeast Fisheries Science Center, proposes to collect very basic socioeconomic data from federally-permitted for-hire operators in the Gulf of Mexico and South Atlantic fisheries, using a mail sample survey. The National Marine Fisheries Service (NMFS) does not systematically collect information on for-hire trip prices and trip costs in the Southeast. The population consists of those for-hire operators who possess a federal for-hire permit for dolphin-wahoo, coastal migratory pelagics, snapper-grouper, or reef fish species in the South Atlantic or Gulf of Mexico. Each year we will sample approximately a third of the population. The two-page survey will be designed to collect basic data on trip revenues and trip costs as well as other related information. These data are needed to conduct socioeconomic analyses in support of management of the for-hire fishing industry and to satisfy legal requirements. The data will be used to assess how fishermen will be impacted by and respond to federal regulation likely to be considered by fishery managers.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: January 20, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–01384 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Community Quota Entity (CQE) Program.

OMB Control Number: 0648–0665.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 65.

Average Hours Per Response: 200 hours, Application to become a CQE; 2 hours for Application to transfer QS–IFQ to or from CQE; 20 hours for Application for a CQE to receive a non-trawl LLP license; 1 hour each for Application for Community Charter Halibut Permit and CQE LLP Authorization Letter; 40 hours for CQE Annual Report.

Burden Hours: 1,544.

Needs and Uses: This request is for extension of a currently approved information collection.

The Alaska Community Quota Entity (CQE) Program allocates to eligible communities a portion of the quotas for groundfish, halibut, crab, and prohibited species in the Bering Sea and Aleutian Islands Management Area (BSAI). Currently, there are 98 CQE eligible communities (45 Individual Fishing Quota (IFQ) and quota share (QS) halibut and sablefish, 32 charter halibut, and 21 License Limitation Program (LLP) communities), although only a few communities are currently participating. The allocations provide communities the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy. A non-profit corporate entity that meets specific criteria to receive transferred halibut or sablefish QS on behalf of an eligible community may lease the resulting IFQ to persons who are residents of the eligible community.

Affected Public: Not-for-profit institutions; individuals or households.

Frequency: Annually.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: January 19, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–01385 Filed 1–25–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0005]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 28, 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 of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal**

Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Community and Family Policy) Office of Family Readiness Policy, Special Needs Program, ATTN: Rebecca Lombardi, 4000 Defense Pentagon, Washington, DC 20301–4000 or call 571–372–0862.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Family Member Travel Screening, DD Form X678–1TEST, Medical and Education Information, DD Form X678–2TEST, Dental Health Information, and DD Form X678–3TEST, Patient Care Review, OMB Control Number 0704–XXXX.

Needs and Uses: The DD Forms X678–1 TEST, X678–2 TEST, and X678–3 TEST are to be used during the Family Member Travel Screening (FMTS) process when active duty Service members with Permanent Change of Station (PCS) orders to OCONUS or remote installations request Command sponsorship for accompanied travel. These forms assist in determining the availability of care at a gaining installation by documenting any special medical, dental, and/or educational needs of dependents accompanying the Service member. Throughout the process, form respondents include: (1) Active duty Service members and/or dependents over the age of majority who provide demographic information; (2) medical and dental providers who provide information about dependent medical and dental needs; (3) losing FMTS Office staff who document any special medical, dental, and/or educational needs; and (4) gaining FMTS Office staff who document the availability of special needs support services at a gaining location.

Affected Public: Individuals or households; medical and dental providers.

Annual Burden Hours: 2,899 hours.

Number of Respondents: 9,876 respondents.

Responses per Respondent: 1 per year.

Annual Responses: 9,876 per year.

Average Burden per Response: 18 minutes.

Frequency: As needed.

The following is a breakdown of the public time burden for specific FMTS Pilot forms:

- The DD Form X678–1 TEST Medical and Educational Information informs sponsors and FMTS staff about possible special medical and/or educational needs of each dependent and guides the appropriate record review and the face-to-face interview. This form is completed by Service members and/or family members and internal physicians.
  - Total annual public time burden for the DD Form X678–1 TEST: 1,573 hours.
  - Average time per response for the DD Form X678–1 TEST (in minutes): 20 minutes.
  - Total annual public cost burden for the DD Form X678–1 TEST: $35,714.
- The DD Form X678–2 TEST Dental Health Information documents the dental health of dependent(s) in preparation for a move to a location where the patient may have limited access to dental care. This form is completed by Service members and/or family members and internal or civilian dentists.
  - Total annual public time burden for the DD Form X678–2 TEST: 698 hours.
  - Average time per response for the DD Form X678–2 TEST (in minutes): 6 minutes.
  - Total annual public cost burden for the DD Form X678–2 TEST: $49,218.
- The DD Form X678–3 TEST Patient Care Review summarizes each dependent's medical care received outside the Military Treatment Facility (MTF) (completed by non-MTF primary care managers). If applicable, this form is completed by Service members and/or family members and civilian physicians.
  - Total annual public time burden for the DD Form X678–3 TEST: 629 hours.
  - Average time per response for the DD Form X678–3 TEST (in minutes): 8 minutes.
  - Total annual public cost burden for the DD Form X678–3 TEST: $53,081.

The DD TEST Forms will be piloted to test a standardized FMTS process across the military medical departments. The pilot will determine how the TEST forms can integrate into Service-specific assignment processes. If the forms can successfully integrate into these processes, then these TEST forms will be implemented as DD Forms. For a period of 90 days, the DD TEST Forms will be used in place of existing Service-specific FMTS forms for military families accompanying a Service member from a participating losing installation to a participating gaining installation. These TEST Forms will be monitored until the travel screening processes for all participating families are complete. During the pilot, military medical departments at participating installations will continue to screen non-pilot families using the current military medical department travel screening processes and forms.

Dated: January 21, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–01481 Filed 1–25–16; 8:45 am]

BILLING CODE 5001–06–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Public Meeting of the Technical Guidelines Development Committee.

SUMMARY: The Technical Guidelines Development Committee (TGDC) will meet in open session on Monday, February 8, 2016 and Tuesday, February 9, 2016 at the U.S. Access Board in Washington, DC.

DATES: The meeting will be held on Monday, February 8, 2016, from 8:30 a.m. until 5:00 p.m., Eastern time (estimated based on speed of business), and Tuesday, February 9, 2016 from 8:30 a.m. to 3:15 p.m., Eastern time (estimated based on speed of business).

ADDRESSES: The meeting will take place at the U.S. Access Board, 1331 F Street NW., Suite 800, Washington, DC 20004–1111; (202) 272–0080.

FOR FURTHER INFORMATION CONTACT: Patricia Wilburg, NIST Voting Program, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8970, Gaithersburg, MD 20899–8930, telephone: (301) 975–6994 or *patricia.wilburg@nist.gov.*

Agenda Information: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C.A. App. 2, notice is hereby given that the TGDC will meet Monday, February 8, 2016, from 8:30 a.m. until 5:00 p.m., Eastern time, and Tuesday, February 9, 2016 from 8:30

a.m. to 3:15 p.m., Eastern time. Discussions at the meeting will include the following topics: The Working Groups Activities since the July TGDC Meeting that include Pre-Election, Election and Post-Election; The Constituency Groups Activities since the July TGDC Meeting that include Cyber Security, Human Factors, Interoperability and Testing; the scope of the VVSG in terms of the definition of a voting system, Post-HAVA Voting System Requirements, Usability & Accessibility, and Security; the Standards & Testing Recommendations of the President's Commission on Election Administration (PCEA) and the Standards & Testing used within the Gaming industry; the Standards Setting and Certification Strategies; the Structuring of the Next Generation Guidelines (VVSG 1.1) that include Federal Requirements; State Requirements; and the Mapping State and Federal requirements. The full meeting agenda will be posted in advance at *http://vote.nist.gov/.* All sessions of this meeting will be open to the public.

The TGDC was established pursuant to 42 U.S.C 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. Details regarding the TGDC's activities are available at *http://vote.nist.gov/.*

SUPPLEMENTARY INFORMATION: The general public, including those who do not attend the meeting, may submit written comments, which will be distributed to TGDC members. All comments will also be posted on *http://vote.nist.gov/.* For more information, please contact Patricia Wilburg. Patricia Wilburg's contact information is given in the **FOR FURTHER INFORMATION CONTACT** section above. Persons attending meetings in the Access Board's conference space are requested to refrain from using perfume, cologne, and other fragrances (see *http://www.access-board.gov/the-board/policies/fragrance-free-environment* for more information). If you are in need of a disability accommodation, such as the need for Sign Language Interpretation, please contact Patricia Wilburg, whose contact information is given in the **FOR FURTHER INFORMATION CONTACT** section above.

Bryan Whitener,

Director of Communications & Clearinghouse, U.S. Election Assistance Commission.

[FR Doc. 2016–01670 Filed 1–25–16; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, Denying Request for Rehearing, and To Vacate Prior Authorization During December 2015

	FE Docket Nos.
ENSORCIA AMERICA LLC	15–164–LNG
AIR FLOW NORTH AMERICA CORP	14–206–LNG
FREEPORT LNG EXPANSION, L.P., FLNG LIQUEFACTION, LLC, FLNG, LIQUEFACTION 2, LLC, and FLNG, LIQUEFACTION 3, LLC (collectively, FLEX).	11–161–LNG
CONOCOPHILLIPS COMPANY	15–130–LNG
MACQUARIE ENERGY LLC	15–181–NG
MACQUARIE ENERGY LLC	15–182–LNG
MACQUARIE ENERGY LLC	15–183–LNG
SIERRA PACIFIC POWER COMPANY, d/b/a NV ENERGY	15–179–NG
IRVING OIL TERMINALS INC	15–175–NG
PUGET SOUND ENERGY, INC	15–178–NG
HOUSTON PIPE LINE COMPANY LP	15–185–NG
PEMEX TRANSFORMACION INDUSTRIAL	15–174–NG
AUX SABLE CANADA LP	15–188–NG
UNIPER GLOBAL COMMODITIES NORTH AMERICA LLC	15–180–NG
IRVING OIL COMMERCIAL GP and IRVING OIL OIL TERMINALS OPERATIONS INC	15–165–NG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during December 2015, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), denying request for rehearing, and to vacate prior authority. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://energy. gov/fe/downloads/listing-doefe-authorizationsorders-issued-2015.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 20, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

3752	12/30/15	15–164–LNG	Ensorcia America LLC	Order blanket authority to export LNG to Mexico in ISO Containers transported by vessel.
3753	12/04/15	14–206–LNG	Air Flow North America Corp	Final Opinion and Order granting long-term Multi-contract authorization to export LNG in ISO Containers loaded at the Clean Energy Fuels Corp. LNG Production Facility in Willis, Texas, and exported by vessel to Non-free Trade Agreement nations in Central America, South America, the Caribbean or Africa.

APPENDIX—DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

3357–C	12/04/15	11–161–LNG	Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (collectively, FLEX).	Opinion and Order Denying Request for Rehearing of Orders granting long-term, Multi-contract authorization to export LNG by vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-free Trade Agreement Nations.
3754	12/16/15	15–130–LNG	ConocoPhillips Company	Order granting blanket authority to previously imported LNG by vessel.
3755	12/30/15	15–181–NG	Macquarie Energy LLC	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3756	12/30/15	15–182–LNG	Macquarie Energy LLC	Order granting blanket authority to import/export LNG from/to Canada/Mexico by truck.
3757	12/30/15	15–183–LNG	Macquarie Energy LLC	Order granting blanket authority to LNG from various international sources by vessel.
3758	12/30/15	15–179–NG	Sierra Pacific Power Company d/b/a NV Energy.	Order granting blanket authority to import natural gas from Canada.
3759	12/30/15	15–175–NG	Irving Oil Terminals Inc	Order granting blanket authority to import natural gas from Canada.
3760	12/30/15	15–178–NG	Puget Sound Energy, Inc	Order granting blanket authority to import/export natural gas from/to Canada.
3761	12/30/15	15–185–NG	Houston Pipe Line Company LP.	Order granting blanket authority to import/export natural gas from/to Mexico.
3762	12/30/15	15–174–NG	Pemex Transformacion Industrial.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico, and to import LNG from various international sources by vessel, and vacating prior authorization.
3763	12/30/15	15–188–NG	Aux Sable Canada LP	Order granting blanket authority to import natural gas from Canada.
3764	12/30/15	15–180–NG	Uniper Global Commodities North America LLC.	Order granting blanket authority to import/export natural gas from/to Canada, and vacating prior authorization.
3765	12/30/15	15–165–NG	Irving Oil Commercial GP and Irving Oil Terminals Operations Inc.	Order granting long-term authority to import/export natural gas from/to Canada.

[FR Doc. 2016–01492 Filed 1–25–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. 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 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.

DATES: Comments regarding this proposed information collection must be received on or before March 28, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Cynthia Anderson by email at *Cynthia.Anderson@NNSA.Doe.Gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cynthia Anderson by email at *Cynthia.Anderson@NNSA.Doe.Gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: *(1) OMB No.:* New; (2) *Information Collection Request Title:* Energy and Jobs Survey; (3) *Type of Request:* New; (4) *Purpose:* The rapidly changing nature of energy production, distribution, and consumption throughout the U.S. economy is having a dramatic impact on job creation and economic competitiveness, but is inadequately understood and, in some sectors, incompletely measured. The new Energy and Jobs Survey will collect data from businesses in in-scope industries, quantifying and qualifying employment among energy activities, workforce demographics and the industry's perception on the difficulty of recruiting qualified workers. The data will be used to generate an annual Energy and Jobs Report; (5) *Annual Estimated Number of Respondents:* 30,000; (6) *Annual Estimated Number of Total Responses:* 10,000; (7) *Annual Estimated Number of Burden Hours:* 2,908.4; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

Statutory Authority: Sec. 301 of the Department of Energy Organization Act (42 U.S.C. 7151); sec. 5 of the Federal Energy Administration Act of 1974 (15 U.S.C. 764); and sec. 103 of the Energy Reorganization Act of 1974 (42 U.S.C. 5813).

Issued in Washington, DC, on January 20, 2016.

Cynthia V. Anderson,

Senior Advisor, Office of the Secretary.

[FR Doc. 2016–01493 Filed 1–25–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number: EERE–2016–BT–WAV–0001; Case No. RF–043]

Notice of Interim Waiver and Request for Waiver From Panasonic Appliances Refrigeration Systems Corporation of America Corporation (PAPRSA) From the Department of Energy Refrigerator and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Granting of Interim Waiver; Notice of Request for Waiver; Request for Public Comment.

SUMMARY: This notice announces receipt of a request for an extension to hybrid basic model PR6180WBC of a previously granted waiver and for an interim waiver from Panasonic Appliances Refrigeration Systems Corporation of America (Case No. RF–043) with respect to the U.S. Department of Energy's electric refrigerator and refrigerator-freezer test procedures. Panasonic seeks to apply the alternative test procedure for measuring the energy usage of similar hybrid wine chiller/beverage center basic models, which DOE required in response to prior waiver requests. Because of a an error discovered in the equation used to calculate the energy usage of these products, DOE has rescinded the prior waivers and is proposing to correct this equation to ensure the accuracy of the calculations provided under the alternative test procedure. DOE solicits comments on its proposed modifications to correct the procedure contained in prior waivers issued to PAPRSA. DOE has issued an interim waiver for hybrid basic model PR6180WBC and all other PAPRSA hybrid basic models previously subject to a waiver.

DATES: DOE will accept comments, data, and information with regard to the proposed modification until February 25, 2016.

ADDRESSES: You may submit comments, identified by Case Number RF–043, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov* Include ''Case No. RF–043'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Room 6094, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar clothes washer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371, Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In a petition dated August 21, 2015, Panasonic Appliances Refrigerator Systems Corporation of America (''PAPRSA'') requested that the U.S. Department of Energy (''DOE'') permit PAPRSA to extend the use of an alternative test procedure to a new basic model. PAPRSA also sought an interim waiver to apply this alternative test procedure immediately. The basic model at issue is a hybrid wine chiller/beverage center model that employs technology and design characteristics that prevent the testing of this basic model according to the applicable test procedure found in 10 CFR part 430, subpart B, appendix A. During the course of a negotiated rulemaking that DOE conducted under the auspices of the Appliance Standards Rulemaking Advisory Committee (''ASRAC''), DOE discovered that the alternative test procedure relied on by PAPRSA contained an error in one of the equations used to calculate the energy usage of hybrid products. See 80 FR 17355 (April 1, 2015) (announcing DOE's intention to form a working group to discuss and negotiate potential energy conservation standards for miscellaneous refrigeration products). In accordance with 10 CFR 430.27(k), DOE gives notice of its proposed modification of the prior waivers as set forth below. DOE issued an interim waiver and seeks comment on a waiver that would apply to the new basic model and the basic models covered by the prior waivers.

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and refrigerator-freezers is set forth in 10 CFR part 430, subpart B, appendix A.

DOE's regulations allow a person to seek a waiver from the test procedure requirements for a particular basic model of a type of covered consumer product when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics.

The granting of a waiver is subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2). As soon as practicable after the granting of any waiver, DOE will

[1] For editorial reasons, Part B of EPCA was codified as Part A in the U.S. Code.

publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l). The waiver process also allows the granting of an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures upon a finding that it appears likely that the petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(e). Within one year of issuance of an interim waiver, DOE will either: (i) Publish in the **Federal Register** a determination on the petition for waiver; or (ii) Publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1).

A petitioner may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition. DOE will publish any such extension in the **Federal Register.** 10 CFR 430.27(g).

II. PAPRSA's Extension of Waiver Request: Assertions and Determinations

On August 21, 2015, PAPRSA requested an extension of its previous waivers (Case Nos. RF–022, RF–031 and RF–041) (''2015 waiver request'') under 10 CFR 430.27(g) to its hybrid wine chiller/beverage center basic model, PR6180WBC, with respect to appendix A to subpart B of 10 CFR part 430 (appendix A). PAPRSA, similar to its prior waiver requests, seeks to use a modified version of the test procedure that would specify the use of a higher fresh food compartment temperature during testing. DOE is publishing at the end of this notice PAPRSA's request in its entirety.

DOE granted a waiver, similar to that requested in PAPRSA's 2015 waiver request, to Sanyo E&E Corporation (Sanyo) [2] in a Decision and Order (77 FR 49443 (August 16, 2012)) under Case No. RF–022. On October 4, 2012, DOE issued a notice of correction to the Decision and Order incorporating a K factor (correction factor) value of 0.85 when calculating the energy consumption (77 FR 60688) (''the 2012 waiver''). DOE granted another waiver to PAPRSA for an additional basic model in a Decision and Order (78 FR 57139 (September 17, 2013)) under Case No. RF–031 (''the 2013 waiver''). These two waivers required testing under the now-obsolete Appendix A1 but with modifications. DOE later granted a waiver (79 FR 55769 (September 17, 2014)) to PAPRSA for another basic model under Case No. RF–041 (''the 2014 waiver''); this waiver required testing under Appendix A with modifications.

In its original petition, PAPRSA sought a waiver from the DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 for PAPRSA's hybrid models that consist of single-cabinet units with a refrigerated beverage compartment (*i.e.,* a ''fresh food compartment'') in the top portion and a wine storage compartment (*i.e.,* a ''chiller compartment'') in the bottom of the units.[3] DOE had issued guidance that specified that basic models such as the ones PAPRSA identified in its petition, which do not have a separate chiller compartment with a separate exterior door, are to be tested according to the current DOE test procedure (at that time, appendix A1) with the temperatures specified therein. PAPRSA asserted that the chiller compartment could not be tested at the prescribed temperature because the minimum compartment temperature is 45 °F. PAPRSA submitted an alternate test procedure to account for the energy consumption of its wine chiller/beverage centers. As requested, that alternate procedure would test the chiller compartment at 55 °F, instead of the prescribed 38 °F. To justify the use of this standardized temperature for testing, PAPRSA stated in its petition that it designed these models to provide an average temperature of 55 to 57 °F, which it determined is a commonly recommended temperature for wine storage, suggesting that this temperature is presumed to be representative of expected consumer use. 77 FR 19656. In granting the petition, DOE noted that the test procedures for wine chillers adopted by the Association of Home Appliance Manufacturers (AHAM), California Energy Commission (CEC), and Natural Resources Canada all use a standardized compartment temperature of 55 °F for wine chiller compartments, which is consistent with PAPRSA's approach.

DOE, however, recently became aware of a typographical error regarding one aspect of the equations in the 2012 waiver, the 2013 waiver, and the 2014 waiver, to be used when calculating the energy usage of a unit under test. The equation at issue—which addresses the energy use of the fresh food compartment and that DOE had previously prescribed for use as part of the calculation detailed in section 6.2.2.2 of appendix A—did not apply the specified correction factor (0.85) to the equation as intended. The equations in the waivers were as follows:

Energy consumption of the wine compartment:

$$EWine = ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)] * 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$EBeverage\ Compartment = ET1 + [(ET2 - ET1) \times (39\ °F - TBC1)/(TBC2 - TBC1)]$$

Section 6.2.2.2 of appendix A requires that the average per-cycle energy consumption be calculated based on the higher of the two separate compartment calculations. With the 0.85 K factor applied only to the chiller compartment calculation as detailed in PAPRSA's current waiver request, the fresh food compartment would result in the higher per-cycle energy consumption for nearly all test units and the final energy use calculation would not incorporate the 0.85 K factor. The 0.85 K factor should have also been included to similar calculations of energy consumption in sections 6.2.2.1 and 6.2.2.3 of appendix A. In addition, for consistency with the equations in sections 6.2.2.1 to 6.2.2.3 of appendix A, the waiver equations should also have included an energy adder (known as ''IET'') for any products that include an automatic icemaker.

To address these issues, and pursuant to DOE's authority under 10 CFR 430.27(k), DOE is correcting the formulas noted above to read as follows:

For section 6.2.2.1 of appendix A:

$$E = (ET1 \times 0.85) + IET$$

For section 6.2.2.2 of appendix A:

Energy consumption of the cooler compartment:

[2] Sanyo E&E Corporation has since changed its corporate name to PAPRSA.

[3] In this notice and in the Order, DOE uses the term ''fresh food compartment'' to refer to a compartment of a refrigerator that can be tested at the test temperature specified in 10 CFR part 430, subpart B, Appendix A. DOE uses the term ''chiller compartment'' to refer to a compartment of a refrigerator that cannot be tested at the test temperature specified in 10 CFR part 430, subpart B, Appendix A. Although these terms were recommended by the Miscellaneous Refrigeration Products Working Group to apply to a new product type, miscellaneous refrigeration products, DOE believes that it would be beneficial to adopt terminology in this Case that parallels that negotiated by a wide range of interested parties in the Miscellaneous Refrigeration Products Working Group. For more information, see the docket at *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-STD-0043.*

ECooler Compartment = (ET1 + [(ET2 − ET1) × (55 °F − TW1)/(TW2 − TW1)]) * 0.85 + IET

Energy consumption of the fresh food compartment:

EFreshFood Compartment= (ET1 + [(ET2 − ET1) × (39 °F − TBC1)/(TBC2 − TBC1)]) * 0.85 + IET

For section 6.2.2.3 of appendix A:

E = (Ex × 0.85) + IET

Under the interim waiver, the corrected equations must be used, going forward, with respect to all of the basic models for which DOE has granted a waiver previously and the basic model PAPRSA identified in its new petition.

In addition to the errors in the equations, the 2012 waiver and the 2013 waiver reference Appendix A1, which is obsolete. Finally, to update the waivers to reflect the current test procedure and to modify the equations, DOE is consolidating all of the basic models under one, new, corrected interim waiver, which is subject to comment. PAPRSA must begin using a modified test procedure for the new basic model and all of the basic models of hybrid wine chiller/beverage centers that had previously been subject to a waiver. The prior, erroneous waivers are rescinded, and a new, modified, waiver is issued as an interim waiver subject to comment. Rescission of the prior waiver does not affect or invalidate tests conducted pursuant to that waiver while it was in effect.

III. Conclusion

Therefore, DOE has issued an Order, stating:

After careful consideration of all the material submitted by PAPRSA in this matter, DOE grants an interim waiver regarding basic models PR6180WBC,[4] KBCS24RSBS, SR6180BC,[5] SR5180JBC,[6] and PR5180JKBC.[7] Accordingly, it is ORDERED that:

(1) The waivers previously granted under Case RF–022, Case RF–031 and Case RF–041 are rescinded due to erroneous formulae and because the waivers in RF–022 and RF–031 reference an obsolete DOE test procedure.

(2) PAPRSA must, going forward, test and rate the following PAPRSA basic models as set forth in paragraph (3) below.

PR6180WBC;
KBCS24RSBS;
SR6180BC;
SR5180JBC; and
PR5180JKBC.

(3) The applicable method of test for the PAPRSA basic models listed in paragraph (2) is the test procedure for electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, Appendix A, except that the test temperature for the ''cooler compartment'' (*i.e.,* the compartment designed to store wine) is 55 °F, instead of the prescribed 39 °F.

The K factor (correction factor) value is 0.85. The test must include (where applicable) the icemaking energy usage as defined in 10 CFR part 430, subpart B, appendix A, sec. 6.2.2.1.

Therefore, the energy consumption is defined by:

If compartment temperatures are below their respective standardized temperatures for both test settings (according to 10 CFR part 430, subpart B, Appendix A, sec. 6.2.2.1):

E = (ET1 × 0.85) + IET.

If compartment temperatures are not below their respective standardized temperatures for both test settings, the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, Appendix A, sec. 6.2.2.2):

Energy consumption of the ''cooler compartment'':

ECooler Compartment = (ET1 + [(ET2 − ET1) × (55 °F − TW1)/(TW2 − TW1)]) * 0.85 + IET

Energy consumption of the ''fresh food compartment'':

EFreshFood Compartment = (ET1 + [(ET2 − ET1) × (39 °F − TBC1)/(TBC2 − TBC1)]) * 0.85 + IET.

If the optional test for models with two compartments and user operable controls is used (according to 10 CFR part 430, subpart B, Appendix A, sec. 6.2.2.3):

E = (Ex × 0.85) + IET.

(5) Representations. PAPRSA may make representations about the energy use of its hybrid wine chiller/beverage center products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR 429.14(a).

(6) This interim waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(h) and (l).

(7) This interim waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(8) Granting of this interim waiver does not release PAPRSA from the certification requirements set forth at 10 CFR part 429.

IV. Summary and Request for Comments

DOE has granted PAPRSA an interim waiver from the specified portions of the test procedure for certain basic models of PAPRSA hybrid wine chiller/beverage centers and announces receipt of PAPRSA's request for extension of the existing waivers from those same portions of the test procedure. DOE is publishing PAPRSA's request for an extension of waiver in its entirety. The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the energy consumption of PAPRSA's specified hybrid refrigerators.

DOE solicits comments from interested parties on the request to extend the waiver to basic model PR6180WBC, including the suggested alternate test procedure, calculation methodology and proposed modifications to correct the procedure that PAPRSA would use going forward. In addition, DOE solicits comments from interested parties on DOE's issuing a new waiver, reflecting corrected the equations and the current DOE test procedure, for the basic models subject to the 2012, 2013, and 2014 waivers. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Sean R. Blixseth, Senior Legal Counsel, Panasonic Corporation of North America, 2055 Sanyo Avenue, San Diego, CA 92154–6229. All comment submissions to DOE must include the Case Number RF–043 for this proceeding. Submit electronic comments in Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the

[4] New basic model in Case No. RF–043.

[5] DOE notes that PAPRSA's petition in Case No. RF–022 identified the relevant basic models as: JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, KBCS24RS, and MBCM24FW. Upon further review, however, DOE has determined that these are individual model numbers, rather than basic model numbers. The correct basic model designations, as determined through a review of PAPRSA's filings with DOE's Compliance Certification Management System, are KBCS24RSBS (which covers JUB248LB, JUB248RB, JUB248LW, JUB248RW, KBCO24LS, KBCS24LS, KBCO24RS, and KBCS24RS) and SR6180BC (which covers MBCM24FW).

[6] Originally from Case No. RF–031.

[7] Originally from Case No. RF–041.

electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on January 13, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

BEFORE THE U.S. DEPARTMENT OF ENERGY

Washington, DC 20585

In the Matter of: *Panasonic Appliances Refrigeration Systems Corporation of America,* Petitioner

Case Number: RF–022; RF–031; RF–041

REQUEST FOR EXTENSION OF WAIVER AND INTERIM WAIVER

Panasonic Appliances Refrigeration Systems Corporation of America (''PAPRSA'') respectfully submits this Request for Extension of Waiver and Interim Waiver (''Request'') pursuant to 10 CFR 430.27(g). PAPRSA intends to introduce a new basic hybrid wine chiller beverage center model (''hybrid model'') that employs technology and design characteristics that prevent testing of the basic model according to the test procedures prescribed in 10 CFR 430, subpart B, appendix A and that are substantially the same as the technology and design characteristics for which PAPRSA received two previous waivers and an extension of waiver as a result.[8] As provided in further detail below, the Department of Energy (''DOE'') has previously granted PAPRSA [9] two separate waivers and an extension of waiver from DOE's electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of substantially similar hybrid models in Case Nos. RF–022, RF–031, and RF–041 (the ''waiver hybrid models''). Like the waiver hybrid models, PAPRSA has developed a new basic hybrid model, PR6180WBC, that employs substantially the same technology and design characteristics as its waiver hybrid models that make it impossible to certify, rate, and sell this new hybrid model under the existing testing procedures. PAPRSA therefore respectfully requests that DOE extend the previously granted waivers and interim waivers to this new basic hybrid model and that it be permitted to use the alternative testing method for this new basic hybrid model that has already been approved by DOE for the waiver hybrid models.

1. Existing Waiver Background and Product Characteristics of PAPRSA's Hybrid Models

In Case No. RF–022, PAPRSA submitted the initial petition for waiver on June 2, 2011 with respect to the test procedures for its waiver hybrid models that consist of a combination of a refrigerated ''beverage'' compartment in the top portion of these single-cabinet units and a wine storage compartment on the bottom of the units, and for which an alternative testing procedure was necessary to certify, rate, and sell such models.

As PAPRSA has explained for all of the waiver hybrid models, PAPRSA designed the wine storage compartments to operate between a minimum temperature of 45 °F and a maximum temperature of 64 °F, with an average temperature of 55 to 57 °F. PAPRSA uses heaters to ensure that the temperature in the wine storage compartment never drops below the minimum temperature. If the temperature of a wine bottle falls below 45 °F and approaches freezing, there is an increased risk of damage to wine from crystallization as well as possible damage to the cork. DOE's testing procedures contained in 10 CFR 430, subpart B, appendix A1, however, mandate that energy consumption be measured when the compartment temperature is set at 38 °F. Based on the design characteristics of its waiver hybrid models, PAPRSA needed a waiver with respect to DOE's testing procedures in order to properly ''certify, rate, and sell such models,'' because the existing test procedures contained in 10 CFR 430, subpart B, appendix A1, did not contemplate a product that is designed to be incapable of achieving a temperature below 45 °F.

On April 2, 2012, DOE published PAPRSA's previous petition for waiver and sought public comment, and DOE subsequently extended the deadline for comments after PAPRSA submitted a request for extension to clarify the scope of its original petition for waiver. *See* **Federal Register**, Vol. 77, No. 96, 29331–29333. No comments were filed opposing the relief requested in PAPRSA's petition for waiver.

On August 9, 2012, DOE granted PAPRSA's waiver from DOE's electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of the basic models listed in the Case No. RF–022 petition for waiver. *See* **Federal Register**, Vol. 77, No. 159, 49443–44. In permitting PAPRSA to test the wine chiller compartment at 55 °F, DOE noted ''that the test procedures for wine chillers adopted by the Association of Home Appliance Manufacturers (AHAM), California Energy Commission (CEC), and Natural Resources Canada all use a standardized compartment temperature of 55 °F for wine chiller compartments, which is consistent with [PAPRSA's] approach.'' *Id.* at 49444.

On September 26, 2012, DOE issued a correction to its August 9, 2012 order that incorporated the K factor (correction factor) value of .85 that PAPRSA should utilize when calculating the energy consumption of its waiver hybrid models. *See* **Federal Register**, Vol. 77, No. 193, 60688–89. Accordingly, DOE ultimately directed PAPRSA to utilize the following test procedure for its waiver hybrid models:

Energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, Appendix A1):

Energy consumption of the wine compartment:

$$EWine = (ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)]) * 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$EBeverage\ Compartment = ET1 + [(ET2 - ET1) \times (38\ °F - TBC1)/(TBC2 - TBC1)].$$

See **Federal Register**, Vol. 77, No. 193 at 60689.

On April 29, 2013 in Case No. RF–031, PAPRSA submitted a second petition for waiver and interim waiver for a substantially similar hybrid model, SR5180JBC, that shares the same design characteristics that led DOE to approve PAPRSA's waiver request in Case No. RF–022. No comments were filed opposing the relief requested in PAPRSA's second petition for waiver and interim waiver. On September 17, 2013, DOE again granted PAPRSA a waiver from DOE's electric refrigerator and refrigerator-freezer test procedures for determining the energy consumption of basic hybrid model SR5180JBC. *See* **Federal Register**, Vol. 78, No. 180, 57139–41.

On September 17, 2014 in Case No. RF–041, the DOE granted an Extension of Waiver to PAPRSA for hybrid model PR5180JKBC based on Case Nos. RF–022 and RF–031 but under the new procedures in 10 CFR 430, subpart B, appendix A. *See* **Federal Register**, Vol. 79, No. 180, 55769—55772.

[8] All current references to the test procedures cite to 10 CFR 430, subpart B, ''appendix A,'' which became effective on September 15, 2014. References to testing procedures in effect prior to that date cite to 10 CFR 430, subpart B, ''appendix A1.''

[9] The first waiver granted in Case No. RF–022 was issued to SANYO E&E Corporation. Effective April 1, 2013, SANYO E&E Corporation changed its corporate name to Panasonic Appliances Refrigeration Systems Corporation of America. Throughout this Petition, PAPRSA will be used to refer to both SANYO E&E Corporation and Panasonic Appliances Refrigeration Systems Corporation of America, unless otherwise indicated.

PR5180JKBC employed the same technology and design characteristics as the basic hybrid models in Case Nos. RF–022 and RF–031 that led the DOE to grant waivers in those cases. No comments had been filed opposing the relief requested in PAPRSA petition for extension of waiver and interim waiver.

2. Request to Extend Scope of Previously Granted Waivers, Interim Waivers, and Extension of Waiver to New Basic Hybrid Model under Previously Approved Alternative Testing Procedure

As indicated above, PAPRSA has developed a new basic hybrid model, PR6180WBC, that shares the same design characteristics that led DOE to approve PAPRSA's two prior petitions for waiver and extension of waiver. This new basic hybrid model is a single cabinet hybrid model that would be classified as a compact refrigerator with automatic defrost without through-the-door ice service, but which has a wine-chiller compartment designed for an average temperature of 55 to 57 °F. Just as with PAPRSA's waiver hybrid models, this new basic hybrid model contains a heater that prevents the temperature of the wine-chiller compartment from reaching a temperature below 45 °F. Thus, testing this new hybrid model at 39 °F is simply not possible and not representative of the energy consumption characteristics of this new basic hybrid model.

Further, just as PAPRSA's waiver hybrid models, 0.85 should also be the employed K factor (correction factor) for this new basic hybrid model because it will have a door-opening usage aligned with household freezers. *See* Appendix B to Subpart 430, 5.2.1.1, because Subpart 430 does not recognize wine chiller as a category.

In short, there are no material differences between this new basic hybrid model and PAPRSA's waiver hybrid models as it impacts this Request. The design differences between the new basic hybrid model and the waiver hybrid models are the introduction of a more efficient compressor, other sealed system and electrical components for increased efficiency, improved venting, and new external aesthetic features. Although the new basic hybrid model will be more energy efficient, the design characteristics of the new basic hybrid model are the same as the characteristics of PAPRSA's waiver hybrid models that led DOE to grant the prior waivers. For these reasons, PAPRSA respectfully requests that it be permitted to use the following testing procedure for its new basic hybrid model:

Energy consumption is defined by the higher of the two values calculated by the following two formulas (according to 10 CFR part 430, subpart B, appendix A):

Energy consumption of the wine compartment:

$$EWine = (ET1 + [(ET2 - ET1) \times (55\ °F - TW1)/(TW2 - TW1)]) * 0.85$$

Energy consumption of the refrigerated beverage compartment:

$$EBeverage\ Compartment = ET1 + [(ET2 - ET1) \times (39\ °F - TBC1)/(TBC2 - TBC1)].$$

PAPRSA respectfully requests that it be permitted to use this approved alternative testing method to test, certify and rate the new basic hybrid models in the same manner as its waiver hybrid models subject to the existing waivers and extension of waiver.

3. Grounds for Interim Waiver

Pursuant to 10 CFR part 430.27(b)(2), applicants for an interim waiver should address the likely success of their petition and what economic hardships and/or competitive disadvantages are likely to arise absent the grant of an interim waiver.

As detailed above, it is highly likely that DOE will grant this Request, as PAPRSA is simply seeking to test a new basic hybrid model under the alternative testing procedure already approved by DOE for PAPRSA's waiver hybrid models subject to the existing waivers. The new basic hybrid model contains no materially different design characteristics that should warrant a different result.

DOE has engaged in a rulemaking process to develop comprehensive test procedures for miscellaneous refrigeration products, which would apply to PAPRSA's new basic hybrid model, but the rulemaking process is not complete. As DOE has previously stated, ''[f]ully recognizing that product development occurs faster than the test procedure rulemaking process, the Department's rules permit manufacturers of models not contemplated by the test procedures . . . to petition for a test procedure waiver in order to certify, rate, and sell such models.'' GC Enforcement Guidance on the Application of Waivers and on the Waiver Process at 2 (rel. Dec. 23, 2010).[10]

Certain manufacturers design comparable hybrid models so that the beverage center compartment does not reach below 40 °F, and thus are not covered products under DOE's regulations. Unless PAPRSA is granted an interim waiver, it will be at a competitive disadvantage by being unable to introduce the new basic hybrid model to compete with manufacturers that design their hybrid models in a manner that falls outside of DOE's jurisdiction.

Given that this Request is likely to be granted and PAPRSA will face economic hardship unless an interim waiver is granted, permitting PAPRSA to immediately certify the new basic hybrid model under the alternative testing method already approved by DOE is in the public interest.

Respectfully submitted,

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August 21, 2015

[FR Doc. 2016–01496 Filed 1–25–16; 8:45 am]
BILLING CODE 6450–01–P

[10] Available at *http://energy.gov/sites/prod/files/gcprod/documents/LargeCapacityRCW_guidance_122210.pdf.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–31–000]

Sage Grouse Energy Project, LLC v. PacifiCorp; Notice of Complaint

Take notice that on January 19, 2016, pursuant to Rules 206(a) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206(a), Sage Grouse Energy Project, LLC (Complainant or Sage Grouse) filed a formal complaint against PacifiCorp (Respondent) alleging that Respondent improperly determined that Sage Grouse is not a Qualified Facility within the meaning of the Public Utility Regulatory Policies Act of 1978 and conducted Sage Grouse's Feasibility Study erroneously, as more fully explained in the complaint.

Complainant certifies that copies of the complaint were served upon each person designated on the official service list compiled by the Commission in this proceeding.

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 and

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 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 February 8, 2016.

DATED: January 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01465 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR16–12–000.

Applicants: Columbia Gas of Maryland, Inc.

Description: Submits tariff filing per 284.123(b)(1)/: SOC to be effective 11/5/2015; Filing Type: 980.

Filed Date: 1/19/16.

Accession Number: 201601195012.

Comments/Protests Due: 5 p.m. ET 2/9/16.

Docket Numbers: PR16–13–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Submits tariff filing per 284.123(b)(1)/: SOC to be effective 11/30/2015; Filing Type: 980

Filed Date: 1/19/16.

Accession Number: 201601195014.

Comments/Protests Due: 5 p.m. ET 2/9/16.

Docket Numbers: RP16–389–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: NWP—Measurement Correction/Adjustments Filing to be effective 2/18/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5019.

Comments Due: 5 p.m. ET 2/1/16.

Docket Numbers: RP16–390–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 01/19/16 Negotiated Rates—ConEdison Energy, Inc. (HUB) 2275–89 to be effective 1/18/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5193.

Comments Due: 5 p.m. ET 2/1/16.

Docket Numbers: RP16–391–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 01/19/16 Negotiated Rates—Mercuria Energy Gas Trading LLC (HUB) 7540–89 to be effective 1/18/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5194.

Comments Due: 5 p.m. ET 2/1/16.

Docket Numbers: RP16–392–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Negotiated Rate PAL Agreement—Southwest Energy LP to be effective 1/19/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5257.

Comments Due: 5 p.m. ET 2/1/16.

Docket Numbers: RP16–393–000.

Applicants: Midwestern Gas Transmission Company.

Description: § 4(d) Rate Filing: Negotiated Rate PAL Agreement—ConocoPhillips Company to be effective 1/17/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5267.

Comments Due: 5 p.m. ET 2/1/16.

Docket Numbers: RP16–394–000.

Applicants: OkTex Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Sales and Purchases of Gas for Operational Purposes to be effective 3/1/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5273.

Comments Due: 5 p.m. ET 2/1/16.

Docket Numbers: RP16–395–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Modified Operational Purchases and Sales to be effective 2/19/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5346.

Comments Due: 5 p.m. ET 2/1/16.

Docket Numbers: RP16–396–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: TETLP Jan2016 Cleanup Filing for GTC Section 1 to be effective 2/20/2016.

Filed Date: 1/20/16.

Accession Number: 20160120–5000.

Comments Due: 5 p.m. ET 2/1/16.

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.

Filings in Existing Proceedings

Docket Numbers: RP16–184–001.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Compliance filing Cameron Interstate Pipeline FERC Dec. 30, 2016 Order Compliance Filing to be effective 3/1/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5256.

Comments Due: 5 p.m. ET 2/1/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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 January 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01470 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14731–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 27, 2015, Energy Resources USA, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located at the U.S. Army Corps of Engineers' (Corps) Green River Lock and Dam No. 5, located on the Green River in Warren County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) a 770-foot-long, 300-foot-wide intake channel with a 85-foot-long retaining wall; (2) a 98-foot-long, 66-foot-wide powerhouse containing two generating units with a total capacity of 7 megawatts; (3) a 1000-foot-long, 220-foot-wide tailrace with a 40-foot-long retaining wall; (4) a 4.16/69 kilo-Volt (kV) substation; and (5) a 11.5-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 39,800 megawatt-hours, and operate utilizing surplus water from the Green River Lock and Dam No. 5, as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA, Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134. (954) 248–8425.

FERC Contact: Dustin Wilson, *Dustin.Wilson@ferc.gov,* (202) 502–6528.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14731–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01459 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–28–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line QP, Line Q, and Queen Storage Project Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line QP, Line Q, and Queen Storage Project involving construction and operation of facilities by National Fuel Gas Supply Corporation (National Fuel) in Forest and Warren Counties, Pennsylvania. National Fuel indicates the project would abandon capacity by sale a natural gas storage system and associated pipeline that is no longer needed by the company and would provide that capacity to other gathering system suppliers in Pennsylvania. Additionally, National Fuel proposes to replace a compromised portion of the pipeline associated with the storage system and install new pipeline to maintain National Fuel's distribution capability. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 19, 2016.

If you sent comments on this project to the Commission before the opening of this docket on December 3, 2015, you will need to file those comments in Docket No. CP16–028–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

National Fuel provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–028–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

National Fuel seeks authorization to abandon by sale all of its facilities comprising its Queen Storage Field, including the base gas in the field, its Queen Compressor Station, and a segment of its Line Q, approximately 5.5 miles in length, beginning at the Queen Compressor Station and traversing northwest to a location just south of the Allegheny River (the ''Line Q Segment''). Also, National Fuel seeks authorization to construct and operate approximately 5 miles of new 4-inch-diameter plastic pipeline (''Line QP'') beginning at a point just north of the Allegheny River, and traversing southeast along or adjacent to the existing Line Q right-of-way, to a point approximately 2,000 feet west of the Queen Compressor Station.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 45.3 acres of land for the pipeline. Following construction, National Fuel would maintain about 20.5 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified an issue we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by National Fuel. The proposed replacement of Line Q and installation of Line QP would involve an open cut crossing of the Allegheny River in segments that may contain sensitive freshwater mussels. We encourage comments on this issue as well as other issues you feel should be addressed in the EA.

[1] The appendices referenced in this notice will not appear in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Environmental Mailing List

The environmental mailing list federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP16–28). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01464 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–381–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Section 4(d) Rate Filing: LSS and SS–2 Tracker Effective November 1, 2015 to be effective 11/1/2015.

Filed Date: 1/13/16.

Accession Number: 20160113–5104.

Comments Due: 5 p.m. ET 1/25/16.

Docket Numbers: RP16–382–000.

Applicants: Alliance Pipeline L.P.

Description: Section 4(d) Rate Filing: Contract 1000591 Correction & Others to be effective 12/1/2015.

Filed Date: 1/13/16.

Accession Number: 20160113–5246.

Comments Due: 5 p.m. ET 1/25/16.

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: January 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01454 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–5–000]

Thoreson Family Ranch, LLC; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On January 5, 2016, as supplemented on January 14 and 15, 2016, Thoreson Family Ranch, LLC, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Thoreson Family Ranch Project would have an installed capacity of 2 kilowatts (kW), and would be located at the end of an existing 6-inch-diameter irrigation pipeline. The project would be located near Cottage Grove, in Lane County, Oregon.

Applicant Contact: Stephen Joel Thoreson, 319 North 20th Street, Cottage Grove, Oregon 97424, Phone No. (541) 942–7407.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) An existing pump house, approximately 8 feet by 10 feet, at the end of an existing 6-inch-diameter irrigation pipeline; (2) one turbine/generator unit with an installed capacity of 2 kW; (3) an approximately 5-foot-long tailrace, discharging to Damewood Creek; and (4) appurtenant facilities.

The proposed project would have a total installed capacity of 2 kW.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA ..	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed addition of the hydroelectric project to the Thoreson Family Ranch's existing irrigation conduit will not alter its primary purpose of distributing water for irrigation. Thoreson Family Ranch proposes to continue using the conduit, as it has historically, to irrigate fields during July, August, and September. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments 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. 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.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*i.e.,* CD16–5) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

[1] 18 CFR 385.2001–2005 (2015).

Dated: January 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01461 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12646–014]

City of Broken Bow, Oklahoma; Notice of Application Accepted for Filing, 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. *Type of Proceeding:* Surrender of License.

b. *Project No.:* 12646–014.

c. *Date Filed:* December 21, 2015.

d. *Licensee:* City of Broken Bow, Oklahoma.

e. *Name of Project:* Pine Creek Lake Dam Hydropower Project.

f. *Location:* The unconstructed project was licensed to be located at the U.S. Army Corps of Engineers Pine Creek Lake Dam on the Little River, near the town of Broken Bow, McCurtain County, Oklahoma.

g. *Filed Pursuant to:* 18 CFR 6.2.

h. *Licensee Contact:* Ms. Vickie Pieratt, City of Broken Bow, 210 North Broadway, Broken Bow, Oklahoma 74728, Telephone: 580–584–2285.

i. *FERC Contact:* Jennifer Polardino, (202) 502–6437, *Jennifer.Polardino@ferc.gov.*

j. Deadline for filing comments, interventions and protests is 30 days from the issuance date of this notice. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments 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–12646–014.

k. *Description of Project Facilities:* The unconstructed project is authorized to be located on the downstream side of the U.S. Army Corps of Engineers Pine Creek Lake Dam. The project license approved the following new facilities: (1) a 130-foot-wide by 23-foot-long outlet structure connecting to an existing 13-foot-diameter outlet conduit; (2) a steel liner inside the 13-foot-diameter outlet conduit; (3) a 112-foot-wide by 73-foot-long powerhouse containing two generating units having a total installed capacity of 6.4 megawatts; (4) a tailrace returning flows to the Little River; (5) a 0.7-mile-long, 14.4-kilovolt (kV) primary transmission; and (6) appurtenant facilities.

l. *Description of Proceeding:* On December 21, 2015, the City of Broken Bow, Oklahoma filed an application to surrender the license for the unconstructed Pine Creek Lake Dam Hydropower Project. In its filing, the licensee states the project is not financially feasible or constructible because it is unable to enter into a power sales agreement to sell project energy.

m. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* 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 in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *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, .212 and .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.

p. *Filing and Service of Responsive 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 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). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. 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.

q. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: January 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01466 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12470–010]

City of Broken Bow, Oklahoma; Notice of Application Accepted for Filing, 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. *Type of Proceeding:* Surrender of License.

b. *Project No.:* 12470–010.

c. *Date Filed:* December 21, 2015.

d. *Licensee:* City of Broken Bow, Oklahoma.

e. *Name of Project:* Broken Bow Re-regulation Dam Hydropower Project.

f. *Location:* The unconstructed project was licensed to be located at the U.S. Army Corps of Engineers Broken Bow Re-regulation Dam on the Little River, near the town of Broken Bow, McCurtain County, Oklahoma.

g. *Filed Pursuant to:* 18 CFR 6.2.

h. *Licensee Contact:* Mr. Larry Bachman, City of Broken Bow, 210 North Broadway, Broken Bow, Oklahoma 74728, Telephone: 580–584–2285.

i. *FERC Contact:* Jennifer Polardino, (202) 502–6437, *Jennifer.Polardino@ferc.gov.*

j. Deadline for filing comments, interventions and protests is 30 days from the issuance date of this notice. The Commission strongly encourages electronic filing. Please file motions to intervene, protests and comments 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–12470–010.

k. *Description of Project Facilities:* The unconstructed project is authorized to be located on the downstream side of the U.S. Army Corps of Engineers Broken Bow Re-Regulation Dam. The project license approved the following new facilities: (1) Three steel 93.5-foot-long penstocks inside the 10-foot-diameter outlet conduit; (2) trashracks; (3) a 112-foot-wide by 23-foot-long powerhouse containing three generating units having a total installed capacity of 4.0 megawatts; (4) a tailrace returning flows to the Little River; (5) a 1,891-foot-long, 13.5-kilovolt (kV) primary transmission; and (6) appurtenant facilities.

l. *Description of Proceeding:* On December 21, 2015, the City of Broken Bow, Oklahoma filed an application to surrender the license for the unconstructed Broken Bow Re-Regulation Dam Hydropower Project. In its filing, the licensee states the project is not financially feasible or constructible because it is unable to enter into a power sales agreement to sell project energy.

m. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* 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 in the Commission's Public Reference Room located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *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, .212 and .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.

p. *Filing and Service of Responsive 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 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). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. 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.

q. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: January 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01467 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14730–000]

Palo Verde Power; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 19, 2015, Palo Verde Power filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Palo Verde Hydroelectric Project (Palo Verde Project or project) to be located on the Colorado River, near Blythe, Riverside County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be located near the existing discharge channel north of Palo Verde Irrigation District's Palo Verde diversion dam. The applicant proposes to generate power by bypassing the releases the irrigation district now makes through the discharge channel's gates into the project's new penstock. The proposed project would consist of: (1) a new 30-foot-long concrete and steel penstock; (2) a new 45-foot-long, 45-foot-wide powerhouse containing a single turbine generator unit with an installed capacity of 29 megawatts; (3) a tailrace discharging powerhouse flows to the existing diversion spill area; (4) less than a mile of 161-kilovolt transmission line; and (5) appurtenant facilities. The project would have an estimated average annual energy generation of 161 gigawatt-hours. There are no federal lands associated with the project.

Applicant Contact: Michael Blakey, Palo Verde Power, 9734 Diablo Vista Ave., Galt, CA 95632; phone: (209) 251–3105.

FERC Contact: Jim Fargo; phone: (202) 502–6095.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments,

motions to intervene, notices of intent, and competing applications 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–14730–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14730) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01458 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14732–000]

Energy Resources USA, Inc.; Notice of Preliminary Permit Application Accepted for Filing And Soliciting Comments, Motions To Intervene, and Competing Applications

On November 27, 2015, Energy Resources, USA, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located at the U.S. Army Corps of Engineers' (Corps) Green River Lock and Dam No. 3, located on the Green River in Muhlenberg County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) a 770-foot-long, 300-foot-wide intake channel with a 85-foot-long retaining wall; (2) a 98-foot-long, 82-foot-wide powerhouse containing two generating units with a total capacity of 10 megawatts; (3) a 1,000-foot-long, 220-foot-wide tailrace with a 40-foot-long retaining wall; (4) a 4.16/69 kilo-Volt (kV) substation; and (5) a 1-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 54,900 megawatt-hours, and operate utilizing surplus water from the Green River Lock and Dam No. 3, as directed by the Corps.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA, Inc., 2655 Le Jeune Road, Suite 804, Coral Gables, Florida 33134. (954) 248–8425.

FERC Contact: Dustin Wilson, *Dustin.Wilson@ferc.gov;* (202) 502–6528.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *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* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14732–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01460 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–39–000.

Applicants: Bethel Wind Farm LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Bethel Wind Farm LLC.

Filed Date: 1/20/16.

Accession Number: 20160120–5083.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: EG16–40–000.

Applicants: Tenaska Pennsylvania Partners, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Tenaska Pennsylvania Partners, LLC.

Filed Date: 1/19/16.

Accession Number: 20160119–5422.

Comments Due: 5 p.m. ET 2/9/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–052; ER14–630–027; ER10–2319–043; ER10–2317–043; ER13–1351–025; ER10–2330–050.

Applicants: J.P. Morgan Ventures Energy Corporation, AlphaGen Power LLC, BE Alabama LLC, BE CA LLC, Florida Power Development LLC, Utility Contract Funding, L.L.C.

Description: Non-Material Change in Status of the J.P. Morgan Sellers.

Filed Date: 1/19/16.

Accession Number: 20160119–5414.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER12–1436–010; ER14–152–005; ER14–153–005; ER14–154–005; ER13–1793–007; ER10–3300–010; ER13–2386–006; ER10–3099–016; ER10–2740–009; ER10–3143–017; ER10–2742–008; ER12–1260–009; ER10–2329–007.

Applicants: Eagle Point Power Generation LLC, Elgin Energy Center, LLC, Gibson City Energy Center, LLC, Grand Tower Energy Center, LLC, Hazle Spindle, LLC, La Paloma Generating Company, LLC, Lakeswind Power Partners, LLC, RC Cape May Holdings, LLC, Rocky Road Power, LLC, Sabine

Cogen, LP, Tilton Energy LLC, Stephentown Spindle, LLC, Vineland Energy LLC

Description: Notice of Change in Status of the Rockland Sellers.

Filed Date: 1/19/16.

Accession Number: 20160119–5412.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER15–1873–004.

Applicants: Buckeye Wind Energy LLC.

Description: Notification of Change in Facts Under Market-Based Rate Authority of Buckeye Wind Energy LLC.

Filed Date: 1/19/16.

Accession Number: 20160119–5405.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER15–2620–002.

Applicants: Little Elk Wind Project, LLC.

Description: Compliance filing: Little Elk Wind Project, LLC MBR Tariff to be effective 10/1/2015.

Filed Date: 1/20/16.

Accession Number: 20160120–5130.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: ER16–165–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance Filing in ER16–165—Revisions to Clarify Treatment of PTP Revenues to be effective 1/1/2016.

Filed Date: 1/20/16.

Accession Number: 20160120–5054.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: ER16–518–001.

Applicants: Central Maine Power Company.

Description: Tariff Amendment: Amendment to Executed Interconnection Agreement Hackett Mills Hydro Associates to be effective 1/1/2016.

Filed Date: 1/20/16.

Accession Number: 20160120–5094.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: ER16–750–000.

Applicants: Bethel Wind Farm LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 3/21/2016.

Filed Date: 1/20/16.

Accession Number: 20160120–5077.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: ER16–750–001.

Applicants: Bethel Wind Farm LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 3/21/2016.

Filed Date: 1/20/16.

Accession Number: 20160120–5088.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: ER16–751–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Service Agreement No. 4395; Queue No. AA1–092 to be effective 12/21/2015.

Filed Date: 1/20/16.

Accession Number: 20160120–5120.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: ER16–752–000.

Applicants: Carousel Wind Farm, LLC.

Description: Section 205(d) Rate Filing: Carousel Wind Farm, LLC Notice of Non-Material Change in Status to be effective 10/31/2015.

Filed Date: 1/20/16.

Accession Number: 20160120–5131.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: ER16–753–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Second Revised Service Agreement No. 2962; Queue Position W4–016 to be effective 12/21/2015.

Filed Date: 1/20/16.

Accession Number: 20160120–5136.

Comments Due: 5 p.m. ET 2/10/16.

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: January 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01463 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–288]

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchanges; Notice of Compliance Filing

Take notice that on January 4, 2016, Shell Energy North America (US), LP submitted its Compliance Filing to Order on Rehearing of Opinion No. 536.[1]

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 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 March 9, 2016.

[1] *San Diego Gas & Elec. Co.* v. *Sellers of Energy & Ancillary Servs.,* 153 FERC ¶ 61,144 (2015) (''Order on Rehearing''), *denying rehearing of San Diego Gas & Elec. Co.* v. *Sellers of Energy & Ancillary Servs.,* Opinion No. 536, 149 FERC ¶ 61,116 (2014) (''Opinion No. 536'').

Dated: January 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01456 Filed 1–25–16; 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: ER10–2331–051; ER14–630–026; ER10–2319–042; ER10–2317–042; ER13–1351–024; ER10–2330–049.

Applicants: J.P. Morgan Ventures Energy Corporation, AlphaGen Power LLC, BE Alabama LLC, BE CA LLC, Florida Power Development LLC, Utility Contract Funding, L.L.C.

Description: Non-Material Change in Status of the J.P. Morgan Sellers.

Filed Date: 1/19/16.

Accession Number: 20160119–5403.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER12–839–002; ER15–1657–002.

Applicants: Entergy Rhode Island State Energy, L.P., SEPG Energy Marketing Services, LLC.

Description: Notice of Non-Material Change in Status of Entergy Rhode Island State Energy, L.P., et al.

Filed Date: 1/15/16.

Accession Number: 20160115–5686.

Comments Due: 5 p.m. ET 2/5/16.

Docket Numbers: ER15–793–001.

Applicants: Southern Indiana Gas and Electric Company.

Description: Market-Based Triennial Review Filing: Supplement to SIGECO/Vectren South Triennial MBR Update in ER15–793 to be effective 3/19/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5298.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER15–1862–000.

Applicants: Tucson Electric Power Company.

Description: Report Filing: Response to Deficiency Letter to be effective N/A.

Filed Date: 1/19/16.

Accession Number: 20160119–5258.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER15–2256–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–01–19 Order 809 Compliance Filing to be effective 11/5/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5274.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER15–2615–002.

Applicants: Goodwell Wind Project, LLC.

Description: Compliance filing: Goodwell Wind Project, LLC MBR Tariff to be effective 10/1/2015.

Filed Date: 1/19/16.

Accession Number: 20160119–5339.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–139–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Deficiency Response in ER16–139—Revisions to Attachment W to Update GFAs to be effective 1/1/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5272.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–745–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Section 205(d) Rate Filing: NCEMC Energy Exchange Agreement RS No. 347 to be effective 3/21/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5340.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–746–000.

Applicants: Constellation Power Source Generation, LLC.

Description: Section 205(d) Rate Filing: FERC Rate Schedule No. 2 to be effective 2/1/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5341.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–747–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original Service Agreement No. 4355; Queue Z2–011 (ISA) to be effective 12/21/2015.

Filed Date: 1/20/16.

Accession Number: 20160120–5005.

Comments Due: 5 p.m. ET 2/10/16.

Docket Numbers: ER16–748–000.

Applicants: Sentinel Energy Center, LLC.

Description: Section 205(d) Rate Filing: Notice of Succession to be effective 12/21/2015.

Filed Date: 1/20/16.

Accession Number: 20160120–5016.

Comments Due: 5 p.m. ET 2/10/16.

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: January 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01462 Filed 1–25–16; 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 corporate filings:

Docket Numbers: EC16–54–000.

Applicants: Goal Line L.P., KES Kingsburg, L.P., Colton Power L.P.

Description: Correction to December 23, 2015 Application for Authorization of Disposition of Jurisdictional Facilities of Goal Line L.P., et al.

Filed Date: 1/15/16.

Accession Number: 20160115–5669.

Comments Due: 5 p.m. ET 1/25/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–712–011; ER10–1325–006; ER16–141–002; ER12–1946–006; ER15–255–001; ER10–2566–007; ER10–1333–006; ER15–2387–001; ER10–2034–005; ER10–2032–005; ER10–2033–005; ER13–2322–003; ER15–190–003; ER10–1335–006; ER10–1328–002; ER12–1502–003; ER10–2567–003; ER12–2313–002; ER10–1330–004; ER16–323–001; ER16–61–002; ER16–63–002; ER10–1331–002; ER16–64–002; ER10–1332–002; ER10–2522–003.

Applicants: Cimarron Wind Energy, LLC, CinCap V, LLC, Conetoe II Solar, LLC, Duke Energy Beckjord, LLC, Duke Energy Beckjord Storage, LLC, Duke Energy Carolinas, LLC, Duke Energy Commercial Enterprises, Inc., Duke Energy Florida, Inc., Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc., Duke Energy Ohio, Inc., Duke Energy Progress, Inc., Duke Energy Renewable Services, LLC, Duke Energy Retail Sales, LLC, Happy Jack Windpower, LLC, Ironwood

Windpower, LLC, Kit Carson Windpower, LLC, Laurel Hill Wind Energy, LLC, North Allegheny Wind, LLC, Ohio Valley Electric Corporation, Seville Solar One LLC, Seville Solar Two LLC, Silver Sage Windpower, LLC, Tallbear Seville LLC, Three Buttes Windpower, LLC, Top of the World Wind Energy, LLC.

Description: Notification of Non-Material Change in Status of Duke Energy Corporation MBR Sellers.

Filed Date: 1/15/16.

Accession Number: 20160115–5676.

Comments Due: 5 p.m. ET 2/5/16.

Docket Numbers: ER15–1019–004.

Applicants: Fowler Ridge IV Wind Farm LLC.

Description: Notice of Non-Material Change in Status of Fowler Ridge IV Wind Farm LLC.

Filed Date: 1/15/16.

Accession Number: 20160115–5650.

Comments Due: 5 p.m. ET 2/5/16.

Docket Numbers: ER15–1861–000.

Applicants: Tucson Electric Power Company.

Description: Report Filing: Response to Deficiency Letter to be effective N/A.

Filed Date: 1/19/16.

Accession Number: 20160119–5223.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–118–001.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: Compliance filing: 2016–01–19_ALLETE Transmission Rate Compliance Filing to be effective 1/1/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5237.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–737–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: Attachment H, Attachment L and Section 34.8 Clean-up FIling to be effective 1/1/2016.

Filed Date: 1/15/16.

Accession Number: 20160115–5494.

Comments Due: 5 p.m. ET 2/5/16.

Docket Numbers: ER16–738–000.

Applicants: Colonial Eagle Solar, LLC.

Description: Section 205(d) Rate Filing: Amendment to MBR Tariff to be effective 11/20/2015.

Filed Date: 1/15/16.

Accession Number: 20160115–5512.

Comments Due: 5 p.m. ET 2/5/16.

Docket Numbers: ER16–739–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original WMPA Service Agreement No. 4360, Queue No. AA1–080 to be effective 12/21/2015.

Filed Date: 1/19/16.

Accession Number: 20160119–5185.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–740–000.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: ITC Great Plains, LLC Formula Rate Compliance Filing to be effective 1/1/2016.

Filed Date: 1/19/16.

Accession Number: 20160119–5186.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–741–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original WMPA Service Agreement No. 4361, Queue No. AA1–096 to be effective 12/21/2015.

Filed Date: 1/19/16.

Accession Number: 20160119–5191.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–742–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original Service Agreement No. 4392; Queue AA1–093 (WMPA) to be effective 12/21/2015.

Filed Date: 1/19/16.

Accession Number: 20160119–5232.

Comments Due: 5 p.m. ET 2/9/16.

Docket Numbers: ER16–744–000.

Applicants: Midcontinent Independent System Operator, Inc., WPPI Energy.

Description: Filing for Authorization of Regulatory Asset Amount of Midcontinent Independent System Operator, Inc., on behalf of WPPI Energy.

Filed Date: 1/15/16.

Accession Number: 20160115–5681.

Comments Due: 5 p.m. ET 2/5/16.

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: January 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01453 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–383–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Section 4(d) Rate Filing: 01/14/16 Negotiated Rates—Sequent Energy Management (HUB) 3075–89 to be effective 1/13/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5154.

Comments Due: 5 p.m. ET 1/26/16.

Docket Numbers: RP16–384–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Section 4(d) Rate Filing: 01/14/16 Negotiated Rates—Mercuria Energy Gas Trading LLC (HUB) 7540–89 to be effective 1/13/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5236.

Comments Due: 5 p.m. ET 1/26/16.

Docket Numbers: RP16–385–000.

Applicants: Paiute Pipeline Company.

Description: Section 4(d) Rate Filing: Nonconforming TSA 48–A to be effective 1/15/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5284.

Comments Due: 5 p.m. ET 1/26/16.

Docket Numbers: RP16–386–000.

Applicants: Dominion Transmission, Inc.

Description: Section 4(d) Rate Filing: DTI—January 14, 2016 Nonconforming Service Agreement to be effective 2/1/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5291.

Comments Due: 5 p.m. ET 1/26/16.

Docket Numbers: RP16–387–000.

Applicants: Guardian Pipeline, L.L.C.

Description: Section 4(d) Rate Filing: Negotiated Rate PAL Agreement—MIECO INC. to be effective 1/15/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5372.

Comments Due: 5 p.m. ET 1/26/16.

Docket Numbers: RP16–388–000.

Applicants: East Cheyenne Gas Storage, LLC.

Description: Section 4(d) Rate Filing: ECGS Limited Section 4 Filing to be effective 2/14/2016.

Filed Date: 1/14/16.

Accession Number: 20160114–5379.

Comments Due: 5 p.m. ET 1/26/16.

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.

Filings in Existing Proceedings

Docket Numbers: RP11–1566–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Report Filing: Revenue Sharing Report—2016.

Filed Date: 1/12/16.

Accession Number: 20160112–5122.

Comments Due: 5 p.m. ET 1/25/16.

Docket Numbers: RP15–555–001.

Applicants: Columbia Gas Transmission, LLC.

Description: Compliance filing TCO RAM Compliance—LAUF Report.

Filed Date: 1/15/16.

Accession Number: 20160115–5420.

Comments Due: 5 p.m. ET 1/27/16.

Docket Numbers: RP15–557–001.

Applicants: Columbia Gulf Transmission, LLC.

Description: Compliance filing TRA LAUF Compliance Report.

Filed Date: 1/15/16.

Accession Number: 20160115–5575.

Comments Due: 5 p.m. ET 1/27/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: January 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01457 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–27–000]

Paulsboro Natural Gas Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Delaware River Pipeline Relocation Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Delaware River Pipeline Relocation Project (project) involving construction and operation of facilities by Paulsboro Natural Gas Pipeline Company, LLC (PNGPC) in Delaware County, Pennsylvania, and Gloucester County, New Jersey. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 18, 2016.

If you sent comments on this project to the Commission before the opening of this docket on December 11, 2015, you will need to file those comments in Docket No. CP16–27–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

PNGPC provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–27–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

PNGPC is seeking authorization from the Commission under Sections 7(b) and 7(c) of the Natural Gas Act (NGA) to relocate, replace, and abandon approximately 2.4-miles of a 6- and 8-inch diameter natural gas pipeline extending across the Delaware River

between Delaware County, Pennsylvania and Gloucester County, New Jersey. The pipeline currently transports approximately 38 million standard cubic feet per day (MMSCF/d) of natural gas from the Spectra Energy Partners, LP Texas Eastern Transmission 16-inch-diameter pipeline to a refinery owned by Paulsboro Refining Company LLC (PRC), a PNGPC affiliate, in Paulsboro, New Jersey, to support PRC refinery operations. Natural gas transport would increase to 57.7 MMSC/d, and the sole customer served by the pipeline is, and would continue to be, the PRC refinery.

In 2014, an underwater portion of the pipeline was damaged as a result of the United States Army Corps of Engineers' (USACE) dredging activities in the Delaware River, as part of the Delaware River Main Channel Deepening Project (45-Foot Project). The 45-Foot Project is ongoing and the anticipated project completion is 2017. The USACE imposed a deadline to PNGPC to have the pipeline relocated and the segment within the river removed by June 2017.

The Delaware River Pipeline Relocation Project would consist of the following:

- Removal of approximately 425-feet of existing pipeline west of the Delaware River shipping channel;
- removal of 4,179-feet of existing pipeline near Philadelphia International Airport;
- abandonment in place of approximately 8,153-feet of 6- and 8-inch-diameter pipeline;
- construction of 2.6 miles of a new 12- and 24-inch-diameter pipeline adjacent to the abandoned line, of that, 8,550-feet will be installed using the horizontal directional drill method under the Delaware River;
- installation of a new pig launcher at an existing metering site in Delaware County, Pennsylvania;
- modification of an existing PRC connection to include new block valves, check valves, and reducers in Gloucester County, New Jersey; and
- construction of a new PRC tie-in facility to include a pig receiver, block valves, and a reducer in Gloucester County, New Jersey.

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice will not appear in the **Federal Register.** Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Land Requirements for Construction

Construction of the proposed facilities would require the temporary use of about 28.6 acres of land. Operation of the facilities would require the permanent use of about 4.5 acres. The remaining 24.2 acres would be restored or reverted to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- socioeconomics;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the Federal Aviation Administration, U.S. Coast Guard, and U.S. Army Corps of Engineers, Philadelphia District, have expressed their intention to participate as a cooperating agency in the preparation of the EA to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP16–27). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 19, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01455 Filed 1–25–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0533; FRL—9940–80–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Phosphate Fertilizer Industry (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Phosphate Fertilizer Industry (40 CFR part 60, subparts T, U, V, W, and X) (Renewal)'' (EPA ICR No. 1061.13, OMB Control No. 2060–0037), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through January 31, 2016. Public comments were previously requested, via the **Federal Register** (80 FR 32116), on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 25, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0533, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 60, subpart A, as well as for the provisions of Subparts T, U, V, W, and X. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: New and existing facilities that engage in the manufacture of phosphate fertilizers and have a design capacity of more than 15 tons of equivalent phosphorous pentoxide (P_2O_5) feed per calendar day.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts T, U, V, W, and X).

Estimated number of respondents: 13 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 1,390 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $460,000 (per year), which includes $320,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most-recently approved ICR is due to accounting for the assumption that all sources will spend one hour annually reviewing and understanding the rule requirements. Previously, the assumption was that only new sources would incur this burden.

There is a small decrease in O&M cost in this ICR due to rounding of all calculated values to three significant digits. In addition, there is an increase of two annual responses due to a minor correction. The previous ICR did not account for notifications of operational changes in calculating the number of responses.

Courtney Kerwin,

Acting-Director, Collection Strategies Division.

[FR Doc. 2016–01472 Filed 1–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0499; FRL–9941–35–OW]

Draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges From the Application of Pesticides; Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit and request for public comment.

SUMMARY: All ten EPA Regions today are proposing for public comment the draft 2016 National Pollutant Discharge Elimination System (NPDES) pesticide general permit (PGP)—the ''draft 2016 PGP.'' The draft 2016 PGP covers point source discharges from the application of pesticides to waters of the United States. Once finalized, the draft 2016 PGP will replace the existing permit that will expire at midnight on October 31, 2016. The draft 2016 PGP has the same conditions and requirements as the 2011 PGP and would authorize certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. EPA proposes to issue this permit for five (5) years in all areas of the country where EPA is the NPDES permitting authority. EPA solicits public comment on all aspects of the draft 2016 PGP. This **Federal Register** notice describes the draft 2016 PGP in general and also includes specific topics about which the Agency is particularly seeking comment. The fact sheet accompanying the permit contains supporting documentation. EPA encourages the public to read the fact sheet to better understand the draft 2016 PGP.

DATES: Comments on the draft 2016 PGP must be received on or before March 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0499, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, 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: EPA Regional Office listed in Section I.D, or Prasad Chumble, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202–564–0021 or email: *chumble.prasad@epa.gov.*

SUPPLEMENTARY INFORMATION: This section is organized as follows:

Table of Contents

I. General Information

A. Does this action apply to me?

You may be affected by this action if you apply pesticides, under the use patterns in Section III.B., that result in a discharge to waters of the United States in one of the geographic areas identified in Section III.A. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THE DRAFT 2016 PGP

Category	NAICS	Examples of potentially affected entities
Agriculture parties—General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber, including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations.	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products.	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
	221310 Water Supply for Irrigation.	Operating irrigation systems.

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THE DRAFT 2016 PGP—Continued

Category	NAICS	Examples of potentially affected entities
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	923120 Administration of Public Health Programs.	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs.	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.
	924120 Administration of Conservation Programs.	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
Utility parties (includes utilities)	221 Utilities	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.

B. How can I get copies of this document and other related information?

The draft 2016 PGP, fact sheet and all supporting documents are available at *www.regulations.gov* under Docket ID No. EPA–HQ–OW–2015–0499. Electronic versions of the draft 2016 PGP and fact sheet are also available on EPA's NPDES Web site at *www.epa.gov/npdes/pesticides.*

C. Will public hearings be held on this action?

EPA has not scheduled any public hearings to receive public comment concerning the draft 2016 PGP. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the draft 2016 PGP. Requests for a public hearing must be sent or delivered in writing to the same address as provided above, for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the draft 2016 PGP. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the draft 2016 PGP at any such public hearing.

D. Finalizing the Draft 2016 PGP

EPA intends to issue a final 2016 PGP on or prior to October 31, 2016 (the expiration date of the 2011 PGP). The final 2016 PGP will be issued after all public comments received during the public comment period have been considered and appropriate changes made to the draft 2016 PGP. EPA will include its response to comments received in the docket as part of the final permit decision. Once the final 2016 PGP becomes effective, eligible Operators may seek authorization under the new PGP as outlined in the permit. To ensure uninterrupted permit coverage from the 2011 PGP to the new permit, Operators, who are required to submit a Notice of Intent (NOI), must submit their NOI for coverage under the new permit prior to discharge as outlined in the permit (no later than 10 or 30 days before discharge). See Part 1.2.4 of the draft 2016 PGP.

E. Who are the EPA regional contacts for the Draft 2016 PGP?

For EPA Region 1, contact George Papadopoulos at tel.: (617) 918–1579; or email at *papadopoulos.george@epa.gov.*

For EPA Region 2, contact Maureen Krudner at tel.: (212) 637–3874; or email at *krudner.maureen@epa.gov.*

For EPA Region 3, contact Mark Smith at tel.: (215) 814–3105; or email at *smith.mark@epa.gov.*

For EPA Region 4, contact Sam Sampath at tel.: (404) 562–9229; or email at *sampath.sam@epa.gov.*

For EPA Region 5, contact Mark Ackerman at tel.: (312) 353–4145; or email at *ackerman.mark@epa.gov.*

For EPA Region 6, contact Kilty Baskin at tel.: (214) 665–7500 or email at *baskin.kilty@epa.gov.*

For EPA Region 7, contact Kimberly Hill at tel.: (913) 551–7841 or email at: *hill.kimberly@epa.gov.*

For EPA Region 8, contact David Rise at tel.: (406) 457–5012 or email at: *rise.david@epa.gov.*

For EPA Region 9, contact Pascal Mues at tel.: (415) 972–3768 or email at: *mues.pascal@epa.gov.*

For EPA Region 10, contact Dirk Helder at tel.: (208) 378–5749 or email at: *helder.dirk@epa.gov.*

II. Background

Section 301(a) of the Clean Water Act (CWA) provides that ''the discharge of any pollutant by any person shall be unlawful'' unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines ''discharge of a pollutant'' as

''(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.'' 33 U.S.C. 1362(12). A ''point source'' is any ''discernible, confined and discrete conveyance'' but does not include ''agricultural stormwater discharges and return flows from irrigated agriculture.'' 33 U.S.C. 1362(14).

The term ''pollutant'' includes, among other things, ''garbage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water.'' 33 U.S.C. 1362(6).

A person may discharge a pollutant without violating the section 301 prohibition by obtaining authorization to discharge (referred to herein as ''coverage'') under a section 402 NPDES permit (33 U.S.C. 1342). Under section 402(a), EPA may ''issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)'' upon certain conditions required by the Act.

EPA issued the first Pesticide General Permit (PGP) on October 31, 2011 in response to a United States Sixth Circuit Court of Appeals ruling vacating EPA's 2006 Final Rule on Aquatic Pesticides. *National Cotton Council of America.* v. *EPA,* 553 F.3d 927 (6th Cir. 2009). EPA developed the PGP to control point source discharges of biological pesticides, and chemical pesticides that leave a residue, into waters of the United States.

Implementation of the 2011 PGP has been successful during its first four years. EPA is not aware of any lawsuits brought against Operators discharging under EPA's PGP. The regulated community has raised very few implementation issues, and EPA resolved those issues. The provisions in the permit for pesticide applications during emergencies have been effectively implemented. Finally, Operators have generally submitted the NOIs and Annual Reports on time to the Agency. However, in an effort to pursue continuous improvement to protect water quality, EPA seeks comment on the draft 2016 PGP, in general, and on specific topics as described in Section III.C, below.

III. Scope and Applicability of the Draft 2016 PGP

A. Geographic Coverage

EPA would provide permit coverage for classes of discharges where EPA is the NPDES permitting authority. The geographic coverage of today's draft 2016 PGP is listed below. Where the permit covers activities on Indian Country lands, those areas are as listed below within the borders of that state:

EPA Region 1

- Massachusetts, including Indian Country lands within Massachusetts
- Indian Country lands within Connecticut
- New Hampshire
- Indian Country lands within Rhode Island
- Federal Facilities within Vermont

EPA Region 2

- Indian Country lands within New York State
- Puerto Rico

EPA Region 3

- The District of Columbia
- Federal Facilities within Delaware

EPA Region 4

- Indian Country lands within Alabama
- Indian Country lands within Florida
- Indian Country lands within Mississippi
- Indian Country lands within North Carolina

EPA Region 5

- Indian Country lands within Michigan
- Indian Country lands within Minnesota
- Indian Country lands within Wisconsin

EPA Region 6

- Indian Country lands within Louisiana
- New Mexico, including Indian Country lands within New Mexico, except Navajo Reservation Lands (see Region 9) and Ute Mountain Reservation Lands (see Region 8)
- Indian Country lands within Oklahoma
- Discharges in Texas that are not under the authority of the Texas Commission on Environmental Quality (formerly TNRCC), including activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, including Indian Country lands

EPA Region 7

- Indian Country lands within Iowa
- Indian Country lands within Kansas
- Indian Country lands within Nebraska, except Pine Ridge Reservation lands (see Region 8)

EPA Region 8

- Federal Facilities in Colorado, including those on Indian Country lands within Colorado as well as the portion of the Ute Mountain Reservation located in New Mexico
- Indian Country lands within Montana
- Indian Country lands within North Dakota
- Indian Country lands within South Dakota, as well as the portion of the Pine Ridge Reservation located in Nebraska (see Region 7)
- Indian Country lands within Utah, except Goshute and Navajo Reservation lands (see Region 9)
- Indian Country lands within Wyoming

EPA Region 9

- The Island of American Samoa
- Indian Country lands within Arizona as well as Navajo Reservation lands in New Mexico (see Region 6) and Utah (see Region 8)
- Indian Country lands within California
- The Island of Guam
- The Johnston Atoll
- Midway Island, Wake Island, and other unincorporated U.S. possessions
- The Commonwealth of the Northern Mariana Islands
- Indian Country lands within the State of Nevada, as well as the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon (see Region 10) and the Goshute Reservation in Utah (see Region 8)

EPA Region 10

- Indian Country lands within Alaska
- Idaho, including Indian Country lands within Idaho, except Duck Valley Reservation lands (see Region 9)
- Indian Country lands within Oregon, except Fort McDermitt Reservation lands (see Region 9)
- Federal Facilities in Washington, including those located on Indian Country lands within Washington.

B. Categories of Facilities Covered

The draft 2016 PGP has the same requirements and conditions as EPA's 2011 PGP and regulates the same discharges to waters of the United States from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue. These apply to the following pesticide use patterns:

- Mosquito and Other Flying Insect Pest Control—to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- Weed and Algae Pest Control—to control weeds, algae, and pathogens that

are pests in water and at water's edge, including ditches and/or canals.

• Animal Pest Control—to control animal pests in water and at water's edge. Animal pests in this use category include fish, lampreys, insects, mollusks, and pathogens.

• Forest Canopy Pest Control—application of a pesticide to a forest canopy to control the population of a pest species (*e.g.,* insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

The scope of activities encompassed by these pesticide use patterns is described in greater detail in Part III.1.1 of the Fact Sheet for the draft 2016 PGP.

C. Summary of the Permit Requirements and Provisions for Which EPA Is Soliciting Comment

Once issued, the final 2016 PGP will replace the 2011 PGP, which was issued for a five-year term on October 31, 2011 (see 76 FR 68750). The draft 2016 PGP has the same conditions and requirements as the existing 2011 PGP, and is structured in the same nine parts: (1) Coverage under the permit, (2) technology-based effluent limitations, (3) water quality-based effluent limitations, (4) monitoring, (5) pesticide discharge management plan, (6) corrective action, (7) recordkeeping and Annual Reporting, (8) EPA contact information and mailing addresses, and (9) permit conditions applicable to specific states, Indian country lands or territories. Additionally, as with the 2011 PGP, the draft 2016 PGP includes nine appendices with additional conditions and guidance for permittees: (A) Definitions, abbreviations, and acronyms, (B) standard permit conditions, (C) areas covered, (D) Notice of Intent (NOI) form, (E) Notice of Termination (NOT) form, (F) Pesticide Discharge Evaluation worksheet (PDEW), (G) Annual Reporting template, (H) Adverse Incident template, and (I) endangered species procedures.

The following is a summary of the draft 2016 PGP's requirements:

• The draft 2016 PGP defines ''Operator'' (*i.e.,* the entity required to obtain NPDES permit coverage for discharges) to include any (a) *Applicator* who performs the application of pesticides or has day-to-day control of the application of pesticides that results in a discharge to waters of the United States, or (b) *Decision-maker* who controls any decision to apply pesticides that results in a discharge to waters of the United States. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

• All Applicators are required to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest, maintain pesticide application equipment in proper operating condition, control discharges as necessary to meet applicable water quality standards, and monitor for and report any adverse incidents.

• All Decision-makers are required, to the extent not determined by the Applicator, to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest. All Decision-makers are also required to control discharges as necessary to meet applicable water quality standards and monitor for and report any adverse incidents.

• Certain Decision-makers [*i.e.,* any agency for which pest management for land resource stewardship is an integral part of the organization's operations, entities with a specific responsibility to control pests (*e.g.,* mosquito and weed control districts), local governments or other entities that apply pesticides in excess of specified annual treatment area thresholds, and entities that discharge pesticides to Tier 3 waters or to waters of the United States containing National Marine Fisheries Service (NMFS) Listed Resources of Concern] are required to also submit an NOI to obtain authorization to discharge and implement pest management options to reduce the discharge of pesticides to waters of the United States. Of this group, certain large Decision-makers must also develop a Pesticide Discharge Management Plan (PDMP), submit annual reports, and maintain detailed records. Certain small Decision-makers are required to complete a pesticide discharge evaluation worksheet for each pesticide application (in lieu of the more comprehensive PDMP), an annual report, and detailed recordkeeping.

While EPA encourages the public to review and comment on all aspects and provisions in the draft 2016 PGP, EPA specifically solicits comments on the following as part of this reissuance:

(1) *Notice of Intent.* As with the 2011 PGP, the draft 2016 PGP requires only certain Decision-makers, as discussed above, to submit NOIs. If an NOI is required, it must contain either a map or narrative description of the area and the potentially affected waters of the United States, and the pesticide use patterns for which permit coverage is being requested for the duration of the permit. Operators can identify specific waters or request coverage for all waters within the area for which they are requesting permit coverage. EPA is interested in feedback on whether the NOI data requirements capture adequate information on the pesticide application areas and associated waters of the United States for which permit coverage is being requested. For example, in the NOI submissions for the 2011 PGP, EPA received a variety of submissions for the Pest Management Areas ranging from maps of large waterbodies to specific subsections of streams. NOIs submitted under the 2011 PGP are available online at (*http://ofmpub.epa.gov/apex/aps/f?p=PGP_2011:HOME:::::*), and a summary of the data is available in the docket EPA–HQ–OW–2010–0257. EPA requests comments on whether different, or more specific and consistent, information should be required to better determine the locations of pesticides applications.

As mentioned above, the draft 2016 PGP requires Decision-makers to include in their NOIs a description of the areas where pesticides are applied (or treatment areas) within the broader designated Pest Management Area. Within the Pest Management Area, Operators are required to determine if they are applying to impaired or Tier 3 waters; however, Operators are not required to determine whether their application will impact the water quality of drinking water supplies. EPA seeks feedback on how best to collect information to determine if pesticides activities covered under this permit could impact drinking water source protection areas. One possible approach would be to require a determination of whether a portion of the Pest Management Area is within a public drinking water supply source protection area. If EPA adopted this approach, EPA would add a ''Yes/No'' indicator to the eNOI form (Appendix D) to indicate whether a portion of the Pest Management Area is within a public water supply source water protection area. EPA solicits comment on this approach.

(2) *Annual Reporting.* As with the 2011 PGP, the draft 2016 PGP requires any Decision-maker who is required to submit an NOI and is a large entity, and any Decision-maker with discharges to waters of the United States containing NMFS Listed Resources of Concern including small entities, to submit an annual report to EPA that contains, among other things, a previous calendar year's compilation of pesticide products applied, total annual quantities applied, locations where pesticide applications were made, and information on any adverse incidents or corrective actions

resulting from discharges covered under the draft 2016 PGP. See Appendix G of the draft 2016 PGP, Annual Report template. Due to the potential burden of accounting and submitting information on each and every location of application, type, and amount of pesticides, EPA asked for a compilation of that information for the previous year of application. However, as with the information requested in the NOI, EPA received a variety of descriptions for the Pest Management Areas and treatment areas in the Annual Reports. The Agency is interested in comments on the utility and value of the information collected by the reports. EPA would also like feedback on whether less, more, or different information would provide a more accurate accounting of the amount, type, and location of pesticide discharges. Annual Reports submitted under the 2011 PGP are available online at (*http://ofmpub.epa.gov/apex/aps/f?p=PGP_2011:HOME::::::*). In addition, to ensure consistency and prevent confusion among the pesticides user community, EPA seeks comment on whether the terminology is clear and easily understandable. For example, many state pesticide regulations require Applicators to report pesticides in ''amount used,'' unlike the 2011 PGP, which requires that pesticides be reported in ''quantity applied.'' See Part III.7 of the Fact Sheet for further discussion on Annual Reporting requirements.

(3) *Water Quality-Based Effluent Limitations (WQBEL).* The 2011 PGP contained several provisions to protect water quality and the draft 2016 PGP includes those same provisions. It includes a narrative WQBEL requiring that discharges be controlled as necessary to meet applicable water quality standards. Failure to control discharges in a manner that meets applicable water quality standards is a violation of the permit.

In addition to the narrative WQBEL, the draft 2016 PGP contains related provisions which act together to further protect water quality. These provisions were also included in the 2011 PGP. For example, the draft 2016 PGP requires the Operator to implement control measures and to take corrective action in response to any excursion of applicable water quality standards. Additionally, EPA expects that, as with the 2011 PGP, the Agency will receive CWA Section 401 certifications for the final 2016 PGP. Some of those certifications will include additional conditions that are required by the state, territory, or tribe, that are necessary to assure compliance with the applicable provisions of the CWA, including water quality standards, in specific geographic areas where the permit is available. The CWA Section 401 certifications submitted by states, territories and tribes for the 2011 PGP are included in the docket at EPA–HQ–OW–2010–0257–1267.

The draft 2016 PGP retains the same eligibility provisions from the 2011 PGP which provides additional water quality protection. For instance, the draft 2016 PGP makes clear that Operators must comply with all applicable statutes, regulations, and other requirements including, but not limited to, requirements contained in the labeling of pesticide products approved under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), known as ''FIFRA labeling.'' If Operators are found to have applied a pesticide in a manner inconsistent with any relevant water quality-related FIFRA labeling requirements, EPA will presume that the effluent limitation to minimize pesticides entering the waters of the United States has been violated under the NPDES permit. Many provisions of FIFRA labeling—such as those relating to application sites, rates, frequency, and methods, as well as provisions concerning proper storage and disposal of pesticide wastes and containers—are requirements that protect water quality. Also, it is important to note that biological pesticides do not cause water quality toxicity because they do not work through a toxic mode of action, and the discharges of chemical pesticides that would be covered by the draft 2016 PGP are residues of pesticides after they have performed their intended purpose. Thus, residue concentrations will be no higher than the concentration of the pesticide as applied.

To provide further protection, the draft 2016 PGP also includes the provision from the 2011 PGP which excludes from coverage any discharges of pesticides to waters listed as impaired, including waters with Total Maximum Daily Loads (TMDLs), where the waterbody is impaired for the active ingredient in that pesticide or its degradates. For geographic areas covered under the draft 2016 PGP, the 303(d) list of impairments [1] indicates that of the 17 pesticide active ingredients identified on the impairment list, seven are for legacy pollutants that have had their FIFRA registrations cancelled and are no longer authorized for use. Furthermore, for the remaining pesticides, analysis of the 2011 PGP annual reports data indicate that none of the reported pesticides are on the 303(d) list of impairments in geographic areas where the PGP is authorized. See document titled, ''*Comparison of 303(d) Pesticides Impairment Data with 2011 PGP Annual Reports Data*'' in the docket.

In addition, as identified in Part 1.2.3 of the 2011 PGP and the draft 2016 PGP, for eligible discharges (*e.g.,* discharges to waters that are impaired for pollutants other than the pesticide product or degradates of that product), EPA may determine that additional TBELs or WQBELs are necessary, or may deny coverage under the PGP and require submission of an application for an individual permit.

Prior to reissuing permits, EPA evaluates opportunities for improving permit requirements to protect water quality. Although EPA finds that the conditions and requirements of the draft 2016 PGP are protective of water quality, EPA is aware that some states, tribes, and territories include additional WQBELs in their states-issued permits or included additional conditions in their 401 certifications for the draft 2011 PGP. EPA has examined these additional BMPs and permit conditions and seeks feedback on whether some of these additional measures or others should be added to the draft 2016 PGP WQBELs to further protect water quality. EPA has included examples of some permit requirements from NPDES authorized state WQBELs in the docket. See document titled, ''*Examples of State PGP Provisions that Address WQBELs/WQ Monitoring.''* Additionally, examples of some BMPs from pesticides labels are available in the docket as well. See document titled, ''*Examples of BMPs in Pesticides Product FIFRA Labels to Address Water Quality.*''

IV. Cost Impacts of the PGP

EPA performed a cost impact analysis on Operators covered by the 2011 PGP for the purpose of examining the economic achievability of complying with the technology-based effluent limitations and the administrative requirements embodied in the permit. EPA performs this type of analysis where a general permit is developed in the absence of existing applicable national effluent limitations. Based on the 2011 PGP analysis and the updated cost analysis for the draft 2016 PGP, EPA expects that there will be minimal burden on entities, including small businesses, covered under the draft 2016 PGP. EPA finds the limitations to be economically achievable. A copy of EPA's cost analysis, titled, ''*Cost Impact Analysis for the Draft 2016 Pesticide General Permit (PGP),''* is available in

[1] *http://iaspub.epa.gov/waters10/attains_nation_cy.control?p_report_type=T.*

the docket. EPA solicits additional information during the public notice of the draft 2016 PGP that will allow for a more accurate cost analysis, and will update the cost impact analysis as appropriate, for the final permit.

V. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

The draft 2016 PGP is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in E.O. 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. EPA directly implements the NPDES Program, including the proposed 2016 PGP, in Indian Country; therefore, in compliance with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with tribal officials early in the process to permit tribes to have meaningful and timely input into the renewal of the 2016 PGP. To gain an understanding of, and where necessary, to address tribal implications of the draft 2016 PGP, EPA conducted the following activities:

- October 28, 2015—EPA mailed notification letters to tribal leaders initiating consultation and coordination on the renewal of the PGP. The initiation letter was posted on the tribal portal Web site at *http://tcots.epa.gov.*
- November 19, 2015—EPA held an informational teleconference open to all tribal representatives, and reserved the last part of the teleconference for official consultation comments. Seven tribal officials participated. EPA also invited tribes to submit written comments on the draft 2016 PGP. The presentation was posted on the tribal portal Web site at *http://tcots.epa.gov.*

Although EPA did not receive any comments during the formal consultation period, EPA encourages tribes to participate in the public review process by submitting comments through regulations.gov. EPA will consider the comments and address them in the final action.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 14, 2016.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

Dated: January 14, 2016.

Joan Leary Matthews,

Director, Clean Water Division, EPA Region 2.

Dated: January 14, 2016.

Jose C. Font,

Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: January 13, 2016.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: January 13, 2016.

James D. Giattina,

Director, Water Protection Division, EPA Region 4.

Dated: January 13, 2016.

Tinka G. Hyde,

Director, Water Division, EPA Region 5.

Dated: January 14, 2016.

William K. Honker, P.E.,

Director, Water Division, EPA Region 6.

Dated: January 14, 2016.

Karen A. Flournoy,

Director, Water, Wetlands and Pesticides Division, EPA Region 7.

Dated: January 14, 2016.

Darcy O'Connor,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.

Dated: January 13, 2016.

Tomas Torres,

Director, Water Division, EPA Region 9.

Dated: January 14, 2016.

Daniel D. Opalski,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2016–01564 Filed 1–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9941–73–ORD]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Equivalent Method

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the designation of a new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, one new reference method for measuring concentrations of PM_{10} in the ambient air.

FOR FURTHER INFORMATION CONTACT: Robert Vanderpool, Exposure Methods and Measurement Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Email: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQSs. A list of all reference or equivalent methods that have been previously designated by EPA may be found at *http://www.epa.gov/ttn/amtic/criteria.html.*

The EPA hereby announces the designation of one new reference method for measuring concentrations of a new equivalent method for measuring pollutant concentrations of PM_{10} in the ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on August 31, 2011 (76 FR 54326–54341).

The new equivalent method for PM_{10} is an automated monitoring method utilizing a measurement principle based on sample collection by filtration and analysis by beta-ray attenuation and is identified as follows:

EQPM–1215–226, ''Met One Instruments, Inc. E–BAM + Beta Attenuation Mass Monitor − PM_{10} FEM Configuration,'' configured for 24 1-hour average measurements of PM_{10} by beta attenuation, using a glass fiber filter tape roll (460130 or 460180), a sample flow rate of 16.67 liters/min, with the standard (BX–802) EPA PM_{10} inlet (meeting 40 CFR 50 Appendix L specifications) and equipped with 9250 ambient temperature sensor. Instrument must be operated in accordance with the E–BAM + Particulate Monitor operation manual, revision 1 or later. This designation applies to PM_{10} measurements only.

The application for equivalent method determination for the PM_{10} method was received by the Office of Research and Development on November 19, 2015. This monitor is commercially available from the applicant, Met One Instruments, Inc., 1600 Washington Blvd., Grants Pass, OR 97526.

Representative test monitors have been tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on August 31, 2011. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that these methods should be designated as a reference or equivalent method.

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.,* configuration or operational settings) specified in the designated method description (see the identification of the method above).

Use of the method also should be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program,'' EPA–454/B–13–003, (both available at *http://www.epa.gov/ttn/amtic/qalist.html*). Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

Consistent or repeated noncompliance with any of these conditions should be reported to: Director, Exposure Methods and Measurements Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Dated: January 19, 2016.

Jennifer Orme-Zavaleta,

Director, National Exposure Research Laboratory.

[FR Doc. 2016–01560 Filed 1–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2010–0763; FRL–9941–70–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Hazardous Chemical Reporting: Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Hazardous Chemical Reporting: Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II) (Renewal)'' (EPA ICR No. 2436.03, OMB Control No. 2050–0206) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through March 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 62526) on October 16, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 25, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number, EPA–HQ–SFUND–2010–0763, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2620; email address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) apply to the owner or operator of any facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and its implementing regulations. Under section 311 of EPCRA, these facilities are required to submit MSDS to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the local fire department for each hazardous chemical stored on-site in a quantity greater than the reporting threshold. Section 312 of EPCRA requires owners and operators of facilities to annually report the inventories of those chemicals reported under section 311. EPA is required to publish two emergency and hazardous chemical inventory forms, ''Tier I'' and ''Tier II,'' for use by these facilities. On July 13, 2012, EPA further revised these forms to add some new data elements that would be useful for local emergency planners and responders. In ICR 2436.02, EPA estimated that after the initial reporting of the new data elements, it would only take 0.25 hours per facility to review the new data elements and revise if necessary. New data elements added to page one of the Tier II form included contact information for facility emergency coordinator; Tier II information; whether facility is manned or unmanned; if the facility is subject to EPCRA Section 302 or CAA Section 112(r) (Risk Management Program) etc.

Form Numbers: 8700–29 and 8700–30.

Respondents/affected entities: Facilities with hazardous chemicals

above the reporting thresholds specified in the regulations at 40 CFR part 370.

Respondent's obligation to respond: Mandatory (Section 312 of EPCRA).

Estimated number of respondents: 400,000 (total).

Frequency of response: Annual.

Total estimated burden: 100,000 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,760,400 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 62,500 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is because the burden of reading the rule and modifying their software was only necessary at the onset of the rule.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–01482 Filed 1–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9941–63–OA]

Notification of a Public Meeting of the Science Advisory Board Environmental Economics Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Environmental Economics Advisory Committee to review the EPA's proposed methodology for updating its mortality risk valuation estimates for policy analysis.

DATES: The public meeting will be held on March 7, 2016 from 9:00 a.m. to 5:00 p.m. (Eastern Time) and on March 8, 2016, from 8:30 a.m. to 4:30 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the Crowne Plaza Washington National Airport Hotel, 1480 Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this public meeting may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400R) U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; by telephone at (202) 564–2155 or via email at *armitage.thomas@epa.gov.* General information concerning the EPA SAB can be found at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Environmental Economics Advisory Committee will hold a public meeting to review the EPA's proposed methodology for updating its mortality risk valuation estimates for policy analysis. Estimates of the value of mortality risk reductions play an important role in the EPA's analysis of the benefits of regulatory actions. The committee will provide advice to the Administrator through the chartered SAB.

The EPA's Office of Policy has requested advice on proposed improvements to the Agency's methodology for estimating benefits associated with reduced risk of mortality. This methodology takes into account the amounts that individuals are willing to pay for reductions in mortality risk. The resulting values are combined into an estimate known as the value of statistical life (VSL) which is used in regulatory benefit-cost analysis. The EPA has also requested that the SAB review options for accounting for changes in the VSL over time as real income grows, known as income elasticity of willingness to pay. The EPA has submitted the following documents to the SAB for review: (1) *Valuing Mortality Risk for Policy: a Meta-analytic Approach,* a white paper prepared by the EPA Office of Policy to describe the Agency's interpretation and application of SAB recommendations received in July 2011 regarding updates to the EPA's estimates of mortality risk valuation; (2) *The Effect of Income on the Value of Mortality and Morbidity Risk Reductions,* a report prepared for the EPA's Office of Air and Radiation on options for updating the Agency's recommended estimate for the income elasticity of the value of statistical life; and (3) *Recommended Income Elasticity and Income Growth Estimates: Technical Memorandum,* an EPA memorandum providing supplementary information to the report. Additional information about this SAB advisory activity can be found at the following URL: *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Measuring%20Mortality%20Risk?OpenDocument.*

Technical Contacts: Any technical questions concerning the documents to be reviewed by the SAB should be directed to Dr. Nathalie Simon in the EPA's National Center for Environmental Economics, by telephone at 202–566–2347 or by email at *Simon.nathalie@epa.gov.*

Availability of the meeting materials: Prior to the meeting, the review documents, agenda and other materials will be accessible on the meeting page on the SAB Web site at *http://www.epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Interested members of the public may submit relevant information on the topic of this advisory activity, including the charge to the panel and the EPA review documents, and/or the group conducting the activity, for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB panel to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at the meeting will be limited to five minutes per speaker. Interested parties should contact Dr. Thomas Armitage, DFO, in writing (preferably via email), at the contact information noted above, by February 29, 2016 to be placed on the list of public speakers for the meeting.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by Committee members, statements should be

supplied to the DFO (preferably via email) at the contact information noted above by February 29, 2016. It is the SAB Staff Office general policy to post written comments on the Web page for advisory meetings. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at the contact information provided above. To request accommodation of a disability, please contact Dr. Armitage preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 19, 2016.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2016–01507 Filed 1–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–9941–62–ORD]

Board of Scientific Counselors Executive Committee; Notification of Public Teleconference and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public teleconference and public comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the Board of Scientific Counselors (BOSC) Executive Committee will host a public teleconference convening on February 8, 2016, from 1:00pm to 3:00pm Eastern Time. The primary discussion will focus on the consolidated report incorporating the five subcommittee reports, which addresses the research and future direction of the Office of Research and Development's (ORD) National Research Programs. The five subcommittees are: Air, Climate and Energy; Chemical Safety for Sustainability and Human Health Risk Assessment; Homeland Security; Safe and Sustainable Water Resources; and Sustainable and Healthy Communities. The report also provides advice on two ORD Cross-Cutting Research Roadmaps: Environmental Justice and Climate Change. There will be a public comment period from 1:15 pm to 1:30 pm Eastern Time on February 8, 2016. For information on registering to participate on the teleconference or to provide public comment, please see the **DATES** and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come, first-served basis. Advance registration is required. Registration for participating via teleconference closes February 4, 2016. The deadline to sign up to speak during the public comment period or to submit written public comment is February 4, 2016.

DATES: The BOSC Executive Committee meeting will be held on February 8, 2016. All times noted are Eastern Time and are approximate. In order to participate on the teleconference you must register at the following site: *https://www.eventbrite.com/e/us-epa-bosc-executive-committee-teleconference-registration-20730008012.* Once you have completed the online registration, you will be contacted and provided with the teleconference instructions.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the meeting should be directed to Tom Tracy, Designated Federal Officer, Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., MC 8104 R, Washington, DC 20460; by telephone at 202–564–6518; fax at 202–565– 2911; or via email at *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: The Charter of the BOSC states that the advisory committee shall provide independent advice to the Administrator on technical and management aspects of the ORD's research program. Additional information about the BOSC is available at: *http://www2.epa.gov/bosc.* Oral Statements: Members of the public who wish to provide oral comment during the meeting must preregister. Individuals or groups making remarks during the public comment period will be limited to five (5) minutes. To accommodate the number of people who want to address the BOSC Executive Committee, only one representative of a particular community, organization, or group will be allowed to speak. Written Statements: Written comments for the public meeting must be received by February 4, 2016, and will be included in the materials distributed to the BOSC Executive Committee prior to the meeting. Written comments should be sent to Tom Tracy, Environmental Protection Agency, via email at *tracy.tom@epa.gov* or by mail to 1200 Pennsylvania Avenue NW., (MC 8104 R), Washington, DC 20460, or submitted through regulations.gov, Docket ID No. EPA–HQ–ORD–2015–0765. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted online at regulations.gov. Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Tom Tracy, at 202–564–6518 or via email at *tracy.tom@epa.gov.* To request special accommodations, please contact Tom Tracy no later than February 4, 2016, to give the Environmental Protection Agency sufficient time to process your request. All requests should be sent to the address, email, or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: January 14, 2016.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2016–01506 Filed 1–25–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Technical Release 16

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued a technical release, *Implementation Guidance for Internal Use Software.*

The technical release is available on the FASAB Web site at *http://www.fasab.gov/about/aapc/technical-releases/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, executive director, 441 G Street NW., Mailstop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: January 20, 2016.

Wendy M. Payne,

Executive Director.

[FR Doc. 2016–01449 Filed 1–25–16; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 14–252; DA 16–7]

Instructions for FCC Form 175 Application to Participate in the Forward Auction (Auction 1002)

AGENCY: Federal Communications Commission.

ACTION: Notification of application instructions.

SUMMARY: The broadcast incentive auction (Auction 1000) is composed of a reverse auction (Auction 1001) and a forward auction (Auction 1002). This document provided information on and filing instructions for completing FCC Form 175, the application for parties seeking to participate in the forward auction (Auction 1002).

DATES: The forward auction FCC Form 175 filing window opens at 12:00 p.m. Eastern Time (ET) on January 26, 2016, and closes at 6:00 p.m. ET on February 9, 2016.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* for general forward auction questions Leslie Barnes or Valerie Barrish at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Application Instructions for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Instructions for FCC Form 175 Application to Participate in the Forward Auction (Auction 1002) (Forward Auction 1002 FCC Form 175 Instructions Public Notice),* AU Docket No. 14–252, DA 16–7, released on January 19, 2016. The complete text of the *Forward Auction 1002 FCC Form 175 Instructions Public Notice* is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov,* the Auction 1002 Web site at *http://www.fcc.gov/auctions/1002,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

General Information

The *Forward Auction 1002 FCC Form 175 Instructions Public Notice* provides the filing instructions for the electronic FCC Form 175, the application for parties seeking to participate in the forward auction. When filing out an FCC Form 175, a prospective forward auction applicant should follow the step-by-step filing instructions in the attachment to the *Forward Auction 1002 FCC Form 175 Instructions Public Notice,* along with the *Auction 1000 Application Procedures Public Notice,* 80 FR 66429, October 29, 2015. Each prospective applicant should also reference other public notices and/or decisions that have been issued in this proceeding, any future public notices and/or decisions that may be issued in this proceeding, and any other relevant public notices and/or decisions issued by the Commission in other proceedings that may relate to the incentive auction. Additional guidance, data, and information related to the incentive auction are available on the Auction 1000 Web site (*http://www.fcc.gov/auctions/1000*). A pre-auction process tutorial for the forward auction is available on the Auction 1002 Web site (*http://www.fcc.gov/auctions/1002*) to assist applicants with completing their applications.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2016–01484 Filed 1–22–16; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10450, First Cherokee State Bank, Woodstock, Georgia

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First Cherokee State Bank, Woodstock, Georgia (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First Cherokee State Bank on July 20, 2012. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Date: January 21, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–01447 Filed 1–25–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:01 a.m. on Thursday, January 21, 2016, the Corporation's Board of Directors determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Richard Cordray (Director, Consumer Financial Protection Bureau), concurred in by Director Thomas J. Curry (Comptroller of the Currency), and Chairman Martin J. Gruenberg, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and resolution re: Interim Final Rule with Request for Comments: Expanded Exam Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks.

The Board further determined, by the same majority vote, that no notice earlier than January 20, 2016, of the

change in the subject matter of the meeting was practicable.

Dated: January 21, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–01445 Filed 1–25–16; 8:45 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, January 28, 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 December 17, 2015
Draft Advisory Opinion 2015–14: Hillary for America
Audit Division Recommendation Memorandum on the Oklahoma Democratic Party (ODP) (A12–06)
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. 2016–01516 Filed 1–22–16; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register.** Copies of the agreement are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012386.

Title: K-Line/NYK Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. and Nippon Yusen Kaisha.

Filing Party: Robert Shababb; NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The agreement would authorize the parties to share vessels and vessel space in the trade between the U.S. and ports or places in a foreign country.

By Order of the Federal Maritime Commission.

Dated: January 21, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–01488 Filed 1–25–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting; Correction

TIME AND DATE: 8:30 a.m. (Eastern Time) January 25, 2016 (Telephonic).

DIAL IN NUMBER: Open Session Dial In: 1–877–446–3914 Pass Code: 956836.

PLACE: 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the December 14, 2015 Board Member Meeting
2. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
3. Quarterly Reports
   (a) Investment Policy Report
   (b) Vendor Financials
   (c) Budget Review
   (d) Project Activity
   (e) Audit Status
4. Audit Report
5. Annual Expense Ratio Review
6. 2016 Calendar Review

Parts Closed to the Public

7. Semi-Annual OGC Litigation Review
8. Security
9. Personnel

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: January 21, 2016.

Megan Grumbine,

Deputy General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2016–01621 Filed 1–22–16; 11:15 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds For Section 7A of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act.

DATES: *Effective Date:* February 25, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 400 7th Street SW., Room #5301, Washington, DC 20024, Phone (202) 326–3100.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390 (''the Act''), requires all persons contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds in the Act, to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Section 7A(a)(2) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). Note that while the filing fee thresholds are revised annually, the actual filing fees are not similarly indexed and, as a result, have not been adjusted for inflation in over a decade. The new thresholds, which take effect 30 days after publication in the **Federal Register**, are as follows:

Subsection of 7A	Original threshold (million $)	Adjusted threshold (million $)
7A(a)(2)(A)	200	312.6

Subsection of 7A	Original threshold (million $)	Adjusted threshold (million $)
7A(a)(2)(B)(i)	50	78.2
7A(a)(2)(B)(i)	200	312.6
7A(a)(2)(B)(ii)(i)	10	15.6
7A(a)(2)(B)(ii)(i)	100	156.3
7A(a)(2)(B)(ii)(II)	10	15.6
7A(a)(2)(B)(ii)(II)	100	156.3
7A(a)(2)(B)(ii)(III)	100	156.3
7A(a)(2)(B)(ii)(III)	10	15.6
Section 7A note: Assessment and Collection of Filing Fees[s1] (3)(b)(1)	100	156.3
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2)	100	156.3
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(2)	500	781.5
Section 7A note: Assessment and Collection of Filing Fees (3)(b)(3)	500	781.5

Any reference to these thresholds and related thresholds and limitation values in the HSR rules (16 CFR parts 801–803) and the Antitrust Improvements Act Notification and Report Form and its Instructions will also be adjusted, where indicated by the term ''(as adjusted)'', as follows:

Original threshold	Adjusted threshold (million $)
$10 million	15.6
$50 million	78.2
$100 million	156.3
$110 million	171.9
$200 million	312.6
$500 million	781.5
$1 billion	1,563.0

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–01451 Filed 1–25–16; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $31,841,000 for Section 8(a)(1), and $3,184,100 for Section 8(a)(2)(A).

DATES: *Effective Date:* January 26, 2016.

FOR FURTHER INFORMATION CONTACT: James F. Mongoven, Bureau of Competition, Office of Policy and Coordination, (202) 326–2879.

Authority: 15 U.S.C. 19(a)(5).

Donald S. Clark,

Secretary.

[FR Doc. 2016–01452 Filed 1–25–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Healthcare Research And Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Five AHRQ Subcommittee Meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will commence in open session before closing to the public for the duration of the meeting. These meetings will be closed to the public in accordance with 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6).

DATES: See below for dates of meetings:

1. Healthcare Safety and Quality Improvement Research (HSQR)

Date: February 10–11, 2016 (Open from 8:00 a.m. to 8:30 a.m. on February 10th and closed for remainder of the meeting).

2. Health System and Value Research (HSVR)

Date: February 17–18, 2016 (Open from 8:30 a.m. to 9:00 a.m. on February 17th and closed for remainder of the meeting).

3. Healthcare Effectiveness and Outcomes Research (HEOR)

Date: February 24–25, 2016 (Open from 8:30 a.m. to 9:00 a.m. on February 24th and closed for remainder of the meeting).

4. Health Care Research and Training (HCRT)

Date: February 25–26, 2016 (Open from 8:00 a.m. to 8:30 a.m. on February 25th and closed for remainder of the meeting).

5. Healthcare Information Technology Research (HITR)

Date: February 25–26, 2016 (Open from 9:00 a.m. to 9:30 a.m. on February 25th and closed for remainder of the meeting).

ADDRESSES: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: (To obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.)

Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

SUPPLEMENTARY INFORMATION: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), AHRQ announces meetings of the scientific peer review groups listed above, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committees. Each subcommittee

meeting will commence in open session before closing to the public for the duration of the meeting. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6) 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.

Agenda items for these meetings are subject to change as priorities dictate.

Sharon B. Arnold,

AHRQ Deputy Director.

[FR Doc. 2016–01354 Filed 1–25–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting for Software Developers on the Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: AHRQ coordinates the development of sets of common definitions and reporting formats (Common Formats) for reporting on health care quality and patient safety. In order to support the Common Formats, AHRQ has provided technical specifications to promote standardization by ensuring that data collected by Patient Safety Organizations (PSOs) and other entities are clinically and electronically comparable. More information on the Common Formats, including the technical specifications, can be obtained through AHRQ's PSO Web site: *http://www.pso.ahrq.gov/.*

The purpose of this notice is to announce a meeting to discuss the Common Formats. This meeting is designed as an interactive forum where software developers and PSOs can provide input on the formats. AHRQ especially requests participation by and input from those entities which have used AHRQ's technical specifications and implemented, or plan to implement, the formats electronically.

DATES: The meeting will be held from 8:00 a.m.–2:30 p.m. on Friday, April 15, 2016.

ADDRESSES: The meeting will be held at 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: A. Gretchen Buckler, MD MPH, CDR, USPHS Commissioned Corps, Medical Officer, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b-21 to b-26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, (73 FR 70732–70814), provide for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The collection of patient safety work product allows the aggregation of data that help to identify and address underlying causal factors of patient quality and safety problems.

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, skilled nursing facilities, and other healthcare providers may assemble information regarding patient safety events and quality of care. Information that is assembled and developed by providers for reporting to PSOs and the information received and analyzed by PSOs—called ''patient safety work product''—is privileged and confidential. Patient safety work product is used to conduct patient safety activities, which may include identifying events, patterns of care, and unsafe conditions that increase risks and hazards to patients. Definitions and other details about PSOs and patient safety work product are included in the Patient Safety Act and Patient Safety Rule which can be accessed electronically at: *http://www.pso.ahrq.gov/legislation/.*

Definition of Common Formats

The term ''Common Formats'' refers to the common definitions and reporting formats, specified by AHRQ, that allow health care providers to collect and submit standardized information regarding patient quality and safety to PSOs and other entities. The Common Formats are not intended to replace any current mandatory reporting system, collaborative/voluntary reporting system, research-related reporting system, or other reporting/recording system; rather the formats are intended to enhance the ability of health care providers to report information that is standardized both clinically and electronically.

In collaboration with the interagency Federal Patient Safety Workgroup (PSWG), the National Quality Forum (NQF), and the public, AHRQ has developed Common Formats for three settings of care — acute care hospitals, skilled nursing facilities, and retail pharmacies — in order to facilitate standardized data collection and analysis. The scope of Common Formats applies to all patient safety concerns including: incidents—patient safety events that reached the patient, whether or not there was harm; near misses or close calls—patient safety events that did not reach the patient; and unsafe conditions—circumstances that increase the probability of a patient safety event.

AHRQ's Common Formats include:

- Event descriptions (descriptions of patient safety events and unsafe conditions to be reported),
- Specifications for patient safety aggregate reports and individual event summaries,
- Delineation of data elements to be collected for different types of events to populate the reports,
- A user's guide and quick guide, and
- Technical specifications for electronic data collection and reporting.

Common Formats Development

In anticipation of the need for Common Formats, AHRQ began their development by creating an inventory of functioning private and public sector patient safety reporting systems. This inventory provided an evidence base to inform construction of the Common Formats. The inventory included many systems from the private sector, including prominent academic settings, hospital systems, and international reporting systems (*e.g.,* from the United Kingdom and the Commonwealth of Australia). In addition, virtually all major Federal patient safety reporting systems were included, such as those from the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Department of Defense (DoD), and the Department of Veterans Affairs (VA).

Since February 2005, AHRQ has convened the PSWG to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes

major health agencies within HHS—CDC, Centers for Medicare & Medicaid Services, FDA, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, National Library of Medicine, Office of the National Coordinator for Health Information Technology, Office of Public Health and Science, and Substance Abuse and Mental Health Services Administration—as well as the DoD and VA.

When developing Common Formats, AHRQ first reviews existing patient safety practices and event reporting systems. In collaboration with the PSWG and Federal subject matter experts, AHRQ drafts and releases beta versions of the Common Formats for public review and comment. The PSWG assists AHRQ with assuring the consistency of definitions/formats with those of relevant government agencies as refinement of the Common Formats continues.

Since the initial release of the Common Formats in August 2008, AHRQ has regularly revised the formats based upon public comment. AHRQ solicits feedback on beta (and subsequent) versions of Common Formats from private sector organizations and individuals. Based upon the feedback received, AHRQ further revises the Common Formats. To the extent practicable, the Common Formats are also aligned with World Health Organization (WHO) concepts, frameworks, and definitions.

Participation by the private sector in the development and subsequent revision of the Common Formats is achieved through working with the NQF. The Agency engages the NQF, a non-profit organization focused on health care quality, to solicit comments and advice regarding proposed versions of the Common Formats. AHRQ began this process with the NQF in 2008, receiving feedback on AHRQ's 0.1 Beta release of the Common Formats for Event Reporting—Hospital. After receiving public comment, the NQF solicits the review and advice of its Common Formats Expert Panel and subsequently provides feedback to AHRQ. The Agency then revises and refines the Common Formats and issues them as a production version. AHRQ has continued to employ this process for all subsequent versions of the Common Formats.

The technical specifications promote standardization of collected patient safety event information by specifying rules for data collection and submission, as well as by providing guidance for how and when to create data elements, their valid values, conditional and go-to logic, and reports. These specifications will ensure that data collected by PSOs and other entities have comparable clinical meaning.

The technical specifications also provide direction to software developers, so that the Common Formats can be implemented electronically, and to PSOs, so that the Common Formats can be submitted electronically to the Patient Safety Organization Privacy Protection Center (PSOPPC) for data de-identification and transmission to the NPSD.

Common Formats technical specifications consist of the following:

- Data dictionary—defines data elements and their attributes (data element name, answer values, field length, guide for use, etc.) included in Common Formats;
- Clinical document architecture (CDA) implementation guide—provides instructions for developing a file to transmit the Common Formats Patient Safety data from the PSO to the PSOPPC using the Common Formats;
- Validation rules and errors document—specifies and defines the validation rules that will be applied to the Common Formats data elements submitted to the PSOPPC;
- Common Formats flow charts—diagrams the valid paths to complete generic and event specific formats (a complete event report);
- Local specifications—provides specifications for processing, linking and reporting on events and details specifications for reports; and
- Metadata registry—includes descriptive facts about information contained in the data dictionary to illustrate how such data corresponds with similar data elements used by other Federal agencies and standards development organizations [*e.g.,* HL—7, International Standards Organization (ISO)].

Agenda, Registration, and Other Information about the Meeting

The 2016 meeting will be an interactive forum designed to allow meeting participants not only to provide input but also to respond to the input provided by others. The meeting agenda will include: an update of Federal efforts related to the Common Formats, including development of formats for new settings; Common Formats software products demonstrations; a discussion of data integrity related to submission of patient safety adverse events; and a question and answer session.

AHRQ requests that interested persons send an email to the PSOPPC at *support@psoppc.org* for registration information. Before the meeting, a detailed agenda and logistical information will be provided to registrants. Prior to the meeting, AHRQ invites review of the technical specifications for Common Formats which can be accessed through AHRQ's PSO Web site at *https://www.psoppc.org/psoppc_web/publicpages/commonFormatsOverview.*

Sharon B. Arnold,

AHRQ Deputy Director.

[FR Doc. 2016–01353 Filed 1–25–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Advisory Committee on Immunization Practices (ACIP)

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for membership on ACIP. The ACIP consists of 15 experts in fields associated with immunization, who are selected by the Secretary of the U.S. Department of Health and Human Services (HHS) to provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the CDC on the control of vaccine-preventable diseases. The role of the ACIP is to provide advice that will lead to a reduction in the incidence of vaccine preventable diseases in the United States, and an increase in the safe use of vaccines and related biological products. The committee also establishes, reviews, and as appropriate, revises the list of vaccines for administration to children eligible to receive vaccines through the Vaccines for Children (VFC) Program.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the field of immunization practices; multi-disciplinary expertise in public health; expertise in the use of vaccines and immunologic agents in both clinical and preventive medicine; knowledge of vaccine development, evaluation, and vaccine delivery; or knowledge about consumer perspectives and/or social and community aspects of immunization programs. Federal employees will not be considered for membership. Members may be invited to serve for four-year terms.

The next cycle of selection of candidates will begin in the fall of 2016,

for selection of potential nominees to replace members whose terms will end on June 30, 2017. Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACIP objectives (*http://www.cdc.gov/vaccines/acip/index.html*). The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of professional training and background, points of view represented, and the committee's function. Consideration is given to a broad representation of geographic areas within the U.S., with equitable representation of the sexes, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address)
- At least one letter of recommendation from person(s) not employed by HHS *

The deadline for receipt of all application materials (for consideration for term beginning July 1, 2017) is November 4, 2016. All files must be submitted electronically as email attachments to: Ms. Stephanie Thomas, ACIP Secretariat, Email: *SThomas5@cdc.gov.*

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

* Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by HHS (*e.g.,* CDC, NIH, FDA, etc.).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–01443 Filed 1–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

Notice of Cancellation: This notice was published in the **Federal Register** on December 23, 2015, Volume 80, Number 246, pages 79899–79900. The meeting previously scheduled to convene on January 21–22, 2016, has been cancelled.

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, Telephone (301) 458–4395, Fax (301) 458–4020, Email: *vcain@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–01442 Filed 1–25–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4852]

Design Considerations and Premarket Submission Recommendations for Interoperable Medical Devices; Draft Guidance for Industry and Food and Drug Administration Staff; 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 the draft guidance entitled ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices''. FDA is issuing this draft guidance to assist industry and FDA staff in identifying specific considerations related to the ability of electronic medical devices to safely and effectively exchange and use exchanged information. This document highlights considerations that should be included in the development and design of interoperable medical devices and provides recommendations for the content of premarket submissions and labeling for such devices. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 28, 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–2015–D–4852 for ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices''. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential''. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Heather Agler, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5570, Silver Spring, MD 20993–0002, 301–796–6340; and Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

The need and desire to connect medical devices to other products, technologies, and systems is growing in the health care community. As electronic medical devices are increasingly connected to each other and to other technology, the ability of these connected systems to safely and effectively exchange and use the information that has been exchanged becomes increasingly important. Advancing the ability of medical devices to exchange and use information safely and effectively with other medical devices, as well as other technology, offers the potential to increase efficiency in patient care.

FDA intends to promote the development and availability of safe and effective interoperable medical devices. FDA is issuing this draft guidance to assist industry and FDA staff in identifying specific considerations related to the ability of electronic medical devices to safely and effectively exchange and use exchanged information. This document highlights considerations that should be included in the development and design of interoperable medical devices and provides recommendations for the content of premarket submissions and labeling for such devices.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices''. 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.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Design Considerations and Pre-market Submission Recommendations for Interoperable Medical Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500015 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H have been approved under OMB control number 0910–0332; the collections of information in 21 CFR

part 601 have been approved under OMB control number 0910–0338; and the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485.

Dated: January 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01471 Filed 1–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0117]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; Acetylfentanyl; MT–45; para-Methoxymethylamphetamine (PMMA); α-Pyrrolidinovalerophenone (α-PVP); para-Methyl-4-methylaminorex (4,4′-DMAR); Methoxetamine (MXE); Phenazepam; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments, and to request an informal public meeting concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, under international treaties, on certain drug substances. The comments received in response to this notice and/or public meeting will be considered in preparing the United States' position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, in March 2016. This notice is issued under the Controlled Substances Act (the CSA).

DATES: Submit either electronic or written comments by February 25, 2016. Submit requests for a public meeting on or before February 5, 2016. The short time period for the submission of comments and requests for a public meeting is needed to ensure that HHS may, in a timely fashion, carry out the required action and be responsive to the United Nations. For additional information, see section IV of this document.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–0117 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; Acetylfentanyl; MT–45; para-Methoxymethylamphetamine (PMMA); α-Pyrrolidinovalerophenone (α-PVP); para-Methyl-4-methylaminorex (4,4′-DMAR); Methoxetamine (MXE); Phenazepam; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (Psychotropic Convention). Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the Psychotropic Convention that the CND proposes to decide whether to add a drug or other

substance to one of the schedules of the Psychotropic Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS must then evaluate the proposal and furnish a recommendation to the Secretary of State that shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed in the following paragraphs, the Secretary of State has received notification from the Secretary-General of the United Nations (the Secretary-General) regarding 5 substances to be considered for control under the Psychotropic Convention. This notification reflects the recommendation from the 36th WHO Expert Committee for Drug Dependence (ECDD), which met in June 2014. In the **Federal Register** of December 30, 2013 (78 FR 79465), FDA announced the WHO ECDD review and invited interested persons to submit information for WHO's consideration.

The full text of the notification from the Secretary-General is provided in section II of this document. Section 201(d)(2)(B) of the CSA requires the Secretary of HHS, after receiving a notification proposing scheduling, to publish a notice in the **Federal Register** to provide the opportunity for interested persons to submit information and comments on the proposed scheduling action.

The United States is also a party to the 1961 Single Convention on Narcotic Drugs (1961 Single Convention). The Secretary of State has received a notification from the Secretary-General regarding 2 substances to be considered for control under this convention. The CSA does not require HHS to publish a summary of such information in the **Federal Register.** Nevertheless, in an effort to provide interested and affected persons an opportunity to submit comments regarding the WHO recommendations for narcotic drugs, the notification regarding these substances is also included in this **Federal Register** notice. The comments will be shared with other relevant Agencies to assist the Secretary of State in formulating the position of the United States on the control of these substances. The HHS recommendations are not binding on the representative of the United States in discussions and negotiations relating to the proposal regarding control of substances under the 1961 Single Convention.

II. United Nations Notification

The formal notification from the United Nations that identifies the drug substances and explains the basis for the recommendations is reproduced as follows:

Reference:
NAR/CL.5/2015
WHO/ECDD37; 1961C-Art.3; 1971C-Art.2
CU 2014/288/DTA/SGB

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that the Director-General of the World Health Organization (WHO), pursuant to article 3, paragraphs 1 and 3 of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (1961 Convention) and article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances of 1971 (1971 Convention) notified the Secretary-General of the following recommendations:

Acetylfentanyl be placed in Schedule I and in Schedule IV of the 1961 Convention

and

MT–45 be placed in Schedule I of the 1961 Convention

and

para-Methoxymethylamphetamine (PMMA) be placed in Schedule I of the 1971 Convention

and

α-Pyrrolidinovalerophenone (α-PVP); para-Methyl-4-methylaminorex (4,4′-DMAR) and methoxetamine (MXE) be placed in Schedule II of the 1971 Convention

and

Phenazepam be placed in Schedule IV of the 1971 Convention.

In the letter from the Director-General of the World Health Organization to the Secretary-General reference is also made to Commission on Narcotic Drugs decision 58/2 of 13 March 2015, by which the Commission decided to postpone the consideration of the proposal concerning the recommendation to place ketamine in Schedule IV of the Convention on Psychotropic Substances of 1971 and to request additional information from the World Health Organization and other relevant sources.

His Excellency
Mr. John Kerry
Secretary of State of the United States of America

In accordance with the provisions of article 3, paragraph 2 of the 1961 Convention and article 2, paragraph 2 of the 1971 Convention, the Secretary-General hereby transmits the notification as annex I to the present note.

In accordance with the provisions of article 3, paragraph 2 of the 1961 Convention and article 2, paragraph 2 of the 1971 Convention, the notification from WHO will be brought to the attention of the fifty-ninth session of the Commission on Narcotic Drugs, 14–22 March 2016.

In connection with the notification, WHO has also submitted the relevant extract from the report of the thirty-seventh session of the WHO Expert Committee on Drug Dependence which is hereby transmitted as annex II.

In order to assist the Commission in reaching a decision, it would be appreciated if the Government could communicate any economic, social, legal, administrative or other factors that it considers relevant to the possible scheduling of the afore-mentioned substances under the 1961 Convention and the 1971 Convention, at the latest by 1 February 2016 to the Executive Director of the United Nations Office on Drugs and Crime, c/o Secretary, Commission on Narcotic Drugs, P.O. Box 500, 1400 Vienna, Austria, fax: +43–1–26060–5885, email: *sgb@unodc.org.*

30 December 2015
NAR/CL.5/2015
Annex I

Annex I

Letter addressed to the Secretary-General of the United Nations from the Director-General of the World Health Organization

''The Thirty-seventh meeting of the WHO Expert Committee on Drug Dependence was convened from 16 to 20 November 2015, at WHO headquarters in Geneva.

With reference to Article 2, paragraphs 1, 4 and 6 of the Convention on Psychotropic Substances (1971) and Article 3, paragraphs 1, 3 and 5 of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol, I am pleased to submit recommendations of the World Health Organization as follows:

—Acetylfentanyl be placed in Schedule I and in Schedule IV of the Single Convention on Narcotic Drugs (1961), and that:

—MT–45 be placed in Schedule I of the Single Convention on Narcotic Drugs (1961), and that:

—para-Methoxymethylamphetamine (PMMA) be placed in Schedule I of the Convention on Psychotropic Substances (1971), and that:
—α-Pyrrolidinovalerophenone (α-PVP); para-Methyl-4-methylaminorex (4,4′-DMAR) and methoxetamine (MXE) be placed in Schedule II of the Convention on Psychotropic Substances (1971), and that:
—Phenazepam be placed in Schedule IV of the Convention on Psychotropic Substances (1971).

The recommendations and the assessments and findings on which they are based are set out in detail in the Report of the 37th Expert Committee on Drug Dependence, which is the Committee that advises me on these issues. An extract of the Committee's Report is attached in Annex 1 to this letter.

In decision 58/2 of 13 March 2015, the Commission on Narcotic Drugs decided to postpone the consideration of the proposal concerning the recommendation to place ketamine in Schedule IV of the Convention on Psychotropic Substances of 1971 and to request additional information from the World Health Organization and other relevant sources. Consequentially, an update review paper on ketamine was commissioned and provided to the Expert Committee. Following its deliberations the Committee unanimously agreed that it found nothing in the updates, nor in what was disclosed during its deliberations, that would give it reason to recommend a new pre-review or critical review of ketamine with a view to potentially change its standing recommendation of 2014 that ketamine should not be placed under international control. The current standing recommendation is consistent with the earlier recommendation made in 2012.

I am very pleased with the ongoing collaboration between UNODC, INCB and WHO, in particular, the support to the work of the WHO Expert Committee on Drug Dependence and preparations for the Special Session of the United Nations General Assembly on the World Drug Problem in 2016.''

NAR/CL.5/2015
Annex II

Annex II

Extract from the Report of the 37th Expert Committee on Drug Dependence

Substance recommended to be scheduled in Schedule I and Schedule IV of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol:

Acetylfentanyl

Chemically, acetylfentanyl is *N*-phenyl-*N*-[1-(2-phenylethyl)-4-piperidinyl]acetamide. It is in the phenylpiperidine class of synthetic opioids that includes fentanyl, a Schedule I drug under the UN 1961 Single Convention on Narcotic Drugs. Acetylfentanyl has also been referred to as ''desmethyl fentanyl''.

Acetylfentanyl has not been previously reviewed by the Committee. A critical review was proposed based on information brought to WHO's attention that acetylfentanyl is clandestinely manufactured, poses a risk to public health and society, and has no recognized therapeutic use by any Party.

Acetylfentanyl has effects similar to those of morphine and fentanyl that are included in Schedule I of the 1961 Single Convention on Narcotic Drugs. It has no recorded therapeutic use and its use has resulted in fatalities. Thus, because it meets the required condition of similarity, it is recommended that acetylfentanyl be placed in Schedule I of the Single Convention on Narcotic Drugs, 1961, as consistent with Article 3, paragraph 3 (iii) of that Convention in that the substance is liable to similar abuse and productive of similar ill effects as drugs in Schedule I. In addition, in accordance with Article 3, paragraph 5 of that Convention, considering acetylfentanyl is particularly liable to abuse and to produce ill-effects, and its liability is not offset by substantial therapeutic advantages, it is recommended it be included in Schedule IV of the Single Convention on Narcotic Drugs, 1961.

Substance recommended to be scheduled in Schedule I of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol:

MT–45

Chemically, MT–45 is 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine. MT–45 has two enantiomers and is commonly available as the racemic mixture.

MT–45 has not been previously reviewed by the Committee. A critical review was proposed based on information brought to WHO's attention that MT–45 is clandestinely manufactured, poses a risk to public health and society, and has no recognized therapeutic use by any Party.

MT–45 is a compound with morphine-like effects. The Committee considered that the degree of risk to public health and society associated with the abuse liability and accompanying evidence warranted its placement under international control. Therapeutic use in humans has not been recorded. The Committee recommended that MT–45 be placed in Schedule I of the 1961 Single Convention, as amended by the 1972 Protocol.

Substance recommended to be scheduled in Schedule I of the Convention on Psychotropic Substances (1971):

para-Methoxymethylamphetamine (PMMA)

Chemically, PMMA (*para*-methoxymethylamphetamine) is 1-(4-methoxyphenyl)-*N*-methylpropan-2-amine. PMMA has two enantiomers and is commonly available as the racemic mixture.

PMMA has not been previously reviewed by the Committee. A critical review was proposed based on information brought to WHO's attention that PMMA is clandestinely manufactured, poses a risk to public health and society, and has no recognized therapeutic use by any Party.

The Committee considered that the effects of PMMA are similar to PMA, a drug listed in Schedule I of the Convention on Psychotropic Substances of 1971, and the degree of risk to public health and society associated with its abuse is especially serious. The Committee also noted it has no recorded therapeutic use. The Committee considered that the evidence of its abuse warranted its placement under international control and recommended that PMMA be placed in Schedule I of the 1971 Convention.

Substances recommended to be scheduled in Schedule II of the Convention on Psychotropic Substances (1971):

α-Pyrrolidinovalerophenone (α-PVP)

Chemically, α-PVP (α-pyrrolidinovalerophenone) is 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one. This synthetic cathinone is the desmethyl analogue of pyrovalerone that is listed in Schedule IV of the 1971 United Nations Convention on Psychotropic Substances. α-PVP has two enantiomers and is commonly available as the racemic mixture. α-PVP is closely related to 3',4'-methylenedioxypyrovalerone (MDPV) that has recently been placed in Schedule II of the UN Convention on Psychotropic Substances (1971).

α-PVP has not been previously reviewed by the Committee. A direct critical review was proposed based on information brought to WHO's attention that α-PVP is clandestinely manufactured, poses a risk to public health and society, and has no recognized therapeutic use by any Party.

The Committee considered that the degree of risk to public health and

society associated with the abuse of α-PVP is substantial. Therapeutic usefulness has not been recorded. Its pharmacological effects are similar to methamphetamine and MDPV, psychostimulants listed in Schedule II of the 1971 Convention. The Committee considered that the evidence of its abuse warranted its placement under international control. As per the *Guidance on the WHO review of psychoactive substances for international control,* higher regard was accorded to the substantial public health risk than to the lack of therapeutic usefulness. The Committee recommended that α-PVP be placed in Schedule II of the 1971 Convention.

para-Methyl-4-methylaminorex (4,4′-DMAR)

Chemically, 4,4′-DMAR (*para*-methyl-4-methylaminorex) is 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3- oxazol-2-amine. 4,4′-DMAR has four enantiomers and exists as racemic *cis*- or *trans*- forms. It is a synthetic substituted oxazoline derivative interpretable as an analogue of 4-methylaminorex (4–MAR) and aminorex, which are psychostimulants listed as Schedule I and Schedule IV substances, respectively, under the 1971 United Nations Convention on Psychotropic Substances.

4,4′-DMAR has not been previously reviewed by WHO. A critical review was proposed based on information brought to WHO's attention that 4,4′-DMAR is clandestinely manufactured, poses a risk to public health and society, and has no recognized therapeutic use by any Party.

As per the *Guidance on the WHO review of psychoactive substances for international control,* higher regard was accorded to the substantial public health risk than to the lack of therapeutic usefulness. The Committee considered that the degree of risk to public health and society associated with the abuse of 4,4′-DMAR is substantial. The Committee recommended that 4,4′-DMAR be placed in Schedule II of the 1971 Convention.

Methoxetamine (MXE)

Chemically, methoxetamine (MXE) is 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexanone. It is a synthetic drug and belongs to the arylcyclohexylamine class like phencyclidine. Methoxetamine has two enantiomers and is commonly available as the racemic mixture.

During its 36th meeting, the WHO Expert Committee on Drug Dependence discussed the critical review report on methoxetamine and concluded that owing to the insufficiency of data regarding dependence, abuse and risks to public health, methoxetamine should not be placed under international control at that time, but be kept under surveillance. In 2014 the European Union decided to bring methoxetamine under control after a risk assessment by the EMCDDA. Furthermore new information on its abuse potential and more reports of fatal and non-fatal intoxications warranted a critical review for the 37th ECDD.

Methoxetamine has been shown to have effects similar to phencyclidine, a compound listed in Schedule II of the Convention on Psychotropic Substances of 1971. The Committee considered that the degree of risk to public health and society associated with the abuse liability of methoxetamine is substantial. The Committee also noted it has no recorded therapeutic use. The Committee considered that the evidence of its abuse warranted its placement under international control. The Committee recommended that methoxetamine be placed in Schedule II of the 1971 Convention.

Substance recommended to be scheduled in Schedule IV of the Convention on Psychotropic Substances (1971):

Phenazepam

Chemically, phenazepam is 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2*H*-1,4-benzodiazepin-2-one.

Phenazepam has not been previously reviewed by the Committee. The Committee undertook a pre-review of the substance and considered that the information provided in the pre-review report was sufficient and indicated that dependence and harm caused by phenazepam was of such magnitude that proceeding directly into critical review within the meeting was warranted. All procedural requirements for a critical review, including two peer reviews, were fulfilled. Phenazepam has been shown to have effects similar to diazepam that is in Schedule IV of the Convention on Psychotropic Substances of 1971. The Committee considered that the degree of risk to public health and society associated with the abuse of phenazepam has a smaller but still significant risk to public health compared to substances in Schedules I–III and has a therapeutic usefulness from little to great. The Committee considered that the evidence of its abuse warranted its placement under international control. The Committee further recommended that phenazepam be placed in Schedule IV of the 1971 Convention.

Substance recommended for critical review:

Etizolam (INN)

Chemically, etizolam is 4-(2-chlorophenyl)-2-ethyl-9-methyl-6*H*-thieno[3,2-*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine.

The Expert Committee on Drug Dependence (ECDD) reviewed etizolam for the first time at its 26th meeting in 1989. At that time, the Committee rated the abuse liability of etizolam as moderate and the therapeutic usefulness as moderate to high. In view of the lack of clear-cut abuse, and of public health and social problems associated with its use, the Committee was unable to come to a decision concerning the scheduling of etizolam and recommended that a decision be deferred to the 27th meeting of the Committee.

At its 27th meeting in 1990, the Committee again rated the abuse liability of etizolam as low to moderate and the therapeutic usefulness as moderate to high. The Committee noted few public health and social problems associated with its use at that time and considered that the degree of seriousness of these problems was not great enough to warrant international control. Consequently, the Committee did not recommend scheduling of etizolam in 1990.

At the 37 ECDD, on the basis of the evidence available regarding dependence, abuse and risks to public health, the Committee recommended that a critical review of etizolam is warranted for a future meeting.

Substance recommended for surveillance:

4-Fluoroamphetamine (4-FA)

Chemically, 4-FA (4-fluoroamphetamine) is 1-(4-fluorophenyl)propan-2-amine. 4-FA has two enantiomers and is commonly available as the racemic mixture.

4-FA has not been previously reviewed by the Committee. A critical review was proposed based on information brought to WHO's attention that 4-FA is clandestinely manufactured, poses a risk to public health and society, and has no recognized therapeutic use by any Party.

Owing to the current insufficiency of data regarding dependence, abuse and risks to public health (including risks to the individual), the Committee recommended that 4-FA not be placed under international control at this time, but be kept under surveillance.

Update on cannabis:

The Commission on Narcotic Drugs, in Resolution 52/5, expressed that it ''. . . looks forward to an updated

report on cannabis by the Expert Committee, subject to the availability of extra budgetary resources'', and the Report of the International Narcotics Control Board for 2014 reiterated, ''. . . its invitation to WHO to evaluate the potential medical utility of cannabis and the extent to which cannabis poses a risk to human health.'' WHO therefore commissioned an update report paper on cannabis and cannabis resin.

An update on the scientific literature of cannabis was presented and reviewed during the session including the pharmacology, toxicology and the claimed therapeutic applications. The Committee then deliberated about the content of the material presented. The Committee requested the Secretariat to begin collecting data towards a pre-review of cannabis, cannabis resin, extracts and tinctures of cannabis at a future meeting. Furthermore it specifically requested the Secretariat to place emphasis on any therapeutic advantages that they may have relative to other existing therapeutics.

Update on ketamine:

Updates on ketamine were presented in which the levels and consequences of its abuse, and new potential medical applications were identified. Levels of ketamine abuse appeared to be declining in many countries world-wide. Potential new therapeutic uses were identified including depression and refractory status epilepticus. Evaluation of ketamine for treating depression is in Phase III studies. Ketamine is widely used as an anaesthetic agent for human and veterinary use globally. Ketamine is the anaesthetic agent of choice in low income countries and emergency situations where there are limitations in trained medical personnel, anesthesia machines, and consistent sources of electricity.

Following its deliberations, the Committee unanimously agreed that it found nothing in the updates, nor that which was disclosed during its deliberations, that would give it reason to recommend a new pre-review or critical review of ketamine with a view to potentially change its standing recommendation of 2014 that ketamine should not be placed under international control.

III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, the CND is not obliged to follow the WHO recommendations. Options available to the CND for substances considered for control under the Psychotropic Convention include the following: (1) Accept the WHO recommendations; (2) accept the recommendations to control, but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

Acetylfentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide) is a potent opioid analgesic in the phenylpiperidine class of synthetic opioids. On July 17, 2015, acetylfentanyl was temporarily placed into Schedule I of the CSA for 2 years upon finding that it posed an imminent hazard to the public safety. The U.S. Attorney General (the Attorney General), though, may extend this temporary scheduling for up to 1 year. The WHO ECDD met in November 2015 and recommended that acetylfentanyl be placed in Schedule I and in Schedule IV of the 1961 Single Convention. On July 17, 2015, acetylfentanyl was temporarily placed in Schedule I of the CSA under the temporary scheduling provision of section 201(h) of the CSA. These provisions provide the Attorney General with the authority to temporarily place a substance into Schedule I of the CSA for 2 years, without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety. In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to 1 year (21 U.S.C. 811(h)(2)). Therefore, considering the previously mentioned time limitations of temporary scheduling under section 201(h) of the CSA, it will be necessary to adopt non-temporary controls to fulfill U.S. obligations if acetylfentanyl is controlled under Schedule I and Schedule IV of the 1961 Single Convention.

1-cyclohexyl-4-(1,2-diphenylethyl)-piperazine (MT-45) is a synthetic opioid with potent analgesic activity comparable to morphine despite being structurally unrelated to most other opioids. MT-45 use has been associated with deaths in the United States and in other countries. The WHO ECDD met in November 2015 and recommended that MT-45 be placed in Schedule I of the 1961 Single Convention. MT-45 is not currently controlled in the United States under the CSA. As such, additional controls will be necessary to fulfill U.S. obligations if MT-45 is controlled under Schedule I of the 1961 Single Convention.

Phenazepam belongs to a class of substances known as benzodiazepines. Benzodiazepines produce central nervous system depression and are commonly used to treat insomnia, anxiety, and seizure disorders. The WHO ECDD at its 37th meeting recommended that Phenazepam be placed in Schedule IV of the Psychotropic Convention. While Phenazepam is currently prescribed in some countries, it is not approved for medical use or controlled in the United States under the CSA. Additional controls will be necessary to fulfill U.S. obligations if Phenazepam is controlled under Schedule IV of the Psychotropic Convention.

Para-Methoxymethylamphetamine (PMMA) is a substituted amphetamine of the phenethylamine class, as well as a structural analog of para-methoxyamphetamine (PMA) which produces effects similar but not identical to that of MDMA. The WHO ECDD at its 37th meeting recommended PMMA be placed in Schedule I of the Psychotropic Convention. PMMA is not currently controlled in the United States under the CSA. Additional controls will be necessary if PMMA is placed in Schedule I of the Psychotropic Convention.

Para-Methyl-4-methylaminorex (4,4′-DMAR) is a derivative of the stimulant drug 4-methylaminorex and has been involved in several deaths in the United States. The WHO ECDD at its 37th meeting recommended 4,4′-DMAR be placed in Schedule II of the Psychotropic Convention. 4,4′-DMAR is not currently controlled in the United States under the CSA. Additional controls will be necessary to fulfill U.S. obligations if 4,4′-DMAR is controlled under Schedule II of the Psychotropic Convention.

α-Pyrrolidinovalerophenone (α-PVP or alpha-PVP) is a synthetic cathinone structurally and pharmacologically similar to amphetamine; 3,4-methylenedioxymethamphetamine (MDMA); cathinone; and other related substances. On March 7, 2014, α-PVP was temporarily placed into Schedule I of the CSA for 2 years upon finding that it posed an imminent hazard to the public safety. The Attorney General, though, may extend this temporary scheduling for up to 1 year. The WHO ECDD at its 37th meeting recommended that α-PVP be placed in Schedule II of the Psychotropic Convention. Therefore, considering the previously mentioned time limitations of temporary scheduling under section 201(h) of the CSA, additional controls will be necessary to fulfill U.S. obligations if α-PVP is controlled under Schedule II of the Psychotropic Convention.

Methoxetamine (MXE) is a synthetic drug substance and belongs in the arylcyclohexamine class. The WHO

ECDD at its 37th meeting recommended that MXE be placed in Schedule II of the Psychotropic Convention. MXE is not currently controlled under the CSA in the United States. Additional controls will be necessary to fulfill U.S. obligations if MXE is controlled under Schedule II of the Psychotropic Convention.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the notifications from the United Nations concerning these drug substances. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO scheduling recommendations. Then, under section 201(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations for control of substances under the Psychotropic Convention at the CND meeting in March 2015.

Comments regarding the WHO recommendations for control of acetylfentanyl and MT-45 under the 1961 Single Convention will also be forwarded to the relevant Agencies for consideration in developing the U.S. position regarding narcotic substances at the CND meeting.

IV. Opportunity for Public Meeting

FDA does not presently plan to hold a public meeting. If any person believes that, in addition to written comments, a public meeting would contribute to the development of the U.S. position on the substances to be considered for control under the Psychotropic Convention, a request for a public meeting and the reasons for such a request should be sent to James R. Hunter (see **FOR FURTHER INFORMATION CONTACT**) on or before February 5, 2016.

Dated: January 20, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01474 Filed 1–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–P–3053]

Determination That IZBA (Travoprost Ophthalmic Solution), 0.003 Percent, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that IZBA (travoprost ophthalmic solution), 0.003 percent, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for travoprost ophthalmic solution/drops, 0.003 percent, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Kate Greenwood, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6286, Silver Spring, MD 20993–0002, 240–402–1748.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

IZBA (travoprost ophthalmic solution), 0.003 percent, is the subject of NDA 204822, held by Alcon Laboratories, Inc., and initially approved on May 15, 2014. IZBA is indicated for the reduction of elevated intraocular pressure in patients with open-angle glaucoma or ocular hypertension.

In a letter dated September 4, 2015, Alcon Laboratories, Inc. notified FDA that IZBA (travoprost ophthalmic solution), 0.003 percent, was discontinued. IZBA (travoprost ophthalmic solution), 0.003 percent, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Jonathan Goodman of Florek & Endres PLLC submitted a citizen petition dated August 20, 2015 (Docket No. FDA–2015–P–3053), under 21 CFR 10.30, requesting that the Agency determine whether IZBA (travoprost ophthalmic solution), 0.003 percent, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that IZBA (travoprost ophthalmic solution), 0.003 percent, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that IZBA (travoprost ophthalmic solution), 0.003 percent, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of IZBA (travoprost ophthalmic solution), 0.003 percent, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list IZBA (travoprost ophthalmic solution), 0.003 percent, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to IZBA (travoprost ophthalmic solution), 0.003 percent, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: January 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01473 Filed 1–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Request for Nominations on the National Mammography Quality Assurance Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on the National Mammography Quality Assurance Advisory Committee (NMQAAC) for the Center for Devices and Radiological Health (CDRH) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on the NMQAAC. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current and upcoming vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to the FDA by *February 25, 2016,* (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by February 25, 2016.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative nomination should be sent to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Margaret Ames, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5215, Silver Spring, MD 20993. 301–796–5960, FAX: 301–847–8505, email: *margaret.ames@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency request nominations for nonvoting industry representatives to the following committee:

I. National Mammography Quality Assurance Advisory Committee

The Committee shall advise the Food and Drug Administration on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999; and (9) determining the costs and benefits of compliance with these requirements.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore encourages nominations of appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from the mammography manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01487 Filed 1–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Food and Drug Administration/Xavier University PharmaLink Conference: Increasing Product Confidence

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) Cincinnati District, in co-sponsorship with Xavier

University, is announcing a public conference entitled ''FDA/Xavier University PharmaLink Conference: Increasing Product Confidence''. The PharmaLink conference seeks solutions to important and complicated issues by aligning with the strategic priorities of FDA, featuring presentations from key FDA officials, global regulators, and industry experts. Each presentation challenges the status quo and conventional wisdom, to create synergies focused on finding solutions which make a difference. The experience level of the audience has fostered engaged dialogue, which has led to innovative initiatives.

DATES: The public conference will be held on March 16, 2016, from 8:30 a.m. to 5 p.m.; March 17, 2016, from 8:30 a.m. to 5p.m.; and March 18, 2016, from 8:30 a.m. to 12:20 p.m.

ADDRESSES: The public conference will be held on the campus of Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207; 513–745–3016.

FOR FURTHER INFORMATION CONTACT: *For information regarding this document:* Steven Eastham, Food and Drug Administration, Cincinnati South Office, 36 East 7th St., Cincinnati, OH 45202; 513–246–4134, *steven.eastham@fda.hhs.gov.*

For information regarding the conference and registration: Mason Rick, Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207–5471; 513–745–3016, *rickm@xavier.edu.*

SUPPLEMENTARY INFORMATION:

I. Background

The most pressing challenges of the global pharmaceutical industry require solutions, which are inspired by collaboration, to ensure the ongoing health and safety of patients. These challenges include designing products with the patient in mind, building quality into the product from the onset, selecting the right suppliers, and considering total product lifecycle systems. Meeting these challenges requires vigilance, innovation, supply chain strategy, relationship management, proactive change management, and a commitment to doing the job right the first time. FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices.

II. Meeting Information

A. Registration

There is a registration fee. The conference registration fees cover the cost of the presentations, training materials, receptions, breakfasts and lunches for the 2.5 days of the conference. There will be onsite registration. The cost of registration is as follows:

TABLE 1—REGISTRATION FEES [1]

Attendee type	Standard rate
Industry	$1,895
Small Business (<100 employees)	1,295
Supplier	600
Start-up Manufacturer	300
Academic	300
Media	Free
Government	Free

[1] The fourth registration from the same company is free; all four attendees must register at the same time.

The following forms of payment will be accepted: American Express, Visa, Mastercard, and company checks. To register online for the public conference, please visit the ''Registration'' link on the conference Web site at *http://www.XavierPharmaLink.com.* FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register.**

To register by mail, please send your name, title, firm name, address, telephone number, email address, and payment information to: Xavier University, Attention: Mason Rick, 3800 Victory Pkwy., Cincinnati, OH 45207–5471. An email will be sent confirming your registration.

Attendees are responsible for their own accommodations. The conference headquarters hotel is the Downtown Cincinnati Hilton Netherlands Plaza, 35 West 5th St., Cincinnati, OH 45202, 513–421–9100. To make reservations online, please visit the ''Venue & Logistics'' link at *http://www.XavierPharmaLink.com.* The hotel is expected to sell out during this timeframe, so early reservation in the conference room-block is encouraged.

If you need special accommodations due to a disability, please contact Mason Rick (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the conference.

B. Purpose and Scope of Meeting

The public conference helps fulfill the Department of Health and Human Services and FDA's important mission to protect the public health. The conference will engage those involved in FDA-regulated global supply chain quality and management through the following topics:

- Office of Compliance Update
- Data Integrity
- Medicines and Healthcare products Regulatory Agency (MHRA) Update: Strategic Priorities and Initiatives
- Operating in India and Southeast Asia
- Serialization
- Integrity of Supply
- Office of Pharmaceutical Quality Update
- How to Measure Quality Culture
- Pharmaceutical Metrics and the Value Proposition
- Office of Regulatory Affairs Update
- The 21st Century Cures Act: Goals and Impact
- International Conference on Harmonisation Q12: Technical and Regulatory Considerations for Pharmaceutical Product Lifecycle Management
- Barriers to Quality and Supply Chain Excellence
- Proactive and Systematic Quality Implementation: Case Studies across functional areas
- FDA and MHRA Investigator Insights

The conference includes:

- Networking by topic
- Case Studies
- Small Group Discussions
- Action Plans
- Keynote dinner at Paul Brown Stadium (Home of the Cincinnati Bengals)

The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) by providing outreach activities by Government Agencies to small businesses.

Dated: January 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01486 Filed 1–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, codified at 5 U.S.C.

App.), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders in Newborns and Children

Dates and Times: February 11, 2016, 8:30 a.m. to 5:00 p.m., February 12, 2016, 8:30 a.m. to 3:00 p.m.

Place: Webinar and In-Person, National Institutes of Health, 45 Center Drive Room, Bethesda, MD 20892.

Status: The meeting will be open to the public with attendance limited to space availability. Participants also have the option of viewing the meeting via webinar. Whether attending in-person or via webinar, all participants must register for the meeting. The registration link will be made available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/.* The registration deadline is Friday, February 5, 2016, 11:59 p.m. Eastern Time.

Purpose: The Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by Public Health Service Act, Title XI, § 1111 (42 U.S.C. 300b–10), as amended by the Newborn Screening Saves Lives Reauthorization Act of 2014 (Pub. L. 113–240), was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee's recommendations regarding additional conditions/heritable disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP) and constitute part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans and group and individual health insurance issuers are required to cover evidence-informed care and screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (in the individual market, policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

Agenda: The meeting will include: (1) A panel discussion on Long Term Follow-up activities regarding newborns and children identified with a condition via newborn screening. Presentations may include perspectives from state public health experts, researchers, and providers; (2) updates from workgroups focused on cost analysis in newborn screening, newborn screening timeliness, and pilot studies for future nominated conditions; and (3) a discussion on proposed priorities and action items from the three subcommittees (Laboratory Standards and Procedures, Follow-up and Treatment, and Education and Training) to develop a plan for 2016. There are no votes that involve proposed additions of a condition to the RUSP scheduled for this meeting.

Agenda items are subject to change as necessary or appropriate. The agenda, webinar information, Committee Roster, Charter, presentations, and other meeting materials will be available on the Committee's Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Public Comments: Members of the public may present oral comments and/or submit written comments. Comments are part of the official Committee record. The public comment period is tentatively scheduled for both days of the meeting. Advance registration is required to present oral comments and/or submit written comments. Registration information will be on the Committee Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.* The registration deadline for public comments is Friday, February 5, 2016, 11:59 p.m. Eastern Time. Written comments must be received by the deadline of January 29, 2016, 11:59 p.m. Eastern Time in order to be included in the February meeting briefing book. Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (*i.e.,* parent, researcher, clinician, public health, etc.), and the topic/subject matter of comments. To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted. For additional information or questions on public comments, please contact Alaina Harris, Maternal and Child Health Bureau, Health Resources and Services Administration; email: *aharris@hrsa.gov.*

Contact Person: Anyone interested in obtaining other relevant information should contact Alaina Harris, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18W66, 5600 Fishers Lane, Rockville, Maryland 20857; email: *aharris@hrsa.gov.*

More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–01432 Filed 1–25–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the ≤discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R24 Telephone Review SEP.

Date: February 17, 2016.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; A Community Research Resource of Microbiome-Derived Factors Modulating Host Physiology in Obesity, Digestive and Liver Diseases and Nutrition (R24).

Date: February 29, 2016.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–13–305: Collaborative Interdisciplinary Team Science in NIDDK Research Areas (R24)—Diabetes.

Date: March 4, 2016.

Time: 1:15 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–7682, *campd@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–R24 Telephone Review.

Date: March 4, 2016.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Xiaodu Guo, Md, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–12–265: NIDDK Ancillary Studies (R01) on Diabetes Complications.

Date: March 11, 2016.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–7682, *campd@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Exploratory Studies for Delineating Microbiome: Host Interactions in Obesity, Digestive and Liver Diseases and Nutrition (R21).

Date: March 15, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Washington, DC Downtown, 1199 Vermont Avenue NW., Washington, DC 20005.

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Program Project on IBD.

Date: March 17, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila–Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, Niddk, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01362 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information.

Date: May 10, 2016.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2:00 p.m. to 3:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, National Center for Biotechnology Information, National Library of Medicine, Building 38A, Room 8N805, Bethesda, MD 20892, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: January 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01358 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: June 7, 2016.

Time: 9:30 a.m. to 3:00 p.m.

Agenda: Review and Analysis of Systems.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, National Center for Biotechnology Information, National Library of Medicine, Building 38, Room 8N805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.pubmed.central.nih.gov/about/nac/html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: January 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01357 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Exercise Effect on Muscle Aging.

Date: March 4, 2016.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, Md, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 20, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01368 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission of OMB Review, 30-Day Comment Request; Conference, Meeting, Workshop, and Poster Session Registration Generic Clearance (OD)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 30, 2015, page 45541 and allowed 60-day for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health (NIH), Office of the Director (OD), may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or Email your request, including your address to *curriem@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Conference, Meeting, Workshop, and Poster Session Registration Generic Clearance (OD), 0925—New, National Institutes of Health (NIH), Office of the Director (OD).

Need and Use of Information Collection: The information collections encompassed by this generic clearance will allow the NIH to select the most appropriate participants for non-grantee activities sponsored, organized, and run by the NIH staff, according to the type and purpose of the activity. For example, the NIH may develop an application process or information collection to select a limited number of researchers to participate in a poster session, identify speakers and panelists with desired expertise on a specific topic to be covered at a meeting, or determine which researchers would most likely benefit from a training course or other opportunity. For the NIH to plan and conduct activities that are timely for participants and their fields of research, it is often necessary for such information to be collected with a relatively short turnaround time. In general, submitted abstracts or other application materials will be reviewed by an internal NIH committee responsible for planning the activities. This committee will be responsible for selecting and notifying participants.

The information collected for these activities generally includes title, author(s), institution/organization, poster size, character limitations along with other requirements. This information is necessary to identify attendees as eligible for poster presentations, to present their research, speak on panels, and discuss innovative approaches to science and technology to their peers. The registration form collects information from interested parties necessary to register them for a workshop.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 8,875.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of activity	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Conferences	2,500	1	1	2,500
Meetings	2,500	1	45/60	1,875
Workshops	2,500	1	30/60	1,250
Poster Session	1,000	1	1	1,000
Panels	1,500	1	30/60	750
Presentations	1,500	1	1	1,500
Total	11,500	11,500	.....	8,875

Dated: January 19, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–01555 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Mechanisms of Sensory, Perceptual, and Cognitive Processes Study Section.

Date: February 18, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton La Jolla Hotel, 3299 Holiday Court, La Jolla, CA 92037.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: February 18–19, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immune System Plasticity in the Pathogenesis and Treatment of Complex Dental, Oral, and Craniofacial Diseases.

Date: February 19, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Torrance Marriott, Redondo Beach, CA, 3635 Fashion Way, Torrance, CA 90503.

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Theories, Models and Methods for Analysis of Complex Data from the Brain.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes, and Genetics.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7804, Bethesda, MD 20892, *belangerm@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Vascular Cell and Molecular Biology Study Section.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132,

MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Baltimore Inner Harbor, 222 St. Paul Place, Baltimore, MD 21202204

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Biology of the Visual System Study Section.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Michael H. Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

Contact Person: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, Bethesda, MD 20892, *cowleshw@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.

Date: February 22, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405, Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Vascular and Hematology IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community-Level Health Promotion Study Section.

Date: February 22–23, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services Organization and Delivery Study Section.

Date: February 22–23, 2016.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—B Study Section.

Date: February 22–23, 2016.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Ave., San Diego, CA 92101.

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases.

Date: February 22, 2016.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198 MSC 7808, Bethesda, MD 20892, (301) 435–2306, *kaushikbasun@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA grant applications: Toxicology and Digestive, Kidney and Urological Systems.

Date: February 22, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846– 93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 20, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01364 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular and Cellular Hematology.

Date: February 17, 2016.

Time: 2:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.
Date: February 18–19, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Daniel F. McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.
Date: February 18–19, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.
Date: February 23, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–204: Research in Biomedicine and Agriculture.
Date: February 23, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pulmonary Diseases.
Date: February 23–24, 2016.
Time: 9:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Probes.
Date: February 23, 2016.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.
Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.
Date: February 23–24, 2016.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, *kkrishna@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology B Study Section.
Date: February 24–25, 2016.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Pier 2620 Hotel, 2620 Jones Street, San Francisco, CA 94133.
Contact Person: Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, 301–828–6146, *schwarel@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Enabling Bioanalytical and Imaging Technologies.
Date: February 24, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Arlington Capital View, 2800 South Potomac Avenue, Arlington, VA 22202.
Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Dissemination and Implementation Research in Health Study Section.
Date: February 24, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Martha L. Hare, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical and Translational Imaging Applications.
Date: February 24, 2016.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Eileen W. Bradley, DSC, Chief, SBIB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral Dental and Craniofacial Sciences.
Date: February 24, 2016.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Alexey Belkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4102, Bethesda, MD 20817, 301–435–3578, *alexey.belkin@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846– 93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 20, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01363 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus SEP–4 R03 & R21.

Date: March 3–4, 2016.

Time: 6:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center; Montgomery County Conference Center Facility; 5701 Marinelli Road; North Bethesda, MD 20852.

Contact Person: Clifford W. Schweinfest, Ph.D.; Scientific Review Officer; Special Review Branch; Division of Extramural Activities; National Cancer Institute; 9609 Medical Center Drive, Room 7W108; Bethesda, MD 20892–9750; 240–276–6343; *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: March 2, 2016.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove; 9609 Medical Center Drive; Room 7W556; Rockville, MD 20850; (Telephone Conference Call).

Contact Person: Bratin K. Saha, Ph.D.; Scientific Review Officer; Program Coordination and Referral Branch; Division Of Extramural Activities; National Cancer Institute; 9609 Medical Center Drive, Room 7W556; Bethesda, MD 20892–9750; 240–276–6411; *sahab@mail.nih.gov*

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Molecular Analysis Technologies for Cancer Research.

Date: March 8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City; 1250 South Hayes Street; Arlington, VA 22202.

Contact Person: Gerard Lacourciere, Ph.D.; Scientific Review Officer; Research Technology and Contract Review Branch; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, 7W248; Rockville, MD 20850; 240–276–5457; *gerard.lacourciere@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel NCI Provocative Questions—6.

Date: March 10, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove; 9609 Medical Center Drive; Room 7W032; Rockville, MD 20850 (Telephone Conference Call)

Contact Person: Thomas A. Winters, Ph.D.; Scientific Review Officer; Special Review Branch; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, Room 7W412; Rockville, MD 20850; 240–276–6386; *twinters@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Omnibus SEP–11B.

Date: March 17, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove; 9609 Medical Center Drive; Room 6W032; Rockville, MD 20850; (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D.; Scientific Review Officer; Research Programs Review Branch; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, Room 7W120; Bethesda, MD 20892–8328; 240–276–6457; *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Omnibus SEP–16 R03 & R21.

Date: March 31, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove; 9609 Medical Center Drive; Room 7W554; Rockville, MD 20850; (Telephone Conference Call).

Contact Person: Christopher L. Hatch, Ph.D.; Chief Program Coordination & Referral Branch; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, Room 7W554; Bethesda, MD 20892–8328; 240–276–6457 *ch29v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Provocative Questions Review—PQ 9.

Date: April 5, 2016.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove; 9609 Medical Center Drive; Room 7W126 Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Caron A. Lyman, Ph.D.; Chief, Scientific Review Officer; Research Programs Review Branch; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, Room 7W126; Bethesda, MD 20892–8328; 240–276–6348; *lymanc@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Provocative Questions Review—PQ 4.

Date: April 6, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove; 9609 Medical Center Drive; Room 7W126; Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Caron A. Lyman, Ph.D.; Chief, Scientific Review Officer Research Programs Review Branch; Division of Extramural Activities; National Cancer Institute, NIH; 9609 Medical Center Drive, Room 7W126; Bethesda, MD 20892–8328; 240–276–6348; *lymanc@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 20, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01367 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel; R01/R21/K99/K01 Conflicts.

Date: February 25, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 20, 2016.

Michelle Trout,

Program Analyst, Office of the Federal Advisory Committee Policy.

[FR Doc. 2016–01360 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Literature Selection Technical Review Committee.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: June 23–24, 2016

Open: June 23, 2016, 8:30 a.m. to 10:45 a.m.

Agenda: Administrative

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 23, 2016, 10:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: Closed: June 24, 2016, 8:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Joyce Backus, M.S.L.S., Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2W04, Bethesda, MD 20892, 301–496–6921, *backusj@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: January 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01359 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: May 3, 2016.

Closed: 7:45 a.m. to 8:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Betsy L. Humphreys, M.L.S., Acting Director, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2E17, Bethesda, MD 20892, 301–496–6661, *humphreb@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 3–4, 2016.

Open: May 3, 2016, 9:00 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 3, 2016, 4:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 4, 2016, 9:00 a.m. to 12:00 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Betsy L. Humphreys, M.L.S., Acting Director, National Library of Medicine, 8600 Rockville Pike, Building 38, Room 2E17, Bethesda, MD 20892, 301–496–6661, *humphreb@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's

license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on May 3–4, 2016.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: January 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01355 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: February 24, 2016.

Open: 1:00 p.m. to 2:00 p.m.

Agenda: Program reports and presentations; business of the Board.

Closed: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room TE406, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ncab/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 20, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01365 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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: Biomedical Library and Informatics Review Committee.

Date: June 16–17, 2016.

Time: June 16, 2016, 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, The Lindberg Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: June 17, 2016, 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Contact Person: Arthur A. Petrosian, Ph.D., Chief Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 20, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01356 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: March 9, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Sheila A. Prindiville, MD, MPH, Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, Coordinating Center for Clinical Trials, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 20, 2016.

Melanie J. Gray-Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01366 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus SEP–3 R03 & R21.

Date: March 21–22, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Viatcheslav A. Soldatenkov, MD, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Bethesda, MD 20892–9750, 240–276–5378, *soldatenkovv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis; Panel Advance Development and Validation of Emerging Molecular Analysis.

Date: March 22–23, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 5W030/4W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division Of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 20, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01361 Filed 1–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Now Is the Time (NITT)—Healthy Transitions (HT) Evaluation—New

SAMHSA is conducting a national evaluation of the Now is the Time (NITT) initiative, which includes separate programs—NITT Project AWARE (Advancing Wellness and Resilience in Education)—State Educational Agency (SEA), Healthy Transitions (HT), and two Minority Fellowship Programs (Youth and Addiction Counselors). These programs are united by their focus on capacity building, system change, and workforce development.

NITT–HT, which is the focus of this data collection, represents a response to the fourth component of President Obama's NITT Initiative: Increasing access to mental health services. The purpose of the NITT–HT program is to improve access to treatment and support services for youth/young adults 16–25 years that either have, or are at risk of developing a mental illness or substance use disorder, and are at high risk of suicide. NITT–HT grants were made to 17 state or local jurisdictions, each of which include 2–3 learning laboratories (n = 43), which are the local communities of practice responsible for implementing the NITT–HT approach. The NITT–HT program aims to increase awareness about early signs and symptoms of mental health conditions in the community; identify action strategies to use when a mental health concern is detected; provide training to provider and community groups to improve services and supports for youth/young adults; enhance peer and family supports; and develop effective services and interventions for youth and young adults with a serious mental health condition and their families. The NITT–HT evaluation is designed to understand whether and how NITT–HT grantees reach these program goals by examining system- and grantee-level processes and system- and client-level outcomes. Data collection efforts that will support the evaluation are described below.

The *Community Support for Transition Inventory (CSTI)* will assess systems change for communities implementing comprehensive, community-based approaches to improve outcomes for emerging adults with serious mental health conditions. The *CSTI* is organized around seven themes: Community partnership, collaborative action, transition planning quality assurance and support, workforce, fiscal policies and sustainability, access to needed support and services, and accountability. The *CSTI* is a web-based survey to be completed by 1,075 community leaders (15–25 community leaders per 43 learning laboratories) once during Year 2 and once during Year 4 of the grant period. Community leaders include members of the local advisory or steering committee, staff of the NITT–HT program, staff of agencies providing portions of the services, and young adult and family members' advocates.

The *State Support for Transition Inventory (SSTI)* will assess state support for systems change and is organized around six themes (partnership, collaborative action, workforce, fiscal policies & sustainability, access to needed supports & services, and accountability). The *SSTI* is a web-based survey to be

completed by 425 state leadership members (20–25 state leaders per 17 grantees) once during Year 2 and once during Year 4 of the grant period. State leadership members include administrators or staff from state agencies responsible for aspects of services to youth/young adults (*e.g.,* mental health, child welfare, education), youth/young adult and adult allies who are active in promoting, planning, or overseeing services at the state level, as well as other members of state-level advisory groups or governing bodies.

The *Collaborative Member Survey* is designed to assess specific team processes that contribute to collaboration outcomes at the systems level and will be administered to a subset of *CSTI* respondents who participate in a NITT–HT grantee's Advisory Team. The *Collaborative Member Survey* emphasizes aspects of Advisory Teams' climate (participatory decision-making, structure, management of conflict, reflexivity). A maximum of 1,075 respondents (15–25 advisory team members per 43 learning laboratories) are expected to complete the web-based survey once during Year 3 and once during Year 5 of the grant period.

The *Collaborative Self-Assessment* assesses collaborative functioning and accomplishments, and specific tasks completed by NITT–HT grantee stakeholders and the leadership team including progress in each of the primary ''functions'' for the NITT–HT grantees (*i.e.,* specific, discrete achievements or steps toward strategic and fiscal planning, expansion of services, early identification outreach, and reduction of barriers to access). The web-based *Collaborative Self-Assessment Survey* will be completed by one advisory team member per learning laboratory (n = 43) once in Year 3 and once in Year 5 of the grant period.

The *Project Director Web Survey* will collect information on planning, coordination, leadership processes, fiscal planning, and sustainability. The brief *Project Director Web Survey* will be completed by all grantee project directors (n = 17) once during each of Years 2, 3, and 4 of the grant period. The web survey includes prompts designed to assist the project director in gathering and recalling information to be discussed during the subsequent *Project Director Telephone Interview.* Upon completion of the web survey, the project director will be asked to schedule a telephone interview, which will focus on gathering more in depth information to complement information gathered via the web survey. The *Project Director Telephone Interview* includes information on state/local implementation, fiscal planning, coordination and organizational challenges, workforce development, quality assurance procedures, sustainability planning, and leadership and political issues. The telephone interview will also be completed by all grantee project directors (n = 17) once during each of Years 2, 3, and 4 of the grant period. The web survey and telephone interview are slightly different at each time point to reflect varying annual changes in program implementation emphasis.

The *Core Staff Web Survey* will be administered to core NITT–HT staff to assess characteristics of person-centered practice and barriers to this practice. ''Core staff'' are defined as staff members serving as primary providers of planning, case management and coordination services to youth/young adults (''life coaches,'' ''transition facilitators,'' or ''transition specialists''). A maximum of 430 core staff (no more than 10 core staff per 43 learning laboratories) are expected to complete the *Core Staff Survey* once during the grant period.

In the *Multi-Media Project,* youth/young adults will be invited to voluntarily provide information about their experiences working with or being served by NITT–HT grantee communities using multi-media outlets. Youth/young adult involvement is a priority both for the NITT–HT national evaluation and for NITT–HT grantees. Consequently, it will be important to offer youth/young adults opportunities to participate in national evaluation activities in developmentally-appropriate and engaging ways. These outlets could include videos, photos, blogs, or poems (at the choice of the participating youth/young adult). Youth/young adults will be given informational probes (*e.g.,* what keeps you involved in NITT–HT activities?) in grantee Years 2, 3, and 4; an estimated 510 youth/young adults (30 youth/young adults per 17 grantees) will participate in the *Multi-Media Project.*

The *Supplemental Youth and Youth Adult Interview (SYAI)* will assess key client-level outcomes of interest for the NITT–HT program, including: School/home/daily living functioning, emotional/behavioral health, vocation and education status, housing stability, criminal or juvenile justice involvement, psychotic symptoms, substance use/abuse, trauma symptoms, victimization experiences and propensity to commit violent acts. In addition to primary outcomes of interest, the *SYAI* also assesses intermediate outcomes thought to be critical in influencing change in behavioral health and functioning, including: Self-efficacy (mental health, school, career and social), and perceptions of social support, person-centered care, and service alliance. The *SYAI* includes standardized instruments as well as project-developed items and does not duplicate the client-level data collection required separately by SAMHSA (OMB No. 0930–0346). The *SYAI* will be conducted with 90 service recipient youth/young adults per NITT–HT grantee (n = 17), for a total of 1,530 youth/young adults, at program enrollment (Baseline) and 12- and 24-months after enrollment. These 90 cases will be evenly distributed across the grantee's 2–3 learning laboratories. The *SYAI* is designed for administration as an audio computer-assisted self-interviewing (ACASI) survey. This mode was selected to offer participating youth/young adults maximum privacy while completing the interview and to present minimal survey administration burden to NITT–HT grantee staff.

Grantee Visit In-Person Interviews and Focus Group Guides

All NITT–HT grantees (n = 17) will be visited once during the 5-year grant period. Activities associated with the grantee visit (*i.e.,* a pre-planning inventory, interviews, focus groups, and document review) are described below.

Prior to the grantee visit, the *Services & Supports Inventory* will be administered one time by telephone to a representative from each of the NITT–HT grantees (n = 17) to identify specific providers and other stakeholders to participate in the grantee visit. Respondents will also provide information about specific services, especially evidence-based and evidence-informed practices being provided to youth/young adults through NITT–HT associated behavioral health or other professional agencies, and provide a preliminary assessment of the frequency and quality of implementation of the practice(s).

During the one-time grantee visit, several in-person interviews and two client-oriented focus groups will be conducted with NITT–HT program staff. The *Core Staff In-Person Interview* will be conducted with core staff members (*i.e.,* ''transitions specialists,'' ''transition facilitators,'' or ''life coaches'') to examine their experiences providing person-centered planning services to youth/young adults served within the NITT–HT grantee communities and ask about successes and challenges in creating and implementing youth/young adult service plans. A total of 215 core staff

(five core staff per 43 learning laboratories) are expected to participate.

The *Youth Coordinator In-Person Interview* will be conducted with three staff members (one youth coordinator and up to two peer workers) to elicit staff experiences working with the NITT–HT grantee with a focus on the Youth Coordinator functions including participation in planning and coordination, outreach, mentoring, and other activities. A total of 129 staff members (three per 43 learning laboratories) are expected to participate.

The *Provider In-Person Interview* will be conducted with individuals who provide behavioral health services/treatment directly to youth/youth adults served within the NITT–HT community, other than the transition facilitators. These individuals will likely come from NITT–HT partner organizations. Interviews will focus on two areas: (1) Perceptions of organizational support by the collaborative, and (2) implementation of evidence-based practices (*e.g.,* general attitudes, types of practices being used, implementation supports). A total of 85 key provider informants (five key providers per 17 grantees) are expected to participate.

The *Stakeholder In-Person Interview* will be conducted with other key stakeholders (*e.g.,* board members for agencies, leaders or liaisons for advocacy groups, leaders or advocates with religious or charitable organizations), as identified by grantee leadership. The interview will elicit experiences contributing to systems development, including history of involvement, their specific contributions to the systems development effort, and strategies, barriers and facilitators to making these contributions. A total of 51 community stakeholders (3 stakeholders per 17 grantees) are expected to participate.

Two *Young Adult Focus Groups* will be conducted during the grantee visit—one for youth/young adults directly involved in NITT–HT system change efforts, and one for youth/young adults who are recipients of NITT–HT services. The focus groups are designed to elicit perceptions based on youth/young adult lived experience about resources to support successful youth/young adult transition at NITT–HT sites, whether practices are well aligned to address needs and cultivate resources, and ideas about how to build on these achievements in the future. An information form will be completed by each participant to gather general background information (*e.g.,* demographics, extent of experience with the mental health system and grantee community). A total of 860 youth/young adult participants (20 participants per 43 learning laboratories) are expected to participate.

Two *Family/Adult Ally Focus Groups* will be conducted during the grantee visit—one focused at the client-level (for family members of youth/young adults service recipients), and one focused at the systems level (for family members involved in NITT–HT grantee planning and systems change efforts). The focus groups will gather information about family member perceived needs and resources to support youth/young adults at the NITT–HT sites. An information form will be completed by each participant to gather general background information (*e.g.,* demographics, extent of experience with the mental health system and grantee community). A total of 860 family/adult allies (20 participants per 43 learning laboratories) are expected to participate.

Grantee Visit Document Review. Files or charts of a subset of youth/young adults participating in the *SYAI* will be reviewed during the grantee visit. This document review will be designed to ascertain types of standard documentation routinely completed for youth/young adult clients served as well as the consistency of completion of these documents. Information extracted from client charts will be programmatic only; there will be no identifying or personal information extracted from these client charts.

ANNUALIZED BURDEN HOURS FOR THE NITT—HEALTHY TRANSITIONS EVALUATION

Instrument/activity	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Community Support for Transition Inventory	1,075	1	1,075	0.4	430
State Support for Transition Inventory	425	1	425	0.32	136
Collaborative Member Survey	1,075	1	1,075	0.25	269
Collaborative Self-Assessment Survey	43	1	43	0.83	36
Project Director Web Survey	17	1	17	0.33	6
Project Director Telephone Interview	17	1	17	1.5	26
Core Staff Web Survey	430	1	430	0.33	142
Grantee Visits:					
Services & Supports Inventory	17	1	17	0.67	11
Core Staff In-Person Interview	215	1	215	0.33	71
Youth Coordinator In-Person Interview	129	1	129	1	129
Provider In-Person Interview	85	1	85	0.75	64
Stakeholder In-Person Interview	51	1	51	0.75	38
Young Adult Focus Group	860	1	860	1.75	1,505
Family/Adult Ally Focus Group	860	1	860	1.75	1,505
Document Review	43	1	43	0.25	11
Supplemental Youth & Young Adult Interview	1,530	1	1,530	0.67	1,025
Multi-Media Project Young Adult Probes	510	1	510	0.33	168
Total	*5,522	.....	7,382	.....	5,572

*This is an unduplicated count of total respondents.

Written comments and recommendations concerning the proposed information collection should be sent by February 25, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit

their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–01480 Filed 1–25–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Quarterly Progress Reporting and Annual Indirect Services Outcome Data Collection for the Minority Substance Abuse/HIV Prevention Program (MAI)—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) is requesting approval from the Office of Management and Budget (OMB) for the collection of quarterly progress information and annual community-level outcome data from CSAP's Minority AIDS Initiative (MAI) programs.

This data collection effort supports two of SAMHSA's 6 Strategic Initiatives: Prevention of Substance Abuse and Mental Illness and Health Care and Health Systems Integration. The grantees funded by the MAI and included in this clearance request are:

- Minority Serving Institutions (MSI) in Partnerships with Community-Based Organizations (CBO): 84 grantees funded up to three years;
- Capacity Building Initiative (CBI): 74 grantees funded up to five years.

MSI CBO grantees are Historically Black Colleges/Universities, Hispanic Serving Institutions, American Pacific Islander Serving Institutions, or Tribal Colleges/Universities in partnership with community based organizations in their surrounding communities. MSI CBO grantees are required to provide integrated substance abuse (SA), Hepatitis C (HCV), and HIV prevention services to young adults. The CBI grantees are community-level domestic, public and private nonprofit entities, federally recognized American Indian/Alaska Native Tribes and tribal organizations, and urban Indian organizations. CBI grantees will use grant funds for building a solid infrastructure for integrated SA, HIV, and HCV prevention service provision and implementing evidence-based prevention interventions using SAMHSA's Strategic Prevention Framework (SPF) process. The target population for the CBI grantees will be at-risk minority adolescents and young adults. All MAI grantees are expected to provide leadership and coordination on the planning and implementation of the SPF and to target minority populations, as well as other high risk groups residing in communities of color with high prevalence of SA and HIV/AIDS.

The MAI grantees are expected to provide an effective prevention process, direction, and a common set of goals, expectations, and accountabilities to be adapted and integrated at the community level. Grantees have substantial flexibility in choosing their individual evidence-based programs, but must base this selection on and build it into the five steps of the SPF. These SPF steps consist of assessing local needs, building service capacity specific to SA and HIV prevention services, developing a strategic prevention plan, implementing evidence-based interventions, and evaluating their outcomes. Grantees are also required to provide HIV and HCV testing and counseling services and referrals to appropriate treatment options. Grantees must also conduct ongoing monitoring and evaluation of their projects to assess program effectiveness including Federal reporting of the Government Performance and Results Act (GPRA) of 1993, The GPRA Modernization Act of 2010, SAMHSA/CSAP National Outcome Measures (NOMs), and the Department of Health and Human Services Core HIV Indicators.

The primary objectives of this data collection effort are to:

- Ensure the correct implementation of the five steps of the SPF process by maintaining a continuous feedback loop between grantees and their POs;
- Promptly respond to grantees' needs for training and technical assistance;
- Assess the fidelity with which the SPF is implemented;
- Collect aggregate data on HIV testing to fulfill SAMHSA's reporting and accountability obligations as defined by the Government Performance and Results Modernization Act (GPRA Modernization Act) and HHS's HIV Core Measures;
- Assess the success of the MAI in reducing risk factors and increasing protective factors associated with the transmission of the Human Immunodeficiency Virus (HIV), Hepatitis C Virus (HCV) and other sexually-transmitted diseases (STD);
- Measure the effectiveness of evidence-based programs and infrastructure development activities such as: Outreach and training, mobilization of key stakeholders, substance abuse and HIV/AIDS counseling and education, testing, referrals to appropriate medical treatment, and other intervention strategies (e. g., cultural enrichment activities, educational and vocational resources, motivational interviewing & brief interventions, social marketing, and computer-based curricula);
- Investigate intervention types and features that produce the best outcomes for specific population groups;
- Assess the extent to which access to health care was enhanced for population groups and individuals vulnerable to behavioral health disparities residing in communities targeted by funded interventions;

These objectives support the four primary goals of the National HIV/AIDS Strategy which are: (1) Reducing new HIV infections, (2) increasing access to care and improving health outcomes for people living with HIV/AIDS, (3) reducing HIV-related disparities and health inequities, and (4) achieving a coordinated national response to the HIV epidemic.

The Quarterly Progress Reporting (QPR) Tool is a modular instrument structured around the SPF. Each section or module corresponds to a SPF step with an additional section dedicated to cultural competence and efforts to address behavioral health disparities, which is an overarching principle of the framework guiding every step. Grantees provide quarterly reports of their progress through the SPF. Each quarter's report consists of updates to the module(s) corresponding to the SPF steps that the grantee worked on during that quarter. Grantees are required to report on their activities, accomplishments, and barriers associated with cultural competence and reduction of health disparities twice a year, as part of the second- and fourth-

quarter progress reports. Data on HIV/HCV testing and hepatitis vaccination are reported only in the aggregate (e. g. numbers tested and percent of tests that were positive). No individual-level information is collected through this instrument.

The Indirect Services Outcomes Data Tool collects annual data on community-level outcome measures. These data typically come from existing sources such as ongoing community surveys and administrative data collected by local agencies and institutions such as law enforcement, school districts, college campuses, hospitals, and health departments. The data are submitted to SAMHSA in the form of community-level averages, percentages, or rates, and are used to assess the grantees' success in changing community norms, policies, practices, and systems through environmental strategies and information dissemination activities. As with the QPR, no individual-level information is collected through this instrument.

The third data collection instrument for which approval is being sought is intended to collect FY 2015 data on the HIV testing activities of the grantees. It will be used once only, immediately after the system goes online, in order to collect data for two of the seven HHS Core Indicators that SAMHSA/CSAP has agreed to report. Although this statement refers to it as a separate instrument for purposes of clarity in burden estimation, it has the same data fields as the HIV Testing Implementation section of the main Quarterly Progress Report tool and differs only in its reporting timeframe

Although the main purpose of this data collection effort is to provide a standard and efficient system for SAMHSA's project officers to maintain a feedback loop with the grantees that they manage and to respond to training and technical assistance needs in a timely fashion, the data will also be incorporated into the national cross-site evaluation. By combining this grantee-level implementation information and community-level outcome data with participant-level pre-post data, SAMHSA will be able to identify interventions and intervention combinations that produce the most favorable outcomes at the individual and community levels, and to investigate the interaction between participant- and grantee-level factors in predicting positive outcomes.

Respondent burden has been limited to the extent possible while allowing SAMHSA project officers to effectively manage, monitor, and provide sufficient guidance to their grantees, and for the cross-site evaluation to reliably assess program outcomes and successful strategies. The following table displays estimates of the annualized burden for data collected through the Quarterly Progress Reporting and Indirect Services outcomes data collection tools.

ESTIMATES OF ANNUALIZED HOUR BURDEN BY INSTRUMENT

Type of respondent activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Quarterly Progress Report	158	4	632	4	2,528
Indirect Services Outcomes	158	1	158	2	316
HIV Testing Retrospective Reporting Tool	50	1/3	16. 67	0. 25	4. 17
Total	158	.....	806. 67	.....	2,848

Written comments and recommendations concerning the proposed information collection should be sent by February 25, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–01479 Filed 1–25–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Revocation of Customs Broker's License

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Customs broker's license revocation.

SUMMARY: This document provides notice of the revocation of a customs broker's license.

FOR FURTHER INFORMATION CONTACT: Julia Peterson, Broker Management Branch, Office of International Trade, (202) 863–6601.

SUPPLEMENTARY INFORMATION: This document provides notice of the revocation of a customs broker's license pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641). The following customs broker's license and all associated permits are revoked by operation of law for failure to employ at least one qualifying individual pursuant to 19 U.S.C. 1641 and section 111.45(a) of title 19 of the Code of Federal Regulations (19 CFR 111.45(a)).

Company name	License No.	Port of issuance
EWC Brokerage Services LLC.	29337	Miami.

Dated: January 21, 2016.

Brenda B. Smith,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2016–01558 Filed 1–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0074]

Agency Information Collection Activities: Prior Disclosure

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Prior Disclosure. 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 March 28, 2016 to be assured of consideration.

ADDRESSES: Written comments may be mailed to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Prior Disclosure.

OMB Number: 1651–0074.

Abstract: The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties, or misclassified merchandise. The procedure for making a prior disclosure is set forth in 19 CFR 162.74 which requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 3,500.

Estimated Number of Annual Responses: 3,500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 3,500.

Dated: January 20, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–01556 Filed 1–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Saybolt LP as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Saybolt LP as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Saybolt LP has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of June 16, 2015.

DATES: *Effective Dates:* The approval of Saybolt LP as commercial gauger became effective on June 16, 2015. The next triennial inspection date will be scheduled for June 2018.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Saybolt LP, 120 West Highway 10, Gonzales, LA 70737, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Saybolt LP is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: January 13, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–01565 Filed 1–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1542]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before April 25, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1542, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
Jackson County, OR and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–10–0672S Preliminary Date: June 30, 2015	
City of Ashland	City of Ashland, 51 Winburn Way, Ashland, OR 97520.
Unincorporated Areas of Jackson County	Jackson County Development Services, 10 South Oakdale Avenue, Room 100, Medford, OR 97501.

Community	Community map repository address
Kenosha County, WI and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project:14–05–9406S Preliminary Date: April 3, 2015	
Village of Pleasant Prairie	Village Hall, 9915 39th Avenue, Pleasant Prairie, WI 53158.

[FR Doc. 2016–01563 Filed 1–25–16; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet in person on February 10–11, 2016 in Reston, VA. The meeting will be open to the public.

DATES: The TMAC will meet on Wednesday, February 10, 2015 from 8:00 a.m.–5:30 p.m. Eastern Standard Time (EST), and Thursday, February 11, 2016 from 8:00 a.m.–5:00 p.m. EST. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in the auditorium of the United States Geological Survey (USGS) headquarters building located at 12201 Sunrise Valley Drive, Reston, VA 20192. Members of the public who wish to attend the meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (attention Kathleen Boyer) by 11:00 p.m. EDT on Friday, February 5, 2016. Members of the public must check in at the USGS Visitor's entrance security desk; photo identification is required.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated meeting materials will be available at *www.fema.gov/TMAC* for review by Monday, February 1, 2016. Written comments to be considered by the committee at the time of the meeting must be submitted and received by Friday, February 5, 2016, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email TO: *FEMA–RULES@fema.dhs.gov* and CC: *FEMA–TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. *Docket:* For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Wednesday, February 10, 2015, from 4:00 p.m. to 4:30 p.m. EST and again on Thursday, February 11, 2016, from 3:00 to 3:30 p.m. EST. Speakers are requested to limit their comments to no more than three minutes. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Wednesday, February 3, 2016.

FOR FURTHER INFORMATION CONTACT: Kathleen Boyer, Designated Federal Officer for the TMAC, FEMA, 1800 South Bell Street, Arlington, VA 22202, telephone (202) 646–4023, and email *Kathleen.boyer@fema.dhs.gov.* The TMAC Web site is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Further, in accordance with the *Homeowner Flood Insurance Affordability Act of 2014,* the TMAC must develop a review report related to flood mapping in support of the National Flood Insurance Program (NFIP).

Agenda: On February 10, 2016, the TMAC members will present and deliberate on the draft content and potential recommendations to be incorporated in the 2016 Review Report (due in April 2016) and the 2016 Annual Report (due in October 2016). A

brief public comment period will take place during the meeting. On February 11, 2016, the TMAC members will continue to present and deliberate on the draft content and potential recommendations to be incorporated in the two reports. In addition, the TMAC members will identify and coordinate on the TMAC's next steps. A brief public comment period will take place during the meeting prior to any vote. The full agenda and related briefing materials will be posted for review by February 5, 2016 at *http://www.fema.gov/TMAC.*

Dated: January 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

[FR Doc. 2016–01497 Filed 1–25–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0024; OMB No. 1660–0100]

Agency Information Collection Activities: Proposed Collection; Comment Request; General Admissions Applications (Long and Short) and Stipend Forms

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the admission applications and student stipend agreements for FEMA courses and programs that are delivered on-campus at the FEMA National Emergency Training Center (NETC) facility and throughout the Nation, in coordination with State and local training officials and local colleges and universities.

DATES: Comments must be submitted on or before March 28, 2016.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2015–0024. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Smiley White, Supervisory Program Specialist, United States Fire Administration, 301–447–1055. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA offers courses and programs that are delivered at National Emergency Training Center (NETC) in Emmitsburg, Maryland and the Center for Domestic Preparedness (CDP) in Anniston, Alabama and throughout the Nation in coordination with State and local training officials and local colleges and universities to carry out the authorities listed below. To facilitate meeting these requirements, FEMA collects information necessary to be accepted for courses and for the student stipend or travel reimbursement program for these courses. There are several organizations within the Federal Emergency Management Agency that deliver training and education in support of the FEMA mission.

1. Section 7 of Public Law 93–498, Federal Fire Prevention and Control Act, as amended, established the National Fire Academy (NFA) to advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities.

2. Section 611.f. of subchapter VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) as amended, 42 U.S.C. 5121–5207, authorizes the Director to conduct or arrange, by contract or otherwise, for the training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness; conduct or operate schools or classes, including the payment of travel expenses, in accordance with subchapter I of chapter 57 of title 5, United States Code, and the Standardized Government Travel Regulations, and per diem allowances, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Director; and provide instructors and training aids as deemed necessary. This training is conducted through the Emergency Management Institute (EMI).

3. Title XIV of the National Defense Authorization Act of 1997, PL 104–201, 110 Stat. 2432; title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, PL 105–119, 111 Stat. 2440; sections 403 and 430 of the Homeland Security Act of 2002, PL 107–296, 116 Stat. 2135; and section 611 of the Post-Katrina Emergency Management Reform Act of 2006, PL 109–295, 120 Stat. 1355, all authorize the Center for Domestic Preparedness (CDP) to serve as a training facility for all relevant federally supported training efforts that target state and local law enforcement, firefighters, emergency medical personnel, and other key agencies such as public works and state and local emergency management. The focus of the training is to prepare relevant state and local officials to deal with chemical, biological, or nuclear terrorist acts and handle incidents dealing with hazardous materials.

4. PL 110–53, State. 6 U.S.C. 1102 established a National Domestic Preparedness Consortium within the Department of Homeland Security. According to the enacting legislation, the members of the Consortium consist of the Center for Domestic Preparedness; the National Energetic Materials Research and Testing Center, New Mexico Institute of Mining and Technology; the National Center for Biomedical Research and Training, Louisiana State University; the National Emergency Response and Rescue Training Center, Texas A&M University; the National Exercise, Test, and Training Center, Nevada Test Site; the Transportation Technology Center, Incorporated, in Pueblo, Colorado; and the National Disaster Preparedness Training Center, University of Hawaii. Other organizations have been added to the Consortium membership since the passage of the enacting legislation. The Consortium shall identify, test, and deliver training to State, local, and tribal emergency response providers, provide on-site and mobile training at the performance, management, and

planning levels, and facilitate the delivery of training by the training partners of the Department.

5. Under the authorities of Exec. Order Nos. 12127 and 12148, the Administrator, Federal Emergency Management Agency, is responsible for carrying out the mandates of the public laws mentioned above.

Collection of Information

Title: General Admissions Applications (Long and Short) and Stipend Forms.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0100.

FEMA Forms: FEMA Form 119–25–0–1, General Admissions Application; FEMA Form 119–25–3, Student Stipend Agreement; FEMA Form 119–25–4, Student Stipend Agreement (Amendment); FEMA Form 119–25–5, National Fire Academy Executive Fire Officer Program Application Admission; FEMA Form 119–25–0–6, General Admissions Application Short Form.

Abstract: FEMA Form 119–25–0–1 has an increase in the number of respondents from 25,000 to 52,000 (+27,000) because FEMA is replacing all existing General Admissions Application and Training Registration forms with a single FEMA-wide form which will be submitted as a paper version or using an on-line application process. There was also an adjustment increase for FEMA Form 119–25–0–1 from 3,750 hours to 7,800 (+4,050) hours. The FEMA Form 119–25–0–6 has been created for those courses where less information is required from the respondent. It is expected that 154,500 respondents will used this form requiring 15,450 burden hours. The FEMA Form 119–25–2 (reduction of 80,000 respondents and 8,000 burden hours) is being eliminated and being replaced by the FEMA Form 119–25–0–1.

Affected Public: Business and other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 214,300.

Number of Responses: 214,300.

Estimated Total Annual Burden Hours: 24,400.

Estimated Cost: $2,063,978.

Comments

Comments may be submitted as indicated in the ADDRESSES caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: January 20, 2016.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–01495 Filed 1–25–16; 8:45 am]

BILLING CODE 9111–72–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0004]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on February 8, 2016, in Washington, DC. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Monday, February 8, 2016, from 1:00 p.m. to 5:00 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held both in person in Washington, DC at 650 Massachusetts Avenue NW., 4th Floor, and via online forum (URL will be posted on the Privacy Office Web site in advance of the meeting at *www.dhs.gov/privacy-advisory-committees*). For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

To facilitate public participation, we invite public comment on the issues to be considered by the Committee as listed in the **SUPPLEMENTARY INFORMATION** section below. A public comment period will be held during the meeting from 4:30 p.m.–4:50 p.m., and speakers are requested to limit their comments to three minutes. If you would like to address the Committee at the meeting, we request that you register in advance by contacting Sandra Taylor at the address provided below or sign up at the registration desk on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. Please note that the public comment period may end before the time indicated, following the last call for comments. Written comments should be sent to Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by January 27, 2016. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2016–0004) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2016–0004) in the subject line of the message.
- *Fax:* (202) 343–4010.
- *Mail:* Sandra Taylor, Designated Federal Officer, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2016–0004). Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

If you wish to attend the meeting, please bring a government issued photo I.D. and plan to arrive at 650 Massachusetts Avenue NW., 4th Floor, Washington, DC no later than 12:50 p.m. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@hq.dhs.gov.* Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

Docket: For access to the docket to read background documents or comments received by the DHS Data

Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov* and search for docket number DHS–2016–0004.

FOR FURTHER INFORMATION CONTACT: Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0655, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. 2. The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of Homeland Security and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information, as well as data integrity and other privacy-related matters. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451.

Proposed Agenda

During the meeting, the Chief Privacy Officer will provide an update on the Privacy Office activities. In addition, the Privacy Office Senior Directors will brief the Committee on their 2016 priorities. The Committee will also receive updates on the Privacy and Civil Liberties Oversight Board and the Federal Privacy Committee. The Committee will also discuss draft recommendations for DHS to consider on how to best protect privacy through the various stages of behavioral analysis while achieving the Department's cybersecurity goals. The final agenda will be posted on or before January 27, 2016, on the Committee's Web site at *www.dhs.gov/privacy-advisory-committees.* Please note that the meeting may end early if all business is completed.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: The *Federal Records Act,* 44 U.S.C. 3101; the FACA, 5 U.S.C. Appendix; and the *Privacy Act of 1974,* 5 U.S.C. 552a.

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–002 Mailing and Other Lists System of Records Notice (November 25, 2008, 73 FR 71659).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 Mailing and Other Lists System of Records referenced above.

Dated: January 20, 2016.

Karen Neuman

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–01469 Filed 1–21–16; 4:15 pm]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, With Changes, of an Existing Information Collection

AGENCY: Immigration and Customs Enforcement, HSD.

ACTION: 60-Day Notice of Information collection for review; Form No. I–352SA/I–352RA; Electronic Bonds Online (eBonds) Access; OMB Control No. 1653–0046.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty day until March 28, 2016.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Chief Information Office, Forms Management Office, U.S. Immigrations and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536–5800.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with changes, of a currently approved information collection

(2) *Title of the Form/Collection:* Electronic Bonds Online (eBonds) Access

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* ICE Form I–352SA (Surety eBonds Access Application and Agreement); ICE Forms I–352RA (eBonds Rules of Behavior Agreement); U.S Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-

profit. The information taken in this collection is necessary for ICE to grant access to eBonds and to notify the public of the duties and responsibilities associated with accessing eBonds. The I–352SA and the I–352RA are the two instruments used to collect the information associated with this collection. The I–352SA is to be completed by a Surety that currently holds a Certificate of Authority to act as a Surety on Federal bonds and details the requirements for accessing eBonds as well as the documentation, in addition to the I–352SA and I–352RA, which the Surety must submit prior to being granted access to eBonds. The I–352RA provides notification that eBonds is a Federal government computer system and as such users must abide by certain conduct guidelines to access eBonds and the consequences if such guidelines are not followed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

Dated: January 21, 2016.

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2016–01425 Filed 1–25–16; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N147; FXES11130000–156–FF08E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Laguna Mountains Skipper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Recovery Plan for Laguna Mountains skipper, a small butterfly, for public review and comment. The draft recovery plan includes recovery objectives and criteria, and specific actions necessary to achieve recovery and removal of the species from the Federal List of Endangered and Threatened Wildlife. We request review and comment on this draft recovery plan from local, State, and Federal agencies, and the public.

DATES: We must receive any comments on the draft recovery plan on or before March 28, 2016.

ADDRESSES: You may obtain a copy of the draft recovery plan from our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008 (telephone 760–431–9440). If you wish to comment on the draft recovery plan, you may submit your comments in writing by any one of the following methods:

- *U.S. mail:* Field Supervisor, at the above address;
- *Hand-delivery:* Carlsbad Fish and Wildlife Office, at the above address; or
- *Email: fw8cfwocomments@fws.gov.*

For additional information about submitting comments, see the ''Request for Public Comments'' section below.

FOR FURTHER INFORMATION CONTACT: Mendel Stewart, Field Supervisor, at the above street address or telephone number (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

The Laguna Mountains skipper is a small butterfly that inhabits large wet mountain meadows and associated forest openings at elevations above 3,900 feet (ft) (1,189 meters (m)). We listed the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) as endangered throughout its entire range in 1997 (January 16, 1997; 62 FR 2313). At the time of listing, the subspecies occurred in the Laguna Mountains and on Palomar Mountain in San Diego County, California, but it is currently restricted to Palomar Mountain, where there are four extant occurrences. Adult occupancy is also associated with surface water such as streams and wet seeps, and population growth appears positively correlated with rainfall levels. *Horkelia clevelandii* (Cleveland's horkelia) is Laguna Mountains skipper's primary host plant.

The primary threats to survival of the Laguna Mountains skipper are habitat modification through poor management of cattle grazing and succession, climate change, incidental ingestion by cattle, and small isolated populations susceptible to events such as drought and fire.

Recovery Plan Goals

The purpose of a recovery plan is to provide a framework for the recovery of species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species is warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

The ultimate goal of this recovery plan is to recover the Laguna Mountains skipper so that it can be delisted. The interim goal is to recover the species to the point that it can be downlisted from endangered to threatened status. To meet the recovery goal, the following objectives have been identified:

1. Validate the population ecology model to advance our ability to understand and monitor the status of Laguna Mountains skipper and inform management practices;

2. Increase abundance and ensure long-term persistence of Laguna Mountains skipper through reduction and management of threats to the subspecies and its habitat throughout its current range; and

3. Ensure population redundancy of Laguna Mountains skipper through documentation and reestablishment (where needed) of multiple resilient and genetically representative populations within its historical range.

As the Laguna Mountains skipper meets recovery criteria, we will review its status and consider it for downlisting or removal from the Federal List of Endangered and Threatened Wildlife.

Request for Public Comments

We request written comments on the draft recovery plan described in this notice. All comments received by the date specified in the **DATES** section will be considered in development of a final recovery plan for Laguna Mountains skipper. You may submit written comments and information by mail or in person to the Carlsbad Fish and Wildlife

Office at the address in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We developed our recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 14, 2016.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2016–01131 Filed 1–25–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX15.WB12.C25A1.00]

Agency Information Collection Activities: Request for Comments on the Alaska Beak Deformity Observations

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Alaska Beak Deformity Observations.

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) 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 ICR.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before February 25, 2016.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–NEW 'Alaska Beak Deformity Observations'. Please also forward a copy of your comments and suggestions 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) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–NEW: 'Alaska Beak Deformity Observations' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Colleen Handel, Alaska Science Center, U.S. Geological Survey, 4210 University Drive, Anchorage, AK 99508 (mail); 907–786–7181 (phone); or *cmhandel@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

As part of the USGS Ecosystems mission to assess the status and trends of the Nation's biological resources, the Alaska Science Center Landbird Program conducts research on avian populations within Alaska. Beginning in the late 1990s, an outbreak of beak deformities in Black-capped Chickadees emerged in southcentral Alaska. USGS scientists launched a study to understand the scope of this problem and its effect on wild birds. Since that time, researchers have gathered important information about the deformities but their cause still remains unknown. Members of the public provide observation reports of birds with deformities from around Alaska and other regions of North America. These reports are very important in that they allow researchers to determine the geographical distribution and species affected. Data collection over such a large and remote area would not be possible without the public's assistance.

II. Data

OMB Control Number: 1028–NEW.

Title: Alaska Beak Deformity Observations.

Type of Request: Approval of new information collection.

Respondent Obligation: Participation is voluntary.

Frequency of Collection: Seasonally variable, from zero to ten observations as needed.

Description of Respondents: Individuals and Households.

Estimated Total Number of Annual Responses: 250.

Estimated Time per Response: We estimate that it will take approximately 5 minutes to read the instructions and 10 minutes to complete the response form.

Estimated Annual Burden Hours: 63 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

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. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On August 14, 2015, we published a **Federal Register** notice (80 FR 48909) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on October 13, 2015. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR 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) how 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 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 in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Mark Shasby,

Alaska Science Center Director.

[FR Doc. 2016–01430 Filed 1–25–16; 8:45 am]

BILLING CODE 4338–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–555 and 731–TA–1310 (Preliminary)]

Certain Amorphous Silica Fabric From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–555 and 731–TA–1310 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain amorphous silica fabric from China, provided for in subheadings 7019.59.40 and 7019.59.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by March 7, 2016. The Commission's views must be transmitted to Commerce within five business days thereafter, or by March 14, 2016.

DATES: *Effective Date:* January 20, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on January 20, 2016, by Auburn Manufacturing, Inc., Mechanic Falls, Maine.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, February 10, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before February 8, 2016. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 16, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.
Issued: January 20, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–01423 Filed 1–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[Docket No. OTJ 110]

United States Assumption of Concurrent Federal Criminal Jurisdiction; Mille Lacs Band of Ojibwe

AGENCY: Office of Tribal Justice, Department of Justice.

ACTION: Notice.

SUMMARY: The Deputy Attorney General, exercising authority delegated by the Attorney General, is granting the request by the Mille Lacs Band of Ojibwe for

United States Assumption of Concurrent Federal Criminal Jurisdiction, pursuant to the provisions of 28 CFR 50.25. Concurrent federal criminal jurisdiction will take effect on January 1, 2017.

DATES: This notice is effective January 20, 2016.

ADDRESSES: Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530, email *OTJ@usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number) or *OTJ@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Background

The Tribal Law and Order Act (TLOA) was enacted on July 29, 2010, as Title II of Public Law 111–211. The purpose of TLOA is to help the Federal Government and tribal governments better address the unique public safety challenges that confront tribal communities. Section 221(b) of the new law, now codified at 18 U.S.C. 1162(d), permits an Indian tribe with Indian country subject to State criminal jurisdiction under Public Law 280, P.L. 83–280, 67 Stat. 588 (1953), to request that the United States accept concurrent jurisdiction to prosecute violations of the General Crimes Act (18 U.S.C. 1152) and the Major Crimes Act (18 U.S.C. 1153) within that tribe's Indian country.

Department of Justice Regulation Implementing 18 U.S.C. 1162(d)

On December 6, 2011, the Department published final regulations that established the framework and procedures for a mandatory Public Law 280 tribe to request the assumption of concurrent Federal criminal jurisdiction within the Indian country of the tribe that is subject to Public Law 280. 76 FR 76037 (Dec. 6, 2011), codified at 28 CFR 50.25. Among other provisions, the regulations provide that, upon acceptance of a tribal request, the Office of Tribal Justice shall publish notice of the consent in the **Federal Register.**

Request by the Mille Lacs Band of Ojibwe

By a request dated February 22, 2013, the Mille Lacs Band of Ojibwe, located in the State of Minnesota, requested that the United States assume concurrent Federal jurisdiction to prosecute violations of the General Crimes Act and the Major Crimes Act within the Indian country of the tribe. This would allow the United States to assume concurrent criminal jurisdiction over offenses within the Indian country of the tribe without eliminating or affecting the State's existing criminal jurisdiction.

In deciding to grant the tribe's request, the Department followed the procedures described in the Department's final notice on Assumption of Concurrent Federal Criminal Jurisdiction in Certain Areas of Indian Country, 76 FR 76037 (Dec. 6, 2011). The Federal government's assumption of concurrent federal criminal jurisdiction within the Indian country of the Mille Lace Band of Ojibwe will take effect on January 1, 2017.

Dated: January 20, 2016.

Tracy Toulou,

Director, Office of Tribal Justice.

[FR Doc. 2016–01524 Filed 1–25–16; 8:45 am]

BILLING CODE 4410–A5–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act; Correction

ACTION: Notice; Correction.

SUMMARY: The Department of Labor published a document in the **Federal Register** of December 23, 2015, inviting public comments on the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act Information Collection Request (80 FR 79933). The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email to *DOL_PRA_PUBLIC@dol.gov.*

Correction

In the **Federal Register** of December 23, 2016, in FR Doc. 2015–32278, on page 79933, (80 FR 79933) in the second column, correct the **DATES** caption to read:

DATES: The OMB will consider all written comments that agency receives on or before January 29, 2016.

Dated: January 20, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–01552 Filed 1–25–16; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Benefit Accuracy Measurement Program; Correction

ACTION: Notice; Correction.

SUMMARY: The Department of Labor published a document in the **Federal Register** of December 23, 2015, inviting public comments on the Benefit Accuracy Measurement Program Information Collection Request (80 FR 79935). The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email to *DOL_PRA_PUBLIC@dol.gov.*

Correction

In the **Federal Register** of December 23, 2015, in FR Doc. 2015–32249, on page 79935, (80 FR 79935) in the first column, correct the **DATES** caption to read:

DATES: The OMB will consider all written comments that agency receives on or before January 29, 2016.

Dated: January 20, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–01553 Filed 1–25–16; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act Summary Annual Report Requirement; Correction

ACTION: Notice; Correction.

SUMMARY: The Department of Labor published a document in the **Federal Register** of December 23, 2015, inviting public comments on the Employee Retirement Income Security Act Summary Annual Report Requirement Information Collection Request (80 FR 79934). The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email to *DOL_PRA_PUBLIC@dol.gov.*

Correction

In the **Federal Register** of December 23, 2015, in FR Doc. 2015–32304, on page 79934, (80 FR 79934) in the first column, correct the **DATES** caption to read:

DATES: The OMB will consider all written comments that agency receives on or before January 29, 2016.

Dated: January 20, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–01554 Filed 1–25–16; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by the MSHA's Office of Standards, Regulations, and Variances on or before February 25, 2016.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2015–007–M.

Petitioner: Frontier-Kemper Constructors, Inc., 1695 Allen Road, Evansville, Indiana 47710–3394.

Mine: Solvay Chemicals, Inc., P.O. Box 1167, 400 County Road 85, Green River, Wyoming 82935, MSHA I.D. No. 48–01295, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22606(a) and (c) (Explosive materials and blasting units (III mines).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of nonpermissible detonators to detonate explosives in the blast holes during work at the construction of the No. 4 shaft. The petitioner states that application of the standard introduces a safety risk to the miners and the alternative method outlined in the petition will at all times guarantee no less than the same measure of protection afforded the miners by the standard. The petitioner states that:

(1) Frontier-Kemper Constructors, Inc. (FKCI), working as an independent contractor for Solvay Chemicals, will construct a twenty-two foot finished diameter shaft. The shaft will be raise-drilled to sixteen feet, six inches in diameter and then slashed to a final excavated diameter ranging from twenty-four to twenty-eight feet. The concrete lining of the shaft will advance concurrently with the slashing operation to minimize the miner's exposure to open ground.

(2) FKCI is requesting to use nonpermissible detonators during slashing operations because geological ground conditions in this area are highly conductive and interfere with permissible electric donators. The ground inhibits the ability to safely conduct electricity to detonate a blast round. Because of this, the workers and the mine are at a risk of misfires and partial round detonation.

FKCI proposes to use the following blasting methods and practices for the excavation required during construction of Solvay Chemicals Shaft #4:

—Only the explosives and detonators specified in this plan or explosive materials MSHA approved in 30 CFR part 15 will be used.

—Before initiating a blast, all persons will be withdrawn from the shaft. All blasts will be initiated from the surface.

—The air will be tested immediately prior to loading of the blast round and continuously monitored with an instrument capable of providing both visual and audible alarms as required in 30 CFR 57.22227.

—If 1.0 percent or more methane is found prior to loading blast holes or after loading has commenced, the loading will immediately cease and procedures as required in 30 CFR 57.22234 will be followed.

—A minimum air flow of 6000 cfm will be maintained in the shaft at all times during loading of blast holes as required in 30 CFR 57.22213.

—All regulations in the 30 CFR and safeguards in MSDS sheets will be adhered to.

—In the event of mine ventilation loss, the entire mine including Solvay Shaft #4 will be evacuated.

—Warning will be given to the employees working underground at Solvay Shaft #4 before a blast round is initiated.

—Non-electric tubing will be inspected for cuts, nicks and abrasions. The tubing must be free of defects in order to confine the detonation and will not be used if these defects are found.

—A visual inspection around the plug will be done prior to moving the work deck to ensure nothing is caught. In addition, only personnel responsible for loading the round will be on the bench. The round will be initiated with an electric cap.

The petitioner states that:

(1) Blasting for this project will utilize MS delays. FKCI's past experience using MS delays in similar environments has been successful. The Nonel MS caps and detonation cord significantly reduces the amount of cutoffs and misfires when blasting in a ''shaft bottom'' environment. FKCI has successfully used this method in areas of methane without incident.

(2) Included in this petition are blast pattern drawings indicating MS delay times and drilling depth, manufacturer data sheets for blasting materials, and a ventilation plan showing the route of blasting smoke out of the mine.

(3) FKCI believes that the intent of 30 CFR 57.22606(a) and (c) will be achieved along with the other safety concerns contained in this petition.

The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Sheila McConnell,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–01429 Filed 1–25–16; 8:45 am]

BILLING CODE 4520–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet January 28—30, 2016. On Thursday, January 28, the first meeting will commence at 1:00 p.m., Eastern Standard Time (EST), with the meeting thereafter commencing promptly upon adjournment of the immediately preceding meeting. On Friday, January 29, the first meeting will commence at 2:00 p.m., EST, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Saturday, January 30, the first meeting will commence at 9:30 a.m., EST, it will be followed by the closed session meeting of the Board of Directors which will commence promptly upon adjournment of the prior meeting.

LOCATION: The Mills House Wyndham Grand Hotel, 115 Meeting Street, Charleston, South Carolina 29401.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348–.
- When connected to the call, please immediately ''MUTE'' your telephone.
- Combined Audit and Finance Committee you may join the meeting online at *https://global.gotomeeting.com/join/324589357* or telephonically by dialing 1 (571) 317–3122.
- Online when prompted, enter the following access code: 324–589–357, the Audio Pin will be shown after joining the meeting, for *both online and telephonically* the meeting ID code: 324–589–357.
- When connected to the call, please immediately ''MUTE'' your telephone. Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

Meeting Schedule

Thursday, January 28, 2016	Time *
1. Operations & Regulations Committee	1:00 p.m.
2. Delivery of Legal Services Committee.	
Friday, January 29, 2016	
1. Institutional Advancement Committee	2:00 p.m.
2. Communications Subcommittee of the Institutional Advancement Committee	
3. Audit Committee	
4. Finance Committee	
5. Combined Audit and Finance Committee	
6. Governance & Performance Review Committee	
Saturday, January 30, 2016	
1. Board of Directors	9:30 a.m.

* Please note that all times in this notice are in *Eastern Standard Time.*

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and on a list of prospective funders.**

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new prospective donors and to receive a briefing on the donor report.**

Audit Committee—Open, except that the meeting may be closed to the public to hear a briefing on the Office of Compliance and Enforcement's active enforcement matters.**

Combined Audit and Finance Committee—Open, except that the meeting may be closed to the public to hear a briefing from the Corporation's Auditor.**

A verbatim written transcript will be made of the closed session of the Board, Institutional Advancement Committee, Audit Committee, and Combined Audit and Finance Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

** Any portion of the closed session consisting soley of briefings does not fall within the Sunshine Act's defintion of the term ''meeting'' and, therfore, the reqiuremeents of the Sunshine Act do not apply to such portionof the closed session. 5 U.S.C. 552b (a)(2) and (b). *See also* 45 C.F.R. § 1622.2 & 1622.3.

January 28, 2016

Operations & Regulations Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of October 4, 2015
3. Discussion of Committee's evaluations for 2015 and goals for 2016
4. Update on rulemaking for 45 CFR 1610.7—Transfers of LSC Funds and 45 CFR 1627—Subgrants and Membership Fees or Dues
   - Ron Flagg, General Counsel
   - Stefanie Davis, Assistant General Counsel
5. Consider and act on authorizing workshops for revisions to 45 CFR part 1630—Cost Standards and the Property Acquisition and Management Manual based on comments received to the Part 1630 Advance Notice of Proposed Rulemaking
   - Ron Flagg, General Counsel
   - Stefanie Davis, Assistant General Counsel
   - Mark Freedman, Senior Associate General Counsel
6. Consider and act on publication of a notice for comments regarding revisions to population data for grants to serve agricultural and migrant workers
   - Ron Flagg, General Counsel
   - Bristow Hardin, Program Analyst
   - Mark Freedman, Senior Associate General Counsel
7. Consider and act on review of Management's report on implementation of the Strategic Plan 2012–2016 as provided by section VI(3) of the Committee Charter
   - Jim Sandman, President
8. Other public comment
9. Consider and act on other business
10. Consider and act on adjournment of meeting

January 28, 2016

Delivery of Legal Services Committee

1. Approval of agenda
2. Approval of minutes of the Committee's meeting on October 5, 2015
3. Discussion of Committee's evaluations for 2015 and the Committee's goals for 2016
4. Review of LSC management proposal to review and revise Performance Criteria
   - Lynn Jennings, Vice President for Grants Management
5. Panel presentation and Committee discussion on best practices for effective intake
   - Joan Kleinberg, Manager of CLEAR (Coordinated Legal Education, Advice and Referral), Northwest Justice Project
   - Frank Tenuta, Managing Attorney, Iowa Legal Aid
   - Beverly Allen, Managing Attorney, Land of Lincoln Legal Assistance Foundation
   - Adrienne Worthy, Executive Director, Legal Aid of West Virginia
   - Ronke Hughes, Program Counsel, Office of Program Performance
6. Public comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the meeting

January 29, 2016

Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of October 4, 2015
3. Discussion of Committee's evaluations for 2015 and the Committee's goals of 2016
4. Update on development activities
5. Update on Campaign for Justice and Web site
6. Consider and act on Minnesota Charitable Organization Annual Report Form, *Resolution 2016–XXX*
7. Public Comment
8. Consider and act on other business
9. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

1. Approval of minutes of the Committee's Closed Session meeting of October 4, 2015
2. Donor report
3. Consider and act on prospective donors
4. Consider and act on motion to adjourn the closed session meeting

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Subcommittee's meeting of October 4, 2015
3. Discussion of Subcommittee's evaluations for 2015 and the Subcommittee's goals for 2016
4. Communications analytics update
5. Discussion of brochure for young people
6. Public comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the meeting

January 29, 2016

Audit Committee

Open Session

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 4, 2015
3. Committee review of charter responsibilities and development of work plan
4. Briefing of Office of Inspector General
   - Jeffrey Schanz, Inspector General
5. Discussion of Committee's evaluations for 2015 and the Committee's Goals for 2016
6. Management update regarding risk management
   - Ron Flagg, General Counsel
7. Briefing about referrals by the Office of Inspector General to the Office of Compliance and Enforcement including matters from the annual Independent Public Accountants' audits of grantees
   - Jeffrey Schanz, Inspector General
   - John Seeba, Assistant IG for Audits
   - Lora Rath, Director of Compliance and Enforcement
8. Briefing about LSC's oversight of grantees' services to groups
9. Briefing about 403(b) Thrift Plan
10. Public comment
11. Consider and act on other business
12. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

13. Approval of minutes of the Committee's Closed Session meeting of October 4, 2015
14. Briefing by the Office of Compliance and Enforcement on active enforcement matter(s) and follow-up to open investigation referrals from the Office of Inspector General
    - Lora Rath, Director of Compliance and Enforcement
15. Consider and act on adjournment of meeting

January 29, 2016

Finance Committee

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 4, 2015
3. Approval of minutes of the Committee's Open Session telephonic meeting on October 19, 2015
4. Presentation of LSC's Financial Report for the first two months of FY 2016
   - David Richardson, Treasurer/ Comptroller
5. Discussion of LSC's FY 2016 appropriations

- Carol Bergman, Director of Government Relations & Public Affairs

6. Consider and act on LSC's Consolidated Operating Budget for FY 2016, *Resolution 2016–XXX*
   - David Richardson, Treasurer/ Comptroller
7. Discussion of LSC's FY 2017 appropriations request
   - Carol Bergman, Director of Government Relations & Public Affairs
8. Discussion of Committee's evaluation for 2015 and the Committee's goals of 2016
   - Carol Bergman, Director of Government Relations & Public Affairs
9. Report on the Selection of Accounts and Depositories for LSC Funds
   - David Richardson, Treasurer/ Comptroller
10. Public comment
11. Consider and act on other business
12. Consider and act on adjournment of meeting

January 29, 2016

Combined Audit & Finance Committee

Open Session

1. Approval of agenda
2. Presentation of the FY 2015 Annual Financial Audit
   - John Seeba, Assistant Inspector General for Audits
   - Eric Strauss, and David Karakashian, WithumSmith+Brown
3. Consider and act on acceptance of Annual Financial Audit Management Letter for FY 2015, *Resolution 2016–XXX*
4. Presentation of Financial Report for FY 2015
5. Review of LSC's Form 990 for FY 2015
6. Public comment
7. Consider and act on other business
8. Consider and act on motion to adjourn the open session meeting and proceed to a closed session

Closed Session

9. Communication by Corporate Auditor with those charged with governance under Statement on Auditing Standard 114
10. Consider and act on motion to adjourn the meeting

January 29, 2016

Governance and Performance Review Committee

1. Approval of agenda
2. Approval of minutes of the Committee's Open Session meeting on October 5, 2015
3. Discussion of Board and Committee evaluations Review Committee Charter
   a. Staff Report on 2015 Board and Committee Evaluations
   b. Discussion of Governance and Performance Committee evaluations and the Committee's goals for 2016
   - Carol Bergman, Director of Government Relations & Public Affairs
4. Discussion of President's evaluation
5. Discussion of the Inspector General's FY 2015 activities
6. Update on resources for Board and Board Committee succession planning
   - Ron Flagg, Vice President & General Counsel
7. Report on foundation grants and LSC's research agenda
   - Jim Sandman, President
8. Consider and act on other business
9. Public comment
10. Consider and act on adjournment of meeting

January 30, 2016

Board of Directors

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Approval of minutes of the Board's Open Session meeting of October 6, 2015
4. Approval of minutes of the Board's Open Session telephonic meeting of October 19, 2015
5. Approval of minutes of the Board's Open Session telephonic meeting of November 17, 2015
6. Consider and act on nomination for the Chairman of the Board Directors
7. Consider and act on nominations for the Vice Chairman of the Board of Directors
8. Chairman's Report
9. Members' Report
10. President's Report
11. Inspector General's Report
12. Consider and act on the report of the Finance Committee
13. Consider and act on the report of the Audit Committee
14. Consider and act on the Combined Audit and Finance Committee
15. Consider and act on the report of the Operations and Regulations Committee
16. Consider and act on the report of the Governance and Performance Review Committee
17. Consider and act on the report of the Institutional Advancement Committee
18. Consider and act on the report of the Delivery of Legal Services Committee
19. Consider and act on the process for updating LSC 2012–2016 Strategic Plan
20. Report on implementation of recommendations of the Pro Bono Task Force Report and the Pro Bono Innovation Fund
21. Public comment
22. Consider and act on other business
23. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

Closed Session

24. Approval of minutes of the Board's Closed Session meeting of October 6, 2015
25. Briefing by Management
26. Briefing by Inspector General
27. Consider and act on General Counsel's report on potential and pending litigation Involving LSC
28. Consider and act on list of prospective funders
29. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: January 21, 2016.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 2016–01515 Filed 1–22–16; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (16–001)]

Notice of Intent to Grant Exclusive Term License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive Term License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive term license in the United States to practice the invention described and claimed in U.S. Patent Applications Serial Numbers 12/571,049 and 14/168,830, Polyimide Aerogels With Three Dimensional Cross-Linked Structure, LEW–18486–1 and LEW 18,486–2; U.S. Patent Serial Number 8,974,903, Porous Cross-Linked Polyimide-Urea Networks, LEW–18825–1; U.S. Patent Serial Number 9,109,088, Porous Cross-Linked Polyimide Networks, LEW–18864–1; and U.S. Patent Application Serial Number 14/193,719, Process for Preparing Aerogels from Polyamides, LEW–19053–1; U.S. Patent Application Serial Number 14/698,084, Polyalkylene Imide Aerogel, LEW–19108–1; and, U.S. Patent Application Serial Number 14/660,492, Polyimide Aerogels with Polyamide Cross-Links, LEW–19200–1, to Aerogel Technologies, LLC, having its principal place of business in Boston, Massachusetts. The fields of use may be limited to monoliths of polyimide and/or polyamide aerogel with a thickness of 3 mm or greater in the fields of engineering materials, aviation, and automotive plastics. The patent rights in these inventions as applicable have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Glenn Research Center, 21000 Brookpark Rd,

MS 142–7, Cleveland OH 44135. Phone (216) 433–3663. Facsimile (216) 433–6790.

FOR FURTHER INFORMATION CONTACT: Robert Earp, Patent Counsel, Office of Chief Counsel, NASA Glenn Research Center, 21000 Brookpark Rd, MS 142–7, Cleveland OH 44135. Phone (216) 433–3663. Facsimile (216) 433–6790. Information about other NASA inventions available for licensing can be found online at *https://technology.grc.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2016–01426 Filed 1–25–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–002)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Wednesday, March 9, 2016, 8:30 a.m. to 5:00 p.m., and Thursday, March 10, 2016, 8:30 a.m. to 5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 5H41, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 1–888–603–9741, passcode 7275246, on both days, to participate in this meeting by telephone. A toll number also is available, 1–212–519–0817, passcode 7275246, on both days. The WebEx link is *https://nasa.webex.com/* the meeting number on March 9 is 998 136 809, password is PSS@Mar9; and the meeting number on March 10 is 999 111 391, password is PSS@Mar10. The agenda for the meeting includes the following topics:

Planetary Science Division Update

Planetary Science Division Research and Analysis Program Update

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters.

Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire, and New York. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, expiration date, country); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation no less than 3 working days prior to the meeting to Ann Delo. It is imperative that the meeting be held on this date to

accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer,National Aeronautics and Space Administration.

[FR Doc. 2016–01424 Filed 1–25–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Thursday, February 11, 2016, 9:00 a.m.–4:30 p.m. (Eastern Daylight Time), and on Friday, February 12, 2016, 8:30 a.m.–12:15 p.m. (Eastern Daylight Time) in Celebration, Florida.

PLACE: This meeting will occur at the Florida Hospital Nicholson Center, Education Center 2, 404 Celebration, Florida 34747. Interested parties are welcome to join in person or by phone in a listening-only capacity (other than the period allotted for public comment noted below) using the following call-in number: 888–505–4369; Conference ID: 382979; Conference Title: NCD Meeting; Host Name: Clyde Terry.

MATTERS TO BE CONSIDERED: The Council will hear policy presentations on the topics of mental health services in higher education; guardianship; updates since the release of NCD's ''Breaking the School to Prison Pipeline'' report last fall; Medicaid managed care and the direct care workforce; and emerging technology in employment and education. The Council will also receive reports from its standing committees; and receive public comment during four town halls, on the topics of mental health services in higher education; guardianship; challenges of the direct care workforce; and emerging technology.

AGENDA: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

Thursday, February 11

9:00–9:15 a.m.—Call to Order, Welcome and Introductions
9:15–9:30 a.m.—Opening Remarks by Dr. Gary Siperstein
9:30–10:15 a.m.—Mental Health Services in Higher Education Panel
10:15–10:45 a.m.—Town Hall to Receive Comments on Mental Health Services in Higher Education
10:45–11:00 a.m.—Break
11:00–12:45 a.m.—Guardianship and Supported Decision-Making Panel
11:45 a.m.–12:15 p.m.—Town Hall to Receive Comments on Guardianship and Supported Decision-Making Panel
12:15–1:00 p.m.—Break, Pick up boxed lunches for working lunch
1:00–2:00 p.m.—Council discussion on proposed framework of project on guardianship and supported decision-making
2:00–2:45 p.m.—School-to-Prison Pipeline Update Panel
2:45–3:00 p.m.—Break
3:00–4:00 p.m.—Medicaid Managed Care and Challenges for the Direct Care Workforce Panel
4:00–4:30 p.m.—Town Hall to Receive Comments on Direct Care Workforce Challenges
4:30 p.m.–Adjourn

Friday, February 12

8:30–9:30 a.m.—Emerging Technology in Employment and Education Panel
9:30–10:00 a.m.—Town Hall to Receive Comments on Emerging Technology
10:00–10:15 a.m.—Break
10:15–11:00 a.m.—Council Discussion on Emerging Technology Focus Area
11:00–11:45 a.m.—NCD Business Meeting
11:45 a.m.–12:15 p.m.—Old and New Business
12:15 p.m.–Adjournment

PUBLIC COMMENT: To better facilitate NCD's public comment, any individual interested in providing public comment is asked to register his or her intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the quarterly meeting must be received by Wednesday, February 10, 2016. Priority will be given to those individuals who are in-person to provide their comments during the town hall portions of the agenda. Those commenters on the phone will be called on according to the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes. Comments received at the February quarterly meeting will be limited to those regarding mental health services in higher education; guardianship and supported decision-making; challenges to the direct care workforce; and emerging technology, each during its respective slot of time for the themed town hall as previously noted in the agenda.

CONTACT PERSON: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: A CART streamtext link has been arranged for this teleconference meeting. The web link to access CART on Thursday, February 11, 2016 is: *http://www.streamtext.net/text.aspx?event=021116ncd900am;* and on Friday, February 12, 2016 is: *http://www.streamtext.net/text.aspx?event=021216ncd830am.*

Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements. To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person refrain from wearing scented personal care products such as perfumes, hairsprays, and deodorants.

Dated: January 21, 2016.

Rebecca Cokley,

Executive Director.

[FR Doc. 2016–01522 Filed 1–22–16; 11:15 am]

BILLING CODE 8421–03–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Ocean Sciences Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Ocean Sciences (#10752) Site Visit.

Date & Time: February 24–26, 2016, 9:00 a.m.–5:00 p.m.

Place: JOIDES Resolution Science Operator (JRSO), Texas A&M University, 1000 Discovery Drive, Texas A&M University West Campus, College Station, TX 77845, Conference Room C126.

Type of Meeting: Part-Open.

Contact Person: James F. Allan, Program Director, Ocean Drilling, Division of Ocean Sciences; National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8144.

Purpose of Meeting: Site visit to provide advice and recommendations concerning the performance of the International Ocean Discovery Program (IODP) drillship facility *JOIDES Resolution* during FY 2015.

Agenda

Wednesday, February 24

9:00 a.m.–9:15 a.m. NSF and panel introduction
9:15 a.m.–11:00 a.m. Initial Report of the JOIDES Resolution Science Operator (JRSO)
11:00 a.m.–12:00 p.m. Co-Chief Review Report
12:00 p.m.–1:00 p.m. Lunch
1:00 p.m.–3:00 p.m. JRSO response to Co-Chief Review Report
3:00 p.m.–5:00 p.m. Site Visit Panel discussion of presentations and overnight questions to JRSO (CLOSED SESSION)

Thursday, February 25

9:00 a.m.–10:00 a.m. Response of JRSO to Panel questions
10:00 a.m.–12:00 p.m. JRSO discussion of major challenges in operational context, and how they are responding
12:00 p.m.–1:00 p.m. Lunch
1:00 p.m.–3:00 p.m. JRSO discussion of major challenges in providing services and innovation to IODP science community, and how they are responding
3:00 p.m.–3:30 p.m. Break
3:30 p.m.–5:00 p.m. Site Visit Panel discussion of major challenges and overnight questions to JRSO (CLOSED SESSION)

Friday, February 26

9:00 a.m.–10:00 a.m. Response of JRSO to Panel questions
10:00 a.m.–12:00 p.m. Site Visit Panel discussion; work on report (CLOSED SESSION)
12:00 p.m.–1:00 p.m. Lunch (CLOSED SESSION)
1:00 p.m.–3:30 p.m. Site Visit Panel discussion; work on report (CLOSED SESSION)
3:30 p.m.–4:00 p.m. Break
4:00 p.m.–5:00 p.m. Site Visit Panel presents report and recommendations to JRSO (CLOSED SESSION)

Reason for Closing: During closed sessions the review will include information of a confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 20, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–01433 Filed 1–25–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) Advisory Committee Meeting (#1173).

Dates/Time: February 25, 2016, 1:00 p.m.–5:30 p.m.; February 26, 2016, 8:30 a.m.–3:30 p.m.

Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230.

To help facilitate your entry into the building, please contact Vickie Fung (*vfung@nsf.gov*) on or prior to February 23, 2016.

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Contact Information: 703–292–8040/ *banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

- Opening Statement by the CEOSE Chair
- NSF Executive Liaison Report
- Updates from the Federal Liaisons
- Presentation: NSF INCLUDES (Inclusion across the Nation of Communities of Learners that have been Underrepresented for Diversity in Engineering and Science)
- Leadership Discussion: Progress and Success in Broadening Participation in STEM Disciplines
- Presentation: Strength of the Broadening Participation Literature and Inventory of NSF Broadening Participation Portfolio
- Panel Discussion: Evaluation of NSF BP Programs
- Facilitated Session: Framework for a Broadening Participation Accountability System
- Work Session: 2015-2016 CEOSE Biennial Report to Congress

Dated: January 21, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–01485 Filed 1–25–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#66) (Virtual).

Date/Time: February 5, 2016: 12:30 p.m. to 5:30 p.m.

Place: National Science Foundation 4201 Wilson Blvd., Arlington, VA 22230. Virtual Meeting. Join through: *https://nsf.webex.com/nsf/j.php?MTID=mc0893a5ba5e35caef40db251e77bc81c.*

Type of Meeting: Open.

Contact Person: Eduardo Misawa, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230; Telephone: 703/292–8300

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to mathematical and physical sciences programs and activities.

Agenda

Friday, February 5th, 2016 12:30 p.m.–5:30 p.m.

12:30 p.m.–12:45 p.m. Meeting opening, FACA briefing and approval of November meeting minutes
12:45 p.m.–1:45 p.m. MPS updates (FY 16 budget, science highlights)
1:45 p.m.–2:45 p.m. NSF Office of Legislative and Public Affairs (OLPA) update
3:00 p.m.–3:30 p.m. Briefing on National Center for Science and Engineering Statistics
3:30 p.m.–4:30 p.m. Graduate Student Training
4:30 p.m.–5:30 p.m. Early Career Investigators
5:30 pm Adjourn

Dated: January 20, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–01434 Filed 1–25–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board

Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Task Force on NEON Performance and Plans, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

DATE AND TIME: Thursday, January 28, 2016 at 10:00 to 11:00 a.m. EST.

SUBJECT MATTER: Task Force Chair's opening remarks; approval of minutes; NSF Director's update; and Chair's closing remarks.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for information or schedule updates, or contact: Elise Lipkowitz (*elipcowi@nsf.gov*), National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2016–01643 Filed 1–25–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received and Permit Issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated and permits issued under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification and permit issued.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The Foundation issued a permit (ACA 2011–002) to David Ainley on May 28, 2010. The issued permit allows the applicant to band, apply instruments, weigh, collect blood and cloacal swabs, and mark nest of Adelie penguins located at Cape Crozier (ASPA 124), Cape Royds (ASPA 121), Cape Bird, and Beaufort Island (ASPA 105), as well as to enter Cape Hallett (ASPA 106) in November 2014 to check for banded birds and to deploy temperature loggers in penguin nests to test hypotheses on nest quality. A recent modification to this permit, dated November 12, 2015, permitted the applicant to extend the permitted activities for one additional year so that the permit now expires on August 31, 2016. Now the applicant proposes a permit modification to add two named agents and three additional agents to be determined to this permit to assist with approved activities. The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

DATES: January 19, 2016 to August 31, 2016.

The permit modification was issued on January 19, 2016.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–01378 Filed 1–25–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for the Division of Physics (1208) (V161027).

Date and Time: February 25, 2016; 8:30 a.m.–7:00 p.m., February 26, 2016; 8:30 a.m.–3:00 p.m.

Place: California Institute of Technology, Pasadena, CA 91125.

Type of Meeting: Partially Open.

Contact Person: Jean Cottam-Allen, Program Director for Physics Frontier Centers, Division of Physics, National Science Foundation, 4201 Wilson Blvd., Room 1015, Arlington, VA 22230; Telephone: (703) 292–8783.

Purpose of Meeting: Site visit to provide an evaluation of the progress of the projects at the host site for the Division of Physics at the National Science Foundation.

Agenda

February 25, 2016; 8:30 a.m.–7:00 p.m.

08:30 Panel Session: Presentations on Center Overview, Management and Science
12:00 p.m. Lunch with Graduate Students and Postdocs
13:30 Panel Session: Continued Science Presentations, Education and Outreach
16:00 Executive Session—CLOSED SESSION
17:00 Poster Session
19:00 Executive Session—CLOSED SESSION

February 26, 2016; 8:30 a.m.–3:00 p.m.

08:30 Panel Sessions:
Meeting with University Administrators
Discussion with Center Directors
11:00 Executive Session—CLOSED SESSION
15:00 Closeout Session with Center Directors

Reason for Closing: Topics to be discussed and evaluated during the site review will include information of a proprietary or confidential nature, including technical information and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 20, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–01435 Filed 1–25–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 4–6, 2016, 11545 Rockville Pike, Rockville, Maryland.

THURSDAY, FEBRUARY 4, 2016, CONFERENCE ROOM T2–B1, 11545 ROCKVILLE PIKE, ROCKVILLE, MARYLAND

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 p.m.: 10 CFR 50.46c Rulemaking Activities (Open)—The Committee will hear presentations by and hold discussions with representatives of the staff regarding 10 CFR 50.46c rulemaking activities.

9:45 a.m.–11:45 a.m.: Peach Bottom MELLLA+ License Amendment Request (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the staff regarding safety evaluation report associated with the Peach Bottom MELLLA+ license amendment request. **[NOTE: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]**

2:00 p.m.–4:00 p.m.: Draft Final Guide RG 1.127 (Open)—The Committee will hear presentations by and hold discussions with representatives of the staff regarding draft final RG 1.127, ''Design and Inspection Criteria for Water-Control Structures Associated with Nuclear Power Plants.''

4:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. **[NOTE: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]**

FRIDAY, FEBRUARY 5, 2016, CONFERENCE ROOM T2–B1, 11545 ROCKVILLE PIKE, ROCKVILLE, MARYLAND

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. **[NOTE: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]**

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–11:30 a.m.: Preparation for Meeting with the Commission (Open)—The Committee will discuss topics in preparation for the meeting with the Commission.

11:30 a.m.–12:00 p.m.: Biennial Review and Evaluation of the NRC Safety Research Program (Open)—The Committee will hold a discussion regarding the NRC Safety Research Program.

1:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of the proposed ACRS reports listed under Item 5. **[NOTE: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]**

10:30 a.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting. **[NOTE: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]**

SATURDAY, FEBRUARY 6, 2016, CONFERENCE ROOM T2–B1, 11545 ROCKVILLE PIKE, ROCKVILLE, MARYLAND

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. **[NOTE: A portion of this meeting may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4).]**

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of the February 4th, 5th, and 6th meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 19th day of January, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–01477 Filed 1–25–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Fukushima; Revised Date of the February 19, 2016, ACRS Subcommittee Meeting

The ACRS Subcommittee meeting on Fukushima scheduled for February 19, 2016, 8:30 a.m. until 5:00 p.m., has been changed to February 18, 2016.

The notice of this meeting was previously published in the **Federal Register** on Thursday, January 14, 2016, (81 FR 1968).

Information regarding this meeting can be obtained by contacting Kathy Weaver, Designated Federal Official (DFO) (Telephone 301–415–6236 or Email: *Kathy.Weaver@nrc.gov*) between 7:30 a.m. and 5:15 p.m. (EST)).

Dated: January 19, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–01478 Filed 1–25–16; 8:45 am]

BILLING CODE 7590–01–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, January 28, 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.

Commissioner Stein, 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; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: January 21, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–01541 Filed 1–22–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of 99 Cent Stuff, Inc., Bizzingo, Inc., Clicker, Inc., Incentra Solutions, Inc., Maxray Optical Technology Co. Ltd., and Peer Review Mediation & Arbitration, Inc., Order of Suspension of Trading

January 22, 2016.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of 99 Cent Stuff, Inc. (''NNCT [1]'') (CIK No. 1176435), a dissolved Florida corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended June 30, 2006. On February 19, 2015, the Commission's Division of Corporation Finance (''Corporation Finance'') sent a delinquency letter to NNCT requesting compliance with its periodic filing requirements but NNCT did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of NNCT was quoted on OTC Link operated by OTC Markets Group Inc. (formerly ''Pink Sheets'') (''OTC Link''), had four market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of Bizzingo, Inc. (''BIZZ'') (CIK No. 1359504), a defaulted Nevada corporation located in San Francisco, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended August 31, 2012. On April 22, 2015, the Commission's Division of Corporation Finance (''Corporation Finance'') sent a delinquency letter to BIZZ requesting compliance with its periodic filing requirements but BIZZ did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of BIZZ was quoted on OTC Link operated by OTC Markets Group Inc. (formerly ''Pink Sheets'') (''OTC Link''), had six market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Clicker, Inc. (''CLKZ'') (CIK No. 1107998), a revoked Nevada corporation located in Bay Harbor Islands, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended February 28, 2013. On April 22, 2015, Corporation Finance sent a delinquency letter to CLKZ requesting compliance with its periodic filing requirements but CLKZ did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of CLKZ was quoted on OTC Link, had five market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Incentra Solutions, Inc. (''ICNSQ'') (CIK

[1] The short form of each issuer's name is also its stock symbol.

No. 1025707), a permanently revoked Nevada corporation located in Boulder, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2008.On April 28, 2015, Corporation Finance sent a delinquency letter to ICNSQ requesting compliance with its periodic filing requirements but ICNSQ did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of ICNSQ was quoted on OTC Link, had six market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Maxray Optical Technology Co. Ltd. (''MXOP'') (CIK No. 1395695), a void Delaware corporation located in Mississauga, Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended December 31, 2010. On April 28, 2015, Corporation Finance sent a delinquency letter to MXOP requesting compliance with its periodic filing requirements but MXOP did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of MXOP was quoted on OTC Link, had four market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Peer Review Mediation & Arbitration, Inc. (''PRVW'') (CIK No. 1311627), a dissolved Florida corporation located in Pompano Beach, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2012. On February 19, 2015, Corporation Finance sent a delinquency letter to PRVW requesting compliance with its periodic filing requirements but PRVW did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of PRVW was quoted on OTC Link, had five market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 22, 2016, through 11:59 p.m. EST on February 4, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76936; File No. SR–ISE–2016–02]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Back-Up Primary Market Makers

January 20, 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 January 6, 2016, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to correct, and clarify, .03 of Supplementary Material to Rule 803, Obligations of Market Makers, which describes the responsibilities and privileges of a Back-Up Primary Market Maker (''Back-Up PMM'') that takes the place of a Primary Market Maker (''PMM'') when that PMM fails to have a quote in the system. This amendment will specify the PMM responsibilities and privileges that do not apply to Back-Up PMMs. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to make corrections to, and clarify, .03 of Supplementary Material to Rule 803, Obligations of Market Makers, which describes the responsibilities and privileges of a Back-Up PMM that takes the place of a PMM when that PMM fails to have a quote in the system. This amendment will specify the PMM responsibilities and privileges that do not apply to Back-Up PMMs.

In 2006, ISE adopted a rule change that permits Competitive Market Makers (''CMMs'') that are also PMMs on the Exchange to voluntarily act as Back-Up PMMs when the appointed PMM has technical difficulties that interrupt its participation in the market.[3] Then, in 2015, the Exchange amended the process by which a Back-Up PMM is

[3] Securities Exchange Act Release No. 34–53419 (March 6, 2006), 71 FR 12758 (March 13, 2006) (SR–ISE–2005–50).

chosen to replace a PMM that fails to have a quote in the System.[4]

In these situations, a Back-Up PMM assumes the responsibilities and privileges of a PMM under ISE rules with respect to any class in which the appointed PMM fails to have a quote in the ISE System, except that a CMM does not become subject to the PMM's requirement in ISE Rule 804(e)(1) to enter continuous quotations in all of the series of all of the options classes to which it is appointed. Instead, under ISE Rule 804(e)(2), the CMM (or Back-Up PMM) is required to maintain continuous quotations in that class or series for 60% of the time the options class is open for trading on the Exchange, provided, however, that a CMM (or Back-Up PMM) is required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives preferenced orders.[5] Additionally, while PMMs are required to quote LEAPS and adjusted series, a CMM that has been appointed as the Back-Up PMM is not subject to these requirements due to their initial status as a CMM.[6]

Currently, .03 to Supplementary Material to Rule 803 states that, when a PMM fails to have a quote in the System, a Back-Up PMM ''assumes all of the responsibilities and privileges of a'' PMM. Unlike the wording of this rule text, however, ISE's practice has always been to hold CMMs that are appointed as Back-Up PMMs to the above standards/exceptions. ISE now proposes to amend .03 to Supplementary Material to Rule 803 to reflect ISE's longstanding standards/exceptions applicable to a CMM that has been appointed as the Back-Up PMM in a particular class.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5)[8] in particular, in that 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 a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest, and would remove impediments to and perfect the mechanism of a free and open market, because it makes a correction and clarifies ISE's rule text to more accurately reflect the responsibilities and privileges of a Back-Up PMM. This will provide members with a better understanding of their responsibilities and privileges when acting as a Back-Up PMM in situations where a PMM fails to have a quote in the System. Additionally, Back-Up PMMs that are CMMs are not held to the heightened standards of PMMs for continuous quoting, LEAPS, and adjusted series due to the difficulty associated with meeting the standards for each on a short-term basis. For example, for continuous quoting, when a Back-Up PMM assumes responsibility for quoting a series or class, a Back-Up PMM could have problems meeting the continuous quoting requirement during such a short period of time. Similarly, a CMM that is a Back-Up PMM is not required to quote LEAPS because of the difficulty in pricing these options due their 9 month or greater time to expiration. Also, for adjusted series, the effect corporate actions have on certain underlying equity prices makes pricing these options challenging.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE is correcting and clarifying its rule text to accurately reflect the responsibilities and privileges of a Back-Up PMM when a PMM fails to have a quote in the System.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b–4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 No. SR–ISE–2016–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2016–02. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[4] Securities Exchange Act Release No. 34–76508 (November 30, 2015), 80 FR 74826 (November 30, 2015) (SR–ISE–2015–42).

[5] *See* Rule 804(e)(2)(iii).

[6] *See* .02 of Supplementary Material to Rule 804 (The CMM quoting obligation ''does not include adjusted option series, nor series with a time to expiration of nine (9) months or greater for options on equities and exchange-traded funds or with a time to expiration of twelve (12) months or greater for index options.'')

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2016–02 and should be submitted by February 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01392 Filed 1–25–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

OldWeb sites.com, Inc., RPHL Acquisition Corp. (a/k/a Rockport Healthcare Group, Inc.), The Brainy Brands Company, Inc., TheraBiogen, Inc., U.S. Helicopter Corporation, and Vicor Technologies, Inc.; Order of Suspension of Trading

January 22, 2016.

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of OldWeb sites.com, Inc. (''OLDW [1]'') (CIK No. 1391570), an expired Utah corporation located in Salt Lake City, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2011. On February 19, 2015, the Commission's Division of Corporation Finance (''Corporation Finance'') sent a delinquency letter to OLDW requesting compliance with its periodic filing requirements but OLDW did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common shares of OLDW were quoted on OTC Link operated by OTC Markets Group Inc. (formerly ''Pink Sheets'') (''OTC Link''), had four market makers, and were eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of RPHL Acquisition Corp. (a/k/a Rockport Healthcare Group, Inc.) (''RPHL'') (CIK No. 919606), a void Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–KSB for the period ended March 31, 2008. On April 22, 2015, Corporation Finance sent a delinquency letter to RPHL requesting compliance with its periodic filing requirements but RPHL did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of RPHL was quoted on OTC Link, had five market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of The Brainy Brands Company, Inc. (''TBBC'') (CIK No. 1478838), a forfeited Delaware corporation located in Suwanee, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2011. On February 19, 2015, Corporation Finance sent a delinquency letter to TBBC requesting compliance with its periodic filing requirements but TBBC did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of TBBC was quoted on OTC Link, had five market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of TheraBiogen, Inc. (''TRAB'') (CIK No. 1405286), a revoked Nevada corporation located in Manalapan, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended May 31, 2012. On April 28, 2015, Corporation Finance sent a delinquency letter to TRAB requesting compliance with its periodic filing requirements but TRAB did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of TRAB was quoted on OTC Link, had seven market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of U.S. Helicopter Corporation (''USHP'') (CIK No. 1309140), a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2008. On February 19, 2015, Corporation Finance sent a delinquency letter to USHP requesting compliance with its periodic filing requirements but USHP did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of USHP was quoted on OTC Link, had five market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Vicor Technologies, Inc. (''VCRTQ'')

[11] 17 CFR 200.30–3(a)(12).

[1] The short form of each issuer's name is also its stock symbol.

(CIK No. 1335104), a void Delaware corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2011. On February 19, 2015, Corporation Finance sent a delinquency letter to VCRTQ requesting compliance with its periodic filing requirements but VCRTQ did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR Section 232.301 and Section 5.4 of EDGAR Filer Manual). As of January 13, 2016, the common stock of VCRTQ was quoted on OTC Link, had seven market makers, and was eligible for the ''piggyback'' exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 22, 2016, through 11:59 p.m. EST on February 4, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–01613 Filed 1–22–16; 11:15 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76935; File No. SR–NYSEMKT–2016–09]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule

January 20, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective January 13, 2016.[3] The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Sections I. A., C. and E of the Fee Schedule to adjust fees and credits payable, effective on January 13, 2016.

Section I.A. of the Fee Schedule sets forth the rates for Standard Option transactions. The Exchange is proposing to increase rates per contract for Electronic transactions. Specifically, the Exchange proposes to increase rates for Electronic transactions in issues in the Penny Pilot program from $0.44 to $0.50 for Broker Dealers, Professional Customers and Non-NYSE Amex Options Market Makers; from $0.34 to $0.42 for Firms; and $0.23 to $0.25 for DOMMs, e-Specialists, NYSE Amex Options Market Makers and Specialists. These rates are competitive with rates being charged on other exchanges for Electronic executions in Penny Pilot issues.[4]

The Exchange also proposes to increase rates per contract for Electronic transactions in issues that are not part of the Penny Pilot program from $0.58 to $0.75 for Broker Dealers, Firms, Professional Customers and Non-NYSE Amex Options Market Makers; and $0.23 to $0.25 for DOMMs, e-Specialists, NYSE Amex Options Market Makers and Specialists. These rates are competitive with rates being charged on other exchanges for Electronic executions in non-Penny Pilot issues.[5]

Section I.C. of the Fee Schedule currently provides a discount to NYSE Amex Options Market Maker transaction fees based on a sliding volume scale (the ''Sliding Scale'' [sic].[6] Specifically, an NYSE Amex Options Market Maker that has monthly volume on the Exchange of 0.10% or less of total

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally filed this proposed rule change on January 04, 2016 under File No. SR–NYSEMKT–2016–01. The Exchange subsequently withdrew that filing on January 13, 2016 and filed this proposed rule change.

[4] For example, Miami Securities International Exchange, LLC (''MIAX'') charges $0.45 to firms and $0.47 to non-MIAX market makers, broker dealers and public customers other than priority customers for execution in Penny Pilot issues (*see* MIAX fee schedule, *available here, https://www.miaxoptions.com/content/fees*); and NASDAQ OMX PHLX LLC (''PHLX'') charges $0.48 to professional customers, broker dealers and firms for execution in Penny Pilot issues (*see* PHLX fee schedule, *available here, http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing*). In addition, NYSE Arca, Inc. (''NYSE Arca''), NASDAQ Options Market LLC (''NOM'') and BATS BZX Exchange (''BATS'') all charge a $0.50 take fee for removing liquidity in Penny Pilot issues. *See* NYSE Arca fee schedule, *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf*; NOM fee schedule, *available here, http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing*; and BATS fee schedule, *available here, http://www.batsoptions.com/support/fee_schedule/.*

[5] For example, MIAX charges $0.29 to MIAX market makers and $0.75 to non-MIAX market makers, firms, broker dealers and public customers other than priority customers for executions in non-Penny Pilot issues (*see id.,* MIAX fee schedule); PHLX charges $0.25 to specialists and market makers and $0.75 to professional customers, broker dealers and firms per execution in Non-Penny issues (*see id.,* PHLX fee schedule); and CBOE charges $0.75 to broker dealers, non-CBOE market makers and professionals per execution in non-Penny Pilot issues (*see* The Chicago Board Options Exchange, Inc. (''CBOE'') fee schedule, *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*). In addition, the BOX Options Exchange, LLC (''BOX'') assesses fees greater than $1.00 to non-Customers for executions against Public Customer interest in non-Penny Pilot issues and NYSE Arca charges a $0.99 take fee to lead market makers, market makers, firms and broker dealers for executions in non-Penny Pilot issues. *See* NYSE Arca fee schedule, *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf*; and BOX fee schedule, *available here, http://boxexchange.com/assets/BOX_Fee_Schedule.pdf.*

[6] *See* Fee Schedule, Section I.C.(NYSE Amex Options Market Maker Sliding Scale—Electronic), *available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.*

industry Customer equity and exchange traded fund (''ETF'') options volume [7] is charged a base rate of $0.23 and, these same market participants, upon reaching certain volume thresholds, or Tiers, receive a reduction of this per contract rate.[8] The Exchange is proposing to raise these rates across all Tiers by $0.02, which is competitive with base rates charged to market makers on other exchanges.[9] In addition, the Exchange is proposing to eliminate Tier 7 because Market Makers were not availing themselves of this Tier. With this change, Tier 6 would be the highest achievable Tier available to Market Makers that achieved Electronic volume of greater than 1.75% total industry Customer equity and ETF in a given month. Finally, the Exchange is proposing to offer an alternative means for Market Makers to qualify for the reduced per contract rate charged at each Tier of the Sliding Scale which is currently available to Market Makers that execute posting volumes in excess of 0.85% of Industry Customer Equity and ETF Option Volume.[10] The Exchange proposes to make the Sliding Scale rates available to those Market Makers participating in either of the Prepayment Programs offered by the Exchange.[11]

Section I.E. of the Fee Schedule describes the Exchange's ACE Program, which features five tiers expressed as a percentage of total industry Customer equity and ETF option average daily volume and provides two alternative methods through which Order Flow Providers may receive per contract credits for Electronic Customer volume that the OFP, as agent, submits to the Exchange. The Exchange is proposing two amendments to Tier 2 of the Program. First, the Exchange proposes to increase the base rebate (*i.e.,* Customer Volume Credits not tied to either Prepayment Program) from $0.13 to $0.14. Second, the Exchange proposes to offer an additional method for which OFPs can qualify for Tier 2. Specifically, as proposed, an ATP Holder may qualify for Tier 2 by increasing Customer Electronic ADV by 0.35% or more of Industry Customer Equity and ETF Options ADV from its volumes in October 2015. The Exchange's proposal is intended to incentivize OFPs to increase its [sic] Customer Electronic volumes even if they do not have the volumes equating to 0.60% Industry Customer Equity and ETF Options ADV (the current qualification basis to meet Tier 2).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed change to the transaction rates for Electronic transactions are reasonable, equitable and not unfairly discriminatory because the rates are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.[14]

The Exchange believes the proposed change to the reduce [sic] rates per contract on the Sliding Scale are reasonable, equitable and not unfairly discriminatory because the rates are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.[15] In addition, the Exchange believes that the proposal to make all Market Makers participating in one of the Exchange's Prepayment Programs eligible to avail themselves of the Sliding Scale is reasonable, equitable and not unfairly discriminatory because it may encourage additional market making firms to participate in one of these Programs, which could result in increased capital (and resulting liquidity) being committed to the Exchange to the benefit of all market participants. The proposed change would also incentivize Market Makers already enrolled in a Prepayment Program to increase posted liquidity on the Exchange, which would benefit all Exchange participants, including ATP Holders, through increased opportunities to trade as well as enhancing price discovery. The Exchange also believes that eliminating Tier 7 from the Sliding Scale is reasonable, equitable and not unfairly discriminatory because it removes an incentive that was never utilized, thereby adding clarity and transparency to the Fee Schedule.

Finally, the Exchange believes that the proposed changes to the ACE Program are reasonable, equitable and not unfairly discriminatory because the credits offered are based on the amount of business transacted on the Exchange. The Exchange believes the proposal to enable ATP Holders to be eligible for Tier 2 based on an increase in volume over their October 2015 volume is reasonable, equitable and not unfairly discriminatory because it encourages ATP Holders to maintain increased volumes executed on the Exchange. Moreover, the proposed alternative basis for achieving Tier 2 would enable those ATP Holders that are otherwise ineligible for the ACE Program tiers (*i.e.,* because of insufficient monthly volume) to qualify by increasing or ''stepping up'' their own volume executed on the Exchange. The Exchange notes that offering so-called ''step up'' pricing or tiers that use a particular month as a benchmark for incentives is not new or novel.[16]

In addition, the Exchange believes that the proposed amendments to the ACE Program are reasonable, equitable and not unfairly discriminatory because they would enhance the incentives to Order Flow Providers to transact Customer orders on the Exchange,

[7] The volume thresholds are based on an NYSE Amex Options Market Makers' volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the ''OCC''). Total industry Customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. *See* OCC Monthly Statistics Reports, *available here, http://www.theocc.com/webapps/monthly-volume-reports.*

[8] In calculating an NYSE Amex Options Market Maker Electronic volumes, the Exchange excludes any volumes attributable to Mini Options, QCC trades, CUBE Auctions, and Strategy Execution Fee Caps, as these transactions are subject to separate pricing described in Fee Schedule Sections I.B., I.F., I.G., and I.J, respectively. *See* Fee Schedule, Section I.C, *supra* n. 6.

[9] *See supra* nn. 4, 5.

[10] *See supra* n. 8.

[11] The Commission notes that, consistent with this change, the Exchange proposes to add cross-references to Section I.C. in Section I.D. of the Fee Schedule. *See* Fee Schedule, Section I.D. (describing both the 1- and 3- year Prepayment Programs), *see supra* n. 6.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See supra* nn. 4, 5.

[15] *See supra* nn. 4, 5.

[16] *See* BATS fee schedule, *available here, http://www.batsoptions.com/support/fee_schedule/* (offering a ''Customer Step-Up Volume Tier'' based on a member achieving ''Options Step-Up Add TCV'' as well as ''NBBO Setter Tiers.). *See, e.g.,* Securities and Exchange Release No. 76411 (November 10, 2015), 80 FR 71892, 71893 (November 17, 2015) (SR–BATS–2015–98) (among other changes, adopting a Step-Up Volume Tier, which BATS characterized as being ''[s]imilar to other pricing where the Exchange seeks to incentivize growth by providing tiered pricing based on a Member's participation increase over time'').

which would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the ACE Program. Additionally, the Exchange believes the proposed changes to the ACE Program are consistent with the Act because they may attract greater volume and liquidity to the Exchange, which would benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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,[17] 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 acknowledges that the proposed changes relating to transaction charges and/or credits, including the Sliding Scale and ACE Program, may increase both intermarket and intramarket competition by incenting participants to direct their orders to the Exchange, which will enhance the quality of quoting and may increase the volume of contracts traded on the Exchange. To the extent this purpose is achieved, the Exchange believes the proposed amendments are pro-competitive and any resulting increase in volume and liquidity to the Exchange would benefit all of Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[17] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [18] of the Act and subparagraph (f)(2) of Rule 19b–4 [19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–09 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–NYSEMKT–2016–09. 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–NYSEMKT–2016–09, and should be submitted on or before February 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01391 Filed 1–25–16; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 15 U.S.C. 78s(b)(2)(B).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–330, OMB Control No. 3235–0645]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Interactive Data

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

The ''Interactive Data'' collection of information requires issuers filing registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and reports under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to submit specified financial information to the Commission and post it on their corporate Web sites, if any, in interactive data format using

eXtensible Business Reporting Language (XBRL). This collection of information is located primarily in registration statement and report exhibit provisions, which require interactive data, and Rule 405 of Regulation S–T (17 CFR 232.405), which specifies how to submit and post interactive data. The exhibit provisions are in Item 601(b)(101) of Regulation S–K (17 CFR 229.601(b)(101)), Form F–10 under the Securities Act (17 CFR 239.40) and Forms 20–F, 40–F and 6–K under the Exchange Act (17 CFR 249.220f, 17 CFR 249.240f and 17 CFR 249.306).

In interactive data format, financial statement information could be downloaded directly into spreedsheets and analyzed in a variety of ways using commercial off-the-shelf software. The specified financial information already is and will continue to be required to be submitted to the Commission in traditional format under existing requirements. The purpose of the interactive data requirement is to make financial information easier for investors to analyze and assist issuers in automating regulatory filings and business information processing. We estimate that 8601 respondents per year will each submit an average of 4.5 reponses per year for an estimated total of 38,705 responses. We further estimate an internal burden of 56 hours per response for a total annual internal burden of 2,167,480 hours (56 hours per response × 38,705 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 20, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–01394 Filed 1–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76937; File No. SR–NYSEArca–2016–09]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE Arca BBO and NYSE Arca Trades

January 20, 2016.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 11, 2016, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE Arca BBO and NYSE Arca Trades to: (1) Establish a multiple data feed fee; (2) discontinue fees relating to managed non-display; (3) modify the application of the access fee; and (4) reduce the Enterprise Fee. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE Arca BBO and NYSE Arca Trades market data products,[4] as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule (''Fee Schedule''). The Exchange proposes to make the following fee changes effective January 4 [sic],[5] 2016:

- Establish a multiple data feed fee;
- Discontinue fees relating to managed non-display;
- Modify the application of the access fee; and
- Reduce the Enterprise Fee.

Multiple Data Feed Fee [6]

The Exchange proposes to establish a new monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking NYSE Arca BBO or NYSE Arca Trades in more than two locations would be charged $200 per additional location per product per month. No new reporting would be required.[7]

Managed Non-Display Fees

Non-Display Use of NYSE Arca market data means accessing, processing, or consuming NYSE Arca market data delivered via direct and/or Redistributor [8] data feeds for a purpose

[4] *See* Securities Exchange Act Release Nos. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23); 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) (''2013 Non-Display Filing''); 70213 (Aug. 15, 2013), 78 FR 51796 (Aug. 21, 2013) (SR–NYSEArca–2013–81) (''2013 Arca BBO and Trades Filing''); 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEARCA–2014–93) (''2014 Non-Display Filing''); and 73998 (Jan. 6, 2015), 80 FR 1549 (Jan. 12, 2015) (SR–NYSEArca–2014–148) (''2015 NYSE Arca BBO and Trades Filing'').

[5] The Commission notes that, as stated in the Exhibit 5, the proposed fee changes were effective as of January 11, 2016.

[6] The text of footnote 5 in Exhibit 5 of this proposed rule change was previously filed under a separate filing. *See* SR–NYSEArca–2016–01 (Proposed Rule Change to Amend the Fees for NYSE ArcaBook).

[7] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE Arca BBO product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[8] ''Redistributor'' means a vendor or any other person that provides an NYSE Arca data product to a data recipient or to any system that a data

Continued

other than in support of a data recipient's display usage or further internal or external redistribution.[9] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[10] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE Arca BBO and NYSE Arca Trades and does not allow for further internal distribution or external redistribution of NYSE Arca BBO and NYSE Arca Trades by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE Arca on a monthly basis the data recipients that are receiving NYSE Arca market data through the Redistributor's managed non-display service and the real-time NYSE Arca market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE Arca BBO from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $200 per month, and data recipients that receive NYSE Arca Trades from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $800 per month. Data recipients that receive NYSE Arca BBO and NYSE Arca Trades from an approved Redistributor of Managed Non-Display Services are also charged an Access Fee of $375 per month.[11]

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE Arca BBO and NYSE Arca Trades on a managed non-display basis would be subject to the same access fee of $750 per month, and the same non-display services fees,[12] as other non-display data recipients.[13]

Modification of the Application of the Access Fee

The Exchange proposes to modify the application of the access fees for NYSE Arca BBO and NYSE Arca Trades.

Each NYSE Arca BBO data feed recipient currently pays a monthly $750 access fee for NYSE Arca BBO, and each NYSE Arca Trades data feed recipient currently pays a monthly $750 access fee for NYSE Arca Trades. A single access fee applies for data recipients receiving both NYSE Arca BBO and NYSE Arca Trades.[14] The Exchange proposes to amend the access fees so that recipients of NYSE Arca BBO and NYSE Arca Trades would be required to pay a separate access fees [sic] for NYSE Arca BBO ($750 per month) and NYSE Arca Trades ($750 per month). This change would have no impact on customers who receive only NYSE Arca BBO or only NYSE Arca Trades.

Reduction to Enterprise Fee

The Exchange currently charges an enterprise fee of $175,000 per month for an unlimited number of professional and non-professional users for each of NYSE Arca BBO and NYSE Arca Trades. A single Enterprise Fee applies for clients receiving both NYSE Arca BBO and NYSE Arca Trades.[15] The Exchange proposes to lower the enterprise fee to $170,000 per month.

As an example, under the current fee structure for per user fees, if a firm had 40,000 professional users who each received NYSE Arca Trades at $4 per month and NYSE Arca BBO at $4 per month, then the firm would pay $320,000 per month in professional user fees. However, under the current pricing structure, the fees would be capped at $175,000 and effective January, the fees would be capped at $170,000.

Under the proposed enterprise fee, the firm would pay a flat fee of $170,000 for an unlimited number of professional and non-professional users for both products. As is the case currently, a data recipient that pays the enterprise fee would not have to report the number of such users on a monthly basis.[16] However, every six months, a data recipient must provide the Exchange with a count of the total number of natural person users of each product, including both professional and non-professional users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[17] in general, and sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE Arca BBO and NYSE Arca Trades.

Multiple Data Feed Fee

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee for taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted

recipient uses, irrespective of the means of transmission or access.

[9] *See e.g.* 2014 Non-Display Filing, *supra* note 4.

[10] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE Arca BBO and NYSE Arca Trades for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE Arca BBO and NYSE Arca Trades in the Redistributor's own messaging formats (rather than using raw NYSE Arca message formats) by reformatting and/or altering NYSE Arca BBO and NYSE Arca Trades prior to retransmission without affecting the integrity of NYSE Arca BBO and NYSE Arca Trades and without rendering NYSE Arca BBO and NYSE Arca Trades inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[11] A single Managed Non-Display Access Fee applies for clients receiving both NYSE Arca BBO and NYSE Arca Trades. The Exchange is also proposing in this filing to modify this application of the access fees. *See* ''Modification of the application of the access fee,'' below.

[12] *See* Fee Schedule.

[13] In order to harmonize its approach to fees for its market data products, the Exchange is simultaneously proposing to remove fees related to Managed Non-Display Services for NYSE ArcaBook and NYSE Arca Integrated Feed. *See* SR–NYSEArca–2016–01 and SR–NYSEArca–2016–03.

[14] *See* Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23).

[15] *See* 2013 NYSE Arca BBO and Trades Filing, *supra* note 4.

[16] Professional users currently are subject to a per display device count. *See* 2015 NYSE Arca BBO and Trades Filing, *supra* note 4.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4), (5).

in 2013 by the Consolidated Tape Association (''CTA'').[19] The Exchange also notes that the OPRA Plan imposes a similar charge of $100 per connection for circuit connections in addition to the primary and backup connections.[20]

Managed Non-Display Fees

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. As the Exchange noted in the 2013 Non-Display Filing, the Exchange determined at that time that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments. Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in the 2014 Non-Display Filing.[21] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

Modifications to Access Fee

The Exchange believes that it is reasonable to make the changes proposed to the application of access fees for NYSE Arca BBO and NYSE Arca Trades. The Exchange believes the proposed changes will make the application of the access fees to each of the products so that an access fee entitles a customer to receive, for the applicable product, a data feed or feeds. Specifically, data recipients that take the NYSE Arca BBO and/or NYSE Arca Trades products receive value from each product they choose to take. A data recipient that chooses to take multiple products (no recipient is required to take any of these products, or any specific combination of them) uses each product in a different way and therefore obtains different value from each. The Exchange believes that each product has a separate and distinct value that is appropriate to reflect in a separate access fee. Finally, the requirement to pay separate access fees for each market data product is equitable and not unfairly discriminatory because it would apply to all data recipients and appropriately reflects the value of each product to those who choose to use them.

Reduction to Enterprise Fee

The proposed enterprise fees for NYSE Arca BBO and NYSE Arca Trades are reasonable because they could result in a fee reduction for data recipients with a large number of professional and nonprofessional users, as described in the example above. If a data recipient has a smaller number of professional users of NYSE Arca BBO and/or NYSE Arca Trades, then it may continue to use the per user fee structure. By reducing prices for data recipients with a large number of professional and non-professional users, the Exchange believes that more data recipients may choose to offer NYSE Arca BBO and NYSE Arca Trades, thereby expanding the distribution of this market data for the benefit of investors. The Exchange also believes that offering an enterprise fee expands the range of options for offering NYSE Arca BBO and NYSE Arca Trades and allows data recipients greater choice in selecting the most appropriate level of data and fees for the professional and non-professional users they are servicing.

The Exchange notes that NYSE Arca BBO and NYSE Arca Trades are entirely optional. The Exchange is not required to make NYSE Arca BBO and NYSE Arca Trades available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE Arca BBO and NYSE Arca Trades. Firms that do purchase NYSE Arca BBO and NYSE Arca Trades do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE Arca BBO and NYSE Arca Trades or any other similar products are attractively priced or not.[22]

Firms that do not wish to purchase NYSE Arca BBO and NYSE Arca Trades at the new prices have a variety of alternative market data products from which to choose,[23] or if NYSE Arca BBO and NYSE Arca Trades do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of them, such firms may simply choose to conduct their business operations in ways that do not use NYSE Arca BBO and NYSE Arca Trades or use them at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.[24]

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S.

[19] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[20] *See* ''Direct Access Fee,'' Options Price Reporting Authority Fee Schedule Fee Schedule PRA [sic] Plan at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[21] *See* note 4, *supra.*

[22] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* ''Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane,'' Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[23] *See* NASDAQ Rule 7047 (Nasdaq Basic) and BATS Rule 11.22 (BATS TOP and Last Sale).

[24] *See* FINRA Regulatory Notice 15–46, ''Best Execution,'' November 2015.

national market system for trading equity securities.'' '' [25]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.[26]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

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. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice (''DOJ'') (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [27]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [28] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[29]

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available NYSE Arca BBO or NYSE Arca Trades unless their customers request it, and

[25] *NetCoalition,* 615 F.3d at 535.

[26] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm.*

[27] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), *available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html*; *see also* Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11–cv–2280 (D.C. Dist.) ¶ 24 (''NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.'').

[28] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[29] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

customers will not elect to pay the proposed fees unless NYSE Arca BBO and NYSE Arca Trades can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of NYSE Arca and NYSE Arca's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[30] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[31]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 11 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[32] In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

[30] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''). *See also* Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111).

[31] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[32] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. With respect to NYSE Arca BBO and NYSE Arca Trades, competitors offer close substitute products.[33] Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed change to the fees for NYSE Arca BBO and NYSE Arca Trades, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[34] of the Act and subparagraph (f)(2) of Rule 19b–4[35] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[36] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–09 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–2016–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–09 and should be submitted on or before February 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Brent J. Fields,

Secretary.

[FR Doc. 2016–01393 Filed 1–25–16; 8:45 am]

BILLING CODE 8011–01–P

[33] *See supra* note 23.

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(2).

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Laughlin/Bullhead International Airport, Bullhead City, Arizona

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Mohave County Airport Authority (MCAA) under the provisions of 49 U.S.C. 47501 *et seq.* (formerly the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and Title 14, Code of Federal Regulations (CFR) Part 150 (hereinafter referred to as ''Part 150''). On November 21, 2013, the FAA determined that the noise exposure maps submitted by the MCAA under Part 150 were in compliance with applicable requirements. On January 11, 2016, the FAA approved the Laughlin/Bullhead International Airport Noise Compatibility Program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed.

DATES: *Effective Date:* This notice is effective January 26, 2016 and applicable January 11, 2016.

FOR FURTHER INFORMATION CONTACT: Jared Raymond, Airport Planner, FAA Phoenix Airports District Office, 3800 North Central Avenue, Suite 1025, Phoenix, Arizona 85012, telephone number (602) 792–1072. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Laughlin/Bullhead International Airport, effective January 11, 2016. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred to as the ''Act'') [recodified as 49 U.S.C. 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Phoenix, Arizona.

The MCAA submitted to the FAA on July 29, 2013, the Noise Exposure Maps for evaluation. The FAA determined that the Noise Exposure Maps for Laughlin/Bullhead International Airport were in compliance with applicable requirements on November 21, 2013. Notice of this determination was published in the **Federal Register** on November 29, 2013 (Volume 78/No. 230/pages 71706–71707).

The Laughlin/Bullhead International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. 47504 (formerly Section 104(b) of the Act). The FAA began its review of the program on July 23, 2015, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The Noise Compatibility Program recommended one (1) Noise Abatement Element, seven (7) Land Use Planning Measures and three (3) Program Management Elements. The FAA completed its review and determined that the procedural and substantive requirements of the Act and Part 150 have been satisfied. The overall program was approved, with the partial disapproval of two (2) Land Use Management Measures by the Manager of the Airports Division, Western-Pacific Region, effective January 11, 2016.

Approval was granted for one Noise Abatement Measure, partial approval was granted for two of the seven Land Use Management Elements, and approval granted for all three Program Management Elements. The approved Noise Abatement Measure includes: Develop a Pilot and Public Education Program. The Land Use Management Measures include the following: Designate the Public Disclosure Map Boundary on the General Plan; Revise the General Plan designations for compatible land uses to help preserve those compatible land uses (industrial, commercial, open space) within the noise contours; Rezone for compatible use all areas within the noise contours; The City of Bullhead City should adopt an airport compatibility checklist for discretionary review of projects within the vicinity of the airport; Mohave County Airport Authority and the City

of Bullhead City should provide access to the Airport's Disclosure Map on their respective Web sites; Establish communication between the Airport and the City of Bullhead City Public Works Department. FAA approved in part and disapproved in part the following Land Use Management Measures: Designate the Public Disclosure Map Boundary on the General Plan; and Amend Airport Noise and Height Overlay Zone.

The approved Program Management Elements include the following: Update Noise Exposure Maps and Noise Compatibility Program; Monitor implementation of the Part 150 Noise Compatibility Program; and Maintain system for receiving and responding to noise complaints.

The FAA determinations are set forth in detail in the Record of Approval signed by the Manager of the Airports Division, Western-Pacific Region, on January 11, 2016. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Laughlin/Bullhead International Airport. The Record of Approval also will be available on-line at: *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/.*

Issued in Hawthorne, California, on January 15, 2016.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 2016–01416 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Federal Obligated Property Release at Cartersville-Bartow Airport, Cartersville, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the Federal Aviation Administration (FAA) is considering a request from the Cartersville-Bartow Airport Authority to waive the requirement for three (3) parcels (0.138 acres in Fee Simple and 1.469 & 0.479 acres in Easement) of federally obligated property, located at the Cartersville-Bartow Airport be used for aeronautical purposes. Currently, ownership of the property provides for protection of FAR Part 77 surfaces and compatible land use which would continue to be protected with deed restrictions required in the transfer of land ownership.

DATES: Comments must be received on or before *February 25, 2016.*

ADDRESSES: Documents are available for review by prior appointment at the following location: FAA/Atlanta Airports District Office, Attn: Rob Rau, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747, Telephone: (404) 305–6748.

Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: FAA/Atlanta Airports District Office, Attn: Rob Rau, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. E. Keith Lovell, Attorney, Cartersville-Bartow Airport Authority at the following address: Archer & Lovell, P.C., On Behalf of: Cartersville-Bartow Airport Authority, P.O. Box 323, Cartersville, Georgia 30120.

FOR FURTHER INFORMATION CONTACT: Rob Rau, Atlanta Airports District Office, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337–2747, (404)305–6748. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Cartersville-Bartow Airport Authority to release three (3) parcels (0.138 acres in Fee Simple and 1.469 & 0.479 acres in Easement) of federally obligated property at the Cartersville-Bartow Airport. This property was originally acquired from the Chemical Products Corporation with an Airport Improvement Program (AIP #3–13–0029–02) grant in 1985.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Cartersville-Bartow Airport.

Issued in Atlanta, Georgia, on January 20, 2016.

Larry F. Clark,

Manager, Atlanta Airports District Office Southern Region.

[FR Doc. 2016–01510 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

[Docket No. FRA 2016–0002–N–2]

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA is seeking an extension of the following currently approved information collection. On December 28, 2015, FRA published a Notice in the **Federal Register** stating that FRA was submitting an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for new Form FRA F 6180.164, Positive Train Control Implementation Plan (PTCIP) Template, under the PRA Emergency Processing procedures. *See* 80 FR 80876. On January 6, 2016, OMB granted FRA's request for Emergency Processing approval for a period of 180 days. FRA now seeks a Regular clearance (extension of the current approval from 180 days to three years) to continue this effort to assist railroads in submitting revised PTCIPs to FRA as Congress mandated under amendments to 49 U.S.C. 20157. Before submitting the ICR requirements for OMB clearance, FRA is soliciting public comment on specific aspects of the ICR, as identified below.

DATES: Comments must be received no later than March 28, 2016.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0553.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.*

Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The PRA, Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require federal agencies to provide 60-days' notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with this voluntary collection of information. In summary, FRA believes that comments received will advance three objectives: (1) Reduce reporting burdens; (2) ensure that FRA organizes information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce the information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activity FRA will submit for clearance by OMB as required under the PRA:

Title: Positive Train Control.

OMB Control Number: 2130–0553.

Abstract: The recently enacted Positive Train Control Enforcement and Implementation (PTCEI) Act of 2015 and the Fixing America's Surface Transportation (FAST) Act (collectively, the ''Acts'') amend certain portions of 49 U.S.C. 20157 relating to positive train control (PTC) system implementation. *See* Public Law 114–73, 129 Stat. 568, 576–82 (Oct. 29, 2015); Public Law 114–94, sec. 11315(d), 129 Stat. 1312, 1675 (Dec. 4, 2015). Most notably, the provisions within these Acts extend the implementation deadline originally established by the Rail Safety Improvement Act of 2008 (RSIA) and require covered railroads and entities to each submit a revised PTC Implementation Plan (PTCIP) with additional information to meet its new deadline.

FRA is proposing to provide a PTCIP template to assist each railroad with complying with the new law's requirement to submit a revised PTCIP to FRA. More specifically, each railroad may voluntarily opt to use FRA's proposed template to concisely organize and present certain quantitative (*i.e.,* measurable) data about its PTC implementation efforts and its projected timeframe for completing PTC implementation. Although some of this information may have been provided by each railroad in the past, the Acts now require submission of specific measurable data as part of each railroad's revised PTCIP. The quantitative information includes:

- The calendar year(s) when wireless spectrum required for PTC operation will be acquired and available for use;
- The total amount of PTC hardware the railroad must install (broken down by each major hardware category);
- The total amount of PTC hardware the railroad will install by the end of each calendar year (broken down by each major hardware category);
- The total number of employees the railroad must train; and
- The total number of employees that will receive training by the end of each calendar year.

FRA believes that providing an optional template will serve as guidance to railroads by reducing confusion about the necessary level of detail required for the quantitative requirements. Furthermore, the optional template will help to expedite submitting this information to FRA and FRA's review for statutory and regulatory compliance, particularly for those railroads that may not have been tracking these details previously. FRA has provided the template on its Web site for use by all interested parties at *https://www.fra.dot.gov/eLib/Details/L17235.*

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: Approximately 38 railroads.

Reporting Burden:

PTCIP template	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
Form FRA F 6180.164	38 Railroads	38 Forms	50	1,900

Form Number(s): FRA F 6180.164.

Total Estimated Responses: 38.

Total Estimated Annual Burden: 1,900 hours.

Status: Regular Review.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on January 20, 2016.

Corey Hill,

Acting Executive Director.

[FR Doc. 2016–01475 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0079 Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2010 Harley-Davidson FX, XL and VR Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2010 Harley-Davidson FX, XL and VR motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2010 Harley-Davidson FX, XL and VR motorcycles) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 25, 2016.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: 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 your comments 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. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to read comments submitted to the docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Skytop Rover Co., of Philadelphia, PA (Registered Importer R–06–343) (Skytop) has petitioned NHTSA to decide whether nonconforming 2010 Harley-Davidson FX, XL and VR motorcycles are eligible for importation into the United States. The vehicles which Skytop believes are substantially similar are 2010 Harley-Davidson FX XL and VR motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2010 Harley-Davidson FX, XL and VR motorcycles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

Skytop submitted information with its petition intended to demonstrate that non-U.S. certified 2010 Harley-Davidson FX, XL and VR motorcycles as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2010 Harley-Davidson FX, XL and VR motorcycles are identical to their U.S. certified counterparts with respect to compliance with: Standard Nos. 106 *Brake Hoses,* 111 *Rear Visibility,* 116 *Motor Vehicle Brake Fluids,* 119 *New pneumatic tires for motorcycles,* and 122 *Motorcycle brake system.*

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

108 *Lamps, Reflective Devices and Associated Equipment:* Replacement of front and rear turn signal lamps, front, rear and side mounted reflex reflectors, headlamps, rear taillamps, stop lamps and license plate lamps with U.S. certified components on vehicles that are not already so equipped.

120 *Tire selection and Rims for Motor Vehicles Other Than Passenger Cars:* Installation of a tire information placard.

123 *Motorcycle Controls and Displays:* Inspection of each vehicle and replacement of non-conforming speedometers with U.S.-model components on vehicles not already so equipped.

205 *Glazing Materials* Inspection of each vehicle and removal of

noncompliant glazing or replacement of the glazing with U.S. certified components on vehicles not already so equipped.

The petitioner additionally states that the vehicles meet the requirements of 49 CFR part 565 *VIN Requirements.*

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–01489 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0080 Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2009 Buell 1125R, Ulysses XB, Lightning XB, and Blast Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2009 Buell 1125R, Ulysses XB, Lightning XB, and Blast motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2009 Buell 1125R, Ulysses XB, Lightning XB, and Blast motorcycles) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 25, 2016.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: 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 your comments 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. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Skytop Rover Co., of Philadelphia, PA (Registered Importer R–06–343) (Skytop) has petitioned NHTSA to decide whether the subject nonconforming 2009 Buell motorcycles are eligible for importation into the United States. The vehicles which Skytop believes are substantially similar are 2009 Buell motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2009 Buell 1125R, Ulysses XB, Lightning XB, and Blast motorcycles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

Skytop submitted information with its petition intended to demonstrate that the subject non-U.S. certified 2009 Buell motorcycles, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2009 Buell motorcycles are identical to their U.S.

certified counterparts with respect to compliance with: Standard Nos. 106 *Brake Hoses,* 111 *Rear Visibility,* 116 *Motor Vehicle Brake Fluids,* 119 *New Pneumatic Tires for Motorcycles,* and 122 *Motorcycle Brake Systems.*

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of front and rear turn signal lamps, front, rear and side mounted reflex reflectors, headlamps, rear taillamps, stop lamps, and license plate lamps with U.S. certified components on vehicles that are not already so equipped.

Standard No. 120 *Tire selection and Rims for Motor Vehicles Other Than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* inspection of each vehicle and replacement of non-conforming speedometers with U.S.-model components on vehicles not already so equipped.

Standard No. 205 *Glazing Materials:* inspection of each vehicles and removal of noncompliant glazing or replacement of the glazing with U.S.-certified components on vehicles not already so equipped.

The petitioner additionally states that the vehicles meet the requirements of 49 CFR part 565 *VIN Requirements.*

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a) (1(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–01490 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2015–0271]

Agency Request for Renewal of a Previously Approved Information Collection; Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information required in an application to request Special Priorities Assistance. The information to be collected is necessary to facilitate the supply of civil transportation resources to promote the national defense. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by March 28, 2016.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2015–0271] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deborah Hinz, 202–366–6945, Office of Intelligence, Security and Emergency Response, Office of the Secretary of Transportation, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0567.

Title: Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act.

Form Numbers: OST F 1254.

Type of Review: Renewal of a previously approved information collection.

Background: The Defense Production Act Reauthorization of 2009 (Pub. L. 111–67, September 30, 2009) requires each Federal agency with delegated authority under section101 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) to issue final rules establishing standards and procedures by which the priorities and allocations authority is used to promote the national defense. The Secretary of Transportation has the delegated authority for all forms of civil transportation. DOT's final rule, Transportation Priorities and Allocations System (TPAS), published October 2012, requires this information collection. Form OST F 1254, Request for Special Priorities Assistance, would be filled out by private sector applicants, such as transportation companies or organizations. The private sector applicant must submit company information, the services or items for which the assistance is requested, and specific information about those services or items.

Respondents: Private sector applicants, such as transportation companies or organizations.

Number of Respondents: We estimate 6 respondents.

Total Annual Burden: We estimate an average burden of 30 minutes per respondent for an estimated total annual burden of 3 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on January 13, 2016.

Habib Azarsina,

OST Privacy and PRA Officer.

[FR Doc. 2016–01428 Filed 1–25–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Fair American Insurance and Reinsurance Company

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 8 to the Treasury Department Circular 570, 2015 Revision, published July 1, 2015, at 80 FR 37735.

FOR FURTHER INFORMATION CONTACT: Surety Bond Section at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Fair American Insurance and Reinsurance Company (NAIC # 35157).

BUSINESS ADDRESS: One Liberty Plaza, 165 Broadway, New York, NY 10006. PHONE: (212) 365–2083. UNDERWRITING LIMITATION b/: $24,306,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE., NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY INCORPORATED IN: NEW YORK.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2015 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Section, 3700 East-West Highway, Room 6D22, Hyattsville, MD 20782.

Dated: December 17, 2015.

Kevin McIntyre,

Manager, Financial Accounting and Services Branch, Bureau of the Fiscal Service.

[FR Doc. 2016–01549 Filed 1–25–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Change In State of Incorporation, Lexington National Insurance Corporation

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 7 to the Treasury Department Circular 570, 2015 Revision, published July 1, 2015, at 80 FR 37735.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that LEXINGTON NATIONAL INSURANCE CORPORATION (NAIC #37940) has redomesticated from the state of Maryland to the state of Florida effective January 1, 2015. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2015 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Bureau of the Fiscal Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6D22, Hyattsville, MD 20782.

Dated: November 17, 2015.

Kevin McIntyre,

Manager, Financial Accounting and Services Branch, Bureau of the Fiscal Service.

[FR Doc. 2016–01551 Filed 1–25–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of eight individuals and three entities whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.''

DATES: OFAC's actions described in this notice are effective January 17, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Regulatory Affairs, tel.: 202/622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202/622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On January 17, 2016, OFAC blocked the property and interests in property of the following eight individuals and three entities pursuant to E.O. 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'':

Individuals

1. MUSAVI, Sayyed Javad, Iran; DOB 23 Aug 1972; Additional Sanctions Information—Subject to Secondary Sanctions (individual) [NPWMD] [IFSR] (Linked To: SHAHID HEMMAT INDUSTRIAL GROUP).

2. FARAHI, Sayyad Medhi (a.k.a. FARAJZADEH, Seyyed Hadi), Iran; DOB 30 Sep 1960; Additional Sanctions Information—Subject to Secondary Sanctions; Passport G9321488 (Iran) expires 10 Oct 2016 (individual) [NPWMD] [IFSR] (Linked To: MINISTRY OF DEFENSE FOR ARMED FORCES LOGISTICS).

3. HASHEMI, Seyed Mohammad (a.k.a. HASHEMI, Sayyed Mohammad; a.k.a. HASHEMI, Seyyed Mohammad), Iran; DOB 16 May 1965; citizen Iran; Additional Sanctions Information—Subject to Secondary Sanctions (individual) [NPWMD] [IFSR] (Linked To: MINISTRY OF DEFENSE FOR ARMED FORCES LOGISTICS).

4. NOOSHIN, Seyed Mirahmad, Iran; DOB 11 Jan 1966; Additional Sanctions Information—Subject to Secondary Sanctions; Passport G9311208 (Iran) (individual) [NPWMD] [IFSR] (Linked To: SHAHID HEMMAT INDUSTRIAL GROUP).

5. CHEN, Mingfu; DOB 30 Apr 1980; POB Anhui, China; citizen China; Additional Sanctions Information—Subject to Secondary Sanctions; Passport G22168109 expires 26 Apr 2017; Identification Number 341181198004300019 (China) (individual)

[NPWMD] [IFSR] (Linked To: NAVID COMPOSITE MATERIAL COMPANY).

6. FARGHADANI, Rahimreza (a.k.a. FARGHADANI, Rahim Reza); DOB 16 Aug 1960; alt. DOB 17 Aug 1960; citizen Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Passport 5671711 (Iran) (individual) [NPWMD] [IFSR].

7. POURNAGHSHBAND, Hossein (a.k.a. POUR NAGHSH BAND, Hussain Reza; a.k.a. POUR NAGHSHBAND, Hossein; a.k.a. POUR NAGHSHBAND, Hossein Reza); DOB 23 Oct 1965; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Passport E1910843 (Iran) (individual) [NPWMD] [IFSR] (Linked To: NAVID COMPOSITE MATERIAL COMPANY).

8. KETABACHI, Mehrdada Akhlaghi (a.k.a. KETABCHI, Merhdada Akhlaghi), c/o AIO, Langare Street, Nobonyad Square, Tehran, Iran; c/o SBIG, Tehran, Iran; DOB 10 Sep 1958; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Passport A0030940 (Iran) (individual) [NPWMD] [IFSR].

Entities

9. ANHUI LAND GROUP CO., LIMITED, Shop T18, 3/F, Cathay Pacific 88 Malls, No. 125, Wanchai Road, Wanchai, Hong Kong; Additional Sanctions Information—Subject to Secondary Sanctions; Registration ID 1774300 (Hong Kong) [NPWMD] [IFSR].

10. CANDID GENERAL TRADING LLC (a.k.a. CANDID TRADING LLC), 3rd Floor, Office No. 306, Al Dana Centre, Al Maktoum Street Deira, Dubai, United Arab Emirates; Additional Sanctions Information—Subject to Secondary Sanctions; P.O. Box 41967, Dubai, United Arab Emirates [NPWMD] [IFSR].

11. MABROOKA TRADING CO L.L.C. (a.k.a. MABROOKA TRADING COMPANY), 3rd Floor, Office No. 306, Al Dana Centre, Al Maktoum Street, Next to Metropolitan Palace Hotel, Al Riqqa, Al Muraqqabat, Deira, Dubai, United Arab Emirates; Additional Sanctions Information—Subject to Secondary Sanctions; P.O. Box 33634, Dubai, United Arab Emirates; Registration ID 500871 [NPWMD] [IFSR] (Linked To: NAVID COMPOSITE MATERIAL COMPANY).

Dated: January 20, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–01352 Filed 1–25–16; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 16 January 26, 2016

Part II

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Energy Conservation Standards for Pumps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2011–BT–STD–0031]

RIN 1904–AC54

Energy Conservation Program: Energy Conservation Standards for Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, sets forth a variety of provisions designed to improve energy efficiency. Part C of Title III establishes the ''Energy Conservation Program for Certain Industrial Equipment.'' The covered equipment includes pumps. In this final rule, the U.S. Department of Energy (DOE) adopts new energy conservation standards for pumps. DOE has determined that the new energy conservation standards for pumps would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is March 28, 2016. Compliance with the new standards established for pumps in this final rule is required on and after January 27, 2020.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *www.regulations.gov/#!docketDetail;D=EERE-2011-BT-STD-0031*. The *www.regulations.gov* Web page will contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–1692. Email: *pumps@ee.doe.gov*.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–9507. Email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Final Rule

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.;* ''EPCA''), Public Law 94–163, sets forth a variety of provisions designed to improve energy efficiency. Part C of Title III, which for editorial reasons was re-designated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317), establishes the ''Energy Conservation Program for Certain Industrial Equipment.'' Covered industrial equipment includes pumps, the subject of this document. (42 U.S.C. 6311(1)(H)).[1]

The standards for certain pumps set forth in this document reflect the consensus of a stakeholder negotiation. A working group was established under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA). (5 U.S.C. App.; 5 U.S.C. 561–570) The purpose of the working group was to discuss and, if possible, reach consensus on proposed standards for pump energy efficiency. On June 19, 2014, the working group successfully reached consensus on proposed energy conservation standards for specific rotodynamic, clean water pumps used in a variety of commercial, industrial, agricultural, and municipal applications. See section II.B for further discussion of the working group, section II.C for the industry sectors covered, and section III.C for a description of the relevant pumps.

The new standards are expressed as a Pump Energy Index (PEI). PEIs for each equipment class and the respective nominal design speed are shown in Table I.1. These standards apply to all equipment classes listed in Table I.1 and manufactured in, or imported into, the United States on and after January 27, 2020.

TABLE I.1—NEW ENERGY CONSERVATION STANDARDS FOR PUMPS

[Compliance starting January 27, 2020]

Equipment class *	Standard level ** PEI	Efficiency percentile	C-Values
ESCC.1800.CL	1.00	25	128.47
ESCC.3600.CL	1.00	25	130.42
ESCC.1800.VL	1.00	25	128.47
ESCC.3600.VL	1.00	25	130.42
ESFM.1800.CL	1.00	25	128.85
ESFM.3600.CL	1.00	25	130.99
ESFM.1800.VL	1.00	25	128.85
ESFM.3600.VL	1.00	25	130.99
IL.1800.CL	1.00	25	129.30
IL.3600.CL	1.00	25	133.84
IL.1800.VL	1.00	25	129.30
IL.3600.VL	1.00	25	133.84
RSV.1800.CL	1.00	†0	129.63
RSV.3600.CL	1.00	†0	133.20
RSV.1800.VL	1.00	†0	129.63
RSV.3600.VL	1.00	†0	133.20
VTS.1800.CL	1.00	††0	138.78
VTS.3600.CL	1.00	25	134.85
VTS.1800.VL	1.00	††0	138.78
VTS.3600.VL	1.00	25	134.85

* Equipment class designations consist of a combination (in sequential order separated by periods) of: (1) An equipment family (ESCC = end suction close-coupled, ESFM = end suction frame mounted/own bearing, IL = inline, RSV = radially split, multi-stage, vertical, in-line diffuser casing, VTS = submersible turbine); (2) a nominal design speed (1800 = 1800 revolutions per minute (rpm), 3600 = 3600 rpm); and (3) an operating mode (CL = constant load, VL = variable load). For example, ''ESCC.1800.CL'' refers to the ''end suction close-coupled, 1,800 rpm, constant load'' equipment class. See discussion in chapter 5 of the final rule technical support document (TSD) for a more detailed explanation of the equipment class terminology.

** A pump model is compliant if its PEI rating is less than or equal to the adopted standard.

† The standard level for RSV was set at a level that harmonized with the current European Union energy conservation standard level. See discussion in section IV.A.2.a for more detail regarding matters related to harmonization.

†† The standard level for VTS.1800 was set based on the baseline C-value for VTS.3600 pumps due to limited data availability. See discussion in section IV.A.2.b for more detail.

[1] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

Under the adopted standards, a pump model would be compliant if its PEI rating is less than or equal to the adopted standard. PEI is defined as the pump efficiency rating (PER) for a given pump model (at full impeller diameter), divided by a calculated minimally compliant PER for the given pump model. PER is defined as a weighted average of the electric input power supplied to the pump over a specified load profile, represented in units of horsepower (hp). A value of PEI greater than 1.00 would indicate that the pump does not comply with DOE's energy conservation standard, while a value less than 1.00 would indicate that the pump is more efficient than the standard requires.

The minimally compliant PER is unique to each pump model and is a function of specific speed (a dimensionless quantity describing the geometry of the pump); flow at best efficiency point (BEP); and a specified C-value. A C-value is the translational component of a three-dimensional polynomial equation that describes the attainable hydraulic efficiency of pumps as a function of flow at BEP, specific speed, and C-value.

Thus, when a C-value is used to define an efficiency level, that efficiency level can be considered equally attainable across the full scope of flow and specific speed encompassed by this final rule.

A certain percentage of pumps currently on the market will not meet each efficiency level. That percentage can be referred to as the efficiency percentile. For example, if 10% of the pumps on the market do not meet a specified efficiency level, that efficiency level represents the lower 10th percentile of efficiency. The efficiency percentile is an effective descriptor of the impact of a selected efficiency level (selected C-value) on the current market.

The C-values listed in Table I.1 correspond to the lower 25th percentile of efficiency for the End Suction Close-Coupled (ESCC), End Suction Frame Mounted/Own Bearings (ESFM), and In-line (IL) equipment classes. For the Submersible Turbine (VTS) equipment classes,[2] the C-values of 3600 rpm speed pumps correspond to the lower 25th percentile of efficiency, while those of 1800 rpm speed pumps correspond to the baseline efficiency level. The C-values for the radially split, multi-stage, vertical, in-line diffuser casing (RSV) equipment class harmonize with the standards recently enacted in the European Union.[3] Models in the RSV equipment class are known to be global platforms with no differentiation between products sold into the United States and European Union markets.[4] Section III.C describes the PEI metric in further detail.

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the adopted standards on consumers of pumps, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[5] The average LCC savings are positive for all equipment classes for which consumers would be impacted by the adopted standards[6] and the PBP is less than the average lifetime of pumps, which is estimated to range between 11 and 23 years depending on equipment class, with an average of 15 years (see section IV.F.2.g).

TABLE I.2—IMPACTS OF ADOPTED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF PUMPS

Equipment class	Average LCC savings (2014$)	Simple payback period (years)
ESCC.1800	163	2.2
ESCC.3600	92	1.0
ESFM.1800	174	2.9
ESFM.3600	549	0.8
IL.1800	147	2.9
IL.3600	138	2.0
RSV.1800	N/A	N/A
RSV.3600	N/A	N/A
VTS.1800	N/A	N/A
VTS.3600	17	3.1

Notes: DOE relied on available data for bare pumps with no information on configuration. Therefore, DOE conducted analysis at the level of equipment type and nominal design speed only. DOE is adopting identical standards for both CL and VL equipment classes.Economic results are not presented for RSV.1800, RSV.3600, and VTS.1800 classes because the adopted standard is at the baseline.

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2015 to 2049). Using a real discount rate of 11.8 percent,[7] DOE estimates that the (INPV) for manufacturers of pumps in the case without new standards is $120.0 million in 2014$. Under the

[2] In the test procedure final rule (See EERE–2013–BT–TP–0055), DOE changed the terminology for this equipment class from ''vertical turbine submersible'' to ''submersible turbine'' for consistency with the definition of this equipment class. DOE is adopting the acronym ''ST'' in the regulatory text for long-term consistency with the defined term but has retained the ''VTS'' abbreviation in the preamble for consistency with the energy conservation standards NOPR and all Working Group discussions and recommendations to date (Docket No. EERE–2013–BT–NOC–0039).

[3] Council of the European Union. 2012. Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps. Official Journal of the European Union. L 165, 26 June 2012, pp. 28–36.

[4] Market research, limited confidential manufacturer data, and direct input from the CIP working group indicate that RSV models sold in the United States market are global platforms with hydraulic designs equivalent to those in the European market.

[5] The average LCC savings are measured relative to the no-new-standards case efficiency distribution, which depicts the market in the compliance year (see section IV.H.2). The simple PBP, which is designed to compare specific pump efficiency levels, is measured relative to the baseline model (see section IV.C.1.b).

[6] DOE also calculates a distribution of LCC savings; the percentage of consumers that would have negative LCC savings (net cost) under the adopted standards is shown in section V.B.1.a.

[7] DOE estimated draft financial metrics, including the industry discount rate, based on data from Securities and Exchange Commission (SEC) filings. DOE presented the draft financial metrics to manufacturers in MIA interviews and adjusted those values based on feedback from industry. The complete set of financial metrics and more detail about the methodology can be found in section 12.4.3 of TSD chapter 12.

standards adopted in this final rule, DOE expects INPV impacts to be between a loss of 32.9 percent to an increase of 7.0 percent of INPV, which is between approximately −$39.5 million and $8.4 million. Additionally, based on DOE's interviews with pump manufacturers, DOE does not expect significant impacts on manufacturing capacity or loss of employment for the industry as a whole to result from the standards for pumps. DOE expects the industry to incur $81.2 million in conversion costs.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in section V.B.2 of this document.

C. National Benefits [8]

DOE's analyses indicate that the adopted energy conservation standards for pumps would save a significant amount of energy. Relative to the case without new standards, the lifetime energy savings for pumps purchased in the 30-year period that begins in the anticipated year of compliance with the new standards (2020–2049), amount to 0.29 quadrillion Btu (quads).[9] This represents a savings of one percent relative to the energy use of these products in the case without new standards (referred to as the ''no-new-standards case'').

The cumulative net present value (NPV) of total consumer costs and savings of the standards for pumps ranges from $0.39 billion (at a 7-percent discount rate) to $1.1 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased equipment costs for pumps purchased in 2020–2049.

In addition, the standards for pumps would have significant environmental benefits. DOE estimates that the standards would result in cumulative greenhouse gas emission reductions (over the same period as for energy savings) of 17 million metric tons (Mt) [10] of carbon dioxide (CO_2), 9.5 thousand tons of sulfur dioxide (SO_2), 31 tons of nitrogen oxides (NO_X), 75 thousand tons of methane (CH_4), 0.20 thousand tons of nitrous oxide (N_2O), and 0.035 tons of mercury (Hg).[11] The cumulative reduction in CO_2 emissions through 2030 amounts to 2.7 Mt, which is equivalent to the emissions resulting from the annual electricity use of more than 0.37 million homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent Federal interagency process.[12] The derivation of the SCC values is discussed in section IV.L.1. Using discount rates appropriate for each set of SCC values, DOE estimates that the net present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.11 billion and $1.6 billion, with a value of $0.52 billion using the central SCC case represented by $40.0/t in 2015. DOE also estimates that the net present monetary value of the NO_X emissions reduction to be $0.04 billion at a 7-percent discount rate, and $0.09 billion at a 3-percent discount rate.[13]

Table I.3 summarizes the national economic benefits and costs expected to result from the adopted standards for pumps.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR PUMPS *

Category	Present value Billion 2014$	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	0.5	7
	1.4	3
CO_2 Reduction Value ($12.2/t case) **	0.1	5
CO_2 Reduction Value ($40.0/t case) **	0.5	3
CO_2 Reduction Value ($62.3/t case) **	0.8	2.5
CO_2 Reduction Value ($117/t case) **	1.6	3
NO_X Reduction Monetized Value †	0.04	7
	0.09	3
Total Benefits ††	1.1	7
	2.0	3

[8] All monetary values in this section are expressed in 2014 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle savings (see section IV.H for discussion).

[9] A quad is equal to 10^{15} British thermal units (Btu). The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.1.

[10] A metric ton is equivalent to 1.1 short tons. Results for NO_X and Hg are presented in short tons.

[11] DOE calculated emissions reductions relative to the no-new-standards-case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[12] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

[13] DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,''* published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf*.) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule. Note that DOE is currently investigating valuation of avoided SO_2 and Hg emissions.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR PUMPS *—Continued

Category	Present value Billion 2014$	Discount rate (%)
Costs		
Consumer Incremental Installed Costs	0.2 0.3	7 3
Total Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value ††	0.9 1.7	7 3

* This table presents the costs and benefits associated with pumps shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the products purchased in 2020–2049. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L.2. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,''* published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.0/t case).

The benefits and costs of the adopted standards, for pumps sold in 2020–2049, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of (1) the national economic value of the benefits in reduced operating costs, minus (2) the increases in product purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[14]

Although DOE believes that the value of operating cost savings and CO_2 emission reductions are both important, two issues are relevant. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings are measured for the lifetime of pumps shipped in 2020–2049. Because CO_2 emissions have a very long residence time in the atmosphere,[15] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

Estimates of annualized benefits and costs of the adopted standards are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, (for which DOE used a 3-percent discount rate along with the SCC series that has a value of $40.0/t in 2015),[16] the estimated cost of the standards in this rule is $17 million per year in increased equipment costs, while the estimated annual benefits are $58 million in reduced equipment operating costs, $30 million in CO_2 reductions, and $3.7 million in reduced NO_X emissions. In this case, the net benefit amounts to $74 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series has a value of $40.0/t in 2015, the estimated cost of the standards is $17 million per year in increased equipment costs, while the estimated annual benefits are $78 million in reduced operating costs, $30 million in CO_2 reductions, and $5.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $96 million per year.

[14] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

[15] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ (2005), ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' '' *J. Geophys. Res.* 110. pp. D14105.

[16] DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section IV.L.1).

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR PUMPS *

	Discount rate	Million 2014$/year		
		Primary estimate	Low net benefits estimate	High net benefits estimate
Benefits				
Consumer Operating Cost Savings	7%	58	52	68.
	3%	78	70	94.
CO_2 Reduction Value ($12.2/t case) **	5%	8.7	8.1.	9.5.
CO_2 Reduction Value ($40.0/t case) **	3%	30	28	33.
CO_2 Reduction Value ($62.3/t case) **	2.5%	44	41	48.
CO_2 Reduction Value ($117/t case) **	3%	91	84	99.
NO_X Reduction Value †	7%	3.7	3.5	9.0.
	3%	5.4	5.0	13.
Total Benefits ††	7% plus CO_2 range	70 to 152	64 to 140	86 to 176.
	7%	91	83	109.
	3% plus CO_2 range	92 to 174	83 to 159	116 to 206.
	3%	113	102	139.
Costs				
Consumer Incremental Equipment Costs	7%	17	19	17.
	3%	17	20	18.
Net Benefits				
Total ††	7% plus CO_2 range	53 to 136	45 to 121	69 to 159.
	7%	74	65	92.
	3% plus CO_2 range	75 to 157	63 to 139	99 to 189.
	3%	96	83	122.

* This table presents the annualized costs and benefits associated with pumps shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the pumps purchased from 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices and shipments from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect constant real prices in the Primary Estimate, an increase in the Low Benefits Estimate, and a decrease in the High Benefits Estimate. The methods used to derive projected price trends are explained in IV.F.2.a.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L.2. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emission, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate ($40.0/t case). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

Based on the analyses culminating in this final rule, DOE found the benefits to the nation of the standards (energy savings, LCC savings for most consumers, positive NPV of consumer benefit, and emission reductions) outweigh the burdens (potential loss of INPV and LCC increases for some users of these products). DOE has concluded that the standards in this final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy.

II. Introduction

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of standards for pumps.

A. Authority

Title III of the Energy Policy and Conservation Act of 1975 ''EPCA''), Public Law 94–163, codified at 42 U.S.C. 6291 *et seq.,* sets forth a variety of provisions designed to improve energy efficiency. Part C of Title III, which for editorial reasons was redesignated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311 *et seq.*), establishes the ''Energy Conservation Program for Certain Industrial Equipment.'' The covered equipment includes pumps, the subject of this rulemaking. (42 U.S.C. 6311(1)(A)) [17] There are currently no

[17] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

energy conservation standards for pumps.

Pursuant to EPCA, DOE's energy conservation program for covered equipment consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 6316(a)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those equipment. (42 U.S.C. 6314(d)) Similarly, DOE must use these test procedures to determine whether the equipment complies with standards adopted pursuant to EPCA. *Id.* The DOE test procedures for pumps appear at title 10 of the Code of Federal Regulations (CFR) part 431, subpart Y, appendix A.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including pumps. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C), 6295(o), and 6316(a)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3) and 6316(a)) Moreover, DOE may not prescribe a standard: (1) For certain products, including pumps, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o) and 6316(a)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII) and 6316(a))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) and 6316(a))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any new standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) and 6316(a)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4) and 6316(a))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered equipment that has two or more subcategories. DOE must specify a different standard level for a group of equipment that has the same function or intended use if DOE determines that equipment within such group: (A) Consume a different kind of energy from that consumed by other covered equipment within such type (or class); or (B) have a capacity or other performance-related feature which other equipment within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) and 6316(a)) In determining whether a performance-related feature justifies a different standard for a group of equipment, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2)) and 6316(a))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) and 6316(a)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

B. Background

Prior to this final rule, DOE did not have energy conservation standards for pumps. In considering whether to establish standards for pumps, DOE issued a Request for Information (RFI) on June 13, 2011. 76 FR 34192. DOE received several comments in response to the RFI. In December 2011, DOE received a letter from the Appliance Standards Awareness Project (ASAP) and the Hydraulic Institute indicating that efficiency advocates (including ASAP, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, and Northwest Energy Efficiency Alliance) and pump manufacturers (as represented by the Hydraulic Institute) had initiated discussions regarding potential energy conservation standards for pumps. (EERE–2011–BT–STD–0031–0011.) In subsequent letters in March and April 2012, and in a meeting with DOE in May 2012, the stakeholders reported on a tentative path forward on energy conservation standards for clean water pumps, inclusive of the motor and controls, and certification and labeling. (EERE–2011–BT–STD–0031–0010 and –0012.)

On February 1, 2013, DOE published a document in the **Federal Register** that announced the availability of the ''Commercial and Industrial Pumps Energy Conservation Standard Framework Document,'' solicited comment on the document, and invited all stakeholders to a public meeting to

discuss the document. 78 FR 7304. The Framework Document described the procedural and analytical approaches that DOE anticipated using to evaluate energy conservation standards for pumps, addressed stakeholder comments related to the RFI, and identified and solicited comment on various issues to be resolved in the rulemaking. (EERE–2011–BT–STD–0031–0013.)

DOE held the framework public meeting on February 20, 2013 and received many comments that helped identify and resolve issues pertaining to pumps relevant to this rulemaking.

As noted previously, DOE established a working group to negotiate proposed energy conservation standards for pumps. Specifically, on July 23, 2013, DOE issued a notice of intent to establish a commercial and industrial pumps working group (''CIP Working Group''). 78 FR 44036. The working group was established under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA). (5 U.S.C. App.; 5 U.S.C. 561–570) The purpose of the working group was to discuss and, if possible, reach consensus on proposed standard levels for the energy efficiency of pumps. The working group was to consist of representatives of parties having a defined stake in the outcome of the proposed standards, and the group would consult as appropriate with a range of experts on technical issues.

DOE received 19 nominations for membership. Ultimately, the working group consisted of 16 members, including one member from the ASRAC and one DOE representative. (See Table II.1) The working group met in-person during seven sets of meetings held December 18–19, 2013 and January 30–31, March 4–5, March 26–27, April 29–30, May 28–29, and June 17–19, 2014.

TABLE II.1—ASRAC PUMP WORKING GROUP MEMBERS AND AFFILIATIONS

Member	Affiliation
Lucas Adin	U.S. Department of Energy.
Tom Eckman	Northwest Power and Conservation Council (ASRAC Member).
Robert Barbour	TACO, Inc.
Charles Cappelino	ITT Industrial Process.
Greg Case	Pump Design, Development and Diagnostics.
Gary Fernstrom	Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison, and Southern California Gas Company.
Mark Handzel	Xylem Corporation.
Albert Huber	Patterson Pump Company.
Joanna Mauer	Appliance Standards Awareness Project.
Doug Potts	American Water.
Charles Powers	Flowserve Corporation, Industrial Pumps.
Howard Richardson	Regal Beloit.
Steve Rosenstock	Edison Electric Institute.
Louis Starr	Northwest Energy Efficiency Alliance.
Greg Towsley	Grundfos USA.
Meg Waltner	Natural Resources Defense Council.

To facilitate the negotiations, DOE provided analytical support and supplied the group with a variety of analyses and presentations, all of which are available in the docket (*www.regulations.gov/#!docketDetail;D=EERE-2013-BT-NOC-0039*). These analyses and presentations, developed with direct input from the working group members, include preliminary versions of many of the analyses discussed in this rulemaking, including a market and technology assessment; screening analysis; engineering analysis; energy use analysis; markups analysis; life cycle cost and payback period analysis; shipments analysis; national impact analysis; and manufacturer impact analysis.

On June 19, 2014, the working group reached consensus on proposed energy conservation standards for specific types of pumps. The working group assembled their recommendations into a term sheet (See EERE–2013–BT–NOC–0039–0092) that was presented to, and approved by the ASRAC on July 7, 2014. DOE considered the approved term sheet, along with other comments received during the rulemaking process, in developing the proposed energy conservation standards. DOE published the notice of proposed rulemaking (NOPR) on April 2, 2015 with proposed standards for pumps. 80 FR 17826. DOE received multiple comments from interested parties and considered these comments in the preparation of the final rule. Relevant comments and DOE's responses are provided in the appropriate sections of this document.

C. Relevant Industry Sectors

The energy conservation standards adopted in this final rule will primarily affect the pump and pumping equipment manufacturing industry. The North American Industry Classification System (NAICS) classifies this industry under code 333911. DOE identified 86 manufacturers of pumps covered under this adopted rule, with 56 of those being domestic manufacturers. The leading U.S. industry association for the pumps covered under this adopted rule is the Hydraulic Institute (HI).

III. General Discussion

DOE developed this final rule after considering comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

In developing this final rule, DOE reviewed comments received on the April 2015 energy conservation standards NOPR (herein referred to as ''NOPR''). 80 FR 17826. Commenters included: The Hydraulic Institute (HI); Wilo USA (Wilo); Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Gas Company, and Southern California Edison collectively, the CA IOUs); Edison Electric Institute (EEI); The Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), the Northwest Energy Efficiency Alliance, and the Northwest Power and Conservation Council (collectively, the Advocates); the Cato Institute; and the U.S. Chamber of Commerce, the American Chemistry Council, the American Forest & Paper

Association, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Brick Industry Association, the Council of Industrial Boiler Owners, the National Association of Manufacturers, the National Mining Association, the National Oilseed Processors Association, and the Portland Cement Association (collectively, ''the Associations''). DOE addressed all relevant stakeholder comments and requests throughout this final rule.

DOE notes that they received two comments in support of the proposed standards in general. Specifically, the Advocates and the CA IOUs supported the proposed standards (which are consistent with TSL 2 in the final rule) and believed they reflect the negotiations of the ASRAC working group. (Advocates, No. 49 at p. 1; [18] CA IOUs, No. 50 at p. 1) The following sections describe the specifics of DOE's proposed standard and all relevant comments from interested parties.

A. Definition of Covered Equipment

Although pumps are listed as covered equipment under 42 U.S.C. 6311(1)(A), the term ''pump'' is not defined in EPCA. In the test procedure final rule (See EERE–2013–BT–TP–0055) DOE defined ''pump'' to clarify what constitutes covered equipment. The definition reflects the consensus reached by the CIP Working Group in its negotiations: ''Pump'' means equipment designed to move liquids (which may include entrained gases, free solids, and totally dissolved solids) by physical or mechanical action and includes a bare pump and, if included by the manufacturer at the time of sale, mechanical equipment, driver and controls. In the test procedure final rule, DOE also defined ''bare pump,'' ''mechanical equipment,'' ''driver,'' and ''controls,'' as recommended by the CIP Working Group.

B. Scope of the Energy Conservation Standards in this Rulemaking

The pumps for which DOE is setting energy conservation standards in this rulemaking are consistent with the scope of applicability of the test procedure final rule. (See EERE–2013–BT–TP–0055) This scope is also consistent with the recommendations of the CIP Working Group and includes the following five equipment categories, which are defined in the test procedure final rule:

- End suction close-coupled,
- End suction frame mounted/own bearings,
- In-line,
- Radially split, multi-stage, vertical, in-line diffuser casing, and
- Submersible turbine.

As discussed in the test procedure final rule (See EERE–2013–BT–TP–0055), DOE is further limiting the scope of this rulemaking to clean water pumps. DOE defined ''clean water pump'' as a pump that is designed for use in pumping water with a maximum non-absorbent free solid content of 0.016 pounds per cubic foot, and with a maximum dissolved solid content of 3.1 pounds per cubic foot, provided that the total gas content of the water does not exceed the saturation volume, and disregarding any additives necessary to prevent the water from freezing at a minimum of 14 °F.

In the test procedure final rule (See EERE–2013–BT–TP–0055), DOE also specified several kinds of pumps that fall within one of the five equipment categories and are clean water pumps, but will not be subject to the test procedure, in accordance with CIP Working Group recommendations. DOE has not adopted standards for these pumps in this rule:

(a) Fire pumps;
(b) self-priming pumps;
(c) prime-assist pumps;
(d) magnet driven pumps;
(e) pumps designed to be used in a nuclear facility subject to 10 CFR part 50—Domestic Licensing of Production and Utilization Facilities; and
(f) a pump meeting the design and construction requirements set forth in Military Specification MIL–P–17639F, ''Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use'' (as amended); MIL–P–17881D, ''Pumps, Centrifugal, Boiler Feed, (Multi-Stage)'' (as amended); MIL–P–17840C, ''Pumps, Centrifugal, Close-Coupled, Navy Standard (For Surface Ship Application)'' (as amended); MIL–P–18682D, ''Pump, Centrifugal, Main Condenser Circulating, Naval Shipboard'' (as amended); MIL–P–18472G, ''Pumps, Centrifugal, Condensate, Feed Booster, Waste Heat Boiler, And Distilling Plant'' (as amended). Military specifications and standards are available for review at *http://everyspec.com/MIL-SPECS*.

In the test procedure final rule (See EERE–2013–BT–TP–0055), DOE defined ''fire pump,'' ''self-priming pump,'' ''prime-assist pump,'' and ''magnet driven pump.'' DOE also limited the applicability of the test procedure to those pumps with the following characteristics:

- 25 gallons/minute and greater (at BEP at full impeller diameter);
- 459 feet of head maximum (at BEP at full impeller diameter and the number of stages specified for testing);
- Design temperature range from 14 to 248 °F;
- Pumps designed to operate with either: (*1*) a 2- or 4-pole induction motor, or (*2*) a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 revolutions per minute and/or 1,440 and 2,160 revolutions per minute, and in either case, the driver and impeller must rotate at the same speed; [19]
- For VTS pumps, 6 inch or smaller bowl diameter; and
- For ESCC and ESFM pumps, specific speed less than or equal to 5000 when calculated using U.S. customary units.[20]

In this final rule, DOE is not adopting standards for pumps that do not have these characteristics. DOE responded to all comments on these scope parameters in the test procedure final rule (See EERE–2013–BT–TP–0055) including those from Wilo regarding horsepower, BEP flow, and speed, provided in the energy conservation standards docket (See Wilo, No. 44 at p. 1–2).

DOE also specified in the test procedure final rule (See EERE–2013–BT–TP–0055) that all pump models must be rated and certified in a full impeller configuration, as recommended by the CIP Working Group. (See EERE–2013–BT–NOC–0039–0092, Recommendation No. 7).[21] DOE also

[18] A notation in the form ''Advocates, No. 49 at p. 1'' identifies a written comment that DOE has received and has included in the docket of this rulemaking (Docket No. EERE–2011–BT–STD–0031). This particular notation refers to (1) a comment submitted by the Advocates, (2) in document number 49 in the docket of this rulemaking, and (3) appearing on page 1 of document number 49.

[19] The CIP Working Group recommendation specified pumps designed for nominal 3600 or 1800 revolutions per minute (rpm) driver speed. However, it was intended that this would include pumps driven by non-induction motors as well. DOE believes that its clarification accomplishes the same intent while excluding niche pumps sold with non-induction motors that may not be able to be tested according to the proposed test procedure. The test procedure final rule contains additional details.

[20] DOE notes that the NOPR included a scope limitation of 1 to 200 hp. In the test procedure final rule, these parameters have been included in the equipment category definitions. Therefore, the limitation is no longer listed separately.

[21] The CIP Working Group made this recommendation because a given pump may be distributed to a particular customer with its impeller trimmed, and impeller trim has a direct impact on a pump's performance characteristics. For any pump sold with a trimmed impeller, it was recommended that the certification rating for that pump model with a full diameter impeller would apply. This approach would limit the overall burden when measuring the energy efficiency of a given pump. In addition, a rating at full impeller diameter will typically be the most consumptive rating for the pump.

specified a definition for full impeller in that rule.

C. Test Procedure and Metric

DOE established a uniform test procedure for determining the energy consumption of certain pumps, as well as sampling plans for the purposes of demonstrating compliance with the energy conservation standards that DOE is adopting in this final rule. In the test procedure final rule (See EERE–2013–BT–TP–0055), DOE prescribed test methods for measuring the energy consumption of pumps, inclusive of motors and/or controls, by measuring the produced hydraulic power and measuring or calculating the shaft power and/or electric input power to the motor or controls. Consistent with the recommendations of the CIP Working Group, DOE specified that these methods be based on Hydraulic Institute (HI) Standard 40.6–2014, ''Hydraulic Institute Standard for Method for Rotodynamic Pump Efficiency Testing,'' hereinafter referred to as ''HI 40.6–2014.'' (See EERE–2013–BT–NOC–0039–0092, Recommendation No. 10.) DOE specified additions to HI 40.6–2014 to account for the energy performance of motors and/or controls, which is not addressed in HI 40.6–2014.

Wilo commented on several elements of the test procedure. Namely, Wilo noted that there are no standard losses associated with VFDs; that calculation-based methods in the test procedure should be eliminated; and that the allowed fluctuations in power measure such as voltage and frequency will cause error and discrepancy between tests conducted by manufacturers and DOE. (Wilo, No. 44 at p. 3). DOE has addressed these comments in the pumps test procedure final rule (See EERE–2013–BT–TP–0055).

The test procedure final rule (See EERE–2013–BT–TP–0055) specifies that the energy conservation standards for pumps be expressed in terms of a constant load PEI (PEI_{CL}) for pumps sold without continuous or non-continuous controls (*i.e.,* either bare pumps or pumps sold inclusive of motors but not continuous or non-continuous controls) or a variable load PEI (PEI_{VL}) for pumps sold with continuous or non-continuous controls. The PEI_{CL} or PEI_{VL}, as applicable, describes the weighted average performance of the rated pump, inclusive of any motor and/or controls, at specific load points, normalized with respect to the performance of a ''minimally compliant pump'' (as defined in section III.C.1) without controls. The metrics are defined as follows:

$$PEI_{CL} = \left[\frac{PER_{CL}}{PER_{STD}}\right]$$

$$PEI_{VL} = \left[\frac{PER_{VL}}{PER_{STD}}\right] \qquad \textbf{Eq. 1}$$

Where:

PER_{CL} = the equally-weighted average electric input power to the pump measured (or calculated) at the driver input over a specified load profile, as tested in accordance with the DOE test procedure. This metric applies only to pumps in a fixed speed equipment class. For bare pumps, the test procedure specifies the default motor loss values to use in the calculations of driver input.

PER_{VL} = the equally-weighted average electric input power to the pump measured (or calculated) at the controller input over a specified load profile as tested in accordance with the DOE test procedure. This metric applies only to pumps in a variable speed equipment class.

PER_{STD} = the PER rating of a minimally compliant pump (as defined in section III.C.1). It can be described as the allowable weighted average electric input power to the specific pump, as calculated in the test procedure. This metric applies to all equipment classes.

A value of PEI greater than 1.00 indicates that the pump consumes more energy than allowed by DOE's energy conservation standard and thus does not comply. A value less than 1.00 indicates that the pump consumes less energy than the level required by the standard.

HI requested that DOE release a calculation tool for both PEI_{CL} and PEI_{VL}, to ensure that all manufacturers are rating pumps in the same manner. (HI, No. 45 at pp. 2–3). Wilo also commented that, in absence of such a calculation tool, parties could potentially make errors in calculating PEI. (Wilo, No. 44 at p. 3). As a convenience to interested parties, DOE has provided a draft Excel spreadsheet designed to perform the calculations necessary to determine PEI.[22] DOE notes that interested parties should not rely on this spreadsheet and should consult the final test procedure rule (See EERE–2013–BT–TP–0055) for the formulas for calculating PEI. Ultimately, it is the responsibility of any party certifying the performance of a given pump to ensure the accuracy of calculation of PEI according to the DOE test procedure.

1. PER of a Minimally Compliant Pump

DOE is using a standardized, minimally compliant bare pump, inclusive of a minimally compliant motor, as a reference pump for each combination of flow at BEP and specific speed. The efficiency of a minimally compliant pump is defined as a function of certain physical properties of the bare pump, such as flow at BEP and specific speed (Ns), as shown in equation 2:

$$\eta_{pump,STD} = -0.8500 * \ln(Q_{100\%})^2 - 0.3800 * \ln(Ns) * \ln(Q_{100\%}) - 11.480 *$$

$$\ln(Ns)^2 + 17.800 * \ln(Q_{100\%}) + 179.80 * \ln(Ns) - (C + 555.60) \qquad \textbf{Eq. 2}$$

Where:

$Q_{100\%}$= BEP flow rate of the tested pump at full impeller diameter and nominal speed of rotation (gpm),

Ns = specific speed of the tested pump at 60 Hz and calculated using U.S. customary units, and

C = a constant that is set for the surface based on the speed of rotation and equipment category of the pump model.

As noted in the test procedure final rule, DOE developed this equation based on the equation used in the EU to develop its regulations for clean water pumps, translated to 60 Hz electrical input power and U.S. customary units.[23]

The C-value is the translational component of the three-dimensional polynomial equation that controls pump efficiency by a constant factor across the

[22] The draft PEI calculator is available at: *http://www.energy.gov/eere/buildings/downloads/draft-pei-calculator.*

[23] The equation to define the minimally compliant pump in the EU is of the same form, but employs different coefficients to reflect the fact that the flow will be reported in m^3/h at 50 Hz and the specific speed will also be reported in metric units. Specific speed is a dimensionless quantity, but has a different magnitude when calculated using metric versus U.S. customary units. DOE notes that an exact translation from metric to U.S. customary units is not possible due to the logarithmic relationship of the terms.

entire range of flow and specific speed. A positive or negative change in C-value corresponds to a decrease or increase in the pump efficiency of a minimally compliant pump, respectively. The efficiency of the minimally compliant pump calculated from this function corresponds to pump efficiency at BEP flow. This value is adjusted to determine the minimally compliant pump efficiency at 75 percent and 110 percent of BEP flow using the scaling values implemented in the EU regulations for clean water pumps. Namely, the efficiency at 75 percent of BEP flow is assumed to be 94.7 percent of that at 100 percent of BEP flow and the pump efficiency at 110 percent of BEP flow is assumed to be 98.5 percent of that at 100 percent of BEP flow.

Using the efficiency of a minimally compliant pump, PER for a minimally compliant pump is determined using equation 3:

$$PER_{STD} = \sum_{i=75\%,100\%,110\%} \omega_i \left(\frac{P_{u,i}}{\alpha_i \times \left[\eta_{pump,STD} / 100 \right]} + L_i \right)$$

$$= \omega_{75\%} \left(\frac{P_{u,75\%}}{0.947 \times \left[\eta_{pump,STD} / 100 \right]} + L_{75\%} \right) + \omega_{100\%} \left(\frac{P_{u,100\%}}{1.000 \times \left[\eta_{pump,STD} / 100 \right]} + L_{100\%} \right)$$

$$+ \omega_{110\%} \left(\frac{P_{u,110\%}}{0.985 \times \left[\eta_{pump,STD} / 100 \right]} + L_{110\%} \right)$$

Eq. 3

Where:

ω_i = weighting at each load point i (equal weighting or 0.3333 in this case);

$P_{u,i}$ = the measured hydraulic output power at load point i of the tested pump (hp);

α_i = 0.947 for 75 percent of the BEP flow rate, 1.000 for 100 percent of the BEP flow rate, and 0.985 for 110 percent of the BEP flow rate;

$\eta_{pump,STD}$ = the minimally compliant pump efficiency, as determined in accordance with equation 2,

L_i = the motor losses at load point i, as determined in accordance with the procedure specified in the DOE test procedure, and

i = load point corresponding to 75%, 100%, and 110% of BEP flow, as determined in accordance with the DOE test procedure.

Equation 3 defines PER as a function of the average power input to the pump motor at three load points, 75%, 100%, and 110% of BEP flow. The input power to the motor at each load point comprises a shaft input power term and a motor loss term. The shaft input power is computed as the quotient of hydraulic output power divided by the minimally compliant pump efficiency, where the pump hydraulic output power for the minimally compliant pump is the same as that for the particular pump being evaluated. As described in the test procedure final rule, the corresponding motor loss term is calculated assuming a minimally compliant motor that is sized for the calculated shaft input power at 120% BEP flow, as well as the default part-load loss curve. The applicable minimum motor efficiency is determined as a function of construction (*i.e.,* open or enclosed), number of poles, and horsepower as specified by DOE's energy conservation standards for electric motors at 10 CFR 431.25. PER_{STD} is then determined as the weighted average input power to the motor at each load point, as shown in equation 3.

DOE selected several C-values to establish the efficiency levels analyzed in this final rule. Each C-value and efficiency level accounts for pump efficiency at all load points as well as motor losses, and does so equivalently across the full scope of flow and specific speed encompassed by this final rule. See section IV.C.4 for a complete examination of the efficiency levels analyzed in this rulemaking.

D. Compliance Date

Pump manufacturers must comply with the energy conservation standards established in this final rule as of January 27, 2020. The compliance date is consistent with the recommendations of the CIP Working Group. (See EERE–2013–BT–NOC–0039–0092, Recommendation No. 9) In its analysis, DOE used an analysis period of 2020 through 2049.

E. Technological Feasibility

1. General

EPCA requires that any new or amended energy conservation standard that DOE prescribes be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible. (42 U.S.C. 6295(o)(2)(A) and 6316(a).) In determining the maximum possible improvement in energy efficiency, DOE conducts a screening analysis based on all current technology options and working prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. (10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv).) Section IV.B of this final rule discusses the results of the

screening analysis for pumps, particularly the designs DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE adopts a new or amended standard for a type or class of covered equipment, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such equipment. (42 U.S.C. 6295(p)(1) and 6316(a)). Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for pumps, using the design options that passed the screening analysis.

F. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the pumps that are the subject of this rulemaking purchased in the 30-year period that begins in the first full year of compliance with new standards (2020–2049).[24] The savings are measured over the entire lifetime of pumps purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that currently exists in the marketplace in the absence of mandatory efficiency standards, and it considers market forces and policies that affect demand for more efficient products. To estimate the no-new-standards case, DOE used data provided by the CIP Working Group, as discussed in section IV.H.2.

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from potential new standards for the equipment that is the subject of this rulemaking. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. To calculate this primary energy savings, DOE derives annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *2015 Annual Energy Outlook (AEO).*

DOE also estimates full-fuel-cycle (FFC) energy savings, as discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels) and, thus, presents a more complete picture of the impacts of energy efficiency standards. DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by the covered equipment. For more information on FFC energy savings, see section IV.H.1.a.

2. Significance of Savings

To adopt standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) and 6316(a).) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, for the District of Columbia Circuit in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for all the TSLs considered in this rulemaking, including the adopted standards, are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

G. Economic Justification

1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a).) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential new or amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and payback period (PBP) associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential new standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II) and 6316(a).) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of

[24] DOE also presents a sensitivity analysis that considers impacts for products shipped in a nine-year period.

values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III) and 6316(a).) As discussed in section IV.H, DOE uses the NIA spreadsheet to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of equipment, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential new standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 6316(a).) Based on data available to DOE, the standards adopted in the final rule would not reduce the utility or performance of the equipment under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and 6316(a).) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) and 6316(a).) DOE transmitted a copy of its proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. In a letter dated July 10, 2015, DOJ stated that it did not have sufficient information to conclude that the proposed energy conservation standards or test procedure likely will substantially lessen competition in any particular product or geographic market. However, DOJ noted that the possibility exists that the proposed energy conservation standards and test procedure—which will apply to a broad range of pumps—may result in anticompetitive effects in certain pump markets. Specifically in relation to the proposed standards, DOJ expressed concern that ''by design, the bottom quartile of pumps in each class of covered pumps will not meet the new standards. The non-compliance of the bottom quartile of pump models may result in some manufacturers stopping production of pumps altogether and fewer firms producing models that comply with the new standards. At this point, it is not possible to determine the impact on any particular product or geographic market.''

Although the terminology in this rule is different from that typically used in energy conservation standards rulemaking documents, as requested by the Pumps Working Group, the options for non-compliant models are no different from other rules. In all energy conservation standards rulemakings that set new standards or amend standards, a certain percentage of the market is affected by the standard. The percentage of affected pumps is represented by any models below the amended standard, which may have a distribution of efficiencies (*i.e.,* some pump models will be closer to the new or amended standard level than others). It is not unusual for a large fraction of models (sometimes greater than 25%) to be at or near the baseline and thus be impacted. As in all rulemakings, manufacturers have a choice between re-designing a non-compliant model to meet the standard and discontinuing it.

The ASRAC working group indicated that between 5 and 10% of models requiring redesign may be dropped because current sales are very low. (Docket No. EERE–2013–BT–NOC–0039, May 28 Pumps Working Group Meeting, p. 61–63) Manufacturers indicated that additional models may be dropped where they can be replaced by another existing equivalent model currently made by the same manufacturer, often under an alternative brand. (Docket No. EERE–2013–BT–NOC–0039, April 29 Pumps Working Group Meeting, p. 100) In either case, the elimination of these models would not have an adverse impact on the market or overall availability of pumps to serve particular applications.

For these reasons, DOE has concluded that the standard levels included in this final rule will not result in adverse impacts on competition within the pump marketplace. The remaining concerns in the DOJ letter regarding the test procedure have been addressed in the parallel test procedure rulemaking (Docket No. EERE–2013–BT–TP–0055).

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) and 6316(a)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

The adopted standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how potential new standards may affect these emissions, as discussed in section IV.K; the emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) and 6316(a).) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically

justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. 42 U.S.C. 6295(o)(2)(B)(iii) and 6316(a) DOE's LCC and PBP analyses generate values used to calculate the effect potential new or amended energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 6316(a). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback results are discussed in section V.B.1.c of this final rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE performed for this rulemaking. Separate subsections address each component of DOE's analyses.

DOE used four analytical tools to estimate the impact of the standards adopted in this document. The first tool is a spreadsheet that calculates LCC and PBP of potential new energy conservation standards. The second tool is a spreadsheet that provides shipments projections and calculates national energy savings and net present value resulting from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts. These three spreadsheet tools are available on the DOE Web site for this rulemaking: *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-STD-0031*. Additionally, DOE used output from the latest version of EIA's National Energy Modeling System (NEMS) for the emissions and utility impact analyses. NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector. EIA uses NEMS to prepare its *Annual Energy Outlook (AEO),* a widely known energy forecast for the United States.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information (*e.g.,* manufacturer specification sheets, industry publications) and data submitted by manufacturers, trade associations, and other stakeholders. The subjects addressed in the market and technology assessment for this rulemaking include: (1) Quantities and types of equipment sold and offered for sale; (2) retail market trends; (3) equipment covered by the rulemaking; (4) equipment classes; (5) manufacturers; (6) regulatory requirements and non-regulatory programs (such as rebate programs and tax credits); and (7) technologies that could improve the energy efficiency of the equipment under examination. DOE researched manufacturers of pumps and made a particular effort to identify and characterize small business manufacturers in this sector. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

1. Equipment Classes

When evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used, capacity, or other performance-related features that would justify a different standard from that which would apply to other equipment classes. In the NOPR, DOE proposed to divide pumps into equipment classes based on the following three factors:

1. Basic pump equipment category,
2. Configuration, and
3. Nominal design speed.

In the NOPR, DOE also noted that some clean water pumps are sold for use with engines or turbines rather than electric motors, and as such, would use a different fuel type (*i.e.,* fossil fuels rather than electricity). However, because of the small market share of clean water pumps using these fuel types, in the test procedure final rule, DOE specifies that any pump sold with, or for use with, a driver other than an electric motor would be rated as a bare pump.[25] Therefore, in the NOPR, DOE did not disaggregate equipment classes by fuel type.

As discussed in section III.B, there were five pump equipment categories considered in NOPR, each of which form the basis for the individual equipment classes; these categories are:

- End suction close coupled;
- End suction frame mounted/own bearings;
- In-line;
- Radially split, multi-stage, vertical, in-line diffuser casing; and
- Submersible turbine.

In the NOPR, DOE proposed to define a pump's configuration by the equipment with which it is sold. Pumps sold inclusive of motors and continuous or non-continuous controls (as defined in the test procedure), capable of operation at multiple driver shaft speeds are defined as variable load (VL); pumps sold as bare pumps or with motors without such controls, capable only of operation at a fixed shaft speed, are defined as constant load (CL).

The CIP Working Group also recommended separate energy efficiency standards for equipment categories at the nominal speeds for two- and four-pole motors. (See EERE–2013–BT–NOC–0039–0092, p. 4, Recommendation No. 9.) In its NOPR analysis, DOE found that across the market, pumps at each nominal speed demonstrate distinctly different energy-related performance. For the same load point (flow and head), 2-pole pumps were typically found to be less efficient than 4-pole pumps. Their higher operating speeds, however, allow a 2-pole pump serving the same load as a 4-pole pump to be significantly smaller in size. The smaller size is a consumer utility to consumers who face space constraints in their installation location.

To account for the variability in efficiency between 2- and 4-pole pumps, in the NOPR, DOE proposed that for both constant load and variable load pumps, the equipment classes should also be differentiated on the basis of nominal design speed. Therefore, within the scope of the NOPR, pumps were to be defined as being designed for either 3,600 or 1,800 rpm nominal driver speeds. Pumps defined as having a 3,600 rpm nominal driver speed are designed to operate with a 2-pole induction motor or with a non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 rpm. Pumps defined as having an 1,800 rpm nominal driver speed are designed to operate with a 4-pole induction motor or with a non-induction motor with a speed of rotation operating range that includes speeds of rotation between

[25] Such a rating would include the hydraulic efficiency of the bare pump as well as the efficiency of a minimally-compliant electric motor, as described in section III.C.1.

1,440 and 2,160 rpm. Throughout this document, a 3,600 rpm nominal speed is abbreviated as 3600, and a 1,800 rpm nominal speed is abbreviated as 1800.

Taking into account the basic pump equipment category, nominal design speed, and configuration, DOE proposed the following twenty equipment classes in the NOPR:

- ESCC.1800.CL;
- ESCC.3600.CL;
- ESCC.1800.VL;
- ESCC.3600.VL;
- ESFM.1800.CL;
- ESFM.3600.CL;
- ESFM.1800.VL;
- ESFM.3600.VL;
- IL.1800.CL;
- IL.3600.CL;
- IL.1800.VL;
- IL.3600.VL;
- RSV.1800.CL;
- RSV.3600.CL;
- RSV.1800.VL;
- RSV.3600.VL;
- VTS.1800.CL;
- VTS.3600.CL;
- VTS.1800.VL; and
- VTS.3600.VL.

DOE received no comments regarding their proposed equipment classes and associated methodology; consequently, DOE has maintained these equipment classes in this final rule. Chapter 3 of the final rule TSD provides further detail on the definition of equipment classes.

As noted in section III.C and specified in the test procedure final rule, CL equipment classes are rated with the PEI_{CL} metric, and VL equipment classes are rated with the PEI_{VL} metric. In the NOPR, however, DOE relied on available data for bare pumps. DOE received no comment regarding the use of bare pump data to represent all equipment classes, as such, DOE's final rule analysis is based on equipment category and nominal design speed only—reported results do not use a ''.CL'' or ''.VL'' designation. Separate CL and VL equipment classes are maintained because CL and VL pumps have distinctly different utilities to the consumer (constant vs. variable load systems) and as a result require different metric and testing methods.

2. Scope of Analysis and Data Availability

DOE collected data to conduct all final rule analyses for the following equipment classes directly: [26]

- ESCC.1800,
- ESCC.3600,
- ESFM.1800,
- ESFM.3600,
- IL.1800,
- IL.3600, and
- VTS.3600.

The following subsections summarize DOE's approach for the remaining equipment classes:

- RS–V.1800;
- RS–V.3600; and
- VT–S.1800.

a. Radially Split, Multi-Stage, Vertical, in-Line Diffuser Casing

In the NOPR, DOE used available information to identify baseline and the maximum technologically feasible efficiency levels for this class. DOE identified these efficiency levels based on a review of the efficiency data for RSV pumps in a database generated using market research and confidential manufacturer information, and that included models offered for sale in the United States by three major manufacturers of RSV pumps. DOE found no models less efficient than the European Union's MEI 40 standard level, which took effect on January 1, 2015.[27] Details of this analysis are presented in Chapter 5 of the TSD. This analysis, in conjunction with confidential discussions with manufacturers, led DOE to conclude that RSV models sold in the United States market are global platforms with hydraulic designs equivalent to those in the European market. DOE presented this conclusion to the CIP Working Group for consideration, where it was supported and reaffirmed on numerous occasions (See, *e.g.* EERE–2013–BT–NOC–0039–0109 at pp. 91–97, EERE–2013–BT–NOC–0039–0105 at pp. 293–300, EERE–2013–BT–NOC–0039–0106 at pp. 38–40, 62–67, 88–95; EERE–2013–BT–NOC–0039–0108 at pp. 119.) Additionally, both HI and Wilo commented in agreement with this conclusion (HI, No. 45 at p. 3; Wilo, No. 44 at p. 4). As a result, in this final rule, DOE is setting the baseline and max-tech levels equivalent to those established in Europe. Specifically, the baseline is the European minimum efficiency standard,[28] and the max-tech level is the European level referred to as ''the indicative benchmark for the best available technology.'' [29]

Available data did not support the development of a cost-efficiency relationship or additional efficiency levels for RSV equipment. As a result, in this final rule DOE is specifying a standard level for RSV that is equivalent to the baseline, consistent with the recommendation of the CIP Working Group. (See EERE–2013–BT–NOC–0039–0092, p. 4, Recommendation No. 9). Based on the data available and recommendation of the CIP Working Group, DOE concludes that this standard level is representative of the typical minimum efficiency configuration sold in this equipment class, and no significant impact is expected for either the consumers or manufacturers. Chapter 5 of the final rule TSD provides complete details on RSV data availability and the development of the baseline efficiency level.

b. Submersible Turbine, 1800 RPM

In the NOPR DOE proposed to set the energy conservation standard level for VTS.1800 at the same C-values as those for the VTS.3600 equipment based on a preliminary consensus of the CIP working group. DOE and the working group pursued this approach due to limited availability of performance data for the VTS.1800 equipment class; the mechanical similarity between VTS.1800 and VTS.3600 equipment; and a concern that because of the mechanical similarity, bare VTS.1800 pumps (which are identical to bare VTS.3600 pumps) could be sold into the market as unregulated equipment, if DOE set a standard only for VTS.3600 equipment. However, at the time of consensus, working group members were asked to perform research on their four-pole VTS product lines and provide feedback on the proposed C-values. (See EERE–2013–BT–NOC–0039–0105 at pp. 300–308; EERE–2013–BT–NOC–0039–0106 at pp. 38–40, 62–67) In the NOPR, DOE requested comment on whether any pump models would meet the proposed standard at a nominal speed of 3600 but fail at a nominal speed of 1800 if the same C-values were used for each equipment class.

In response, Wilo commented that duplicated C-values could be eliminated and DOE could use data from only 3600

[26] DOE again notes that all analyses are based on data for bare pumps. This data is broken out by equipment category and nominal design speed only. As such the ''.CL'' or ''.VL'' designations are not listed.

[27] Council of the European Union. 2012. Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps. Official Journal of the European Union. L 165, 26 June 2012, pp. 28–36.

[28] Note that this final rule and the European Union regulation use different metrics to represent efficiency. DOE used available data to establish harmonized baseline and max-tech efficiency levels using the DOE metric.

[29] Council of the European Union. 2012. Commission Regulation (EU) No 547/2012 of 25 June 2012 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for water pumps. Official Journal of the European Union. L 165, 26 June 2012, pp. 28–36.

rpm (2-pole) pumps, which would set the minimum standards at a slightly lower efficiency. (Wilo, No. 44 at p. 4) Wilo's comment implies that 1800 rpm (4-pole) pumps, in general, are typically more efficient than analogous 3600 rpm models; this implication agrees with the preliminary consensus reached by the CIP Working Group.

HI commented that the submersible turbines as defined in this regulation are designed for 2-pole speeds and that C-values derived for submersible turbines in the April 2015 proposed rule are valid only for those pumps with 2-pole motors, and not those with four-pole motors. (HI, No. 45 at p. 3).

DOE considered HI and Wilo's comments in establishing an energy conservation standard for VTS.1800 equipment. Per Wilo's comment, DOE recognizes that in other analyzed equipment categories, pumps using 4-pole motors are generally more efficient than an equivalent pump using a 2-pole motor at a given flow and specific speed. However, insufficient data exists to confirm that 4-pole VTS pumps are more efficient than equivalent 2-pole versions. DOE also notes that it did not use any data from four-pole pumps to establish the C-values for 2-pole VTS pumps.

DOE agrees with HI that submersible turbines in the scope of this rulemaking are primarily designed for 2-pole speeds. In the NOPR, DOE stated that every 4-pole based model is constructed from a bare pump that was originally designed for use with a 2-pole motor. DOE also acknowledged that total shipments for the VTS.1800 equipment are estimated to be less than 1-percent of VTS.3600 equipment. While the C-values were derived from pumps with 2-pole motors, as discussed previously, the C-values were set equal for VTS.1800 and VTS.3600 due to lack of data for VTS.1800 and concerns that bare VTS.1800 pumps (which are identical to bare VTS.3600 pumps) could be sold into the market as unregulated equipment, if DOE set a standard only for VTS.3600.

Upon further review, DOE concludes that setting standards only for pumps that have bowl diameters less than or equal to 6 inches limits the possibility that manufacturers would design VTS pumps for use with 4-pole motors. Specifically, submersible pumps with 6 inch or less bowl diameter are primarily designed for wells. Reducing the speed of the motor would require additional bowl assemblies that would significantly increase the cost of the pump.

For these reasons, DOE updated its analysis of the VTS.1800 equipment class. In this final rule, DOE maintained its approach in identifying baseline and max-tech levels for VTS.1800, utilizing data from VTS.3600 equipment. Specifically, DOE established the baseline and max-tech levels for VTS.1800 at a C-value equivalent to the VTS.3600 baseline and max-tech levels. Available data did not support the development of a cost-efficiency relationship, or additional efficiency levels for VTS.1800 equipment. As a result, after consideration of working group and additional stakeholder input, DOE is setting an energy conservation standard for VTS.1800 pumps at the baseline level. DOE will continue to monitor VTS products in the market and may consider revisions in future rulemakings.

3. Technology Assessment

Throughout DOE's NOPR analyses, DOE considered technologies that may improve pump efficiency. DOE received no comments regarding additional technologies to consider; accordingly, DOE has made no changes to its considered technologies for the final rule. Chapter 3 of the final rule TSD details each of these technology options, which include:

- Improved hydraulic design;
- Improved surface finish on wetted components;
- Reduced running clearances;
- Reduced mechanical friction in seals;
- Reduction of other volumetric losses;
- Addition of a variable speed drive (VSD);
- Improvement of VSD efficiency; and
- Reduced VSD standby and off mode power usage.

a. Applicability of Technology Options to Reduced Diameter Impellers

In the NOPR, DOE proposed setting energy conservation standards for pump efficiency based on the pump's full impeller diameter characteristics, which would require testing the pump at its full impeller diameter. DOE did not receive any comments related to full impeller diameter testing. As such, DOE's analyses of technology options have been made with respect to the full diameter model. In setting standards only on the full diameter, DOE considered that improvements made to the full diameter pumps will also improve the efficiency for all trimmed or reduced diameter variants.

b. Elimination of Technology Options Due to Low Energy Savings Potential.

In the NOPR, DOE eliminated some technologies that were determined to provide little or no potential for efficiency improvement for one of the following additional reasons: (a) The technology does not significantly improve efficiency; (b) the technology is not applicable to the equipment for which standards are being considered or does not significantly improve efficiency across the entire scope of each equipment class; and (c) efficiency improvements from the technology degrade quickly.

Furthermore, in the NOPR, DOE found that most of the considered technology options have limited potential to improve the efficiency of pumps. In addition, DOE found that several of the options also do not pass the screening criteria listed in section III.B. DOE did not receive any comments related to the elimination of technology options due to low energy savings potential. DOE discusses the elimination of all of these technologies in section III.B.

B. Screening Analysis

In the NOPR, DOE used four screening factors to determine which technology options are suitable for further consideration in a standards rulemaking. If a technology option failed to meet any one of the factors, it was removed from consideration. The factors for screening design options include:

(1) Technological feasibility. Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.

(2) Practicability to manufacture, install and service. If mass production of a technology in commercial products and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.

(3) Adverse impacts on product utility or product availability.

(4) Adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, sections (4)(a)(4) and (5)(b).

1. Screened Out Technologies

DOE did not receive any comments related to the technology options that were screened out in the NOPR. As such, the conclusions of DOE's screening analysis are unchanged from the NOPR. The following subsections

outline DOE's screening methodology and conclusions.

Improved Surface Finish on Wetted Components

DOE observed through analysis that manual smoothing poses a number of significant drawbacks—(1) the process is manually-intensive, which makes it impractical to implement in a production environment, (2) the efficiency improvements from this process degrade over a short period of time, and (3) the relative magnitude of efficiency improvements are small (*e.g.,* approximately 20:1 for a baseline pump with a specific speed of 2,500 rpms) when compared to other options, such as hydraulic redesign. After considering these limitations and the relative benefits that might be possible from including this particular option, DOE concluded that manual smoothing operations would not be likely to significantly improve the energy efficiency across the entire scope of each equipment class in this rule. Consequently, DOE screened this technology option out. Chapters 3 and 4 of final rule TSD provide further details on the justification for screening out this technology.

In addition to smoothing operations, DOE also evaluated two additional methods for improving surface finish; (1) surface coating or plating, and (2) improved casting techniques. In addition to being unable to significantly improve efficiency across the entire scope of each equipment class, surface coatings and platings were also screened out due to reliability and durability concerns, and improved casting techniques were screened out because the efficiency improvements from the technology degrade quickly. Chapters 3 and 4 of final rule TSD provide further details on these methods for surface finish improvement, and justification for screening out each one.

Reduced Running Clearances

Manufacturer interview responses indicate that clearances are currently set as tight as possible, given the limitations of current wear ring materials, machining tolerances, and pump assembly practices. To tighten clearance any further without causing operational contact between rotating and static components would require larger (stiffer) shafts, and larger (stiffer) bearings. Without these stiffer components, operational contact will lead to accelerated pump wear and loosened clearances. Loosened clearances cause the initial efficiency improvements to quickly degrade. Alternatively, the use of larger components to improve the stiffness to appropriate levels results in increased mechanical losses. These losses negate the potential improvements gained from reduced clearances. Consequently, DOE eliminated this technology option because of the concerns about reliability and quick degradation of efficiency improvements. For additional details on the screening of reduced running clearances, see chapter 4 of the final rule TSD.

Reduced Mechanical Friction in Seals

DOE evaluated mechanical seal technologies that offered reduced friction when compared to commonly used alternatives. DOE concluded from this evaluation that the reduction in friction resulting from improved mechanical seals would be too small to significantly improve efficiency across the entire scope of each equipment class. For additional details, see chapters 3 and 4 of the final rule TSD.

Reduction of Other Volumetric Losses

The most common causes of volumetric losses (other than previously discussed technology options) are thrust balance holes. (Thrust balance holes are holes located in the face of an impeller that act to balance the axial loads on the impeller shaft and thus reduce wear on rub surfaces and bearings). DOE found that removal of thrust balance holes from existing impellers will reduce pump reliability. DOE notes that manufacturers may be able to decrease volumetric losses by reducing the number and/or diameter of thrust balance holes as a part of a full hydraulic redesign. For additional details, see chapters 3 and 4 of the final rule TSD.

Addition of a Variable Speed Drive (VSD)

Because there are many application types and load profiles that would not benefit from a VSD, and many applications for which energy use would increase with a VSD, DOE eliminated the use of VSDs from the list of technology options. For additional details, see chapters 3 and 4 of the final rule TSD.

Improvement of VSD Efficiency

Because DOE has eliminated the use of VSDs as a technology option, improvement of VSD efficiency was screened out as technology option. For additional details, see chapters 3 and 4 of the final rule TSD.

Reduced VSD Standby and Off Mode Power Usage

Although improving VSD efficiency and standby/off mode power may help improve overall pump efficiency, DOE concluded that not all pumps for which DOE is considering standards in this rule would benefit from the use of a VSD. As such, DOE screened out improved VSD efficiency and reduced standby and off mode power usage as design options in the engineering analysis. For additional details, see chapter 4 of the final rule TSD.

2. Remaining Technologies

In the NOPR, DOE concluded that only improved hydraulic design met all four screening criteria (*i.e.,* practicable to manufacture, install, and service and no adverse impacts on consumer utility, product availability, health, or safety). Furthermore, DOE concluded that improved hydraulic design is technologically feasible, as there is equipment currently available in the market that has utilized this technology option. As such, DOE considered improved hydraulic design as a design option in the engineering analysis. 80 FR 17826, 17843 (April 2, 2015)

In response to DOE's conclusions, HI commented that hydraulic redesign towards higher efficiency may impact suction performance, which subsequently may cause issues with increased cavitation, as well as reduced mechanical seal and bearing life. (HI, No. 45 at p. 6). In response, DOE notes in the NOPR DOE established and analyzed market-based efficiency levels. This means that for all analyzed efficiency levels, a full range of equipment already exists in the market. Specifically, the standard level proposed in the NOPR and established in this final rule was selected by the CIP Working Group and determined to be technologically feasible. Therefore, DOE concludes that improved hydraulic design, as analyzed, does not have a negative impact on utility. For additional details, see chapter 4 of the final rule TSD.

C. Engineering Analysis

The engineering analysis determines the manufacturing costs of achieving increased efficiency or decreased energy consumption. DOE historically has used the following three methodologies to generate the manufacturing costs needed for its engineering analyses: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which

provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data as to costs for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

DOE conducted the engineering analyses for this rulemaking using a design-option approach. The decision to use this approach was made due to several factors, including the wide variety of equipment analyzed, the lack of numerous levels of equipment efficiency currently available in the market, and the limited design options available for the equipment. More specifically, for the hydraulic redesign option, DOE used industry research to determine changes in manufacturing costs and associated increases in energy efficiency. DOE directly analyzed costs for the equipment classes listed in section IV.A.2. Consistent with HI's recommendation (HI, Framework Public Meeting Transcript at p. 329) and available data, DOE concluded that it was infeasible to determine the upfront costs (engineering time, tooling, new patterns, qualification, etc.) associated with hydraulic redesign via reverse engineering.

The following sections briefly discuss the methodology used in the engineering analysis. Complete details of the engineering analysis are available in chapter 5 of the final rule TSD.

1. Representative Equipment for Analysis

a. Representative Configuration Selection

For the NOPR engineering analysis, DOE directly analyzed the cost-efficiency relationship for all equipment classes specified in in section IV.C.8, over the full range of sizes, for all pumps falling within the proposed scope. Within the engineering analysis, ''size'' is defined by a pump's flow at BEP and specific speed. Analyzing over the full size range allowed DOE to use representative configurations for each equipment class, rather than an approach that analyzes a representative unit from each class. A representative unit has a defined size and defined features, while a representative configuration defines only the features of the pump, allowing the cost-efficiency analysis to consider a large range of data points that occur over the full range of sizes.

In selecting representative configurations, DOE researched the offerings of major manufacturers to select configurations generally representative of the typical offerings produced within each equipment class. Configurations and features were based on high-shipment-volume designs prevalent in the market. The key features that define each representative configuration include impeller material, impeller production method, volute/casing material, volute/casing production method, and seal type.

For the ESCC, ESFM, and IL equipment classes, the representative configuration was defined as a pump fitted with a cast bronze impeller; cast-iron volute; and mechanical seal. For the RSV and VTS equipment classes, the representative configuration was defined as a pump fitted with sheet metal-based fabricated stainless-steel impeller(s), and sheet metal-based fabricated stainless-steel casing and internal static components. 80 FR 17826, 17844 (April 2, 2015) DOE received no comments regarding its approach to representative units; consequently, DOE utilized the same representative unit configurations in this final rule. Chapter 5 of the TSD provides further detail on representative configurations.

b. Baseline Configuration

The baseline configuration defines the lowest efficiency equipment in each analyzed equipment class. This configuration represents equipment that utilizes the lowest efficiency technologies present in the market. In the NOPR, DOE directly analyzed the cost-efficiency relationship over the full range of pump sizes; as such, in the NOPR, DOE defined a baseline configuration applicable across all sizes, rather than a more specific baseline model. This baseline configuration ultimately defines the energy consumption and associated cost for the lowest efficiency equipment analyzed in each class. In the NOPR, DOE established baseline configurations by reviewing available manufacturer performance and sales data for equipment manufactured at the time of the analysis. 80 FR 17826, 17844 (April 2, 2015) DOE received no comments regarding baseline configurations; consequently, DOE has maintained this methodology in this final rule. Chapter 5 of the final rule TSD sets forth the process that DOE used to select the baseline configuration for each equipment class and discusses the baseline in greater detail.

2. Design Options

After conducting the screening analysis, DOE considered hydraulic redesign as a design option in the final rule engineering analysis.

3. Available Energy Efficiency Improvements

In the NOPR, DOE assessed the available energy efficiency improvements resulting from a hydraulic redesign for each equipment class. This assessment was informed by manufacturer performance and cost data, confidential manufacturer interview responses, general industry research, and stakeholder input gathered at the CIP Working Group public meetings. DOE concluded that a hydraulic redesign is capable of improving the efficiency of a pump up to and including the max-tech level (discussed in section IV.C.4.a). The efficiency gains that a manufacturer realizes from a hydraulic redesign are expected to be commensurate with the level of effort and capital a manufacturer invests in redesign. 80 FR 17826, 17844 (April 2, 2015) DOE received no comments regarding this assessment; consequently, DOE maintained this methodology in this final rule. Section IV.C.6 discusses the relationship between efficiency gains and conversion cost in more detail.

4. Efficiency Levels Analyzed

In assessing the cost associated with hydraulic redesign, and carrying through to all downstream analyses, DOE analyzed several efficiency levels for the NOPR. Each level corresponds to a specific C-value, as shown in Table IV.2. 80 FR 17826, 17844 (April 2, 2015)

TABLE IV.1—NOPR EFFICIENCY LEVELS ANALYZED WITH CORRESPONDING C-VALUES

Equipment class	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
	Baseline	10th efficiency percentile	25th efficiency percentile	40th efficiency percentile	55th efficiency percentile	70th efficiency percentile/max tech
ESCC.1800	134.43	131.63	128.47	126.67	125.07	123.71
ESCC.3600	135.94	134.60	130.42	128.92	127.35	125.29
ESFM.1800	134.99	132.95	128.85	127.04	125.12	123.71
ESFM.3600	136.59	134.98	130.99	129.26	127.77	126.07
IL.1800	135.92	133.95	129.30	127.30	126.00	124.45
IL.3600	141.01	138.86	133.84	131.04	129.38	127.35
RSV.1800*	129.63	N/A	N/A	N/A	N/A	124.73
RSV.3600*	133.20	N/A	N/A	N/A	N/A	129.10
VTS.1800	137.62	135.93	134.13	130.83	128.92	127.29
VTS.3600	137.62	135.93	134.13	130.83	128.92	127.29

*For RSV equipment, DOE established only baseline and max-tech efficiency levels due to limited data availability.

DOE did not receive any comments related to ESCC, ESFM, IL, or RSV pumps and has maintained the same efficiency levels for these equipment categories in this final rule. DOE received feedback related to VTS pumps and has accordingly updated efficiency levels for the VTS.3600 and VTS.1800 equipment classes. DOE calculated new C-values for each efficiency level based on updated data for submersible motors submitted by HI. (See EERE–2013–BT–TP–0055–0008 at pp. 19–20) More detailed discussion of this data can be found in the pumps test procedure final rule. Additionally, based on feedback from HI suggesting that standards for 2-pole VTS pumps (*i.e.* VTS.3600) should not apply to 4-pole VTS pumps (*i.e.* VTS.1800), DOE analyzed baseline and max-tech efficiency levels for the VTS.1800 equipment class. This feedback was previously discussed in section IV.A.2.b. In the final rule, DOE updated efficiency levels for VTS pumps based on stakeholder feedback. The final rule efficiency levels and corresponding C-values are shown in Table IV.2. (See section III.C for more information about C-values and the related equations.)

TABLE IV.2—FINAL RULE EFFICIENCY LEVELS ANALYZED WITH CORRESPONDING C-VALUES

Equipment class	EL0	EL1	EL 2	EL 3	EL 4	EL 5
	Baseline	10th efficiency percentile	25th efficiency percentile	40th efficiency percentile	55th efficiency percentile	70th efficiency percentile/max tech
ESCC.1800	134.43	131.63	128.47	126.67	125.07	123.71
ESCC.3600	135.94	134.60	130.42	128.92	127.35	125.29
ESFM.1800	134.99	132.95	128.85	127.04	125.12	123.71
ESFM.3600	136.59	134.98	130.99	129.26	127.77	126.07
IL.1800	135.92	133.95	129.30	127.30	126.00	124.45
IL.3600	141.01	138.86	133.84	131.04	129.38	127.35
RSV.1800*	129.63	N/A	N/A	N/A	N/A	124.73
RSV.3600*	133.20	N/A	N/A	N/A	N/A	129.10
VTS.1800*	138.78	N/A	N/A	N/A	N/A	127.15
VTS.3600	138.78	136.92	134.85	131.92	129.25	127.15

*For RSV and VTS.1800 equipment, DOE established only baseline and max-tech efficiency levels due to limited data availability.

a. Maximum Technologically Feasible Levels

Efficiency level five (EL5), as shown in Table IV.2, represents the maximum technologically feasible (''max-tech'') efficiency level for the ESCC, ESFM, IL, RSV, and VTS equipment classes. To set the max-tech level for the applicable equipment classes, DOE performed an analysis to determine the maximum improvement in energy efficiency that is technologically feasible for each equipment class.

DOE considers technologies to be technologically feasible if they are incorporated in any currently available equipment or working prototypes. A max-tech level results from the combination of design options predicted to result in the highest efficiency level possible for an equipment class.

DOE determined during the NOPR stage, based on available information and consistent with the conclusions of the CIP Working Group, that pumps are a mature technology, with all available design options already existing in the marketplace.[30] Therefore, DOE assumed in its analysis that the max-tech efficiency level coincides with the maximum available efficiency already offered in the marketplace. As a result, DOE performed a market-based analysis to determine max-tech/max-available levels. Based on this analysis, and as a result of the wide range of pumps in each equipment class (1–200 hp), DOE established a max-tech level for each equipment class at the 70th efficiency percentile. This max-tech level was set so that there are existing pumps available in the market that both meet this level and have varying shaft input powers over the entire range of 1–200 hp. As a result, for each equipment class, the max-tech level is representative of the maximum efficiency achievable for pumps that is inclusive of the entire horsepower range. A preliminary version of this analysis was provided to the CIP

[30] See EERE–2013–BT–NOC–0039–0072, pp.103–105.

Working Group during the April 29–30, 2014 meetings, and DOE did not receive feedback on any alternative max-tech efficiency levels. (EERE–2013–BT–NOC–0039–0051, pp. 17–32) DOE incorporated the 70th efficiency percentile as the highest TSL level evaluated in the NOPR (80 FR 17826, 17845 (April 2, 2015)) and received no further comments. DOE therefore maintained these max-tech efficiency levels in this final rule. Chapter 5 of final rule TSD provides complete details on DOE's market-based max-tech analysis and results.

5. Manufacturers Production Cost Assessment Methodology

a. Changes in MPC Associated With Hydraulic Redesign

In the NOPR, DOE performed an analysis for each equipment class to determine the change in manufacturer production cost (MPC), if any, associated with a hydraulic redesign. 80 FR 17826, 17845 (April 2, 2015) For this analysis, DOE reviewed the manufacturer selling price (MSP), component cost, performance, and efficiency data supplied by both individual manufacturers and HI. DOE, with the support of the majority of the CIP Working Group, concluded that for all equipment classes, a hydraulic redesign is not expected to increase the MPC of the representative pump configuration used for analysis.[31] Specifically, a hydraulic redesign is not expected to increase production or purchase cost of a pump's two primary components; the impeller and the volute.

In the NOPR, DOE acknowledged that actual changes in MPC experienced by individual manufacturers will vary, and that in some cases redesigns may actually increase or decrease the cost of the impeller and/or volute. However, available information indicates that the flat MPC-versus-efficiency relationship best represents the aggregated pump industry as a whole. DOE did not receive any comments on changes in MPC. Consequently, in this final rule, DOE maintains its conclusions that hydraulic redesign is not expected to increase the MPC of the representative pump configuration used for analysis. Chapter 5 of the final rule TSD provides complete details on DOE's MPC-efficiency analysis and results.

b. Manufacturer Production Cost (MPC) Model

In the NOPR, for each equipment class, DOE developed a scalable cost model to estimate MPC across all pump sizes. Given a pump's specific speed and BEP flow, the cost model outputs an estimated MPC. Because hydraulic redesign is not expected to result in an increase in MPC, the model is efficiency-independent and predicts the same MPC for all pumps of the identical BEP flow, specific speed, and equipment class, regardless of efficiency.

The NOPR MPC model was developed using data supplied by both HI and individual manufacturers. 80 FR 17826, 17845 (April 2, 2015) This data set includes information on the MSP, manufacturer markup, shipments volumes, model performance and efficiency, and various other parameters. DOE did not receive any comments on the MPC model. Consequently, DOE utilized the same MPC model in this final rule. Chapter 5 of the final rule TSD provides additional detail on the development of the MPC model.

6. Product and Capital Conversion Costs

DOE expects that hydraulic redesigns will result in significant conversion costs for manufacturers as they attempt to bring their pumps into compliance with the proposed standard. DOE classified these conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with a new or amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new product designs can be fabricated and assembled.

In the NOPR, DOE used a bottom-up approach to evaluate the magnitude of the product and capital conversion costs the pump industry would incur to comply with new energy conservation standards. 80 FR 17826, 17845–17846 (April 2, 2015) For this approach, DOE first determined the industry-average cost, per model, to redesign pumps of varying sizes to meet each of the proposed efficiency levels. DOE then modeled the distribution of unique pump models that would require redesign at each efficiency level. For each efficiency level, DOE multiplied each unique failing model by its associated cost to redesign and summed the total to reach an estimate of the total product and capital conversion cost for the industry.

Data supplied to DOE by HI was used as the basis for the industry-average cost, per model, to redesign a failing pump model. HI, through an independent third party, surveyed 15 manufacturers regarding the product and conversion costs associated with redesigning one-, 50-, and 200-hp pumps from the 10th to the 40th percentile of market efficiency. Specifically, HI's survey contained cost categories for the following: Redesign; prototype and initial test; patterns and tooling; testing; working capital; and marketing.

DOE validated the HI survey data with independent analysis and comparable independently collected manufacturer interview data. In addition, data from the EU pumps regulation preparatory study[32] was used to augment the HI survey data and scale costs to various efficiency levels above and below the 40th percentile.

DOE used a pump model database, containing various performance parameters, to model the distribution of unique pump models that would require redesign at each efficiency level. The database is comprised of a combination of data supplied by HI and data that DOE collected independently from manufacturers. For the ESCC, ESFM, IL, and VTS equipment classes, the database is of suitable size to be representative of the industry as a whole. Table IV.3 presents the resulting product and capital conversion costs for each equipment class, at each efficiency level.

DOE received comments that were consistent with the conversion costs presented in the NOPR, as discussed in section IV.J.3. Consequently, DOE is maintaining the same product and capital conversion costs in this final rule. However, DOE adjusted conversion costs for the VTS.1800 class, as DOE could not establish intermediate efficiency levels due to lack of data, as discussed in section IV.A.2.b. As a result, in Table IV.3, VTS.3600 and VTS.1800 are listed separately, as different efficiency levels were established for each of these equipment classes. Complete details on the calculation of industry aggregate

[31] Refer to the following transcripts in which the conclusion of no change in MPC with improved efficiency is presented to the working group and discussed: EERE–2013–BT–NOC–0039–0072, pp. 114–130 and pp. 270–273; EERE–2013–BT–NOC–0039–0109, p. 264).

[32] AEA Energy & Environment. 2008, Appendix 6: Lot 11—'Circulators in buildings,' Report to European Commission.

product and capital conversion costs are found in chapter 5 of the final rule TSD.

TABLE IV.3—TOTAL CONVERSION COST AT EACH EFFICIENCY LEVEL

All values in millions of 2014 dollars	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
ESCC/ESFM *	0	12.6	50.1	112.2	213.5	349.8
IL	0	5.1	20.3	46.0	89.5	146.1
VTS.3600 ††	0	2.6	9.5	19.4	38.4	62.2
VTS.1800 ††	0	N/A **	N/A **	N/A **	N/A **	Data Not Available †
RSV	0	N/A **	N/A **	N/A **	N/A **	Data Not Available †

* Due to commonality in design and components, DOE calculated the conversion costs for ESCC and ESFM in aggregate. These values were later disaggregated, as appropriate, in downstream analyses.

** Intermediate efficiency levels were not established for VTS.1800 and RSV equipment classes. Please see section IV.A.2 for further detail.

† Although max-tech efficiency levels were established for VTS.1800 and RSV equipment classes, the available data was insufficient to establish a cost-efficiency relationship at max-tech. Please see section IV.A.2 for further detail.

†† VTS.3600 and VTS.1800 are listed separately as different efficiency levels have been established for each equipment class. Please see section IV.A.2 for more details.

7. Manufacturer Markup Analysis

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the full MPC. The resulting MSP is the price at which the manufacturer can recover all production and non-production costs and earn a profit. To meet the new energy conservation standards set forth in this rule, DOE expects that manufacturers will hydraulically redesign their product lines, which may result in new and increased capital and equipment conversion costs. Depending on the competitive environment for this equipment, some or all of the increased conversion costs may be passed from manufacturers to retailers and eventually to consumers in the form of higher purchase prices. The MSP should be high enough to recover the full cost of the equipment (*i.e.,* full production and non-production costs) and overhead (including amortized product and capital conversion costs), and still yield a profit. The manufacturer markup has an important bearing on profitability. A high markup under a standards scenario suggests manufacturers can readily pass along more of the increased capital and equipment conversion costs to consumers. A low markup suggests that manufacturers will not be able to recover as much of the necessary investment in plant and equipment.

To support the downstream analyses, DOE investigated industry markups in detail, characterizing industry-average markups, individual manufacturer markup structures, and the industry-wide markup structure.

a. Industry-Average Markups

In the NOPR, industry-average manufacturer markups were developed by weighting individual manufacturer markup estimates on a market share basis, as manufacturers with larger market shares more significantly affect the market average. 80 FR 17826, 17846 (April 2, 2015) DOE did not receive any comments on these industry-average markups and used the same markups in this final rule.

b. Individual Manufacturer Markup Structures

In the NOPR, DOE concluded that within an equipment class, each manufacturer maintains a flat markup, based on data and information gathered during the manufacturer interviews. This means that each manufacturer targets a single markup value for models offered in an equipment class, regardless of size, efficiency, or other design features. Tiered product offerings and markups do not exist at the individual manufacturer level. 80 FR 17827, 17846 (April 2, 2015) DOE received no comments regarding these individual manufacturer markup structure conclusions. Consequently, DOE has carried through these conclusion into their final rule analysis.

c. Industry-Wide Markup Structure

DOE also used the markup data gathered during the manufacturer interviews to assess the industry-wide markup structure. Although tiered product offerings and markups do not exist at the individual manufacturer level, DOE concluded in the NOPR that when analyzed as whole, the industry exhibits a relationship between manufacturer markup and efficiency. 80 FR 17827, 17846–17847 (April 2, 2015) DOE's analysis showed that on the industry-wide scale, the lowest efficiency models tend to garner lower markups than higher efficiency models, up to about the 25th percentile of efficiency. Beyond the 25th percentile, the relationship flattens out, and no correlation is seen between markup and efficiency. The data suggest that this relationship is a result of certain manufacturers positioning themselves with more or less efficient product portfolios and charging markups commensurate with their position in the marketplace. They also indicate (consistent with the views of the CIP Working Group) that the market does not value efficiency beyond the lower 25th percentile. (EERE–2013–BT–NOC–0039–0072, pp. 269–278; EERE–2013–BT–NOC–0039–0054, pp. 67–69) In both manufacturer interviews and working group comments, manufacturers stated that efficiency is not currently the primary selling point or cost driver for the majority of pumps within the scope of the proposed rule. Rather, other factors, such as reliability, may influence price significantly and are known to be more influential in the purchaser's decision making process. (EERE–2013–BT–NOC–0039–0072, pp. 269–278)

DOE notes that in the NOPR analysis, the development of the markup-efficiency relationship was based on data from the IL equipment class. In the NOPR phase, DOE, with support of the CIP Working Group, concluded that the markup structure of the IL equipment class is representative of the ESCC, ESFM, and VTS equipment classes.[33]

Based on comments previously discussed in section IV.A.2.b, DOE has concluded that available data do not support the development of a cost-efficiency relationship for the VTS.1800 equipment class. Beyond the removal of the VTS.1800 equipment class from the analysis, DOE did not receive any additional comments on the IL markup-efficiency relationship or the general

[33] Refer to the following transcript in which the conclusion that the markup structure of the IL equipment class is representative of the ESCC, ESFM, and VTS equipment classes is presented to the working group and no negative feedback is received: EERE–2013–BT–NOC–0039–0072, pp. 292–295.

methodology presented in the NOPR. Consequently, in this final rule, DOE applied the industry-wide IL markup-efficiency relationship to only the ESCC, ESFM, and VTS.3600 equipment classes. Chapter 5 of the final rule TSD provides complete details the markup-efficiency relationship analysis and results.

8. MSP-Efficiency Relationship

Ultimately, the goal of the engineering analysis is to develop an MSP-Efficiency relationship that can be used in downstream rulemaking analyses such as the Life Cycle Cost (LCC) analysis, the Payback Period (PBP) analysis, and the Manufacturer Impact Analysis (MIA).

For the NOPR downstream analyses, DOE evaluated the base case MSP-Efficiency relationship as well as two separate MSP-Efficiency relationship scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new energy conservation standards. 80 FR 17827, 17847 (Apr. 2, 2015) The two scenarios are: (1) Flat pricing, and (2) cost recovery pricing. These scenarios result in varying revenue and cash flow impacts and were chosen to represent the lower and upper bounds of potential revenues for manufacturers. DOE did not received any additional comments on these two cost recovery scenarios. Consequently, DOE has maintained its methodology and scenarios in the analysis of this final rule. The scenarios are described in further detail in the following paragraphs.

The base pricing scenario represents a snapshot of the pump market, as it stands prior to this rulemaking. The base pricing scenario was developed by applying the markup-efficiency relationship presented in section IV.C.7.c to the MPC model presented in section IV.C.5.a. Both the markup and MPC model are based on data supplied by individual manufacturers. From these data, DOE created a scalable model that can determine MSP as a function of efficiency, specific speed, and flow at BEP.

Under the flat pricing standards case scenario, DOE maintains the same pricing as in the base case, which resulted in no price changes at a given efficiency level for the manufacturer's first consumer. Because this pricing scenario assumes that manufacturers would not increase their pricing as a result of standards, even as they incur conversion costs, this scenario is considered a lower bound for revenues.

In the cost recovery pricing scenario, manufacturer pricing is set so that manufacturers recover their conversion costs over the analysis period. This cost recovery is enabled by an increase in mark-up, which results in higher sales prices for pumps even as MPCs stay the same. The cost recovery calculation assumes manufacturers raise prices on models where a redesign is necessitated by the standard. The additional revenue due to the increase in markup results in manufacturers recovering 100 percent of their conversion costs over the 30-year analysis period, taking into account the time-value of money. The final MSP-efficiency relationship for this scenario is created by applying the markup-efficiency relationship to the MPC cost model presented in section IV.C.5.b., resulting in a scalable model that can determine MSP as a function of efficiency, specific speed, and flow at BEP. In the LCC and NIA analysis, DOE evaluated only the cost recovery pricing scenario, as it would be the most conservative case for consumers, resulting in the fewest benefits.[34]

D. Markups Analysis

DOE uses markups (*e.g.,* manufacturer markups, distributor markups, contractor markups) and sales taxes to convert the MSP estimates from the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the manufacturer impact analysis. The markups are multipliers that represent increases above the MSP. DOE develops baseline and incremental markups based on the equipment markups at each step in the distribution chain. The incremental markup relates the change in the manufacturer sales price of higher-efficiency models (the incremental cost increase) to the change in the consumer price.

Before developing markups, DOE defines key market participants and identifies distribution channels. In the NOPR, DOE used the following main distribution channels that describe how pumps pass from the manufacturer to end-users: (1) Manufacturer to distributor to contractor to end-users (70 percent of sales); (2) manufacturer to distributor to end-users (17 percent of sales); (3) manufacturer to original equipment manufacturer to end-users (8 percent of sales); (4) manufacturer to end-users (2 percent of sales); and (5) manufacturer to contractor to end-users (1 percent of sales). Other distribution channels exist but are estimated to account for a minor share of pump sales (combined 2 percent). 80 FR 17826, 17847 (April 2, 2015). In response to the NOPR, Wilo agreed that the market distribution channels included all appropriate intermediate steps, and the estimated market share of each channel. (Wilo, No. 44 at p. 4) DOE received no additional comments on this topic. Therefore, DOE maintained these distribution channels for this final rule.

In the NOPR, to develop markups for the parties involved in the distribution of the equipment, DOE utilized several sources, including: (1) The U.S. Census Bureau 2007 *Economic Census Manufacturing Industry Series* (NAICS 33 Series) [35] to develop original equipment manufacturer markups; (2) the U.S. Census Bureau 2012 *Annual Wholesale Trade Survey, Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers* [36] to develop distributor markups; and (3) 2013 RS Means *Electrical Cost Data* [37] to develop mechanical contractor markups. 80 FR 17826, 17847 (April 2, 2015).

In addition to the markups, DOE derived State and local taxes from data provided by the Sales Tax Clearinghouse.[38] These data represent weighted-average taxes that include county and city rates. DOE derived shipment-weighted-average tax values for each region considered in the analysis. (*Id.*)

DOE did not receive any comments on the markups or sales tax and has maintained this approach for the final rule.

Chapter 6 of the final rule TSD provides details on DOE's development of markups for pumps.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of pumps at different efficiency levels and to assess the energy savings potential of increased pumps efficiency. The energy use analysis estimates the range of energy

[34] The cost recovery pricing scenario is the most conservative case (*i.e.,* resulting in the fewest benefits) for consumers and the most positive case for manufacturers (*i.e.,* resulting in the fewest negative impacts). In the MIA, DOE analyses this scenario and the flat pricing scenario, which results in the most positive case for consumer and the most conservative case for manufacturers.

[35] U.S. Census Bureau (2007). *Economic Census Manufacturing Industry Series (NAICS 33 Series) www.census.gov/manufacturing/asm.*

[36] U.S. Census Bureau (2012). *Annual Wholesale Trade Survey, Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers (NAICS 4237). www.census.gov/wholesale/index.html.*

[37] RS Means (2013), Electrical Cost Data, 36th Annual Edition (Available at: *www.rsmeans.com*).

[38] Sales Tax Clearinghouse, Inc. (last accessed on January 10, 2014), *State sales tax rates along with combined average city and county rates, http://thestc.com/STrates.stm.*

use of pumps in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

DOE analyzed the energy use of pumps to estimate the savings in energy costs that consumers would realize from more energy-efficient pump equipment. Annual energy use depends on a number of factors that depend on the utilization of the pump, particularly duty point (*i.e.,* flow, head, and power required for a given application), pump sizing, annual hours of operation, load profiles, and equipment losses. The annual energy use is calculated as a weighted sum of input power multiplied by the annual operating hours across all load points.

1. Duty Point

For the NOPR, DOE researched information on duty points for the commercial, industrial, and agricultural sectors from a variety of sources. DOE identified statistical samples only for the agricultural sector. Therefore, DOE used manufacturer shipment data to estimate the distribution of pumps in use by duty point. To account for the wide range of pump duty points in the field, DOE placed pump models in bins with varying power capacities using the shipment data provided by individual manufacturers. DOE grouped all pump models into nine power bins on a log-scale between 1 and 200 hp. Then, for each equipment class, DOE grouped the pump models into nine flow bins on a log-scale between minimum flow at BEP and maximum flow at BEP. Based on the power and flow binning process, DOE defined a representative unit for each of the combined power and flow bins. Within each bin, DOE defined the pump performance data (power and flow at BEP, pump curve and efficiency curve) as the shipment-weighted averages over all units in the bin. DOE used these data to calculate the annual energy use for each of the equipment classes. 80 FR 17826, 17848 (Apr. 2, 2015). DOE did not receive any comments and has maintained this approach in the final rule.

2. Pump Sizing

For the NOPR, DOE reviewed relevant guidelines and resources and introduced a variable called the BEP offset to capture variations in pump sizing practices in the field. The BEP offset is essentially the relative distance between the consumer's duty point and the pump's BEP. Pumps are often sized to operate within 75 percent to 110 percent of their BEP flow. Therefore, for the NOPR analysis, the BEP offset was assumed to be uniformly distributed between −0.25 (*i.e.,* 25% less than BEP flow) and 0.1 (10% more than BEP flow). 80 FR 17826, 17848 (April 2, 2015). DOE did not receive any comments on pump sizing and has maintained this approach in the final rule.

3. Operating Hours

For the NOPR, DOE estimated average annual operating hours by application based on inputs from a market expert and feedback from the CIP Working Group.[39] DOE developed statistical distributions to use in its energy use analysis. 80 FR 17826, 17848 (April 2, 2015). In response to the NOPR, Wilo commented that the average operating hours for the different pump equipment classes and applications in the scope of this rulemaking are based on assumptions and are not well documented in engineering resources. (Wilo, No. 44 at p. 4) Because operating hours are not well documented in engineering resources, DOE developed statistical distributions in the NOPR. DOE maintained its estimate on operating hours based on feedback from the CIP Working Group.

4. Load Profiles

Considering the range of all applications of the pump equipment classes for which DOE considered standards, in the NOPR DOE developed four load profiles, characterized by different weights at 50 percent, 75 percent, 100 percent, and 110 percent of the flow at the duty point. These load profiles represent different types of loading conditions in the field: flat load at BEP, flat/over-sized load weighted evenly at 50 percent and 75 percent BEP, variable load over-sized, and variable load under-sized. In the NOPR, based on discussion in the CIP Working Group, DOE estimated that only 10 percent of consumers would use pumps with the variable load/undersized load profile; the remaining load profiles were estimated to apply to 30 percent of consumers each. 80 FR 17826, 17848 (April 2, 2015). In response to the NOPR, Wilo commented that there are no established typical load profiles for pumps within U.S. engineering standards. (Wilo, No. 44 at p. 5) HI recommended that the equally weighted load profiles initially proposed during the CIP Working Group negotiations be used in the consumer sample. (HI, No. 45 at p. 3) After considering comments from HI and Wilo, and in the absence of established typical load profiles for pumps, DOE maintains the four distinct load profiles and weights outlined in the NOPR to define the range of applications available for pumps on the market.

To describe a pump's power requirements at points on the load profile away from the BEP, DOE used the shipment-weighted average pump curves, modeled as second-order polynomial functions, for each of the representative units. 80 FR 17826, 17849 (April 2, 2015). DOE received no comment on this approach and maintains it in this final rule.

5. Equipment Losses

Using the duty point, load profile, and operating hours, DOE calculated the energy use required for the end-use (or the energy which that is converted to useful hydraulic horsepower). However, the total energy use by pumps also depends on pump losses, motor losses, and control losses.

Pump losses account for the differences between pump shaft horsepower and hydraulic horsepower due to friction and other factors. In the NOPR, DOE took this into account using the efficiency information available in the manufacturer shipment data for each pump. To describe pump efficiency at points away from the BEP, DOE calculated shipment-weighted average efficiency curves for each representative unit, modeled as second-order polynomial functions. DOE used existing minimum motor efficiency standards in calculating annual energy use as well as the proposed default submersible motor efficiency values. DOE did not consider VFDs in the LCC analysis. 80 FR 17826, 17849 (April 2, 2015).

DOE received no comments on the use of these equipment losses in its energy use analysis. However, based on comments on the test procedure NOPR, DOE revised the default submersible motor efficiency values in the test procedure final rule. For the energy use analysis, DOE updated its submersible motor efficiency values to reflect those values.

DOE proposed in the test procedure NOPR that pumps sold with non-electric drivers be rated as bare pumps. Any hydraulic improvements made to the bare pump to comply with any applicable energy conservation standards would also result in energy savings if the pump is used with a non-electric driver. However, DOE

[39] Refer to the following transcripts in which operating hours are presented to the working group and no negative feedback is received: EERE–2013–BT–NOC–0039–0072, pp. 353–355; EERE–2013–BT–NOC–0039–0109, pp. 139–152.

estimated, based on information from consultants and the working group, that only 1–2% of pumps in scope are driven by non-electric drivers. Therefore, in the NOPR, DOE accounted for the energy use of all pumps as electricity use and did not account for fuel use in its analysis. DOE requested comment on the percent of pumps in scope operated by each fuel type other than electricity (*e.g.,* diesel, gasoline, liquid propane gas, or natural gas) and the efficiency or losses of each type of non-electric driver, including transmission losses if any, that would allow DOE to estimate the fuel use and savings of pumps sold with non-electric drivers. 80 FR 17826, 17849 (April 2, 2015).

DOE did not receive any input that would allow it to conduct this side analysis. HI agreed that non-electric drivers represent a very small percentage of drivers used with pumps and does not believe further evaluation on non-electric drivers is needed. (HI, No. 45 at p. 4) Consistent with HI's suggestion and lack of any additional input or data during public review, DOE did not include energy savings from non-electric drivers in the final rule. As in the NOPR, DOE accounted for the energy use of all pumps, including those used in agricultural applications with non-electric drivers, as electricity use.

Chapter 7 of the final rule TSD provides details on DOE's energy use analysis for pumps.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducts the life-cycle cost (LCC) and payback period (PBP) analysis to estimate the economic impacts of potential new standards on individual consumers of pump equipment. The LCC calculation considers total installed cost (equipment cost, sales taxes, distribution chain markups, and installation cost), operating expenses (energy, repair, and maintenance costs), equipment lifetime, and discount rate. DOE calculated the LCC for all consumers as if each would purchase a pump in the year that compliance is required with the standard. DOE presumes that the purchase year for all pump equipment for purposes of the LCC calculation is 2020, the first full year following the expected compliance date of late 2019. To compute LCCs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment.

DOE analyzed the effect of changes in installed costs and operating expenses by calculating the PBP of potential new standards relative to baseline efficiency levels. The PBP estimates the amount of time it would take the consumer to recover the incremental increase in the purchase price of more-efficient equipment through lower operating costs. In other words, the PBP is the change in purchase price divided by the change in annual operating cost that results from the energy conservation standard. DOE expresses this period in years. Similar to the LCC, the PBP is based on the total installed cost and operating expenses. However, unlike the LCC, DOE only considers the first year's operating expenses in the PBP calculation. Because the PBP does not account for changes in operating expense over time or the time value of money, it is also referred to as a simple PBP.

DOE's LCC and PBP analyses are presented in the form of a spreadsheet model, available on DOE's Web site for pumps.[40] DOE accounts for variability in energy use and prices, discount rates by doing individual LCC calculations for a large sample of pumps (10,000 for each equipment class) that are assigned different installation conditions. Installation conditions include consumer attributes such as sector and application, and usage attributes such as duty point and annual hours of operation. Each pump installation in the sample is equally weighted. The simple average over the sample is used to generate national LCC savings by efficiency level. The results of DOE's LCC and PBP analysis are summarized in section V.B.1.a and described in detail in chapter 8 of the final rule TSD.

1. Approach

DOE conducted the LCC analysis by developing a large sample of 10,000 pump installations, which represent the general population of pumps that would be affected by adopted energy conservation standards. Separate LCC analyses are conducted for each equipment class. Conceptually, the LCC distinguishes between the pump installation and the pump itself. The pump installation is characterized by a combination of consumer attributes (sector, application, electricity price, discount rate) and usage attributes (duty point, BEP offset, load profile, annual hours of operation, mechanical lifetime) that do not change among the considered efficiency levels. The pump itself is the regulated equipment, so its efficiency and selling price change in the analysis.

In the no-new-standards case, which represents the market in the absence of new energy efficiency standards, DOE assigns a specific representative pump to each pump installation. These pumps are chosen from the set of representative units described in the energy use analysis. The relative weighting of different representative units in the LCC sample is determined based on 2012 shipments data supplied by the manufacturers.

The no-new-standards case also includes an estimate of the distribution of equipment efficiencies. In the NOPR, DOE developed a no-new-standards case distribution of efficiency levels for pumps using the shipments data mentioned above. DOE assumed that this distribution would remain constant over time and applied the 2012 distribution in 2020. 80 FR 17826, 17850 (April 2, 2015). DOE received no comment on these assumptions and has maintained them for this final rule. Out of this distribution, DOE assigns a pump efficiency based on the relative weighting of different efficiencies. Chapter 8 of the final rule TSD contains details regarding the no-new-standards case efficiency distribution.

At each efficiency level, the pump assigned in the no-new-standards case has a PEI rating that either would or would not meet a standard set at that efficiency level. If the pump would meet the standard at a given efficiency level, the installation is left unchanged. For that installation, the LCC at the given TSL is the same as the LCC in the no-new-standards case and the standard does not impact that user. If the pump would not meet the standard at a given efficiency level, the no-new-standards case pump is replaced with a compliant unit (*i.e.,* a redesigned pump) having a higher selling price and higher efficiency, and the LCC is recalculated. The LCC savings at that efficiency level are defined as the difference between the LCC in the no-new-standards case and the LCC for the more efficient pump. The LCC is calculated for each pump installation at each efficiency level.

In the engineering analysis, DOE determines the total conversion costs required to bring the entire population of pump models up to a given efficiency level. DOE uses these conversion costs to calculate the selling price of a redesigned pump within each of the combined power and flow bins that define a representative unit. DOE assumes that all consumers whose no-new-standards case pump would not meet the standard at a given efficiency level will purchase the new redesigned pump at the new selling price, and that manufacturers recover the total conversion costs at each efficiency level. DOE allocates conversion costs to each

[40] See *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/14.*

representative unit based on the proportion of total revenues generated by that unit in the no-new-standards case.

DOE calculates the selling price in two stages. In the first stage, for each equipment class and efficiency level, DOE calculates the total revenue generated from all failing units, adds the total conversion costs to the revenues from failing units to generate the new revenue requirement, and defines a markup as the ratio of the new revenue requirement to the no-new-standards case revenue from failing units. This approach ensures that (1) the conversion costs are recovered from the sale of redesigned units and (2) the conversion costs are distributed across the different representative units in proportion to the amount of revenue each representative unit generates in the no-new-standards case.

In the second stage, DOE calculates a new selling price for each redesigned representative unit, *i.e.,* for each of the combined power and flow bins. In the no-new-standards case, each bin contains a set of pumps with varying efficiencies and varying prices. However, all pumps that fail at an efficiency level are given the same new price. Hence, the markup defined in stage one of the calculation cannot be applied directly to the selling price of a failing unit. Instead, DOE calculates revenues associates with all failing units in the bin, and applies the markup to this total to get the new revenue requirement for that bin. Then DOE defines the new selling price as the new revenue requirement divided by the number of failing units in the bin.

In general, the economic inputs to the LCC, (*e.g.,* discount rate and electricity price) depend on the sector, while the usage criteria (*e.g.,* hours of operation) may depend on the application. For the pumps analysis, DOE considered four sectors: industrial, commercial buildings, agricultural and municipal water utilities. DOE assigns electricity prices and discount rates based on the sector. DOE considered several applications, based on a review of available data, and determined that there is some correlation between application and operating hours. DOE did not find any information relating either the BEP offset (a pump sizing factor) or load profile to either sector or application, so DOE assigned these values randomly.

As noted above, DOE determines the distribution of representative units in the pump installation sample from the shipments data. Each representative unit can be thought of as a pump that operates at a representative duty point. To assign the consumer attributes (sector, application, etc.) to duty points, DOE reviewed several data sources to incorporate correlations between sector, application, equipment class and the distribution of duty points into the analysis. Specifically, DOE used a database of various industrial applications collected from several case studies and field studies, and a database on pump tests provided by the Pacific Gas & Electric Company, to construct the distribution of pumps by sector, application and speed as a function of power bin and equipment class. DOE used these distributions to determine the relative weighting of different sectors and applications in the LCC sample for each equipment class.

2. Life-Cycle Cost Inputs

For each efficiency level DOE analyzed, the LCC analysis required input data for the total installed cost of the equipment, its operating cost, and the discount rate. Table IV.4 summarizes the inputs and key assumptions DOE used to calculate the consumer economic impacts of all energy efficiency levels analyzed in this rulemaking. A more detailed discussion of the inputs follows.

TABLE IV.4—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES*

Inputs	Description
Affecting Installed Costs	
Equipment Price	Equipment price derived by multiplying manufacturer sales price or MSP (calculated in the engineering analysis) by distribution channel markups, as needed, plus sales tax from the markups analysis.
Installation Cost	Installation cost assumed to not change with efficiency level, and therefore is not included in this analysis.
Affecting Operating Costs	
Annual Energy Use	Annual unit energy consumption for each class of equipment at each efficiency level estimated by sector and application using simulation models.
Electricity Prices	DOE developed average electricity prices and projections of future electricity prices based on *Annual Energy Outlook 2015* (*AEO 2015*).[41]
Maintenance Cost	Maintenance cost assumed to not change with efficiency level, and therefore is not included in this analysis.
Repair Cost	Repair cost assumed to not change with efficiency level, and therefore is not included in this analysis.
Affecting Present Value of Annual Operating Cost Savings	
Equipment Lifetime	Pump equipment lifetimes estimated to range between 4 and 40 years, with an average lifespan of 15 years across all equipment classes, based on estimates from market experts and input from the CIP Working Group.
Discount Rate	Mean real discount rates for all sectors that purchase pumps range from 3.4 percent for municipal sector to 5.9 percent for industrial sector.
Analysis Start Year	Start year for LCC is 2020, which is the first full year following the estimated compliance date of late 2019.

TABLE IV.4—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES*—Continued

Inputs	Description
Analyzed Efficiency Levels	
Analyzed Efficiency Levels	DOE analyzed the baseline efficiency levels and five higher efficiency levels for each equipment class. See the engineering analysis for additional details on selections of efficiency levels and cost.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final rule TSD.
[41] U.S. Energy Information Administration. *Annual Energy Outlook 2015* (2015) DOE/EIA–0383(2015). (Last Accessed August 30, 2015) (Available at: *www.eia.gov/forecasts/aeo/.*)

DOE analyzed the baseline efficiency levels (reflecting the lowest efficiency levels currently on the market) and five higher efficiency levels for each equipment class analyzed. Chapter 5 of the final rule TSD provides additional details on the selection of efficiency levels and cost.

a. Equipment Prices

The price of pump equipment reflects the application of distribution channel markups and sales tax to the manufacturer sales price (MSP), which is the cost established in the engineering analysis. For each equipment class, DOE generated MSPs for the baseline equipment and five higher equipment efficiencies in the engineering analysis. As described in section IV.D, DOE determined distribution channel costs and markups for pump equipment.

The markup is the percentage increase in price as the pump equipment passes through distribution channels. As explained in section IV.D, DOE assumed that pumps are delivered by the manufacturer through one of five distribution channels. The overall markups used in LCC analyses are weighted averages of all of the relevant distribution channel markups.

To project an equipment price trend for the NOPR, DOE derived an inflation-adjusted index of the Producer Price Index for pumps and pumping equipment over the period 1984–2013.[42] These data show a general price index increase from 1987 through 2009. Since 2009, there has been no clear trend in the price index. Given the relatively slow global economic activity in 2009 through 2013, the extent to which the future trend can be predicted based on the last two decades is uncertain and the observed data do not provide a firm basis for projecting future cost trends for pump equipment. Therefore, DOE used a constant price assumption as the default trend to project future pump prices in 2020. Thus, prices projected for the LCC and PBP analysis were equal to the 2012 values for each efficiency level in each equipment class. 80 FR 17826, 17851 (April 2, 2015).

Wilo commented that a more appropriate inflation-adjusted pump price trend for existing products would exceed the inflation rate by 0.5 percent. (Wilo, No. 44 at p. 5) HI commented that the additional costs to re-design more efficient pumps cannot be passed along to the market, based on practices evidenced from the EU regulations, therefore marked up prices are not reflected in the current pump price trend. (HI, No. 45 at p.4.) DOE notes that Wilo did not provide any data or evidence supporting its assertions regarding the expected inflation-adjusted pump price trend, and DOE has not identified any data beyond the PPI series that it reviewed in the NOPR. In response to HI, DOE notes that the equipment prices developed in the NOPR and also used as the basis for this final rule reflect manufacturer cost-recovery as a worst-case scenario for consumers. Therefore, although DOE used a constant price trend, the prices in the LCC year (2020) reflect an increase over the pump prices in 2012. For these reasons, DOE has not changed its assumption of a constant price trend for this final rule. Appendix 8A of the final rule TSD describes the historical data that were considered in developing the trend.

b. Installation Costs

In the NOPR, due to the absence of data to indicate at what efficiency level DOE may need to consider an increase in installation costs, DOE did not estimate installation costs for the LCC. 80 FR 17826, 17851 (April 2, 2015). In response to the NOPR, Wilo and HI both agreed that consumers will experience an increase in installation costs that scale with efficiency. Specifically, HI commented that in driving for higher efficiency, suction performance could be impacted resulting in higher NPSH required and lower margins of safety. Piping system design and foundation changes may be required for reliable operation. (HI, No. 45 at p.4) Wilo commented that if a constant-speed efficiency requirement becomes extensive, consumers would experience a 30 percent increase in installation costs, and added that some submersible turbine pumps would require a larger diameter size, therefore leading to increased installation costs. (Wilo, No. 44 at p. 5) Wilo also commented that pump configurations that do not meet the standard and require a VFD will experience an additional 30 percent increase in installation costs, supplementary to the cost of the VFD. (*Id.*)

In response to HI, DOE requested specific data to help inform any estimates of at what point an increase in efficiency would decrease suction performance. Without actual data, DOE cannot implement a scaling of costs with efficiency (NOPR public meeting transcript, No. 51 at p. 38–39) Commenters did not provide data regarding increases in cost with efficiency, what would drive the increased installation costs for pumps other than submersible turbines, or at what efficiency level such increases might occur. In addition, for submersible turbines (which are designed to fit in boreholes), commenters did not identify the efficiency level at which diameter size would be expected to increase. Finally, DOE notes that the efficiency levels were all analyzed using hydraulic redesign. Therefore, none of the considered levels, including the proposed levels, would require use of a VFD. While manufacturers may opt to sell pumps with VFDs instead of improving their hydraulic efficiency, DOE did not consider the use of VFDs as a design option and therefore did not account for the associated increase in installation costs in its analysis. In other words, DOE only incorporated installation costs associated to the design options considered when establishing the efficiency levels. Given that available data do not support increases in installation costs at specific efficiency levels for any pump category due to hydraulic redesign, DOE continues to assume in this final rule

[42] Series ID PCU333911333911; *www.bls.gov/ppi/*.

that installation costs would not increase as a function of efficiency level and has not taken installation costs into account in the final rule.

c. Annual Energy Use

In the NOPR, DOE estimated the annual electricity consumed by each class of pump equipment, by efficiency level, based on the energy use analysis described in section IV.E and in chapter 7 of the final rule TSD. 80 FR 17826, 17852 (April 2, 2015). DOE did not receive any comments on annual energy use, so it has maintained this approach in the final rule.

d. Electricity Prices

Electricity prices are used to convert changes in the electric consumption from higher-efficiency equipment into energy cost savings. For the NOPR, DOE used average national commercial and industrial electricity prices from the *AEO 2014* reference case. DOE applied the commercial price to pump installations in the commercial sector and the industrial price to installations in the industrial, agricultural, and municipal sectors. To establish prices beyond 2040 (the last year in the *AEO 2014* projection, DOE extrapolated the trend in prices from 2030 to 2040 for both the commercial and industrial sectors. 80 FR 17826, 17852 (April 2, 2015). DOE did not receive any comments on electricity prices. For the final rule, DOE has maintained the same approach but has updated the prices and price trends to *AEO 2015.*

e. Maintenance Costs

As discussed in the NOPR, DOE assumed that maintenance costs would not change with efficiency level and did not estimate a maintenance cost for this analysis. 80 FR 17826, 17852 (April 2, 2015). DOE did not receive any comments on maintenance costs and has maintained this approach for the final rule.

f. Repair Costs

As discussed in the NOPR, DOE assumed that repair costs are not expected to change with efficiency level and did not estimate a repair cost for this analysis. 80 FR 17826, 17852 (April 2, 2015). DOE did not receive any comments on repair costs and has maintained this approach for the final rule.

g. Equipment Lifetime

DOE defines ''equipment lifetime'' as the age when a given commercial or industrial pump is retired from service. In the NOPR, DOE developed distributions of lifetimes that vary by equipment class. The average across all equipment classes was 15 years. DOE also used a distribution of mechanical lifetime in hours to allow a negative correlation between annual operating hours and lifetime in years—pumps with more annual operating hours tend to have shorter lifetimes. In addition, based on discussions in the CIP Working Group meetings,[43] DOE introduced lifetime variation by pump speed—pumps running faster tend to have a shorter lifetime. 80 FR 17826, 17852 (April 2, 2015). DOE did not receive any comments on equipment lifetime, and therefore maintained this approach in the final rule.

Chapter 8 of the final rule TSD contains a detailed discussion of equipment lifetimes.

h. Discount Rates

The discount rate is the rate at which future expenditures are discounted to estimate their present value. The cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. In the NOPR, for all but the municipal sector, DOE used the capital asset pricing model to calculate the equity capital component, and financial data sources, primarily the Damodaran Online Web site,[44] to calculate the cost of debt financing. DOE derived the discount rates by estimating the cost of capital of companies that purchase pumping equipment. 80 FR 17826, 17852 (April 2, 2015).

For the municipal sector, DOE calculated the real average interest rate on state and local bonds over the period of 1983–2012 by adjusting the Federal Reserve Board nominal rates to account for inflation. This 30-year average is assumed to be representative of the cost of capital relevant to municipal end users over the analysis period. (*Id.*)

DOE did not receive any comments on the proposed discount rates, and therefore maintained its approach in the final rule. More details regarding DOE's estimates of consumer discount rates are provided in chapter 8 of the final rule TSD.

3. Payback Period

The PBP measures the amount of time it takes the commercial consumer to recover the assumed higher purchase expense of more-efficient equipment through lower operating costs. Similar to the LCC, the PBP is based on the total installed cost and the operating expenses for each application and sector, weighted by the probability of shipments to each market. Because the simple PBP does not take into account changes in operating expense over time or the time value of money, DOE considered only the first year's operating expenses to calculate the PBP, unlike the LCC, which is calculated over the lifetime of the equipment. Chapter 8 of the final rule TSD provides additional details about the PBP calculation.

4. Rebuttable-Presumption Payback Period

EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(a). For each considered efficiency level, DOE determines the value of the first year's energy savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy price forecast for the year in which compliance with the new standards would be required.

G. Shipments Analysis

In its shipments analysis, DOE developed shipment projections for pumps and, in turn, calculated equipment stock over the course of the analysis period. DOE used the shipments projection and the equipment stock to determine the NES. The shipments portion of the spreadsheet model projects pump shipments from 2020 through 2049.

In the NOPR, to develop the shipments model, DOE started with the 2012 shipment estimates by equipment type from HI (EERE–2013–BT–NOC–0039–0068). For the initial year, DOE distributed total shipments into the four sectors using estimates from the LCC, as discussed in section IV.F.1. To project shipments of pumps, DOE relied primarily on *AEO 2014* forecasts of various indicators for each sector: (1) Commercial floor space; (2) value of manufacturing shipments; (3) value of agriculture, mining, and construction

[43] See, *e.g.,* Docket No. EERE–2013–BT–NOC–0039–0073, p. 153.

[44] Damodaran financial data used for determining cost of capital are available at: *http://pages.stern.nyu.edu/~adamodar/* for commercial businesses (Last accessed February 12, 2014).

shipments; and (4) population (for the municipal sector).

DOE used the 2012 total industry shipments by equipment class estimated by HI to distribute total shipments in each year into the five equipment types. DOE then used 2012 shipment data collected directly from manufacturers to distribute shipments into the further disaggregated equipment classes accounting for nominal speeds. The distribution of sectors changes over time as a result of each sector's differing forecast in AEO, while the distribution of equipment classes remains constant over time.

DOE estimated that standards would have a negligible impact on pump shipments. Under most pricing scenarios, it is likely that following a standard, a consumer would be able to buy a more efficient pump for the same price as the less efficient pump they would have purchased before or without a standard. Therefore, rather than foregoing a pump purchase under a standards case, a consumer might simply switch brands or pumps to purchase a cheaper one that did not have to be redesigned. As a result, DOE used the same shipments projections in the standards case as in the no-new-standards case. 80 FR 17826, 17852 (April 2, 2015).

In response to the NOPR, HI agreed that total shipments will not change significantly with the proposed standards but commented that consumers may decide to repair rather than replace pumps. (HI, No. 45 at p. 4) Wilo commented that there will likely be some minor impacts to shipments, specifically, a slight decline in complete pump sales, and an increase in replacement parts to repair pumps. (Wilo, No. 44 at p. 5–6) Given that HI and Wilo expect the impacts to be minor and that no data are available to support changes in total shipments estimates and annual repair estimates, DOE maintained its approach to the shipments analysis in the final rule. DOE updated its projections based on the forecasts of various indicators for each sector in *AEO 2015.* Chapter 9 of the final rule TSD contains more details.

H. National Impact Analysis

The national impact analysis (NIA) evaluates the effects of energy conservation standards from a national perspective. This analysis assesses the net present value (NPV) (future amounts discounted to the present) and the national energy savings (NES) of total commercial consumer costs and savings expected to result from new standards at specific efficiency levels.[45]

The NES refers to cumulative energy savings for the lifetime of pumps shipped from 2020 through 2049. DOE calculated energy savings in each year relative to a no-new-standards case, defined by the current market. DOE calculated net monetary savings in each year relative to the no-new-standards case as the difference between total operating cost savings and increases in total installed cost. DOE accounted for operating cost savings until the year when the equipment installed in 2049 should be retired. Cumulative savings are the sum of the annual NPV over the specified period.

1. Approach

The NES and NPV are a function of the total number of units in use and their efficiencies. Both the NES and NPV depend on annual shipments and equipment lifetime. Both calculations start by using the shipments estimate and the quantity of units in service derived from the shipments model.

DOE used a spreadsheet tool, available on DOE's Web site for pumps,[46] to calculate the energy savings and the national monetary costs and savings from potential new standards. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet.

Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs, but relies on national average equipment costs and energy costs developed from the LCC analysis. DOE projected the energy savings, energy cost savings, equipment costs, and NPV of benefits for equipment sold in each pump class from 2020 through 2049.

a. National Energy Savings

DOE calculated the NES based on the difference between the per-unit energy use under a standards-case scenario and the per-unit energy use in the no-new-standards case. The average energy per unit used by the pumps in service gradually decreases in the standards case relative to the no-new-standards case because more-efficient pumps are expected to gradually replace less-efficient ones.

Unit energy consumption values for each equipment class are taken from the LCC spreadsheet for each efficiency level and weighted based on market efficiency distributions. To estimate the total energy savings for each efficiency level, DOE first calculated the delta unit energy consumption (*i.e.,* the difference between the energy directly consumed by a unit of equipment in operation in the no-new-standards case and the standards case) for each class of pumps for each year of the analysis period. The analysis period begins with the first full year following the estimated compliance date of any new energy conservation standards (*i.e.,* 2020). Second, DOE determined the annual site energy savings by multiplying the stock of each equipment class by vintage (*i.e.,* year of shipment) by the delta unit energy consumption for each vintage (from step one). Third, DOE converted the annual site electricity savings into the annual amount of energy saved at the source of electricity generation (primary energy) using a time series of conversion factors derived from the *AEO 2015* version of EIA's National Energy Modeling System (NEMS). Finally, DOE summed the annual primary energy savings for the lifetime of units shipped over a 30-year period to calculate the total NES. DOE performed these calculations for each efficiency level considered for pumps in this rulemaking.

DOE has historically presented NES in terms of primary energy savings. On August 18, 2011, DOE published a final statement of policy in the **Federal Register** announcing its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281. After evaluating the approaches discussed in the August 18, 2011 statement, DOE published a statement of amended policy in the **Federal Register** in which DOE explained its determination that NEMS is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). Therefore, DOE used the NEMS model to conduct the FFC analysis. The approach used for this rulemaking, and the FFC multipliers that were applied, are described in appendix 10B of the final rule TSD.

To properly account for national impacts, DOE adjusted the energy use and energy costs developed from the LCC spreadsheet. Specifically, in the LCC, DOE does not account for pumps sold with trimmed impellers or pumps used with VSDs, both of which may reduce the energy savings resulting from pump efficiency improvements.

For the NOPR, DOE reviewed studies on VSD penetration and used an initial

[45] The NIA accounts for impacts in the 50 States and the U.S. territories.

[46] DOE's Web page on pumps can be found at: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/14.*

penetration of 3.2 percent in 1998 [47] with a 5 percent annual increase.[48] Although these studies are not specific to VFDs, DOE assumed all VSD use was attributable to VFD use, as VFDs are the most common type of VSD in the pumps market.[49] Based on DOE's analysis of VFD users in the consumer subgroup analysis (see section IV.I), DOE assumed VFDs would reduce energy use by 39 percent on average, which also reduces the potential energy savings from higher efficiency. However, DOE assumed based on the difficulties with VFD installation and operation,[50] that the full amount of potential savings would not be realized for all consumers. DOE assumed an ''effectiveness rate'' of 75 percent; in other words DOE assumed that consumers would achieve on average only 75 percent of the 39 percent estimated savings (*i.e.,* 29 percent savings) because of improper installation, operation inconsistent with intended use, or other equipment problems. 80 FR 17826, 17853 (April 2, 2015).

For the NOPR, DOE assumed that for all equipment classes except VTS, 50 percent of pumps not sold with VFDs are sold with impellers trimmed to 85 percent of full impeller. According to the pump affinity laws, which are a set of relationships that can be used to predict the performance of a pump when its speed or impeller diameter is changed, such an impeller trim uses 61 percent of the power of full trim. Accordingly, DOE reduced the energy use for those consumers by 39 percent. For the VTS equipment class, DOE assumed that pumps were not sold with trimmed impellers. A large percentage of these pumps are pressed stainless steel and will never be trimmed; the remainder of these pumps will be significantly less likely to be trimmed than other pump types because variability in the number of stages would be used in place of trimming the impellers. (*Id.*)

DOE used the penetration rate and power reduction values for VFDs and trimmed impellers, as well as the effectiveness rate for VFDs, to create an energy use adjustment factor time series in the NES spreadsheet. (*Id.*)

In response to the NOPR, Wilo commented that the energy savings relative to ''business-as-usual'' are overstated due to the adoption of new technologies, including pumps with VFDs (Wilo, No. 44 at p. 1), and that power reductions associated with VFDs are dependent on the pump application. (Wilo, No. 44 at p. 6) HI stated that maintaining maximum diameter and using continuous controls would result in higher energy savings. (HI, No. 45 at p. 6) Wilo commented that pumps shipped with VFDs do not have a trimmed impeller. (Wilo, No. 44 p. 6)

As stated previously, DOE used a 5 percent annual increase for VFD penetration to account for market adoption of these technologies. Available data do not indicate that DOE's assumption on the VFD penetration growth rate is incorrect. Therefore, DOE has maintained this growth rate in the final rule. DOE acknowledges that power reductions associated with VFDs are dependent on pump application. In the NIA, however, DOE has attempted to capture the national average power reduction. Modeling variability in power reduction across applications is not expected to significantly impact the average assumed reduction.

DOE believes that HI and Wilo's comments regarding maximum diameter and trimmed impellers validate DOE's approach to assuming only trimmed impellers for non-VFD shipments. Therefore, DOE maintains this approach in the final rule.

For more information on VFD penetration, see chapter 9 of the final rule TSD.

In the NOPR, DOE considered whether a rebound effect applies to pumps. A rebound effect occurs when an increase in equipment efficiency leads to increased demand for its service. For example, when a consumer realizes that a more-efficient pump used for cooling will lower the electricity bill, that person may opt for increased comfort in the building by using the equipment more, thereby negating a portion of the energy savings. In commercial buildings, however, the person owning the equipment (*i.e.,* the building owner) is usually not the person operating the equipment (*i.e.,* the renter). Because the operator usually does not own the equipment, that person will not have the operating cost information necessary to influence their operation of the equipment. Therefore, DOE believes that a rebound effect is unlikely to occur in commercial buildings. In the industrial and agricultural sectors, DOE believes that pumps are likely to be operated whenever needed for the required process or irrigation demand, so a rebound effect is also unlikely to occur in the industrial and agricultural sectors. 80 FR 17826, 17853 (April 2, 2015).

In response to the NOPR, HI agreed that a rebound effect is unlikely to occur and does not believe it should be included in the determination of annual energy savings. (HI, No. 45 at p. 5) Consistent with this suggestion, DOE maintained its position and did not incorporate the impact of a rebound effect in the final rule.

b. Net Present Value

To estimate the NPV, DOE calculated the net impact as the difference between total operating cost savings and increases in total installed costs. DOE calculated the NPV of each considered standard level over the life of the equipment using the following three steps.

First, DOE determined the difference between the equipment costs under the standard-level case and the no-new-standards case to obtain the net equipment cost increase resulting from the higher standard level. In the NOPR, DOE used a constant price assumption as the default price forecast. In addition, DOE considered two alternative price trends to investigate the sensitivity of the results to different assumptions regarding equipment price trends. One of these used an exponential fit on the deflated Producer Price Index (PPI) for pump and puming equipment manufacturing, and the other is based on the ''deflator—industrial equipment'' forecast for *AEO 2014.* 80 FR 17826, 17854 (April 2, 2015) Comments on this approach are discussed in section IV.F.2.a, and DOE has maintained the same approach for the final rule with minor updates described in appendix 10B of the final rule TSD.

Second, DOE determined the difference between the no-new-standards case operating costs and the standard-level operating costs to obtain the net operating cost savings from each higher efficiency level.

Third, DOE determined the difference between the net operating cost savings and the net equipment cost increase to obtain the net savings (or expense) for each year. DOE then discounted the annual net savings (or expenses) to 2015 and summed the discounted values to

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[47] *United States Industrial Electric Motor Systems Market Opportunities Assessment.* Tech. Washington DC: U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE), 1998. Print.

[48] Almeida, A., Chretien, B., Falkner, H., Reichert, J., West, M., Nielsen, S., and Both, D. *VSDs for Electric Motor Systems.* Tech. N.p.: European Commission Directorate-General for Transport and Energy, SAVE II Programme 2000, n.d. Print.

[49] See for example: *Energy Tips—Motor.* Tech. Washington DC: U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE), 2008, Motor Tip Sheet #11, Print, p. 1. *Variable Frequency Drives.* Tech. Northwest Energy Efficiency Alliance, 2000, Report #00–054, Print, Exhibit 2.1.

[50] See for example: *Variable speed drives: Introducing energy saving opportunities for business.* London: Carbon Trust, 2011.

provide the NPV for a standard at each efficiency level.

In accordance with the Office of Management and Budget's (OMB's) guidelines on regulatory analysis,[51] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, because recent OMB analysis has found the average rate of return on capital to be near this rate. DOE used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for equipment and reduced purchases of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on United States Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the past 30 years.

2. No-New-Standards Case and Standards-Case Distribution of Efficiencies

As described in the NOPR, DOE developed a no-new-standards case distribution of efficiency levels for pumps using performance data provided by manufacturers. Because the available evidence suggested that there is no trend toward greater interest in higher pump efficiency, DOE assumed that the no-new-standards case distribution would remain constant over time. Furthermore, DOE had no reason to believe that implementation of standards would lead to an increased demand for more efficient equipment than the minimum available, and therefore did not use an efficiency trend in the standards-case scenarios.

For each efficiency level analyzed, DOE used a ''roll-up'' scenario to establish the market shares by efficiency level for the year that compliance would be required with new standards (*i.e.,* 2020). DOE concluded that equipment efficiencies in the no-new-standards case that were above the standard level under consideration would not be affected. Information from certain manufacturers indicated that for pumps not meeting a potential standard at some of the lower efficiency levels, redesign would likely target an efficiency level higher than the minimum given the level of investment required for a redesign, and the relatively more modest change in investment to design a given pump to a higher level once redesign is already taking place. However, DOE had no data that clearly indicate what percentage of failing pumps would likely be redesigned to a level higher than the minimum, or how high that level would be. In the absence of such data, DOE did not assume that manufacturers would design to a level higher than required, to avoid overestimating the energy savings that would result from the rulemaking. 80 FR 17826, 17855 (April 2, 2015) DOE did not receive comment on this approach and has maintained it for the final rule. The no-new-standards case efficiency distributions for each equipment class are presented in chapter 10 of the final rule TSD.

I. Consumer Subgroup Analysis

For the consumer subgroup analysis, DOE estimated the impacts of the TSLs on the subgroup of consumers who operate their pumps with VFDs.[52] DOE analyzed this subgroup because the lower power typically drawn by operating pumps at reduced speed may reduce the energy and operating cost savings to the consumer that would result from improved efficiency of the pump itself. DOE estimated the average LCC savings and simple PBP for the subgroup compared with the results from the full sample of pump consumers, which did not account for VFD use.

J. Manufacturer Impact Analysis

1. Overview

DOE performed a manufacturer impact analysis (MIA) to calculate the financial impact of energy conservation standards on manufacturers of pumps and to estimate the potential impact of such standards on direct employment and manufacturing capacity.

The MIA has both quantitative and qualitative aspects. The quantitative portion of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for this rulemaking. The key GRIM inputs are data on the industry cost structure, equipment costs, shipments, markups, and conversion expenditures. The key output is the industry net present value (INPV). Different sets of assumptions will produce different results. The qualitative portion of the MIA addresses factors such as equipment characteristics, as well as industry and market trends. Chapter 12 of the TSD describes the complete MIA.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the pumps industry that includes a top-down cost analysis of manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* sales, general, and administration (SG&A) expenses; research and development (R&D) expenses; and tax rates). DOE used public sources of information, including the Securities and Exchange Commission (SEC) 10–K filings;[53] corporate annual reports; the U.S. Census Bureau's Annual Survey of Manufacturers;[54] and Hoovers reports.[55]

In phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of an energy conservation standard. In general, new or amended energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and possible changes in sales volumes.

In phase 3 of the MIA, DOE conducted detailed interviews with a representative cross-section of manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns.

Additionally, in phase 3, DOE evaluates subgroups of manufacturers that may be disproportionately impacted by standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash-flow analysis. For example, small manufacturers, niche players, or manufacturers exhibiting a cost structure that largely differs from the industry average could be more negatively affected. For this final rule, DOE analyzed small manufacturers as a subgroup.

The Small Business Administration (SBA) defines a small business under

[51] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4.*)

[52] In this analysis, DOE is not counting energy savings of switching from throttling a pump to using a VFD, as this is not a design option. DOE is simply analyzing the life-cycle costs of customers that use VFDs with their pumps.

[53] Filings & Forms, Securities and Exchange Commission (2013) (Available at: *http://www.sec.gov/edgar.shtml*) (Last accessed July 2013).

[54] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2010) (Available at: *<http://www.census.gov/manufacturing/asm/index.html>*) (Last accessed July, 2013).

[55] Hoovers | Company Information | Industry Information | Lists, D&B (2013) (Available at: *http://www.hoovers.com/*) (Last accessed July 2013).

North American Industry Classification System (NAICS) code 333911, ''Pump and Pumping Equipment Manufacturing,'' as one having no more than 500 employees. During its research, DOE identified 25 domestic companies that manufacture equipment covered by this rulemaking and qualify as small businesses under the SBA definition. Consistent with the requirements of the Regulatory Flexibility Act, DOE's analysis of the small business subgroup is discussed in section VII.B of this document and chapter 12 of the TSD.

2. GRIM Analysis

As discussed previously, DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value due to energy conservation standards. The GRIM analysis uses a discounted cash-flow methodology that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs. The GRIM model changes in MPCs, distributions of shipments, investments, and manufacturer margins that could result from new energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2015 (the base year of the MIA) and continuing to 2049. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. DOE applied a discount rate of 11.8 percent, derived from industry financials and then modified according to feedback received during manufacturer interviews.

In the GRIM, DOE calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each TSL (the standards case). The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the energy conservation standard on manufacturers. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the TSD.

a. GRIM Key Inputs

Manufacturer Production Costs

Manufacturer production costs (MPCs) are the cost to the manufacturer to produce a covered pump. The cost includes raw materials and purchased components, production labor, factory overhead, and production equipment depreciation. The changes, if any, in the MPC of the analyzed products can affect revenues, gross margins, and cash flow of the industry. In the MIA, DOE used the MPCs for each efficiency level calculated in the engineering analysis, as described in section IV.C.5 and further detailed in chapter 5 of the TSD. In addition, DOE used information from manufacturer interviews to disaggregate the MPCs into material, labor, and overhead costs.

Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by equipment class. For the no-new-standards case analysis, the GRIM uses the NIA no-new-standards case shipments forecasts from 2015 (the base year for the MIA analysis) to 2049 (the last year of the analysis period). In the shipments analysis, DOE estimates the distribution of efficiencies in the no-new-standards case for all equipment classes. See section IV.G for additional details.

For the standards-case shipment forecast, the GRIM uses the NIA standards-case shipment forecasts. The NIA assumes that equipment efficiencies in the no-new-standards case that do not meet the energy conservation standard in the standards case ''roll up'' to meet the standard after the compliance date. See section IV.G for additional details.

Product and Capital Conversion Costs

Energy conservation standards can cause manufacturers to incur conversion costs to make necessary changes to their production facilities and bring product designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each equipment class. For the purpose of the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, and marketing, focused on making product designs comply with the energy conservation standard. Capital conversion costs are investments in property, plant, and equipment to adapt or change existing production facilities so that compliant equipment designs can be fabricated and assembled.

In the NOPR, DOE used a bottom-up approach to evaluate the magnitude of the product and capital conversion costs the pump industry would incur to comply with new energy conservation standards. 80 FR 17826, 17845–17846 (April 2, 2015) For this approach, DOE first determined the industry-average cost, per model, to redesign pumps of varying sizes to meet each of the candidate efficiency levels. DOE then modeled the distribution of unique pump models that would require redesign at each efficiency level. For each efficiency level, DOE multiplied each unique failing model by its associated cost to redesign it to comply with the applicable efficiency level and summed the total to reach an estimate of the total product and capital conversion cost for the industry. DOE maintained this approach in this final rule. A more detailed description of this methodology can be found in engineering section IV.C.6.

In general, DOE assumes that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the standard. The investment figures used in the GRIM can be found in section V.V.B.2 of this document. For additional information on the estimated product conversion and capital conversion costs, see chapters 5 and 12 of the TSD.

b. GRIM Scenarios

Markup Scenarios

As discussed above, MSPs include direct manufacturing production costs (*i.e.,* labor, material, and overhead estimated in DOE's MPCs), all non-production costs (*i.e.,* SG&A, R&D, and interest), and profit. To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the full MPC. The resulting MSP is the price at which the manufacturer can recover all production and non-production costs and earn a profit. Modifying these markups in the standards case yields different sets of impacts on manufacturers.

To meet new energy conservation standards, manufacturers must often invest in design changes that result in changes to equipment design and production lines, which can result in changes to MPC and changes to working capital, as well as change to capital expenditures. Depending on the competitive pressures, some or all of the increased costs may be passed from manufacturers to the manufacturers' first consumer (typically a distributor) and eventually to consumers in the form of higher purchase prices. The MSP should be high enough to recover the full cost of the produced equipment (*i.e.,* full production and non-production costs) and yield a profit. The manufacturer markup impacts profitability. A high markup under a standards scenario suggests manufacturers can readily pass along

increases in variable costs and some of the capital and product conversion costs (the one-time expenditures) to consumers. A low markup suggests that manufacturers will not be able to recover as much of the necessary investment in plant and equipment.

In the NOPR, industry-average, no-new-standards case manufacturer markups were developed by weighting individual manufacturer markup estimates on a market share basis, as manufacturers with larger market shares more significantly affect the market average. 80 FR 17826, 17846 (April 2, 2015) DOE did not receive any comments on these industry-average markups and used the same markups in this final rule.

In the NOPR, DOE modeled two standards case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new energy conservation standards: (1) A flat markup scenario; and (2) a cost recovery markup scenario. 80 FR 17827, 17847 (April 2, 2015) These scenarios lead to different markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts. DOE used these values to represent the lower and upper bounds of potential markups for manufacturers. DOE did not receive any additional comments on these two cost recovery scenarios. Consequently, DOE has maintained its methodology scenarios, and resulting markups, in the analysis of this final rule. The scenarios are described in further detail in the following paragraphs.

Under the flat markup scenario, DOE maintains the same markup in the no-new-standards case and standards case. This results in no price changes at a given efficiency level for the manufacturer's first consumer. Based on the MSP, component cost, performance, and efficiency data supplied by both individual manufacturers and HI, DOE concluded the non-production cost markup (which includes SG&A expenses, R&D expenses, interest, and profit) to vary by efficiency level. DOE calculated the flat markups as follows:

TABLE IV.5—INDUSTRY AVERAGE FLAT MANUFACTURER MARKUPS

	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC	1.37	1.38	1.39	1.39	1.39	1.39
ESFM	1.33	1.37	1.38	1.39	1.39	1.39
IL	1.43	1.46	1.47	1.47	1.47	1.47
VT–S	1.37	1.37	1.40	1.40	1.40	1.40

Because this markup scenario assumes that manufacturers would not increase their pricing for a given efficiency level as a result of a standard even as they incur conversion costs, this markup scenario is considered a lower bound.

In the cost recovery markup scenario, manufacturer markups are set so that manufacturers recover their conversion costs, which are investments necessary to comply with the new energy conservation standard, over the analysis period. That cost recovery is enabled by an increase in mark-up, which results in higher manufacturer sales prices for pumps even as manufacturer product costs stay the same. The cost recovery calculation assumes manufacturers raise prices only on models where a redesign is necessitated by the standard. The additional revenue due to the increase in markup results in manufacturers recovering 100% of their conversion costs over the 30-year analysis period, taking into account the time-value of money. DOE's calculated cost recovery markups are as follows:

TABLE IV.6—INDUSTRY AVERAGE COST RECOVERY MANUFACTURER MARKUPS

	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC	1.37	1.57	1.68	1.74	1.92	2.13
ESFM	1.33	1.45	1.51	1.54	1.61	1.70
IL	1.43	1.53	1.62	1.73	1.88	2.02
VT–S	1.37	1.49	1.47	1.54	1.65	1.77

Because this markup scenario models the maximum level to which manufacturers would increase their pricing as a result of the given standard, this markup scenario is considered an upper bound to markups.

Depending on the equipment class and the standard level being analyzed, the cost-recovery markup results in a simple payback period of 7 to 8 years for the industry. This means the total additional revenues due to a higher markup equal the industry conversion cost within seven to eight years, not taking into account the time value of money. The simple payback period varies at each TSL due to differences in the number of models requiring redesign, the total conversion costs, and the number of units over which costs can be recouped. The simple payback timeframes are as follows:

TABLE IV.7—MANUFACTURER SIMPLE PAYBACK PERIOD

	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Years	0	8	7	7	7	7

The payback period is greatest at TSL 1 due to the relatively high numbers of models that require redesign as compared to the number of units sold at that level. These payback periods are unchanged from the NOPR analysis.

3. Discussion of MIA Comments

During the NOPR public comment period, interested parties commented on assumptions and results described in the NOPR document and accompanying TSD, addressing several topics related to manufacturer impacts. These include: Conversion costs; industry direct employment; cumulative regulatory burden; and small business impacts.

Conversion Costs

Several commenters requested information about DOE's conversion costs for the pump industry. In response to DOE's request for comment on conversion costs, HI requested further clarification of the sources of DOE's conversion cost data. (HI, No.45 at p.5) Wilo commented that conversion costs at their company would total $125,000 to $300,000 per pump model to reach ''high efficiency''. Wilo also noted that testing could require operational expenditures of $750,000 for their business. (Wilo, No. 44 at p.6–7)

DOE's conversion costs were based on industry survey data provided to the Department by HI, as noted in section IV.C.5 of this document. The industry feedback, which included data from 15 different manufacturers, suggested industry-average conversion costs of approximately $200,000 per model. DOE believes the data provided by HI to be the best dataset available for estimating industry conversion costs. Wilo's range of $125,000 to $300,000 is consistent with DOE's estimates, though DOE recognizes that any single manufacturer's conversion cost may differ from the average. In Wilo's written comments, the company also noted a cost of $750,000 to retest 15,000 unique products. DOE believes that grouping of products into basic models for the purposes of CC&E testing may allow the company to mitigate these costs, as not each unique product requires testing. In response to Wilo's concern, DOE updated its financial models for the final rule to include an expense to industry for testing all basic models. The final pumps test procedure estimated the total cost of testing a pump, including setup, tests, and takedown to range between $161.61 and $430.96 per model. 80 FR 17586 (April 1, 2015). DOE used the upper end estimate of $430.96 per test to develop a conservative expense to industry. Assuming two tests per model and 3,332 basic models in the industry, DOE estimates the cost to test all products in accordance with the DOE test procedure expense will result in an expense of $2.9 million to the industry in both the no-standards case and the standards cases. Additional information about DOE's conversion cost methodology can be found in section IV.C.6 of this document and in Chapter 12 of the TSD.

Direct Employment

HI stated that it disagreed with the statement that ''DOE estimates that in the absence of energy conservation standards, there would be 415 domestic production workers for covered pumps'', and requests to know what data was used to determine this value. HI also believes that the impact will be greater than what is stated by the DOE. HI also believes it is important for DOE to analyze and report the impact on employment throughout the supply and distribution chain. (HI, No.45 at p.5)

In the manufacturer impact analysis, DOE analyzes the impacts on regulated pump manufacturers. DOE's production worker employment estimate includes only workers directly involved in fabricating and assembling the covered product and their line supervisors within the manufacturing facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's production worker estimate relies on the domestic pump shipments estimated in the shipments analysis, the labor content per pump estimated using the engineering analysis, and typical production worker wages estimated using labor rate data in the US Census. The complete methodology is explained in detail in section 12.7 of the TSD. DOE's production worker estimate does not include workers in the supply or distribution chain. These workers are accounted for in DOE's analysis of the indirect employment impact, which estimates impacts on the broader economy. These impacts can be found in section V.B.3.c.

Cumulative Regulatory Burden

HI noted that pending regulations on dedicated purpose pool pumps and any additional pump regulations will further tax the limited resources available for redesign, manufacturing, and testing of new products. (HI, No.45 at p. 6) DOE does not list the pool pump rulemaking in its list of cumulative regulations because the rulemaking is in the preliminary stages. Until the rule reaches the NOPR stage, DOE does not have enough detail on the scope of coverage, the effective date, and potential conversion costs. DOE will consider whether to include the regulatory burden of these pump standards in any subsequent analysis of the cumulative regulatory burden of potential standards for dedicated purpose pool pumps.

Small Businesses Impacts

DOE requested comment on the number of small business in the industry. Wilo commented that the number of businesses affected by this rule numbers in the hundreds, including distributors, installers, design-builders, manufacturers and engineers. (Wilo, No.44 at p.8) Consistent with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), as amended, the Department analyzes the expected impacts of an energy conservation standard on pump manufacturers directly regulated by DOE's standards. Distributors, installers, design-builders, manufacturers, and engineers that are not pump manufacturers are excluded from analysis.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO 2015,* as described in section IV.M. The methodology is described in chapter 13 and 15 of the final rule TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[56] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the final rule TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and ''fugitive''

[56] Available at: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas' global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[57] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[58] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR,[59] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[60] On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.[61] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO 2015,* so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[62] Therefore, DOE believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[63] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this final rule for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2015,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this rulemaking, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the considered efficiency levels. To make

[57] IPCC, 2013: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[58] See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[59] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[60] *See EPA* v. *EME Homer City Generation,* 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[61] See Georgia v. EPA, Order (D.C. Cir. filed October 23, 2014) (No. 11–1302).

[62] DOE notes that the Supreme Court recently remanded EPA's 2012 rule regarding national emission standards for hazardous air pollutants from certain electric utility steam generating units. See *Michigan* v. *EPA* (Case No. 14–46, 2015). DOE has tentatively determined that the remand of the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions. Further, while the remand of the MATS rule may have an impact on the overall amount of mercury emitted by power plants, it does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

[63] CSAPR also applies to NO_X and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

this calculation similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of equipment shipped in the forecast period for each efficiency level. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this rulemaking.

For this final rule, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for those values is provided in the following subsection, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the final rule TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, Oct. 4, 1993, agencies must, to the extent permitted by law, assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed the SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of challenges. A recent report from the National Research Council points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of greenhouse gases; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. The agency can estimate the benefits from reduced emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying the future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent,

and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects, although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.8 presents the values in the 2010 interagency group report,[64] which is reproduced in appendix 14A of the final rule TSD.

TABLE IV.8—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount Rate %			
	5	3	2.5	3
	Average	Average	Average	95th Percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this document were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[65] (See appendix 14B of the final rule TSD for further information.) Table IV.9 shows the updated sets of SCC estimates in five year increments from 2010 to 2050. Appendix 14B of the final rule TSD provides the full set of SCC estimates. The central value that emerges is the average SCC across models at the 3 percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.9—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE [REVISED JULY 2015, 2010–2050

[In 2007 dollars per metric ton CO_2]

Year	Discount Rate %			
	5	3	2.5	3
	Average	Average	Average	95th Percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

[64] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf.*

[65] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf).*

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2014$ using the Gross Domestic Product price deflator. For each of the four cases specified, the values used for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2014$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

In response to the NOPR, the Cato Institute commented that the integrated assessment model (IAM) on which the SCC values are based does not provide reliable guidance and does not signal the order of magnitude of the actual social cost of carbon. Furthermore, the Cato Institute commented that the values are discordant with leading scientific literature on important SCC parameters. (Cato Institute, No. 48 at p. 1) The Associations object to DOE's use of the SCC in the cost-benefit analysis performed in the NOPR and believes that the SCC should not be used in any rulemaking or policymaking until it undergoes a more rigorous notice, review, and comment process. (The Associations, No. 47 at p. 4)

In conducting the interagency process that developed the SCC values, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. Key uncertainties and model differences transparently and consistently inform the range of SCC estimates. These uncertainties and model differences are discussed in the interagency working group's reports, which are reproduced in appendix 14A and 14B of the final rule TSD, as are the major assumptions. Specifically, uncertainties in the assumptions regarding climate sensitivity, as well as other model inputs such as economic growth and emissions trajectories, are discussed and the reasons for the specific input assumptions chosen are explained. However, the three integrated assessment models used to estimate the SCC are frequently cited in the peer-reviewed literature and were used in the last assessment of the IPCC. In addition, new versions of the models that were used in 2013 to estimate revised SCC values were published in the peer-reviewed literature (see appendix 14B of the final rule TSD for discussion). Although uncertainties remain, the revised estimates used in this final rule are based on the best available scientific information on the impacts of climate change. The current estimates of the SCC have been developed over many years, using the best science available, and with input from the public. In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. In July 2015 OMB published a detailed summary and formal response to the many comments that were received.[66] It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters. DOE stands ready to work with OMB and the other members of the interagency working group on further review and revision of the SCC estimates as appropriate.

2. Valuation of Other Emissions Reductions

As noted previously, DOE has estimated how the considered energy conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards.[67] The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent,[68] which are presented in chapter 14 of the final rule TSD. DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030.

DOE multiplied the emissions reduction (tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3-percent and 7-percent as appropriate. DOE will continue to evaluate the monetization of avoided NOx emissions and will make any appropriate updates in energy conservation standards rulemakings.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. It has not included such monetization in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2015.* NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

N. Employment Impact Analysis

Employment impacts include direct and indirect impacts. Direct

[66] *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.*

[67] *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf. See Tables 4–7, 4–8, and 4–9 in the report.*

[68] For the monetized NOx benefits associated with $PM_{2.5}$, the related benefits (derived from benefit-per-ton values) are based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified so using the higher value would also be justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the final rule TSD for further description of the studies mentioned above.)

employment impacts are any changes in the number of employees of manufacturers of the equipment subject to standards; the MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient equipment. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on the purchase of new products; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[69] BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[70] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data, net national employment may increase because of shifts in economic activity resulting from new energy conservation standards for pumps.

For the standard levels considered in this final rule, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[71] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among the 187 sectors. ImSET's national economic I–O structure is based on a 2002 U.S. benchmark table, specially aggregated to the 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run. For the final rule, DOE used ImSET only to estimate short-term (through 2024) employment impacts.

For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for pumps. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for pumps, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE's analyses are contained in the final rule TSD supporting this document.

A. Trial Standard Levels

1. Trial Standard Level Formulation Process and Criteria

DOE developed six efficiency levels, including a baseline level, for each equipment class analyzed in the LCC, NIA, and MIA. TSL 5 was selected at the max-tech level for these equipment classes, and also represented the highest energy savings, NPV, and net benefit to the nation scenario. TSL 1, TSL 2, TSL 3, and TSL 4 provide intermediate efficiency levels between the baseline efficiency level and TSL 5 and allow for an evaluation of manufacturer impact at each level. As discussed in section IV.A.2.a, for the RSV equipment classes, DOE set the baseline and max-tech levels equal to those established in Europe, but did not develop intermediate efficiency levels or TSLs due to lack of available cost data for this equipment. Moreover, as discussed in section IV.A.2.b, DOE set the baseline and max-tech levels for the VTS.1800 equipment class equal to those for VTS.3600, but did not develop intermediate efficiency levels or TSLs, again due to lack of available data. As a result, for the RSV and VTS.1800 equipment classes, TSLs 1 through 4 map to the baseline efficiency level, EL 0, and TSL 5 maps to the max-tech level, EL 5. Table V.1 shows the mapping between TSLs and efficiency levels for all equipment classes.

TABLE V.1—MAPPING BETWEEN TSLS AND EFFICIENCY LEVELS

Equipment Class	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC.1800	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
ESCC.3600	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
ESFM.1800	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
ESFM.3600	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
IL.1800	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
IL.3600	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5
RSV.1800*	EL 0	EL 0	EL 0	EL 0	EL 0	EL 5
RSV.3600*	EL 0	EL 0	EL 0	EL 0	EL 0	EL 5
VTS.1800*	EL 0	EL 0	EL 0	EL 0	EL 0	EL 5

[69] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov*.

[70] *See* Bureau of Economic Analysis, ''Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),'' U.S. Department of Commerce (1992).

[71] M. J. Scott, O. V. Livingston, P. J. Balducci, J. M. Roop, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL-18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

TABLE V.1—MAPPING BETWEEN TSLS AND EFFICIENCY LEVELS—Continued

Equipment Class	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VTS.3600	EL 0	EL 1	EL 2	EL 3	EL 4	EL 5

* Equipment classes not analyzed due to lack of available data (in the case of RSV) or lack of market share (in the case of VTS.1800).

2. Trial Standard Level Equations

Because the efficiency metric, PEI, is a normalized metric targeted to create a standard level of 1.00, DOE has expressed its efficiency levels in terms of C-values. Each C-value represents a normalized efficiency for all size pumps, across the entire equipment class. (See section III.C.1 for more information about C-values and the related equations.) Table V.2 shows the appropriate C-values for each equipment class, at each TSL.

TABLE V.2 C—VALUES AT EACH TSL

Equipment Class	Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC.1800	134.43	131.63	128.47	126.67	125.07	123.71
ESCC.3600	135.94	134.60	130.42	128.92	127.35	125.29
ESFM.1800	134.99	132.95	128.85	127.04	125.12	123.71
ESFM.3600	136.59	134.98	130.99	129.26	127.77	126.07
IL.1800	135.92	133.95	129.30	127.30	126.00	124.45
IL.3600	141.01	138.86	133.84	131.04	129.38	127.35
RSV.1800*	129.63	129.63	129.63	129.63	129.63	124.73
RSV.3600*	133.20	133.20	133.20	133.20	133.20	129.10
VTS.1800*	138.78	138.78	138.78	138.78	138.78	127.15
VTS.3600	138.78	136.92	134.85	131.92	129.25	127.15

* Equipment classes not analyzed due to lack of available data (in the case of RSV) or lack of market share (in the case of VTS.1800).

B. Economic Justification and Energy Savings

1. Economic Impacts on Commercial Consumers

DOE analyzed the economic impacts on pump consumers by looking at the effects potential new standards would have on the LCC and PBP, when compared to the no-new-standards case described in section IV.F.1. DOE also examined the impacts of potential new standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency equipment would affect consumers in two ways: (1) Purchase price would increase over the price of less efficient equipment currently in the market, and (2) annual operating costs would decrease as a result of increased energy savings. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* equipment price plus installation costs), and operating costs (*i.e.,* annual energy savings, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses equipment lifetime and a discount rate. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.3 through Table V.16 show the LCC and PBP results for all efficiency levels considered for all analyzed equipment classes. The average costs at each TSL are calculated considering the full sample of consumers that have levels of efficiency in the no-new-standards case equal to or above the given TSL (who are not affected by a standard at that TSL), as well as consumers who had non-compliant pumps in the no-new-standards case and purchase more expensive and efficient redesigned pumps in the standards case. The simple payback and LCC savings are measured relative to the no-new-standards case efficiency distribution in the compliance year (see section IV.F.1 for a description of the no-new-standards case).

TABLE V.3—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESCC.1800

TSL	Efficiency level	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	$1,661	$2,224	$17,558	$19,219	.....	13
1	1	1,695	2,234	17,482	19,176	3.4	13
2	2	1,728	2,214	17,328	19,056	2.2	13
3	3	1,792	2,196	17,188	18,981	2.7	13
4	4	1,889	2,172	17,008	18,897	3.2	13
5	5	2,054	2,147	16,807	18,861	4.0	13

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the no-new-standards case.

TABLE V.4—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ESCC.1800

TSL	Efficiency level	Average LCC savings* (2014$)	Percent of consumers that experience net cost
1	1	$43	12
2	2	163	11
3	3	238	24
4	4	322	30
5	5	357	43

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.5—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESCC.3600

TSL	Efficiency level	Average costs 2014$				Simple payback *(years)*	Average lifetime *(years)*
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	$1,108	$1,574	$9,800	$10,908	—	11
1	1	1,113	1,570	9,777	10,890	1.5	11
2	2	1,126	1,556	9,689	10,816	1.0	11
3	3	1,157	1,546	9,630	10,787	1.8	11
4	4	1,186	1,533	9,544	10,730	1.9	11
5	5	1,233	1,510	9,400	10,633	2.0	11

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the no-new-standards case.

TABLE V.6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ESCC.3600

TSL	Efficiency level	Average LCC savings* (2014$)	Percent of consumers that experience net cost
1	1	$17	0.68
2	2	92	1.8
3	3	121	14
4	4	178	14
5	5	275	13

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.7—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESFM.1800

TSL	Efficiency level	Average costs (2014$)				Simple payback *years*	Average lifetime *years*
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	$1,917	$3,384	$41,409	$43,326	—	23
1	1	1,920	3,383	41,398	43,318	2.5	23
2	2	1,970	3,365	41,182	43,152	2.9	23
3	3	2,032	3,344	40,919	42,950	2.9	23
4	4	2,181	3,302	40,403	42,584	3.2	23
5	5	2,347	3,262	39,908	42,254	3.5	23

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the no-new-standards-case.

TABLE V.8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ESFM.1800

TSL	Efficiency level	Average LCC savings* (2014$)	Percent of consumers that experience net cost
1	1	$8.0	0.27
2	2	174	6.6
3	3	376	15
4	4	742	24

TABLE V.8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ESFM.1800—Continued

TSL	Efficiency level	Average LCC savings* (2014$)	Percent of consumers that experience net cost
5	5	1,072	26

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.9—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR ESFM.3600

TSL	Efficiency level	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	$1,367	$5,215	$51,540	$52,907	.....	20
1	1	1,375	5,208	51,473	52,848	1.3	20
2	2	1,415	5,155	50,943	52,358	0.8	20
3	3	1,460	5,109	50,481	51,941	0.9	20
4	4	1,549	5,055	49,940	51,489	1.1	20
5	5	1,670	4,976	49,150	50,820	1.3	20

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the no-new-standards-case.

TABLE V.10—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR ESFM.3600

TSL	Efficiency level	Average LCC savings * (2014$)	Percent of consumers that experience net cost
1	1	$58	0.30
2	2	549	1.9
3	3	966	4.8
4	4	1,418	7.2
5	5	2,087	8.6

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.11—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR IL.1800

TSL	Efficiency level	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	$2,157	$1,869	$16,817	$18,974	.....	16
1	1	2,175	1,861	16,748	18,923	2.4	16
2	2	2,225	1,846	16,602	18,827	2.9	16
3	3	2,312	1,831	16,465	18,777	4.1	16
4	4	2,466	1,814	16,311	18,776	5.6	16
5	5	2,650	1,790	16,096	18,747	6.2	16

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the no-new-standards-case.

TABLE V.12—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR IL.1800

TSL	Efficiency level	Average LCC savings * (2014$)	Percent of consumers that experience net cost
1	1	$51	1.9
2	2	147	7.3
3	3	197	15
4	4	198	26
5	5	227	36

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.13—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR IL.3600

TSL	Efficiency level	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	$1,494	$2,021	$14,198	$15,692	.....	13
1	1	1,504	2,013	14,142	15,646	1.4	13
2	2	1,546	1,994	14,008	15,554	2.0	13
3	3	1,600	1,972	13,852	15,452	2.2	13
4	4	1,673	1,955	13,734	15,407	2.8	13
5	5	1,822	1,922	13,497	15,320	3.3	13

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the no-new-standards-case.

TABLE V.14—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR IL.3600

TSL	Efficiency level	Average LCC savings * (2014$)	Percent of consumers that experience net cost
1	1	$45	2.1
2	2	138	13
3	3	239	11
4	4	285	14
5	5	372	20

* The calculation includes consumers with zero LCC savings (no impact).

TABLE V.15—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VTS.3600

TSL	Efficiency level	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
—	0	$706	$1,084	$6,255	$6,961	.....	11
1	1	712	1,080	6,231	6,943	1.3	11
2	2	727	1,077	6,218	6,944	3.1	11
3	3	747	1,061	6,128	6,875	1.8	11
4	4	787	1,044	6,029	6,817	2.0	11
5	5	838	1,028	5,937	6,775	2.4	11

Note: The results for each TSL are calculated considering all consumers. The PBP is measured relative to the no-new-standards-case.

TABLE V.16—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR VTS.3600

TSL	Efficiency level	Average LCC savings * (2014$)	Percent of consumers that experience net cost
1	1	$18	0.51
2	2	17	27
3	3	86	7.4
4	4	144	10
5	5	186	13

* The calculation includes consumers with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

As shown in Table V.17 through Table V.23, the results of the life-cycle cost subgroup analysis indicate that for all equipment classes analyzed, the VFD subgroup fared slightly worse than the average consumer, with the VFD subgroup being expected to have lower LCC savings and longer payback periods than average. This occurs mainly because with power reduction through use of a VFD, consumers use and save less energy from pump efficiency improvements than do consumers who do not use VFDs and so would benefit less from the energy savings.[72] Chapter 11 of the final rule TSD provides more detailed discussion on the LCC subgroup analysis and results.

[72] In this analysis, DOE does not count energy savings of switching from throttling a pump to using a VFD, as this is not a design option. Instead, DOE analyzes the life-cycle costs of consumers who use VFDs with their pumps.

TABLE V.17—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, ESCC.1800

TSL	Energy efficiency level	LCC savings (2014$) *		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$9.3	$43	6.0	3.4
2	2	64	163	3.9	2.2
3	3	80	238	4.7	2.7
4	4	88	322	5.5	3.2
5	5	40	357	7.0	4.0

* Parentheses indicate negative values.

TABLE V.18—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, ESCC.3600

TSL	Energy efficiency level	LCC savings (2014$) *		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$8.0	$17	2.5	1.5
2	2	48	92	1.7	1.0
3	3	53	121	3.0	1.8
4	4	76	178	3.2	1.9
5	5	116	275	3.3	2.0

* Parentheses indicate negative values.

TABLE V.19—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, ESFM.1800

TSL	Energy efficiency level	LCC savings (2014$)*		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$4.0	$8.0	4.2	2.5
2	2	81	175	4.9	2.9
3	3	175	376	4.9	2.9
4	4	334	742	5.5	3.2
5	5	462	1072	6.0	3.5

* Parentheses indicate negative values.

TABLE V.20—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, ESFM.3600

TSL	Energy efficiency level	LCC savings (2014$)*		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$32	$58	2.1	1.3
2	2	306	549	1.4	0.8
3	3	533	966	1.5	0.9
4	4	764	1,418	1.9	1.1
5	5	1,110	2,087	2.1	1.3

*Parentheses indicate negative values.

TABLE V.21—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, IL.1800

TSL	Energy efficiency level	LCC savings (2014$)*		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$23	$51	3.9	2.4
2	2	61	147	4.8	2.9
3	3	53	197	6.8	4.1
4	4	(11)	198	9.5	5.6
5	5	(71)	227	11	6.2

*Parentheses indicate negative values.

TABLE V.22—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, IL.3600

TSL	Energy efficiency level	LCC savings (2014$)*		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$23	$45	2.4	1.4
2	2	61	138	3.3	2.0
3	3	100	239	3.7	2.2
4	4	97	285	4.6	2.8
5	5	88	372	5.6	3.3

*Parentheses indicate negative values.

TABLE V.23—COMPARISON OF IMPACTS FOR VFD USERS WITH NON-VFD USERS, VTS.3600

TSL	Energy efficiency level	LCC savings (2014$)*		Simple payback period (years)	
		VFD-users	Non-VFD users	VFD-users	Non-VFD users
1	1	$9.7	$18	1.9	1.3
2	2	3.8	17	4.7	3.1
3	3	41	86	2.8	1.8
4	4	62	144	3.2	2.0
5	5	69	186	3.7	2.4

*Parentheses indicate negative values.

c. Rebuttable Presumption Payback

As discussed in section III.G.2, EPCA provides a rebuttable presumption that, in essence, an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 6316(a). The results of this analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. For comparison with the more detailed analytical results, DOE calculated a rebuttable presumption payback period for each TSL. Table V.24 shows the rebuttable presumption payback periods for the pump equipment classes.

TABLE V.24—REBUTTABLE PRESUMPTION PAYBACK PERIODS FOR PUMP EQUIPMENT CLASSES

Equipment class	Rebuttable presumption payback *(years)*				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
ESCC.1800	3.5	2.2	2.7	3.2	4.0
ESCC.3600	1.5	1.0	1.8	1.9	1.9
ESFM.1800	2.5	2.8	2.9	3.2	3.5
ESFM.3600	1.3	0.8	0.9	1.1	1.3
IL.1800	2.3	2.9	4.1	5.6	6.2
IL.3600	1.4	2.0	2.2	2.7	3.3
VTS.3600	1.3	3.1	1.9	2.1	2.4

2. Economic Impacts on Manufacturers

As noted above, DOE performed an MIA to estimate the impact of energy conservation standards on manufacturers of pumps. The following section summarizes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash-Flow Analysis Results

Table V.25 and Table V.26 depict the financial impacts (represented by changes in INPV) of energy standards on manufacturers of pumps, as well as the conversion costs that DOE expects manufacturers would incur for all equipment classes at each TSL. To evaluate the range of cash flow impacts on the CIP industry, DOE modeled two different mark-up scenarios using different assumptions that correspond to the range of anticipated market responses to energy conservation standards: (1) The flat markup scenario; and (2) the cost recovery markup scenario. Each of these scenarios is discussed immediately below.

Under the flat markup scenario, DOE maintains the same markup in the no-new-standards case and standards case. This results in no price change at a given efficiency level for the manufacturer's first consumer. Because this markup scenario assumes that manufacturers would not increase their pricing as a result of a standard even as they incur conversion costs, this markup scenario is the most negative

and results in the most negative impacts on INPV.

In the cost recovery markup scenario, manufacturer markups are set so that manufacturers recover their conversion costs over the analysis period. That cost recovery is enabled by an increase in mark-up, which results in higher sales prices for pumps even as manufacturer product costs stay the same. The cost recovery calculation assumes manufacturers raise prices on models where a redesign is necessitates by the standard. This cost recovery scenario results in more positive results than the flat markup scenario.

The set of results below shows potential INPV impacts for pump manufacturers; Table V.25 reflects the lower bound of impacts (*i.e.,* the flat markup scenario), and Table V.26 represents the upper bound (the cost recovery markup scenario).

Each of the modeled scenarios results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the difference in industry value between the no-new-standards case and each standards case that results from the sum of discounted cash flows from the base year 2015 through 2049, the end of the analysis period.

To provide perspective on the short-run cash flow impact, DOE includes in the discussion of the results below a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

TABLE V.25—MANUFACTURER IMPACT ANALYSIS FOR PUMPS—FLAT MARKUP SCENARIO*

	Units	No-new-standards case	Trial standard level				
			1	2	3	4	5
INPV	$M	120.0	110.3	80.5	20.9	(86.1)	(229.0)
Change in INPV	$M		(9.7)	(39.5)	(99.1)	(206.1)	(349.0)
	%		(8.1)	(32.9)	(82.6)	(171.8)	(290.9)
Total Conversion Costs	$M		22.8	81.2	177.2	337.9	550.6
Free Cash Flow (2018)	$M	11.8	4.9	(16.6)	(58.3)	(128.2)	(220.6)
Free Cash Flow (2018)	% Decrease		58.7	241.1	594.5	1186.7	1970.3

* Values in parentheses are negative values.

TABLE V.26—MANUFACTURER IMPACT ANALYSIS FOR PUMPS—COST RECOVERY MARKUP SCENARIO

	Units	No-new-standards case	Trial standard level				
			1	2	3	4	5
INPV	$M	120.0	120.4	128.3	124.5	113.0	93.5
Change in INPV	$M		0.5	8.4	4.6	(6.9)	(26.5)
	%		0.4	7.0	3.8	(5.8)	(22.1)
Total Conversion Costs	$M		22.8	81.2	177.2	337.9	550.6
Free Cash Flow (2018)	$M	11.8	4.9	(16.6)	(58.3)	(128.2)	(220.6)
Free Cash Flow (2018)	% Decrease		58.7	241.1	594.5	1186.7	1970.3

* Values in parentheses are negative values.

TSL 1 represents EL 1 for all equipment classes except for RSV.1800, RSV.3600 and VTS.1800 classes, which are set at EL 0. At TSL 1, DOE estimates impacts on INPV for pump manufacturers to range from −8.1 percent to 0.4 percent, or a change in INPV of −$9.7 million to $0.5 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 58.7 percent to $4.9 million, compared to the no-new-standards case value of $11.8 million in the year before the compliance date (2019). The industry would need to either drop product lines or engage in redesign of approximately 10% of their models. DOE estimates that manufacturers would incur conversion costs totaling $22.8 million, driven by hydraulic redesigns.

TSL 2 represents EL 2 across all equipment classes except for RSV.1800, RSV.3600 and VTS.1800 classes, which are set at EL 0. At TSL 2, DOE estimates impacts on INPV for pump manufacturers to range from −39.5 percent to 8.4 percent, or a change in INPV of −$32.9 million to $7.0 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 241.1 percent to −$16.6 million, compared to the no-new-standards case value of $11.8 million in the year before the compliance date (2019). Conversion costs for an estimated 25% of model offerings would be approximately $81.2 million for the industry. At TSL 2, the industry's annual free cash flow is estimated to drop below zero in 2018 and 2019, the years where conversion investments are the greatest. The negative free cash flow indicates that at least some manufacturers in the industry would need to access cash reserves or borrow money from capital markets to cover conversion costs.

TSL 3 represents EL 3 for all equipment classes except for RSV.1800, RSV.3600 and VTS.1800 classes, which are set at EL 0. At TSL 3, DOE estimates impacts on INPV for pump manufacturers to range from −82.6 percent to 3.8 percent, or a change in INPV of −$99.1 million to $4.6 million. At TSL 3, industry conversion costs for an estimated 40% of model offerings would be approximately $177.2 million. As conversion costs increase, free cash flow continues to drop in the years before the standard year. This increases the likelihood that manufacturers will need to seek outside capital to support their conversion efforts. Furthermore, as more models require redesign, technical resources for hydraulic redesign could become an industry-wide constraint. Participants in the CIP Working Group noted that the industry as a whole relies on a limited pool of hydraulic redesign engineers and consultants. These

specialists can support only a limited number of redesigns per year. Industry representatives stated that TSL 3 could be an upper bound to the number of redesigns possible in the four years between announcement and effective year of the final rule.

TSL 4 represents EL4 across all equipment classes except for RSV.1800, RSV.3600 and VTS.1800 classes, which are set at EL 0. At TSL 4, DOE estimates impacts on INPV for pump manufacturers to range from −171.8 percent to −5.8 percent, or a change in INPV of −$206.1 million to −$6.9 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 1186.7 percent relative to the no-new-standards case value of $11.8 million in the year before the compliance date (2019). The total industry conversion costs for an estimated 55% of model offerings would be approximately $337.9 million. The 1186.7% drop in free cash flow in 2019 indicates that the conversion costs are a very large investment relative to typical industry operations. As noted above, at TSL 2 and TSL 3, manufacturers may need to access cash reserves or outside capital to finance conversion efforts. Additionally, the industry may not be able to convert all necessary models before the compliance date of the standard.

TSL 5 represents max-tech across all equipment classes. The following economic results reflect all equipment classes except for RSV.1800, RSV.3600 and VTS.1800 classes, for which DOE had insufficient data to conduct the analysis. At TSL 5, DOE estimates impacts on INPV for pump manufacturers to range from −290.9 percent to −22.1 percent, or a change in INPV of −$349.0 million to −$26.5 million. At this potential standard level, industry free cash flow is estimated to decrease by approximately 1970.3 percent relative to the no-new-standards case value of $11.8 million in the year before the compliance date (2019). At max-tech, DOE estimates total industry conversion costs for an estimated 70% of model offerings, would be approximately $550.6 million. The negative impacts related to cash availability, need for outside capital, and technical resources constraints at TSLs 2, 3, and 4 would increase at TSL 5.

In section VI.A, DOE adopts labeling requirements recommended by the CIP Working Group. DOE recognizes that such requirements may result in costs to manufacturers. Costs of updating marketing materials for redesigned pumps in each standards case were included in the conversion costs for the industry and are accounted for in the industry cash-flow analysis results and industry valuation figures presented in this section.

b. Labeling Costs

Section VI.A of this rule discusses the labeling requirements for pumps. Manufacturers would need to update labels and literature that make representations of energy use (PEI) for all covered pumps, including both pumps that are redesigned to meet the standard and pumps that do not require redesign. For pumps that require redesign, the industry provided estimates of the cost to produce all-new marketing materials and labels as a part of their conversion costs feedback. Conversion costs were accounted for in DOE's financial modeling of the industry. For pumps that will not need to be redesigned, a much smaller effort is needed to update literature to include the PEI metric when making representations of energy use. DOE did not receive information on the cost to update labels and literature for equipment models that are already compliant with the energy conservation standard. As a result, these costs are not explicitly included in the analysis. DOE believes the labeling costs for compliant pumps to be significantly less than the certification costs and that those costs would not significantly impact the financial modeling results.

c. Impacts on Direct Employment

To quantitatively assess the impacts of energy conservation standards on direct employment in the pumps industry, DOE used the GRIM to estimate the domestic labor expenditures and number of employees in the no-new-standards case and at each TSL from 2015 through 2049. DOE used statistical data from the U.S. Census Bureau's 2011 Annual Survey of Manufacturers (ASM),[73] the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures related to manufacturing of the product are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs. Based on feedback from manufacturers, DOE believes that 99% of the covered pumps are produced in the U.S. Therefore, 99% of the total labor expenditures contribute to domestic production employment.

The total domestic labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours multiplied by the labor rate found in the U.S. Census Bureau's 2011 ASM). The estimates of production workers in this section cover workers, including line-supervisors directly involved in fabricating and assembling a product within the manufacturing facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking. DOE estimates that in the absence of energy conservation standards, there would be 415 domestic production workers for covered pumps.

In the standards case, DOE estimates an upper and lower bound to the potential changes in employment that result from the standard. Table V.27 shows the range of the impacts of potential energy conservation standards on U.S. production workers of pumps.

[73] "Annual Survey of Manufactures (ASM)," U.S. Census Bureau (2011) (Available at: *www.census.gov/manufacturing/asm/*).

TABLE V.27—POTENTIAL CHANGES IN THE TOTAL NUMBER OF PUMP PRODUCTION WORKERS IN 2020 *

	Trial standard level					
	No-new-standards case	1	2	3	4	5
Potential Changes in Domestic Production Workers in 2020 (relative to a no-new-standards case employment of 415).	.....	(41) to 0	(104) to 0	(166) to 0	(228) to 0	(290) to 0.

* Parentheses indicate negative values.

Based on the engineering analysis, MPCs and labor expenditures do not vary with efficiency and increasing TSLs. Additionally, the shipments analysis models consistent shipments at all TSLs. As a result, the GRIM predicts no change in employment in the standards case. DOE considers this to be the upper bound for change in employment. For a lower bound, DOE assumes a loss of employment that is directly proportional to the portion of pumps being eliminated from the market. Additional detail can be found in chapter 12 of the final rule TSD.

DOE notes that the direct employment impacts discussed here are independent of the indirect employment impacts to the broader U.S. economy, which are documented in chapter 15 of the final rule TSD.

d. Impacts on Manufacturing Capacity

Based on the engineering analysis, DOE concludes that higher efficiency pumps require similar production facilities, tooling, and labor as baseline efficiency pumps. Based on the engineering analysis and interviews with manufacturers, a new energy conservation standard is unlikely to create production capacity constraints.

However, industry representatives, in interviews and in the CIP Working Group meetings, expressed concern about the industry's ability to complete the necessary number of hydraulic redesigns required to comply with a new standard. (EERE–2013–BT–NOC–0039–0109, pp. 280–283) In the industry, not all companies have the in-house capacity to redesign pumps. Many companies rely on outside consultants for a portion or all of their hydraulic design projects. Manufacturers were concerned that a new standard would create more demand for hydraulic design technical resources than are available in the industry.

The number of pumps that require redesign is directly tied to the adopted standard level. The level adopted today is based on a level that the CIP Working Group considered feasible for the industry.

e. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions developed for an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For the CIP industry, DOE identified and evaluated the impact of energy conservation standards on one subgroup—small manufacturers. The SBA defines a ''small business'' as having 500 employees or less for NAICS 333911, ''Pump and Pumping Equipment Manufacturing.'' Based on this definition, DOE identified 39 manufacturers in the CIP industry that qualify as small businesses. For a discussion of the impacts on the small manufacturer subgroup, see the regulatory flexibility analysis in section VII.B of this document and chapter 12 of the final rule TSD.

f. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

For the cumulative regulatory burden analysis, DOE looks at product-specific Federal regulations that could affect pumps manufacturers and with which compliance is required approximately three years before or after the 2019 compliance date of standard adopted in this document. The Department was not able to identify any additional regulatory burdens that met these criteria.

3. National Impact Analysis

a. Significance of Energy Savings

For each TSL, DOE projected energy savings for pumps purchased in the 30-year period that begins in the year of compliance with new standards (2020–2049). The savings are measured over the entire lifetime of equipment purchased in the 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case described in section IV.H.2.

Table V.28 presents the estimated primary energy savings and FFC energy savings for each considered TSL. The approach is further described in section IV.H.1.

TABLE V.28—CUMULATIVE NATIONAL ENERGY SAVINGS FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

All equipment classes	Trial standard level (quads)				
	1	2	3	4	5
Primary energy	0.074	0.28	0.53	0.88	1.28
FFC energy	0.077	0.29	0.55	0.91	1.34

Note: Components may not sum to total due to rounding.

OMB Circular A–4 requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs.[74] Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine rather than 30 years of equipment shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[75] The review timeframe established in EPCA is generally not synchronized with the equipment lifetime, product manufacturing cycles, or other factors specific to pumps. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES results based on a nine-year analytical period are presented in Table V.29. The impacts are counted over the lifetime of equipment purchased in 2020–2028.

TABLE V.29—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2028

Equipment class	Trial standard level (quads)				
	1	2	3	4	5
Primary energy	0.020	0.074	0.14	0.24	0.35
FFC energy	0.021	0.078	0.15	0.25	0.36

Note: Components may not sum to total due to rounding.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for pumps. In accordance with OMB's guidelines on regulatory analysis,[76] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.30 shows the consumer NPV results for each TSL considered for pumps. In each case, the impacts cover the lifetime of equipment purchased in 2020–2049.

TABLE V.30—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2049

Discount rate	Trial standard level (billion 2014$*)				
	1	2	3	4	5
3 percent	0.29	1.1	1.9	3.0	4.2
7 percent	0.11	0.39	0.69	1.1	1.4

* Numbers in parentheses indicate negative NPV.
Note: Components may not sum to total due to rounding.

The NPV results based on the aforementioned nine-year analytical period are presented in Table V.31. The impacts are counted over the lifetime of equipment purchased in 2020–2028. As mentioned previously, this information is presented for informational purposes only and is not indicative of any change in DOE's analytical methodology or decision criteria.

[74] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4/*).

[75] EPCA requires DOE to review its standards at least once every six years, and requires, for certain products, a three-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within six years of the compliance date of the previous standards. (42 U.S.C. 6295(m) and 6313(a)(6)(C)). While adding a six-year review to the three-year compliance period adds up to nine years, DOE notes that it may undertake reviews at any time within the six-year period and that the three-year compliance date may yield to the six-year backstop. A nine-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is five years rather than three years.

[76] OMB Circular A–4, section E (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/circulars_a004_a-4*).

TABLE V.31—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFIT FOR PUMP TRIAL STANDARD LEVELS FOR UNITS SOLD IN 2020–2028

Discount rate	Trial standard level (billion 2014$*)				
	1	2	3	4	5
3 percent	0.094	0.35	0.63	0.99	1.4
7 percent	0.049	0.18	0.31	0.48	0.64

* Numbers in parentheses indicate negative NPV.
Note: Components may not sum to total due to rounding.

The results presented in this section reflect an assumption of no change in pump prices over the forecast period. In addition, DOE conducted sensitivity analyses using alternative price trends: one in which prices decline over time, and one in which prices increase. These price trends, and the associated NPV results, are described in appendix 10B of the final rule TSD.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for pumps to reduce energy costs for equipment owners, with the resulting net savings being redirected to other forms of economic activity. Those shifts in spending and economic activity could affect the demand for labor. As described in section IV.N, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term time frames (2020–2024), where these uncertainties are reduced.

The results suggest that these adopted standards would be likely to have negligible impact on the net demand for labor in the economy. The projected net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents more detailed results about anticipated indirect employment impacts.

4. Impact on Utility or Performance of Equipment

Any technology option expected to lessen the utility or performance of pumps was removed from consideration in the screening analysis. As a result, DOE considered only one design option in this final rule, hydraulic redesign. This design option does not involve geometry changes affecting installation of the pump (*i.e.,* the flanges that connect it to external piping)—hence, there is no utility difference that might affect use of the more-efficient pumps for replacement applications. Further, the design option would not reduce the acceptable performance envelope of the pump (*e.g.,* the combinations of pressure and flow for which the pump can be operated, restrictions to less corrosive environments, restrictions on acceptable operating temperature range). The hydraulic redesign would affect only the required power input, making no change to pump utility or performance.

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from new standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6313(a)(6)(B)(ii)(V) and 6316(a).) DOE transmitted a copy of its proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue.

In a letter dated July 10, 2015, DOJ stated that it did not have sufficient information to conclude that the proposed energy conservation standards or test procedure likely will substantially lessen competition in any particular product or geographic market. However, DOJ noted that the possibility exists that the proposed energy conservation standards and test procedure may result in anticompetitive effects in certain pump markets. Specifically in relation to the proposed standards, DOJ expressed concern that ''by design, the bottom quartile of pumps in each class of covered pumps will not meet the new standards. The non-compliance of the bottom quartile of pump models may result in some manufacturers stopping production of pumps altogether and fewer firms producing models that comply with the new standards. At this point, it is not possible to determine the impact on any particular product or geographic market.''

As stated in section III.G.1.e, in all energy conservation standards rulemakings that set new standards or amend standards, a certain percentage of the market is affected by the standard. The percentage of affected pumps is represented by any models below the amended standard, which may have a distribution of efficiencies (*i.e.,* some pump models will be closer to the new or amended standard level than others). It is not unusual for a large fraction of models (sometimes greater than 25%) to be at or near the baseline. As in all rulemakings, manufacturers have a choice between re-designing a non-compliant model to meet the standard and discontinuing it.

The ASRAC working group indicated that between 5 and 10% of models requiring redesign may be dropped because current sales are very low. (Docket No. EERE–2013–BT–NOC–0039, May 28 Pumps Working Group Meeting, p.61–63) Manufacturers indicated that additional models may be dropped where they can be replaced by another existing equivalent model currently made by the same manufacturer, often under an alternative brand. (Docket No. EERE–2013–BT–NOC–0039, April 29 Pumps Working Group Meeting, p.100) In either case, the elimination of these models would not have an adverse impact on the market or overall availability of pumps to serve particular applications.

For these reasons, DOE concludes that the standard levels included in this final rule will not result in adverse impacts on competition within the pump marketplace. The remaining concerns in the DOJ letter regarding the test procedure have been addressed in the parallel test procedure rulemaking (Docket No. EERE–2013–BT–TP–0055). The Attorney General's assessment is available at *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0031-0053*.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the equipment subject to this rule is likely to improve the security of the nation's energy system by reducing the overall demand for energy. Reduced electricity demand may also improve the reliability of the electricity system. Reductions in national electric generating capacity estimated for each considered TSL are reported in chapter 15 of the final rule TSD.

Energy savings from new standards for the pump equipment classes covered in this rulemaking could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.32 provides DOE's estimate of cumulative emissions reductions projected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The upstream emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL in chapter 13 of the final rule TSD. As discussed in section IV.L, DOE did not include NO_X emissions reduction from power plants in States subject to CAIR, because an energy conservation standard would not affect the overall level of NO_X emissions in those States due to the emissions caps mandated by CSAPR.

TABLE V.32—CUMULATIVE EMISSIONS REDUCTION FOR PUMPS SHIPPED IN 2020–2049

	TSL				
	1	2	3	4	5
Power Sector Emissions					
CO_2 *(million metric tons)*	4.4	16	31	52	75
SO_2 (*thousand tons*)	2.5	9.3	18	30	43
NO_X *(thousand tons)*	4.9	18	35	57	84
Hg (*tons*)	0.009	0.035	0.066	0.11	0.16
CH4 (*thousand tons*)	0.36	1.35	2.58	4.28	6.26
N_2O (*thousand tons*)	0.051	0.19	0.36	0.60	0.88
Upstream Emissions					
CO_2 *(million metric tons)*	0.25	0.93	1.78	2.95	4.33
SO_2 (*thousand tons*)	0.05	0.17	0.33	0.55	0.80
NO_X *(thousand tons)*	3.6	13	25	42	62
Hg (*tons*)	0.0001	0.0004	0.0007	0.0012	0.0017
CH4 (*thousand tons*)	20	74	141	234	343
N_2O (*thousand tons*)	0.002	0.008	0.016	0.027	0.040
Total FFC Emissions					
CO_2 *(million metric tons)*	4.6	17	33	54	80
SO_2 (*thousand tons*)	2.6	9.5	18	30	44
NO_X *(thousand tons)*	8.4	31	60	100	146
Hg (*tons*)	0.009	0.035	0.067	0.11	0.16
CH4 (*thousand tons*)	20	75	143	238	349
N_2O (*thousand tons*)	0.054	0.20	0.38	0.63	0.92

As part of the analysis for this rulemaking, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X estimated for each of the TSLs considered for pumps. As discussed in section IV.L, for CO_2, DOE used values for the SCC developed by an interagency process. The interagency group selected four sets of SCC values for use in regulatory analyses. Three sets are based on the average SCC from three integrated assessment models, at discount rates of 2.5 percent, 3 percent, and 5 percent. The fourth set, which represents the 95th-percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2014$) are represented by $12.2/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.3/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic and environmental) as the projected magnitude of climate change increases.

Table V.33 presents the global value of CO_2 emissions reductions at each TSL. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in chapter 14 of the final rule TSD. See Section IV.L. for further details.

TABLE V.33—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR PUMPS SHIPPED IN 2020–2049

TSL	SCC Scenario* (million 2014$)			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector Emissions				
1	29	134	214	410
2	104	492	787	1501
3	199	942	1506	2872
4	329	1559	2494	4753
5	482	2282	3651	6957
Upstream Emissions				
1	1.6	7.6	12	23
2	5.9	28	45	85
3	11	53	86	163
4	19	89	142	270
5	27	130	208	395
Total FFC Emissions				
1	30	142	227	433
2	110	520	832	1586
3	211	995	1592	3035
4	348	1647	2636	5023
5	509	2411	3858	7353

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3 and $117 per metric ton (2014$).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other greenhouse gas (GHG) emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this rulemaking the most recent values and analyses resulting from the interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from new standards for the pump equipment that is the subject of this rulemaking. The dollar-per-ton values that DOE used are discussed in section IV.L. Table V.34 presents the cumulative present value ranges for NO_X emissions reductions for each TSL calculated using seven-percent and three-percent discount rates. This table presents values that use the low dollar-per-ton values. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.36.

TABLE V.34—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR PUMPS SHIPPED IN 2020–2049

TSL	Million 2014$	
	3% discount rate	7% discount rate
Power Sector Emissions		
1	15	5.8
2	55	21
3	104	40
4	172	65
5	252	95
Upstream Emissions		
1	11	4.1
2	40	15
3	76	28
4	125	46
5	183	67
Total FFC Emissions		
1	26	9.9
2	94	35
3	180	67
4	297	111
5	435	162

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a).) In developing the proposed standard, DOE considered the term sheet of recommendations voted on by the CIP Working Group and approved by the ASRAC. (See EERE–2013–BT–NOC–0039–0092.) DOE weighed the value of such negotiation in establishing the standards proposed in in the NOPR. DOE encouraged the negotiation of proposed standard levels, in accordance with the FACA and the NRA, as a means for interested parties, representing diverse points of view, to analyze and recommend energy conservation standards to DOE. Such negotiations

may often expedite the rulemaking process. In addition, standard levels recommended through a negotiation may increase the likelihood for regulatory compliance, while decreasing the risk of litigation. The standards adopted in this final rule reflect the proposed standards and therefore the term sheet of recommendations voted on by the CIP Working Group and approved by the ASRAC.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.35 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a seven-percent and a three-percent discount rate. The CO_2 values used in the columns of each table correspond to the four scenarios for the valuation of CO_2 emission reductions discussed above.

TABLE V.35—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

[Billion 2014$]

TSL	Consumer NPV at 3% Discount Rate added with:			
	SCC Value of $12.2/metric ton CO_2 and 3% Low Value for NO_X	SCC Value of $40.0/metric ton CO_2 and 3% Low Value for NO_X	SCC Value of $62.3/metric ton CO_2 and 3% Low Value for NO_X	SCC Value of $117/metric ton CO_2 and 3% Low Value for NO_X
1	0.3	0.5	0.5	0.7
2	1.3	1.7	2.0	2.7
3	2.3	3.1	3.7	5.2
4	3.7	5.0	6.0	8.4
5	5.2	7.1	8.5	12
TSL	Consumer NPV at 7% Discount Rate added with:			
	SCC Value of $12.2/metric ton CO_2 and 7% Low Value for NO_X	SCC Value of $40.0/metric ton CO_2 and 7% Low Value for NO_X	SCC Value of $62.3/metric ton CO_2 and 7% Low Value for NO_X	SCC Value of $117/metric ton CO_2 and 7% Low Value for NO_X
1	0.1	0.3	0.3	0.6
2	0.5	0.9	1.3	2.0
3	1.0	1.8	2.3	3.8
4	1.5	2.8	3.8	6.2
5	2.1	4.0	5.4	8.9

Note: These label values represent the global SCC in 2015, in 2014$.

In considering the above results, two issues are relevant. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2020 to 2049. Because CO_2 emissions have a very long residence time in the atmosphere,[77] the SCC values in future years reflect future climate-related impacts that continue beyond 2100.

[77] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,''' *J. Geophys. Res.* 110. pp. D14105 (2005).

C. Conclusion

When considering standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered equipment shall be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(a)). In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering, to the greatest extent practicable, the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i) and 6316(a)). The new or amended standard must also ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 6316(a)).

For this final rule, DOE considered the impacts of new standards for pumps at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next-most-efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader in understanding the benefits and/or burdens of each TSL, tables in this section summarize the quantitative analytical results for each TSL, based on the assumptions and methodology discussed herein. The efficiency levels contained in each TSL are described in section I.A. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national

standard, and impacts on employment. Section V.B.1.b presents the estimated impacts of each TSL for these subgroups. DOE discusses the impacts on direct employment in pump manufacturing in section 0, and the indirect employment impacts in section V.B.3.c.

1. Benefits and Burdens of Trial Standard Levels Considered for Pumps Standards

Table V.36 and Table V.37 summarize the quantitative impacts estimated for each TSL for pumps. The national impacts are measured over the lifetime of pumps purchased in the 30-year period that begins in the year of compliance with new standards (2020–2049). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results.

TABLE V.36—SUMMARY OF ANALYTICAL RESULTS FOR PUMPS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
National FFC Energy Savings quads	0.077	0.29	0.55	0.91	1.34.
NPV of Consumer Benefits (2014$ billion)					
3% discount rate	0.29	1.1	1.9	3.0	4.2.
7% discount rate	0.11	0.39	0.69	1.1	1.4.
Cumulative FFC Emissions Reduction					
CO_2 *(million metric tons)*	4.6	17	33	54	80.
SO_2 (*thousand tons*)	2.6	9.5	18	30	44.
NO_X *(thousand tons)*	8.4	31	60	100	146.
Hg (*tons)*	0.009	0.035	0.067	0.11	0.16.
CH_4 (*thousand tons*)	20	75	143	238	349.
N_2O (*thousand tons*)	0.054	0.20	0.38	0.63	0.92.
Value of Emissions Reduction					
CO_2 (2014$ million) *	30 to 433	110 to 1586	211 to 3035	348 to 5023	509 to 7353.
NO_X—3% discount rate (*2014$ million*)	26 to 57	94 to 208	180 to 398	297 to 658	435 to 963.
NO_X—7% discount rate (*2014$ million*)	10 to 22	35 to 79	67 to 151	111 to 248	162 to 362.

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
Note: Parentheses indicate negative values.

TABLE V.37—SUMMARY OF ANALYTICAL RESULTS FOR PUMPS: MANUFACTURER AND CONSUMER IMPACTS

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Manufacturer Impacts					
Industry NPV relative to a no-new-standards case value of 120.0 (2014$ million).	110.3 to 120.4	80.5 to 128.3	20.9 to 124.5	(86.1) to 113.0	(229.0) to 93.5
Industry NPV (% change)	(8.1) to 0.4	(32.9) to 7.0	(82.6) to 3.8	(171.8) to (5.8)	(290.9) to (22.1)
Consumer Mean LCC Savings (2014$)					
ESCC.1800	$43	$163	$238	$322	$357
ESCC.3600	$17	$92	$121	$178	$275
ESFM.1800	$8.0	$174	$376	$742	$1,072
ESFM.3600	$58	$549	$966	$1,418	$2,087
IL.1800	$51	$147	$197	$198	$227
IL.3600	$45	$138	$239	$285	$372
VTS.3600	$18	$17	$86	$144	$186
Consumer Simple PBP (years)					
ESCC.1800	3.4	2.2	2.7	3.2	4.0
ESCC.3600	1.5	1.0	1.8	1.9	2.0
ESFM.1800	2.5	2.9	2.9	3.2	3.5
ESFM.3600	1.3	0.8	0.9	1.1	1.3
IL.1800	2.4	2.9	4.1	5.6	6.2
IL.3600	1.4	2.0	2.2	2.8	3.3
VTS.3600	1.3	3.1	1.8	2.0	2.4
Percent Consumers with Net Cost (%)					
ESCC.1800	12	11	24	30	43
ESCC.3600	0.68	1.8	14	14	13
ESFM.1800	0.27	6.6	15	24	26
ESFM.3600	0.30	1.9	4.8	7.2	8.6
IL.1800	1.9	7.3	15	26	36
IL.3600	2.1	13	11	14	20

TABLE V.37—SUMMARY OF ANALYTICAL RESULTS FOR PUMPS: MANUFACTURER AND CONSUMER IMPACTS—Continued

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VTS.3600	0.51	27	7.4	10	13

Note: Parentheses indicate negative values.

First, DOE considered TSL 5, which would save an estimated total of 1.34 quads of energy, an amount DOE considers significant. TSL 5 has an estimated NPV of consumer benefit of $1.4 billion using a 7-percent discount rate, and $4.2 billion using a 3-percent discount rate. The cumulative emissions reductions at TSL 5 are 80 million metric tons of CO_2, 146 thousand tons of NO_X, and 0.16 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 5 ranges from $509 million to $7,353 million. At TSL 5, the average LCC savings ranges from $186 to $2,087 depending on equipment class. The fraction of consumers with negative LCC impacts ranges from 8.6 percent to 43 percent depending on equipment class. At TSL 5, the projected change in INPV ranges from a decrease of $349.0 million to a decrease of $26.5 million. At TSL 5, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of the range of impacts is reached, TSL 5 could result in a net loss of up to 290.9 percent in INPV for manufacturers.

Accordingly, the Secretary concludes that, at TSL 5 for pumps, the benefits of energy savings, national net present value of consumer benefit, LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the fraction of consumers with negative LCC impacts and the significant burden on the industry. Consequently, DOE has concluded that TSL 5 is not economically justified.

Next, DOE considered TSL 4, which would save an estimated total of 0.91 quads of energy, an amount DOE considers significant. TSL 4 has an estimated NPV of consumer benefit of $1.1 billion using a 7-percent discount rate, and $3.0 billion using a 3-percent discount rate. The cumulative emissions reductions at TSL 4 are 54 million metric tons of CO_2, 100 thousand tons of NO_X, and 0.11 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $348 million to $5,023 million. At TSL 4, the average LCC savings ranges from $144 to $1,418 depending on equipment class. The fraction of consumers with negative LCC impacts ranges from 7.2 percent to 30 percent depending on equipment class. At TSL 4, the projected change in INPV ranges from a decrease of $206.1 million to a decrease of $6.9 million. At TSL 4, DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the lower bound of the range of impacts is reached, TSL 4 could result in a net loss of up to 171.8 percent in INPV for manufacturers.

Accordingly, the Secretary concludes that at TSL 4 for pumps, the benefits of energy savings, national net present value of consumer benefit, LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the fraction of consumers with negative LCC impacts and the significant burden on the industry. Consequently, DOE has concluded that TSL 4 is not economically justified.

Next, DOE considered TSL 3, which would save an estimated total of 0.55 quads of energy, an amount DOE considers significant. TSL 3 has an estimated NPV of consumer benefit of $0.69 billion using a 7-percent discount rate, and $1.9 billion using a 3-percent discount rate. The cumulative emissions reductions at TSL 3 are 33 million metric tons of CO_2, 60 thousand tons of NO_X, and 0.07 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $211 million to $3,035 million. At TSL 3, the average LCC savings range from $86 to $966 depending on equipment class. The fraction of consumers with negative LCC impacts ranges from 4.8 percent to 24 percent depending on equipment class. At TSL 3, the projected change in INPV ranges from a decrease of $99.1 million to an increase of $4.6 million. If the lower bound of the range of impacts is reached, TSL 3 could result in a net loss of up to 82.6 percent in INPV for manufacturers.

Accordingly, the Secretary concludes that at TSL 3 for pumps, the benefits of energy savings, national net present value of consumer benefit, LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the fraction of consumers with negative LCC impacts and the significant burden on the industry. Consequently, DOE has concluded that TSL 3 is not economically justified.

Next, DOE considered TSL 2, which would save an estimated total of 0.29 quads of energy, an amount DOE considers significant. TSL 2 has an estimated NPV of consumer benefit of $0.39 billion using a 7-percent discount rate, and $1.1 billion using a 3-percent discount rate. The cumulative emissions reductions at TSL 2 are 17 million metric tons of CO_2, 31 thousand tons of NO_X, and 0.035 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $110 million to $1,586 million. At TSL 2, the average LCC savings range from $17 to $549 depending on equipment class. The fraction of consumers with negative LCC impacts ranges from 1.8 percent to 27 percent depending on equipment class. At TSL 2, the projected change in INPV ranges from a decrease of $39.5 million to an increase of $8.4 million. If the lower bound of the range of impacts is reached, TSL 2 could result in a net loss of up to 32.9 percent in INPV for manufacturers.

After considering the analysis and weighing the benefits and the burdens, DOE has concluded that at TSL 2 for pumps, the benefits of energy savings, positive NPV of consumer benefit, positive average consumer LCC savings, emission reductions, and the estimated monetary value of the emissions reductions would outweigh the fraction of consumers with negative LCC impacts and the potential reduction in INPV for manufacturers.

In addition, TSL 2 is consistent with the recommendations voted on by the CIP Working Group and approved by the ASRAC. (See EERE–2013–BT–NOC–0039–0092.) DOE has encouraged the negotiation of new standard levels, in accordance with the FACA and the NRA, as a means for interested parties, representing diverse points of view, to analyze and recommend energy conservation standards to DOE. Such negotiations may often expedite the rulemaking process. In addition, standard levels recommended through a negotiation may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

The Secretary of Energy has concluded that TSL 2 would save a significant amount of energy and is

technologically feasible and economically justified. Therefore, DOE adopts the energy conservation standards for pumps at TSL 2. Table V.38 presents the new energy conservation standards for pumps.

TABLE V.38—NEW ENERGY CONSERVATION STANDARDS FOR PUMPS

Equipment class	Adopted standard level *	Adopted C-value
ESCC.1800.CL	1.00	128.47
ESCC.3600.CL	1.00	130.42
ESCC.1800.VL	1.00	128.47
ESCC.3600.VL	1.00	130.42
ESFM.1800.CL	1.00	128.85
ESFM.3600.CL	1.00	130.99
ESFM.1800.VL	1.00	128.85
ESFM.3600.VL	1.00	130.99
IL.1800.CL	1.00	129.30
IL.3600.CL	1.00	133.84
IL.1800.VL	1.00	129.30
IL.3600.VL	1.00	133.84
RSV.1800.CL	1.00	129.63
RSV.3600.CL	1.00	133.20
RSV.1800.VL	1.00	129.63
RSV.3600.VL	1.00	133.20
VTS.1800.CL	1.00	138.78
VTS.3600.CL	1.00	134.85
VTS.1800.VL	1.00	138.78
VTS.3600.VL	1.00	134.85

* A pump model is compliant if its PEI rating is less than or equal to the adopted standard.

2. Summary of Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of these adopted standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value, expressed in 2014$, of the benefits from operating equipment that meets the adopted standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[78] The value of the CO_2 reductions (*i.e.,* SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process. See section IV.L.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of equipment shipped in 2020–2049. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of CO_2 in each year. These impacts continue well beyond 2100.

Table V.39 shows the annualized values for the adopted standards for pumps. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0/t in 2015, the cost of the standards adopted in this rule is $17 million per year in increased equipment costs, while the benefits are $58 million per year in reduced equipment operating costs, $30 million in CO_2 reductions, and $3.7 million in reduced NO_X emissions. In this case, the net benefit amounts to $74 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.0/t in 2015, the cost of the standards adopted in this rule is $17 million per year in increased equipment costs, while the benefits are $78 million per year in reduced operating costs, $30 million in CO_2 reductions, and $5.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $96 million per year.

TABLE V.39—ANNUALIZED BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR PUMPS *

	Discount rate	Million 2014$/year		
		Primary estimate	Low net benefits estimate	High net benefits estimate
Benefits				
Consumer Operating Cost Savings	7%	58	52	68.
	3%	78	70	94.
CO_2 Reduction Value ($12.2/t case) **	5%	8.7	8.1	9.5.
CO_2 Reduction Value ($40.0/t case) **	3%	30	28	33.
CO_2 Reduction Value ($62.3/t case) **	2.5%	44	41	48.
CO_2 Reduction Value ($117/t case) **	3%	91	84	99.
NO_X Reduction Value †	7%	3.7	3.5	9.0.
	3%	5.4	5.0	13.
Total Benefits ††	7% plus CO_2 range	70 to 152	64 to 140	86 to 176.
	7%	91	83	109.
	3% plus CO_2 range	92 to 174	83 to 159	116 to 206.
	3%	113	102	139.
Costs				
Consumer Incremental Equipment Costs	7%	17	19	17.
	3%	17	20	18.
Net Benefits				
Total ††	7% plus CO_2 range	53 to 136	45 to 121	69 to 159.

[78] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

TABLE V.39—ANNUALIZED BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR PUMPS *—Continued

	Discount rate	Million 2014$/year		
		Primary estimate	Low net benefits estimate	High net benefits estimate
	7%	74	65	92.
	3% plus CO_2 range	75 to 157	63 to 139	99 to 189.
	3%	96	83	122.

* This table presents the annualized costs and benefits associated with pumps shipped in 2020–2049. These results include benefits to consumers which accrue after 2049 from the pumps purchased from 2020–2049. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices and shipments from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect constant real prices in the Primary Estimate, an increase in the Low Benefits Estimate, and a decrease in the High Benefits Estimate. The methods used to derive projected price trends are explained in IV.F.2.a.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L.2. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf*.) See section IV.L.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emission, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate ($40.0/t case). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Labeling and Certification Requirements

A. Labeling

EPCA includes provisions for labeling. (42 U.S.C. 6315). EPCA authorizes DOE to establish labeling requirements only if certain criteria are met. Specifically, DOE must determine that: (1) Labeling in accordance with section 6315 is technologically and economically feasible with respect to any particular equipment class; (2) significant energy savings will likely result from such labeling; and (3) labeling in accordance with section 6315 is likely to assist consumers in making purchasing decisions. (42 U.S.C. 6315(h)).

If these criteria are met, EPCA specifies certain aspects of equipment labeling that DOE must consider in any rulemaking establishing labeling requirements for covered equipment. At a minimum, such labels must include the energy efficiency of the affected equipment, as tested under the prescribed DOE test procedure. The labeling provisions may also consider the addition of other requirements, including: Directions for the display of the label; a requirement to display on the label additional information related to energy efficiency or energy consumption, which may include instructions for maintenance and repair of the covered equipment, as necessary to provide adequate information to purchasers; and requirements that printed matter displayed or distributed with the equipment at the point of sale also include the information required to be placed on the label. (42 U.S.C. 6315(b) and 42 U.S.C. 6315(c)).

The CIP Working Group recommended labeling requirements in the term sheet. (See EERE–2013–BT–NOC–0039–0092, recommendation #12.) Specifically, the working group recommended that pumps be labeled based on the configuration in which they are sold. Table VI.1 shows the information that the CIP Working Group recommended be included on a pump nameplate. (See EERE–2013–BT–NOC–0039–0092, recommendation #12.)

TABLE VI.1—LABELING REQUIREMENTS FOR PUMP NAMEPLATE

Bare pump	Bare pump + motor	Bare pump + motor + controls
PEI_{CL}	PEI_{CL}	PEI_{VL}
Model number	Model number	Model number
Impeller diameter for each unit	Impeller diameter for each unit	Impeller diameter for each unit

Note: The impeller diameter referenced is the actual diameter of each unit as sold, not the full impeller diameter at which the pump is rated.

DOE reviewed the recommendations of the working group with respect to the three requirements that must be met for DOE to promulgate labeling rules. (42 U.S.C. 6315(h)). In the NOPR, DOE determined that all three criteria had been met and proposed the labeling requirements as recommended by the working group. 80 FR 17826, 17882 (April 2, 2015) In response to the NOPR, HI agreed with the labeling requirements proposed. (HI, No. 45 at p. 6). The Advocates and the CA IOUs agreed that requiring labels may increase demand for more efficient pumps and facilitate comparison of expected performance of bare pumps and pumps with controls for consumers. (The Advocates, No. 49 at p. 1; CA IOUs, No. 50 at p. 1–2)

The changes made in this final rule, as described in the methodology sections, did not significantly impact DOE's analysis of the labeling proposals.

For these reasons, DOE is adopting the labeling requirements recommended by the CIP Working Group, and proposed in the NOPR, as shown in Table VI.1. Additionally, DOE requires the same labeling requirements for marketing materials as for the pump nameplate. See 42 U.S.C. 6315(c)(3).

DOE adopts the following requirements for display of information: All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data on the pump's permanent nameplate. The PEI_{CL} or PEI_{VL}, as appropriate to a given pump model, must be identified in the form ''PEI_{CL} [certified value of PEI_{CL}]'' or ''PEI_{VL} [certified value of PEI_{VL}].'' The model number shall be in one of the following forms: ''Model [model number]'' or ''Model number [model number]'' or ''Model No. [model number].'' The unit's impeller diameter must be in the form either ''Imp. Dia. [actual diameter] (in.).'' or ''Imp. Dia.__ (in.)'' as discussed below.

DOE is aware that when pump manufacturers sell a bare pump to a distributor, the distributor may trim the impeller prior to selling the pump to a customer. In response to the NOPR, Wilo commented that the labeling of the impeller diameter should be filled in by the final distributor. (Wilo, No. 44 at pp. 7–8) Similarly, HI commented that the impeller diameter field should be left blank and filled in by the final distributor or manufacturer. (HI, No. 45 at p. 6; NOPR public meeting transcript, Mark Handzel, on behalf of HI, No. 51 at pp. 52–55) HI's comments indicate that in some cases the pump manufacturer will act as the ''final distributor,'' and sell directly to the end-user. DOE agrees with HI's indication that most, but not all, pumps are sold through distributors. Consequently, in this final rule, DOE adopts the requirement that manufacturers must mark each pump's actual impeller diameter on the label, if distributed in commerce directly to end-user; otherwise this field must be left blank. DOE has concluded that this requirement meets the original intent of the CIP working group, while also addressing the concerns voiced HI and Wilo.

B. Certification Requirements

In the NOPR, DOE proposed to adopt the reporting requirements in a new § 429.59 within subpart B of 10 CFR part 429. This section also includes sampling requirements, which are discussed in the test procedure final rule. Consistent with other types of covered products and equipment, the proposed section (10 CFR 429.59) would specify that the general certification report requirements contained in 10 CFR 429.12 apply to pumps. The additional requirements proposed in 10 CFR 429.59 would require manufacturers to supply certain additional information to DOE in certification reports for pumps to demonstrate compliance with any energy conservation standards established as a result of this rulemaking.

The CIP Working Group recommended that the following data be included in the certification reports:

- Manufacturer name;
- Model number(s);
- Equipment class;
- PEI_{CL} or PEI_{VL} as applicable;
- BEP flow rate and head;
- Rated speed;
- Number of stages tested;
- Full impeller diameter (in.);
- Whether the PEI_{CL} or PEI_{VL} is calculated or tested; and
- Input power to the pump at each load point *i* (P_{ini}).

(See EERE–2013–BT–NOC–0039–0092, recommendation No. 13.)

In the NOPR, DOE proposed some modifications and additions to the certification report for clarity and to assist with verification. The proposed items included:

- Manufacturer name;
- Model number(s);
- Equipment class;
- PEI_{CL} or PEI_{VL} as applicable;
- BEP flow rate in gallons per minute (gpm) and head in feet when operating at nominal speed;
- Rated (tested) speed in revolutions per minute (rpm) at the BEP of the pump;
- Number of stages tested;
- Full impeller diameter (in.);
- Whether the PEI_{CL} or PEI_{VL} is calculated or tested;
- Driver power input at each required load point *i* (P_{ini}), corrected to nominal speed, in horsepower (hp);
- Nominal speed for certification in revolutions per minute (rpm);
- The configuration in which the pump is being rated (*i.e.,* bare pump, a pump sold with a motor, or a pump sold with a motor and continuous or non-continuous controls);
- For pumps sold with electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25 other single-phase induction motors (with or without controls): Motor horsepower (hp) and nominal motor efficiency, in percent (%);
- PER_{CL} or PER_{VL}, as applicable;
- Pump efficiency at BEP; and
- For VTS pumps, the bowl diameter in inches (in.).

(80 FR 17826, 17891 (April 2, 2015))

In reviewing the certification report requirements for the final rule, DOE has determined that the requirements of § 429.12(b) already require reporting of manufacturer name, model number(s), and equipment class for all covered products and equipment. For these reasons, DOE is withdrawing its proposal to include these requirements in § 429.59. With respect to the certification requirements, the equipment class reported refers to those listed in the table in § 431.465(b); *e.g.,* ESCC.1800.CL, ESCC.1800.VL, IL.1800.CL, etc.

With respect to reporting model number(s), a certification report must include a basic model number and the manufacturer's (individual) model number(s). A manufacturer's model number (individual model number) is the identifier used by a manufacturer to uniquely identify what is commonly considered a ''model'' in industry—all units of a particular design. The manufacturer's (individual) model number typically appears on the product nameplate, in product catalogs and in other product advertising literature. In contrast, the basic model number is a number used by the manufacturer to indicate to DOE how the manufacturer has grouped its individual models for the purposes of testing and rating; many manufacturers choose to use a model number that is similar to the individual model numbers in the basic model, but that is not required. The manufacturer's individual model number(s) in each basic model must reference not only the bare pump, but also any motor and controls with which the pump is being rated. This may be accomplished in one of two ways, depending on the manufacturer's normal business practices. Specifically: (1) Pumps distributed in commerce as a bare pump require the bare pump individual model number reported; (2) pumps distributed in commerce as a bare pump with driver require the bare pump and driver individual model numbers reported; and (3) pumps distributed in commerce as a bare pump with driver and controls require the bare pump, driver, and controls individual model numbers reported. Alternatively, the manufacturer may specify a single manufacturer individual model number for the bare pump with driver and/or controls if the manufacturer routinely uses that model number in marketing materials and on the product to indicate a particular combination of bare pump and driver or bare pump, driver and controls. For example, one manufacturer

may certify basic model ABC as including individual model ABC + EZB12 + AC2, where ABC is the bare pump model number, EZB12 is the driver model number, and AC2 is the control model number. Another manufacturer may certify basic model DEF as including individual model number DEF12DQ45Z, which is the model number the manufacturer routinely uses to indicate the bare pump DEF with a particular driver and set of controls.

After further review, DOE has also determined that the use of the term ''rated speed'' in the CIP working group term sheet was ambiguous. In the NOPR, DOE interpreted this to mean tested speed, and also added an additional requirement for nominal speed, as discussed previously. After reviewing the transcripts of the working group meetings, DOE has determined that it is unclear whether the CIP Working Group actually intended to refer to tested or nominal speed of the pump. DOE has determined that reporting tested speed is not necessary as no two pumps in a sample are likely to be tested at exactly the same speed. Therefore, DOE does not require reporting of ''rated (tested) speed''. However, DOE does require reporting of nominal speed.

In response to the NOPR, HI and Wilo commented against the inclusion of pump efficiency at BEP in certification reports. (HI, No. 45 at p. 7; Wilo, No. 44 at p. 8) HI agreed with only the certification reporting requirements agreed to by the ASRAC CIP working group. Conversely, EEI requested additional data, such as watts per gpm or annual kWh per gpm, to help the public better understand the relative efficiencies of pumps. (EEI, No. 46 ¶ at p. 2)

DOE notes that in the NOPR, six requirements were added beyond those agreed to by the CIP working group. Of these, four were added in order for DOE to conduct verification (*i.e.,* nominal speed; configuration; electric motor information; and for VTS pumps, bowl diameter). As noted previously, DOE has determined that nominal speed was a duplicative requirement and has withdrawn that proposal. However, DOE does require configuration, electric motor information, and bowl diameter to conduct verification. DOE maintains these three requirements in the final rule; however, DOE will not post this information on its Web site.

In response to HI and Wilo's comments, DOE is adopting a reporting option for PER and pump efficiency at BEP, the two reporting requirements that are not required for DOE to conduct enforcement testing and were not recommended by the CIP Working Group. DOE does not add the information requested by EEI, because consumers of pumps in the scope of this rulemaking typically rely on more sophisticated information, and the suggested metrics may be more relevant to commodity-type pumps in the residential sector.

In summary, DOE is modifying required data for certification reports in this final rule based on feedback from interested parties and review of its requirements. The following data is required for certification reports and will be made public on DOE's Web site:

- PEI_{CL} or PEI_{VL} as applicable;
- Number of stages tested;
- Full impeller diameter (in);
- Whether the PEI_{CL} or PEI_{VL} is calculated or tested;
- BEP flow rate in gallons per minute (gpm) and head in feet when operating at nominal speed;
- Nominal speed of rotation in revolutions per minute (rpm); and
- Driver power input at each required load point *i* (P^{in}_i), corrected to nominal speed, in horsepower (hp).

The following data will be required, but will not be posted on DOE's Web site:

- The configuration in which the pump is being rated (*i.e.,* bare pump, a pump sold with a motor, or a pump sold with a motor and continuous or non-continuous controls);
- For pumps sold with electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25 (with or without controls): Motor horsepower (hp) and nominal motor efficiency, in percent (%);
- For pumps sold with submersible motors (with or without controls): Motor horsepower (hp); and
- For VTS pumps, bowl diameter in inches (in.).

Additionally, the following data will be optional for inclusion in certification reports, and if provided, will be public:

- PER_{CL} or PER_{VL}, as applicable; and
- Pump efficiency at BEP.

In response to the NOPR, the Advocates and the CA IOUs requested that DOE set up the certification database early for voluntary certification in order for utilities to gather data and incentivize high efficiency pumps. (Advocates, No. 49 at p. 1–2; CA IOUs, No. 50 at p. 2) DOE typically provides templates for certification early and allows for early voluntary certification.

C. Representations

In response to the NOPR, HI expressed concern with the general language around 42 U.S.C. 6314(d) prohibited representation. HI suggested that pump manufacturers be allowed to continue using pre-existing efficiency curves and sizing software that is used directly by end users and distributors to purchase pumps. HI requested that DOE clearly state in the final rule that prohibited representation only applies to PEI and PER representation. (HI, No. 45 at p. 2) As representations are explicitly discussed in the pumps test procedure rulemaking, DOE has addressed these comments in the test procedure final rule. (See EERE–2013–BT–TP–0055)

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, Oct. 4, 1993, requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the adopted standards for pumps address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of equipment that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE attempts to qualify some of the external benefits through the use of social cost of carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the proposed regulatory action is a significant regulatory action under section (3)(f) of Executive Order 12866.

Accordingly, pursuant to section 6(a)(3)(B) of the Order, DOE has provided to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) an assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

In addition, the Administrator of OIRA has determined that the proposed regulatory action is an ''economically'' significant regulatory action under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011) EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this final rule is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following FRFA for the products that are the subject of this rulemaking.

For manufacturers of pumps, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Manufacturing of pumps is classified under NAICS 333911, ''Pump and Pumping Equipment Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

1. Description on Estimated Number of Small Entities Regulated

To estimate the number of small business manufacturers of equipment covered by this rulemaking, DOE conducted a market survey using available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories (including HI), industry conference exhibitor lists, individual company and buyer guide Web sites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture products covered by this rulemaking. DOE presented its list to manufacturers in MIA interviews and asked industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly-available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of pumps that would be regulated by the adopted standards. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 86 manufacturers of covered pump products sold in the U.S. Thirty-eight of these manufacturers met the 500-employee threshold defined by the SBA to qualify as a small business, but only 25 were domestic companies. DOE notes that manufacturers interviewed stated that there are potentially a large number of small pumps manufacturers that serve small regional markets. These unidentified small manufacturers are not members of HI and typically have a limited marketing presence. The interviewed manufacturers and CIP Working Group participants were not able to name these smaller players, and no commenters to the proposed rule provided information on any other potential small manufacturers.

Two small business manufacturers of pumps responded to DOE's request for an interview prior to publication of the proposed standard. These manufacturers provided extensive data on product availability, product efficiency, and product pricing. This content was critical to the modeling of the industry and was used to estimate impacts on small businesses.

DOE also obtained qualitative information about small business impacts while interviewing large manufacturers. Specifically, DOE discussed with large manufacturers the extent to which new standards might require small businesses to acquire new equipment or cause manufacturing process changes that could destabilize their business. Responses and information provided by small and large manufacturers informed DOE's description and estimate of compliance requirements, which are presented in section VII.B.2.

DOE's final standards reflect the recommendation of the CIP Working Group, which consisted of 16 members, including one small manufacturer. DOE selected the 16 members of the working group after issuing a notice of intent to establish a CIP Working Group (78 FR 44036) and receiving 19 nominations for membership. DOE notes that the three nominated parties who were not selected for the working group did not represent small businesses. Prior to the formation of the CIP Working Group, DOE issued an RFI (76 FR 34192), a Framework Document (78 FR 7304), and held a public meeting on February 20, 2013, to discuss the Framework Document in detail—all of which publicly laid out DOE's efforts to set out standards for pumps. The leading industry trade association, HI, was engaged in each of these stages and helped spread awareness of the rulemaking process to all of its members, which includes both small and large manufacturers.[79]

DOE made key assumptions about the market share and product offerings of small manufacturers in its analysis and requested comment in the NOPR. Specifically, DOE estimated that small manufacturers accounted for approximately 36% of the total industry model offerings. The Department did not receive feedback on this assumption, which was based on product listing data.

2. Description and Estimate of Compliance Requirements

At TSL 2, the level adopted in this document, DOE estimates total conversion costs of $0.8 million for an average small manufacturer, compared to total conversion costs of $1.4 million for an average large manufacturer. DOE notes that it estimates a lower total conversion cost for small manufacturers, because of the previous assumption that small manufacturers offer fewer models than their larger competitors, which means small manufacturers would likely have fewer product models to redesign. DOE's conversion cost estimates were based on industry data collected by HI (see section IV.C.5 for more information on the derivation of industry conversion costs). DOE applied the same per-model product conversion costs for both large and small manufacturers. Table VII.1 below shows the relative impacts of conversion costs on small manufacturers relative to large manufacturers over the four-year conversion period between the announcement year and the effective year of the adopted standard.

TABLE VII.1—IMPACTS OF CONVERSION COSTS ON A MANUFACTURERS AT THE ADOPTED STANDARD

	Capital conversion cost/conversion period CapEx	Product conversion cost/conversion period R&D expense	Total conversion cost/conversion period revenue (%)	Total conversion cost/conversion period EBIT (%)
Average large manufacturer	76	405	8	149
Average small Manufacturer	94	260	6	118

The total conversion costs are approximately 6% of revenue and 118% of earnings before interest and tax (EBIT) for a small manufacturer over the four year conversion period. For large manufacturers, the total conversion costs are approximately 8% of revenue and 149% of EBIT over the conversion period. These initial findings indicate that small manufacturers face conversion costs that are proportionate relative to larger competitors.

However, as noted in section V.B.2.a, the GRIM free cash flow results in 2019 indicated that some manufacturers may need to access the capital markets in order to fund conversion costs directly related to the adopted standard. Given that small manufacturers have a greater difficulty securing outside capital[80] and that the necessary conversion costs are not insignificant to the size of a small business, it is possible the small manufacturers will be forced to retire a greater portion of product models than large competitors. Also, smaller companies often have a higher cost of borrowing due to higher risk on the part of investors, largely attributed to lower cash flows and lower per unit profitability. In these cases, small manufacturers may observe higher costs of debt than larger manufacturers.

Though conversion costs are similar in magnitude for small and large manufacturers, small manufacturers may not have the same resources to make the required conversions. For example, some small pump manufacturers may not have the technical expertise to perform hydraulic redesigns in-house. These small manufacturers would need to hire outside consultants to support their re-design efforts. This could be a disadvantage relative to companies that have internal resources and personnel for the redesign process.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is unaware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

4. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, TSL 2. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at a lower efficiency level. While TSL 1 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings. TSL 1 achieves 73 percent lower energy

[79] Though as noted above, some small businesses may not be members of HI, HI membership includes 48 manufacturers of product within the scope of this rulemaking, of which 10 are small domestic manufacturers.

[80] Simon, Ruth, and Angus Loten, ''Small-Business Lending Is Slow to Recover,'' *Wall Street Journal,* August 14, 2014. Accessed August 2014, available at *http://online.wsj.com/articles/small-business-lending-is-slow-to-recover-1408329562.*

savings compared to the energy savings at TSL 2.

DOE believes that establishing standards at TSL 2 balances the benefits of the energy savings at TSL 2 with the potential burdens placed on pumps manufacturers, including small business manufacturers. Accordingly, DOE is declining to adopt one of the other TSLs considered in the analysis, or the other policy alternatives detailed as part of the regulatory impacts analysis included in chapter 17 of the final rule TSD.

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure (see 10 CFR 431.401). Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Pump manufacturers must certify to DOE that their products comply with any applicable energy conservation standards as of the compliance date for standards. In certifying compliance, manufacturers must test their products according to the applicable DOE test procedures for pumps that DOE adopts to measure the energy efficiency of this equipment, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including pumps. *See generally* 10 CFR part 429. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB for pumps under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, app. B, B5.1(b); § 1021.410(b) and app. B, B(1)-(5). The rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE's CX determination for this rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year

(adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

This final rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year on the private sector. (Such expenditures may include: (1) Investment in research and development and in capital expenditures by manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency equipment.) As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth new energy conservation standards for pumps, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' Id at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html*.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Intergovernmental relations, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 31, 2015.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.12 is amended by revising paragraphs (b)(13) and (d) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(b) * * *

(13) Product specific information listed in §§ 429.14 through 429.60 of this chapter.

* * * * *

(d) *Annual filing.* All data required by paragraphs (a) through (c) of this section shall be submitted to DOE annually, on or before the following dates:

Product category	Deadline for data submission
Fluorescent lamp ballasts, Medium base compact fluorescent lamps, Incandescent reflector lamps, General service fluorescent lamps, General service incandescent lamps, Intermediate base incandescent lamps, Candelabra base incandescent lamps, Residential ceiling fans, Residential ceiling fan light kits, Residential showerheads, Residential faucets, Residential water closets, and Residential urinals.	Mar. 1.
Residential water heater, Residential furnaces, Residential boilers, Residential pool heaters, Commercial water heaters, Commercial hot water supply boilers, Commercial unfired hot water storage tanks, Commercial packaged boilers, Commercial warm air furnaces, Commercial unit heaters and Residential furnace fans.	May 1.
Residential dishwashers, Commercial prerinse spray valves, Illuminated exit signs, Traffic signal modules, Pedestrian modules, and Distribution transformers.	June 1.
Room air conditioners, Residential central air conditioners, Residential central heat pumps, Small duct high velocity system, Space constrained products, Commercial package air-conditioning and heating equipment, Packaged terminal air conditioners, Packaged terminal heat pumps, and Single package vertical units.	July 1.
Residential refrigerators, Residential refrigerators-freezers, Residential freezers, Commercial refrigerator, freezer, and refrigerator-freezer, Automatic commercial automatic ice makers, Refrigerated bottled or canned beverage vending machine, Walk-in coolers, and Walk-in freezers.	Aug. 1.
Torchieres, Residential dehumidifiers, Metal halide lamp fixtures, External power supplies, and Pumps	Sept. 1.
Residential clothes washers, Residential clothes dryers, Residential direct heating equipment, Residential cooking products, and Commercial clothes washers.	Oct. 1.

* * * * *

■ 3. Section 429.59 is amended by adding paragraphs (b) and (c) to read as follows:

§ 429.59 Pumps.

* * * * *

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to pumps; and

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information:

(i) For a pump subject to the test methods prescribed in section III of appendix A to subpart Y of part 431 of this chapter: PEI_{CL}; pump total head in feet (ft.) at BEP and nominal speed; volume per unit time (flow rate) in gallons per minute (gpm) at BEP and nominal speed; the nominal speed of rotation in revolutions per minute (rpm); calculated driver power input at each load point *i* (P^{in}_i), corrected to nominal speed, in horsepower (hp); full impeller diameter in inches (in.); and for RSV and ST pumps, the number of stages tested.

(ii) For a pump subject to the test methods prescribed in section IV or V of appendix A to subpart Y of part 431 of this chapter: PEI_{CL}; pump total head in feet (ft.) at BEP and nominal speed; volume per unit time (flow rate) in gallons per minute (gpm) at BEP and nominal speed; the nominal speed of rotation in revolutions per minute (rpm); driver power input at each load point *i* (P^{in}_i), corrected to nominal speed, in horsepower (hp); full impeller diameter in inches (in.); whether the PEI_{CL} is calculated or tested; and for RSV and ST pumps, number of stages tested.

(iii) For a pump subject to the test methods prescribed in section VI or VII of appendix A to subpart Y of part 431 of this chapter: PEI_{VL}; pump total head in feet (ft.) at BEP and nominal speed; volume per unit time (flow rate) in gallons per minute (gpm) at BEP and nominal speed; the nominal speed of rotation in revolutions per minute (rpm); driver power input (measured as the input power to the driver and controls) at each load point *i* (P^{in}_i), corrected to nominal speed, in horsepower (hp); full impeller diameter in inches (in.); whether the PEI_{VL} is calculated or tested; and for RSV and ST pumps, the number of stages tested.

(3) Pursuant to § 429.12(b)(13), a certification report may include the following public product-specific information:

(i) For a pump subject to the test methods prescribed in section III of appendix A to subpart Y of part 431 of this chapter: Pump efficiency at BEP in percent (%) and PER_{CL}.

(ii) For a pump subject to the test methods prescribed in section IV or V of appendix A to subpart Y of part 431 of this chapter: Pump efficiency at BEP in percent (%) and PER_{CL}.

(iii) For a pump subject to the test methods prescribed in section VI or VII of appendix A to subpart Y of part 431 of this chapter: Pump efficiency at BEP in percent (%) and PER_{VL}.

(4) Pursuant to § 429.12(b)(13), a certification report will include the following product-specific information:

(i) For a pump subject to the test methods prescribed in section III of appendix A to subpart Y of part 431 of this chapter: The pump configuration (*i.e.,* bare pump); and for ST pumps, the bowl diameter in inches (in.).

(ii) For a pump subject to the test methods prescribed in section IV or V of appendix A to subpart Y of part 431 of this chapter: The pump configuration (*i.e.,* pump sold with an electric motor); for pumps sold with electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25, the nominal motor efficiency in percent (%) and the motor horsepower (hp) for the motor with which the pump is being

rated; and for ST pumps, the bowl diameter in inches (in.).

(iii) For a pump subject to the test methods prescribed in section VI or VII of appendix A to subpart Y of part 431 of this chapter: The pump configuration (*i.e.,* pump sold with a motor and continuous or non-continuous controls); for pumps sold with electric motors regulated by DOE's energy conservation standards for electric motors at § 431.25, the nominal motor efficiency in percent (%) and the motor horsepower (hp) for the motor with which the pump is being rated; and for ST pumps, the bowl diameter in inches (in.).

(c) *Individual model numbers.* (1) Each individual model number required to be reported pursuant to § 429.12(b)(6) must consist of the following:

Equipment configuration (as distributed in commerce)	Basic model number	Individual model number(s)		
		1	2	3
Bare pump	Number unique to the basic model	Bare Pump	N/A	N/A.
Bare pump with driver	Number unique to the basic model	Bare Pump	Driver	N/A.
Bare pump with driver and controls	Number unique to the basic model	Bare Pump	Driver	Controls.

(2) Or must otherwise provide sufficient information to identify the specific driver model and/or controls model(s) with which a bare pump is distributed.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 5. Section 431.465 is added to read as follows:

§ 431.465 Pumps energy conservation standards and their compliance dates.

(a) For the purposes of paragraph (b) of this section, ''PEI_{CL}'' means the constant load pump energy index and ''PEI_{VL}'' means the variable load pump energy index, both as determined in accordance with the test procedure in § 431.464. For the purposes of paragraph (c) of this section, ''BEP'' means the best efficiency point as determined in accordance with the test procedure in § 431.464.

(b) Each pump that is manufactured starting on January 27, 2020 and that:

(1) Is in one of the equipment classes listed in the table in paragraph (b)(4) of this section;

(2) Meets the definition of a clean water pump in § 431.462;

(3) Is not listed in paragraph (c) of this section; and

(4) Conforms to the characteristics listed in paragraph (d) of this section must have a PEI_{CL} or PEI_{VL} rating of not more than 1.00 using the appropriate C-value in the table in this paragraph (b)(4):

Equipment class [1]	Maximum PEI [2]	C-value [3]
ESCC.1800.CL	1.00	128.47
ESCC.3600.CL	1.00	130.42
ESCC.1800.VL	1.00	128.47
ESCC.3600.VL	1.00	130.42
ESFM.1800.CL	1.00	128.85
ESFM.3600.CL	1.00	130.99
ESFM.1800.VL	1.00	128.85
ESFM.3600.VL	1.00	130.99
IL.1800.CL	1.00	129.30
IL.3600.CL	1.00	133.84
IL.1800.VL	1.00	129.30
IL.3600.VL	1.00	133.84
RSV.1800.CL	1.00	129.63
RSV.3600.CL	1.00	133.20
RSV.1800.VL	1.00	129.63
RSV.3600.VL	1.00	133.20
ST.1800.CL	1.00	138.78
ST.3600.CL	1.00	134.85
ST.1800.VL	1.00	138.78
ST.3600.VL	1.00	134.85

[1] Equipment class designations consist of a combination (in sequential order separated by periods) of: (1) An equipment family (ESCC = end suction close-coupled, ESFM = end suction frame mounted/own bearing, IL = in-line, RSV = radially split, multi-stage, vertical, in-line diffuser casing, ST = submersible turbine; all as defined in § 431.462); (2) nominal speed of rotation (1800 = 1800 rpm, 3600 = 3600 rpm); and (3) an operating mode (CL = constant load, VL = variable load). Determination of the operating mode is determined using the test procedure in appendix A to this subpart.

[2] For equipment classes ending in .CL, the relevant PEI is PEI_{CL}. For equipment classes ending in .VL, the relevant PEI is PEI_{VL}.

[3] The C-values shown in this table must be used in the equation for PER_{STD} when calculating PEI_{CL} or PEI_{VL}, as described in section II.B of appendix A to this subpart.

(c) The energy efficiency standards in paragraph (b) of this section do not apply to the following pumps:

(1) Fire pumps;

(2) Self-priming pumps;

(3) Prime-assist pumps;

(4) Magnet driven pumps;

(5) Pumps designed to be used in a nuclear facility subject to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities'';

(6) Pumps meeting the design and construction requirements set forth in Military Specification MIL–P–17639F, ''Pumps, Centrifugal, Miscellaneous Service, Naval Shipboard Use'' (as amended); MIL–P–17881D, ''Pumps,

Centrifugal, Boiler Feed, (Multi-Stage)'' (as amended); MIL–P–17840C, ''Pumps, Centrifugal, Close-Coupled, Navy Standard (For Surface Ship Application)'' (as amended); MIL–P–18682D, ''Pump, Centrifugal, Main Condenser Circulating, Naval Shipboard'' (as amended); MIL–P–18472G, ''Pumps, Centrifugal, Condensate, Feed Booster, Waste Heat Boiler, And Distilling Plant'' (as amended). Military specifications and standards are available for review at *http://everyspec.com/MIL-SPECS*.

(d) The energy conservation standards in paragraph (b) of this section apply only to pumps that have the following characteristics:

(1) Flow rate of 25 gpm or greater at BEP at full impeller diameter;

(2) Maximum head of 459 feet at BEP at full impeller diameter and the number of stages required for testing;

(3) Design temperature range from 14 to 248 °F;

(4) Designed to operate with either:

(i) A 2- or 4-pole induction motor; or

(ii) A non-induction motor with a speed of rotation operating range that includes speeds of rotation between 2,880 and 4,320 revolutions per minute and/or 1,440 and 2,160 revolutions per minute; and

(iii) In either case, the driver and impeller must rotate at the same speed;

(5) For ST pumps, a 6-inch or smaller bowl diameter; and

(6) For ESCC and ESFM pumps, specific speed less than or equal to 5,000 when calculated using U.S. customary units.

■ 6. Section 431.466 is added to read as follows:

§ 431.466 Pumps labeling requirements.

(a) *Pump nameplate*—(1) *Required information.* The permanent nameplate of a pump for which standards are prescribed in § 431.465 must be marked clearly with the following information:

(i) For bare pumps and pumps sold with electric motors but not continuous or non-continuous controls, the rated pump energy index—constant load (PEI_{CL}), and for pumps sold with motors and continuous or non-continuous controls, the rated pump energy index—variable load (PEI_{VL});

(ii) The bare pump model number; and

(iii) If transferred directly to an end-user, the unit's impeller diameter, as distributed in commerce. Otherwise, a space must be provided for the impeller diameter to be filled in.

(2) *Display of required information.* All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of the other performance data on the pump's permanent nameplate. The PEI_{CL} or $PEI_{VL,}$ as appropriate to a given pump model, must be identified in the form ''PEI_{CL} ____'' or ''PEI_{VL} ____.'' The model number must be in one of the following forms: ''Model ____'' or ''Model number ____'' or ''Model No. ____.'' The unit's impeller diameter must be in the form ''Imp. Dia. ____ (in.).''

(b) *Disclosure of efficiency information in marketing materials.* (1) The same information that must appear on a pump's permanent nameplate pursuant to paragraph (a)(1) of this section, must also be prominently displayed:

(i) On each page of a catalog that lists the pump; and

(ii) In other materials used to market the pump.

(2) [Reserved]

Note: The following letter will not appear in the Code of Federal Regulations.

U.S. Department of Justice
Antitrust Division
William J. Baer
Assistant Attorney General
RFK Main Justice Building
950 Pennsylvania Ave., NW
Washington, DC 20530–0001
(202)514–2401/(202)616–2645 (Fax)

July 10, 2015

Anne Harkavy
Deputy General Counsel for Litigation, Regulation and Enforcement
U.S. Department of Energy
1000 Independence Ave, S.W.
Washington, DC 20585

Dear Deputy General Counsel Harkavy:

I am responding to your April 2, 2015 letters seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for pumps and a test procedure to be utilized in connection with the new standards.

Your request relating to the proposed energy conservation standards was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. Your request relating to the test procedure was submitted under Section 32(c) of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977, and codified at 15 U.S.C. 788(c), which requires DOE to consult with the Attorney General concerning the impact of proposed test procedures on competition. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

In conducting its analysis, the Antitrust Division examines whether a proposed standard or test procedure may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed energy conservation standards contained in the Notice of Proposed Rulemaking (80 Fed. Reg. 17825, April 2, 2015) and the related Technical Support Document as well as the proposed test procedure contained in the Notice of Proposed Rulemaking (80 Fed. Reg. 17585, April 1, 2015). We have also interviewed industry participants, reviewed information provided by industry participants, and attended the public meetings held on the proposed standards and test procedure on April 29, 2015. We further reviewed additional information provided by the Department of Energy.

Based on our review, we do not have sufficient information to conclude that the proposed energy conservation standards or test procedure likely will substantially lessen competition in any particular product or geographic market. However, the possibility exists that the proposed energy conservation standards and test procedure—which will apply to a broad range of pumps—may result in anticompetitive effects in certain pump markets. As explained below, the standards and test procedure could cause some manufacturers to halt production, reduce the number of manufacturers of pumps covered by the new standards, and deter companies who do not currently manufacture pumps covered by the new standards from entering the market.

Regarding the proposed standards, by design, the bottom quartile of pumps in each class of covered pumps will not meet the new standards. The non-compliance of the bottom quartile of pump models may result in some manufacturers stopping production of pumps altogether and fewer firms producing models that comply with the new standards. At this point, it is not possible to determine the impact on any particular product or geographic market.

As for the proposed test procedure, we are concerned about the possibility of anticompetitive effects resulting from the burden and expense of compliance. The Department of Energy has estimated it will cost manufacturers as much as $277,000 to construct a facility capable of performing the test procedure for all covered classes of pumps. Some industry participants have estimated that their actual costs of building such a facility will be significantly higher, largely due to the test procedure's requirements related to data collection and power supply characteristics.

The Department of Energy has suggested that manufacturers can test their pumps at third-party facilities at lower expense rather than constructing their own facilities. However, pump manufacturers are concerned that third-party facilities do not currently meet the proposed test procedure requirements, and they question whether, when, and how many third-party facilities will meet the requirements. It is also uncertain whether third-party facilities that meet the test procedure requirements will test all—or only some—of the pumps covered by the proposed standards. Thus, the proposed test procedure could cause a significant number of manufacturers of covered pumps to exit the business or stop producing certain models of pumps and deter companies who do not currently manufacture pumps covered by the proposed standards from making such pumps. At this point, we cannot determine whether pump manufacturers can expect vigorous competition, and affordable prices, for third-party testing services.

By the time the proposed test procedure is required, manufacturers may be able to test at least some pumps covered by the proposed standards at third-party facilities. Additionally, the Department of Energy stated at the April 29, 2015 public meetings that it may reconsider certain requirements of the proposed test procedure to ease the burden on pump manufacturers who choose to test their products themselves. If the burden and expense of constructing a facility capable of performing the test procedure was reduced by changing the requirements related to data collection and power supply characteristics, or if using third-party test facilities proved to be a feasible alternative, our concerns would be lessened.

We ask that the Department of Energy take these concerns into account in determining its final energy conservation standards and test procedure.

Sincerely,

William J. Baer

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Part III

Small Business Administration

13 CFR Part 121
Small Business Size Standards: Industries With Employee Based Size Standards Not Part of Manufacturing, Wholesale Trade, or Retail Trade; Small Business Size Standards for Manufacturing; Final Rules

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG51

Small Business Size Standards: Industries With Employee Based Size Standards Not Part of Manufacturing, Wholesale Trade, or Retail Trade

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) modifies 36 employee based small business size standards for industries and sub-industries (*i.e.,* ''exceptions'' in SBA's table of size standards) that are not part of North American Industry Classification System (NAICS) Sector 31–33 (Manufacturing), Sector 42 (Wholesale Trade), or Sector 44–45 (Retail Trade). Specifically, SBA increases 30 size standards for industries and three for sub-industries or ''exceptions.'' SBA also decreases size standards from 500 employees to 250 employees for three industries, namely NAICS 212113 (Anthracite Mining), NAICS 212222 (Silver Ore Mining), and NAICS 212291 (Uranium-Radium-Vanadium Ore Mining). SBA maintains the Information Technology Value Added Resellers (ITVAR) sub-industry or ''exception'' under NAICS 541519 (Other Computer Related Services) with the 150-employee size standard, but amends Footnote 18 to SBA's table of size standards by adding the requirement that the supply (*i.e.,* computer hardware and software) component of small business set-aside ITVAR contracts must comply with the nonmanufacturing performance requirements or nonmanufacturer rule (NMR). Additionally, SBA eliminates the Offshore Marine Air Transportation Services sub-industry or ''exception'' under NAICS 481211 and 481212 and Offshore Marine Services sub-industry or ''exception'' under NAICS Subsector 483 and their $30.5 million receipts based size standard. This change includes removing Footnote 15 from the table of size standards. As part of its ongoing comprehensive size standards review, SBA evaluated employee based size standards for 57 industries and five sub-industries that are not in NAICS Sectors 31–33, 42, or 44–45 to determine whether they should be retained or revised.

DATES: This rule is effective on February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Ph.D., Economist, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as ''size standards'') for private sector industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC/504), and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the start of the SBA's current comprehensive size standards review when the size standards were based on NAICS 2007, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures. Presently, under NAICS 2012, there are 28 different size standards, covering 1,031 industries and 16 ''exceptions.'' Of the 1,047 corresponding size standards including exceptions, 533 are based on average annual receipts, 509 on number of employees (one of which also includes barrels per day total capacity), and five on average assets.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive size standards review was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries, mostly with receipts based size standards, in response to requests from the public and from Federal agencies. SBA reviews all monetary based size standards (except for statutorily set size standards in NAICS Sector 11) for inflation at least once every five years. SBA's latest inflation adjustment to the monetary based size standards was published in the **Federal Register** on June 12, 2014 (79 FR 33647). However, the vast majority of employee based size standards have not been reviewed since they were first established.

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act), 111 Public Law 240, 124 Stat. 2504, Sep. 27, 2010. The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. *Id.* at § 1344(a)(1)(A). In addition, the Jobs Act requires that SBA review all size standards not less frequently than once every five years thereafter. *Id.* at § 1344(a)(2). Reviewing existing small business size standards and making appropriate adjustments based on the latest available data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector-by-Sector basis. A NAICS Sector generally includes 25 to 75 industries, except for NAICS Sector 31–33, Manufacturing, which has considerably more industries. This final rule covers industries with employee based size standards that are not part of NAICS Sector 31–33 (Manufacturing), Sector 42 (Wholesale Trade), or Sector 44–45 (Retail Trade). These include one industry each in NAICS Sector 11 (Agriculture, Forestry, Fishing and Hunting), Sector 22 (Utilities), and Sector 52 (Finance and Insurance), 25 industries in Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), 15 industries in Sector 48–49 (Transportation and Warehousing), 12 industries in Sector 51 (Information), two industries and four sub-industries (''exceptions'') in Sector 54 (Professional, Scientific and Technical Services), and one sub-industry (''exception'') in Sector 56 (Administrative and Support, Waste Management and Remediation Services) that currently have employee based size standards. Once SBA completes its review of size standards for industries in a NAICS Sector, it issues a proposed

rule to revise size standards for those industries based on latest industry and program data available and other relevant factors, such as current economic climate and SBA's and other government's programs and policies to help small businesses.

As part of the ongoing comprehensive size standards review, SBA also developed a ''Size Standards Methodology'' White Paper for developing, reviewing, and modifying size standards, when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comments, and included it as a supporting document in the electronic docket of the proposed rule at *www.regulations.gov*.

In evaluating an industry's size standard, SBA generally examines its characteristics (such as average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size) and the small business level and share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in this final rule, mostly using a special tabulation obtained from the U.S. Bureau of the Census from its 2007 Economic Census (the latest available). The industry data in the Economic Census tabulation are limited to the 6-digit codes and do not permit the evaluation of size standards for sub-industry categories or ''exceptions.'' Thus, as explained in the proposed rule, when establishing, reviewing, or modifying size standards for ''exceptions,'' SBA evaluates the data from the U.S. General Service Administration's (GSA) Federal Procurement Data System—Next Generation (FPDS–NG) and System of Awards Management (SAM) databases. In this final rule, SBA used the data from FPDS–NG and SAM to determine industry and Federal contracting factors for ''Information Technology Value Added Resellers,'' which is an exception under NAICS 541519, Other Computer Related Services, and for ''Environmental Remediation Services,'' which is an exception under NAICS 562910, Remediation Services.

SBA also evaluated the small business level and share of Federal contracts in each industry using the data from FPDS–NG for fiscal years 2009–2011 for the proposed rule and fiscal years 2012–2014 for this final rule. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2010–2012 for the proposed rule and fiscal years 2012–2014 for this final rule.

SBA's ''Size Standards Methodology'' White Paper provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to establish and revise size standards. In the proposed rule itself, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify where necessary, the existing employee based size standards for industries that are not part of NAICS Sectors 31–33, 42, or 44–45. SBA sought comments from the public on a number of issues about its ''Size Standards Methodology,'' such as whether there are alternative methodologies that SBA should consider; whether there are alternative or additional factors or data sources that SBA should evaluate; whether SBA's approach to establishing small business size standards makes sense in the current economic environment; whether SBA's application of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of current or comprehensive data; and whether there are other facts or issues that SBA should consider.

On September 10, 2014 (79 FR 53646), SBA published a proposed rule seeking comments on a number of proposals and issues. SBA invited comments on its proposals to increase employee based size standards for 30 industries and three sub-industries (''exceptions'') and decrease them for three industries that are not part of NAICS Sectors 31–33, 42, or 44–45. SBA requested comments on a number of issues, including whether the size standards should be revised as proposed and whether the proposed revisions are appropriate. The Agency also sought feedback on its proposals to eliminate the Information Technology Value Added Resellers (ITVAR) sub-industry (''exception'') under NAICS 541519 (Other Computer Related Services) and its 150-employee size standard and eliminate the Offshore Marine Air Transportation Services sub-industry or ''exception'' under NAICS 481211 and 481212 and Offshore Marine Services sub-industry (''exception'') under NAICS Subsector 483 and their $30.5 million receipts based size standard. The public was also welcome to comment on any other size standards that the Agency proposed retaining at their current levels. SBA's analyses supported lowering existing size standards for a number of industries. However, as SBA pointed out in the proposed rule, lowering size standards would reduce the number of firms eligible to participate in Federal small business assistance programs and be counter to what the Federal government and SBA are doing to help small businesses. Therefore, SBA proposed to retain the current size standards for those industries and requested comments on whether the Agency should lower size standards for which its analyses might support lowering them. Finally, SBA also welcomed comments on various methodological issues, including the maximum and minimum levels of employees based size standards, industry and Federal contracting factors the Agency evaluates and/or suggestions on other factors that it should consider when evaluating or revising employee based size standards, and whether it should weigh each factor equally or it should weigh one or more factors more or less for certain industries.

Discussion of Comments

SBA received a total of 202 comments on the proposed rule, including 168 concerning the ITVAR size standard, 32 on the Environmental Remediation Services (ERS) size standard, and two relating to proposed size standards in general.

Of the 168 comments relating to the ITVAR size standard, five supported SBA's proposal to eliminate the ITVAR exception to NAICS 541519 and its 150-employee size standard, while the rest opposed it. Among those opposing the proposal, two also asked for a 60-day extension of the comment period. Of the 168 comments on the ITVAR size standard, four were from attorneys, one of which was on behalf of 13 small business ITVARs and three each on behalf of individual ITVAR businesses. One also provided a list of individuals who submitted concerns about the SBA's proposed rule to their Congressional representatives through a Web site that the company had developed.

Of the 32 comments on the ERS size standard, nine favored SBA's proposal to increase it from 500 employees to 1,250 employees, while 23 opposed it.

Among the two general comments, one supported SBA's proposed increases to size standards, while the other opposed it. These comments and SBA's responses are discussed below.

Comments on SBA's Proposal To Eliminate the ITVAR Exception

For Federal contracts that combine substantial services with the acquisition of computer hardware and software, in

2002, SBA proposed to establish a new ''Information Technology Value Added Resellers (ITVAR)'' sub-industry or ''exception'' category under NAICS 541519, Other Computer Related Services, with a size standard of 500 employees (67 FR 48419 (July 24, 2002)). In the final rule, SBA adopted the ITVAR exception under NAICS 541519, as proposed, with a size standard of 150 employees (68 FR 74833 (December 29, 2003)). Presently, the size standard for NAICS 541519 and other industries in NAICS Industry Group 5415, Computer Systems Design and Related Services, is $27.5 million in average annual receipts.

As stated in Footnote 18 to SBA's table of size standards, for a Federal contract to be classified under the ITVAR exception and its 150-employee size standard, it must consist of at least 15 percent but not more than 50 percent of value added services. If the contract consists of less than 15 percent of value added services, it must be classified under the appropriate manufacturing industry. If the contract consists of more than 50 percent of value added services, it must be classified under the NAICS industry that best describes the principal nature of service being procured. In the September 10, 2014, proposed rule, SBA proposed to eliminate the ITVAR 150-employee size standard exception under NAICS 541519 because, as explained in the proposed rule and elsewhere in this final rule, it has created inconsistencies, confusion, and misuse. As stated above, SBA received a total of 168 comments, with five supporting SBA's proposal to eliminate the ITVAR exception and the rest opposing it.

Comments Supporting SBA's Proposal To Eliminate the ITVAR Exception

Four commenters explicitly supported SBA's proposal to eliminate the ITVAR exception. The commenters provided several reasons for their support of SBA's proposal. One stated that, due to its dual supply-services nature, the ITVAR exception has created misuse, confusion, and loopholes; removing it would help to ensure that procuring agencies comply with SBA's regulations and relevant case law. Others contended that the ITVAR exception allows larger businesses making hundreds of millions of dollars to bid as small businesses, thereby taking Federal opportunities away from true small businesses. One also added that the biggest problem is to validate whether the companies are performing 15–50 percent value added services. While stating that it is important to allow ITVARs to compete as small businesses for the Government to receive fair and reasonable pricing, the fifth commenter argued that predominantly hardware and software contracts with little or no value added services are awarded under NAICS 541519 instead of the manufacturing NAICS code. These comments and SBA's responses are below.

Comments That the ITVAR Exception Has Created Misuse

One commenter argued that it has become common for procuring agencies to use the ITVAR exception to classify multi-agency contracts (MACs) and government-wide acquisition contracts (GWACs) to buy commercial off-the-shelf (COTS) IT hardware and software. In many cases, these contracts consist of less than 15 percent of value added services as required, and should have been classified under the appropriate manufacturing (''supply'') NAICS code, the commenter noted. Another commenter contended that the biggest problem has been validating whether the companies are actually performing the 15–50 percent value added services and noted that, in most cases, they are not providing any service except for tacking on their 10–25 percent profit.

Another commenter mentioned that the real problem with NAICS 541519 is not the size standard itself, but the general misuse of the code altogether. It argued that IT hardware and software procurements in the billions of dollars that do not have ''significant'' value added services are purchased through NAICS 541519 instead of the manufacturing NAICS code. The commenter contended that entire GWACs (such as SEWP–IV/V, ECS–3 and new CIO–CS) are awarded under NAICS 541519 when the majority of items purchased are hardware and software only, with little or no value added services at all. The commenter urged SBA to stop the fraud, waste and abuse from contracting agencies using the wrong NAICS codes in order to get around the size standards. The commenter further asked SBA to stop allowing massive GWACs to be misclassified under NAICS 541519 so that everyone gets a fair chance to compete for those contracts.

Comments That SBA's Proposal Would Have Minimal Impact on Small ITVARs

One commenter noted that where the greatest portion of the contract value is for supplies and a manufacturing NAICS code is selected, the size standard for an IT reseller would be only 500 employees, even if the applicable size standard for the manufacturing NAICS code was higher. The commenter believed that, under these circumstances, the elimination of the ITVAR exception would have a minimal impact on businesses below 150 employees, as those businesses would continue to qualify as small for IT supply contracts under the 500-employee nonmanufacturer size standard. The commenter acknowledged that while these businesses may be forced to compete with businesses between 150 employees and 500 employees, it disagreed with many commenters' arguments that eliminating the ITVAR exception would force them to compete with multi-billion dollar companies.

Comments That the ITVAR Exception Has Created Loopholes

One commenter argued that the ITVAR exception has created loopholes in SBA's regulations, country-of-origin requirements, and trade agreements. The commenter added that eliminating the ITVAR exception would help to ensure that the procuring agencies comply with applicable regulations and requirements. The commenter explained that SBA's regulations require procuring agencies to select the ''NAICS code which best describes the principal purpose of the product or service being acquired.'' Where both products and services are being acquired, the commenter continued, the acquisitions must be classified according to the component which accounts for the greatest percentage of the contract value. Thus, the commenter stated, the procuring agency must identify whether the contract is primarily for the acquisition of services or supplies, and noted that the relevant case law (SBA No. SIZ–1295(1979)) also supports this. The solicitation must contain only one NAICS code and one size standard, and for a contract requiring the performance of a combination of work, a contracting officer must identify whether the contract is one for services, construction, or supplies for purposes of applying the performance of work requirements under the ''limitations on subcontracting'' provisions, the commenter concluded.

The same commenter argued that when agencies set-aside acquisitions using the ITVAR exception, it creates loopholes that allow agencies to bypass the NMR and limitations on subcontracting, which are intended to ensure that small business is the ultimate beneficiary of such acquisitions instead of a large original equipment manufacturers (OEMs) or systems integrators. The commenter further contended that because the ITVAR exception is part of a services NAICS code, the NMR does not apply to ITVAR

contracts even if, by definition, supplies are the majority component of those contracts. This allows IT resellers to provide the products under the set-aside acquisitions from large businesses, including foreign-based businesses, the commenter explained. The commenter further argued that restricting acquisitions for IT products to small businesses under the ITVAR exception also eliminates the country-of-origin requirements under both Trade Agreements and Buy American Acts, thereby granting non-designated countries an avenue to supply products to the U.S. government. Without the NMR, the requirement to furnish the end item of a U.S. small business is also eliminated, the commenter concluded.

Comments That the ITVAR Exception Has Caused Adverse Impact on True Small Businesses

One commenter noted that there are numerous large businesses hiding under the ITVAR exception, taking business away from true small businesses. The commenter added that the problem also exists in the subcontracting area where large businesses use these large value added resellers instead of true small businesses. Another commenter argued that the exception creates an unequal playing field as it allows companies making hundreds of millions of dollars a year to bid as small businesses on ITVAR contracts, essentially blocking true small businesses from those opportunities. These companies are much larger than true small businesses and have access to vast resources to assist them in their Request For Proposal responses, the commenter stated. Removing the exception will help level the playing field for companies bidding for opportunities under NAICS 541519, the commenter added. Another commenter contended that a small business is the one with $27.5 million in sales, not the one with 150 employees. There are many companies serving the Federal market that win contracts based on having just 150 employees with annual receipts of $200 million to $800 million, the commenter continued. The commenter concluded by suggesting that to make the size standard more inclusive and see more participation of small businesses in the Federal market, the size standard for NAICS 541519 should be $50 million in receipts.

The commenters supporting SBA's proposal shared the Agency's concerns that the exception has created inconsistencies, confusion, misuse, and loopholes. They explained that to treat ITVAR contracts as service contracts when, by definition, they are supply contracts, is inconsistent with SBA's regulations that require procuring agencies, based on the principal purpose of the service or product being procured, to identify the procurements either as service contracts or as supply contracts, but not both. The commenters added that the dual service-supply nature of ITVAR contracts has also created confusion with respect to compliance with SBA's regulations, such as limitations on subcontracting and the NMR. They contended that, given the inapplicability of the NMR for the exception, ITVARs are allowed to provide the products under the set-aside acquisitions from large businesses, including OEMs and foreign-based businesses, thereby defeating the very intent of the small business set-aside programs. The commenters also shared SBA's concerns that the agencies use the ITVAR exception and its 150-employee size standard to acquire computer hardware and software with limited value added services, which could have been classified under the manufacturing NAICS codes, thereby requiring them to comply with the NMR.

SBA's Response

Regarding commenters' concerns about the misuse of NAICS 541519, SBA agrees that the ITVAR exception has allowed Federal agencies to use NAICS 541519, instead of manufacturing NAICS codes, for computer hardware and software procurements that do not have ''significant'' value added services. SBA's proposal to eliminate the exception was intended to address this issue.

However, SBA disagrees with the suggestion that the size standard for NAICS 541519 should be increased to $50 million in receipts to increase small business participation in the Federal market. The results of industry and Federal procurement data published in the proposed rule (76 FR 14323 (March 16, 2011)) and final rule (77 FR 7490 (February 10, 2012)) on NAICS Sector 54 supported $25.5 million in average annual receipts (now $27.5 million due to inflation adjustment) as the size standard for all industries in NAICS Industry Group 5415, including NAICS 541519. Data do not support the suggested $50 million as the size standard for NAICS 541519, and SBA is also concerned that such a high size standard would negatively impact the ability of small businesses below the current size standard to compete for Federal opportunities. As part of its quinquennial comprehensive review of size standards as required by the Jobs Act, SBA will review all size standards in the coming years and make necessary adjustments to reflect the latest industry and Federal market data.

Comments Opposing SBA's Proposal To Eliminate the ITVAR Exception

Most commenters argued SBA's proposal to eliminate the ITVAR exception and its 150-employee size standard and apply the $27.5 million receipts based size standard to ITVAR contracts would have negative impacts on both many small businesses and on Federal programs. Many contended that a receipts based size standard is not appropriate for the ITVAR industry and SBA's justification to establish the ITVAR exception and the 150-employee based size standard in its 2003 final rule is still valid. A large majority of the commenters questioned the SBA's conclusions based on the 2007 Economic Census data that the proposed rule would have a minimum impact on businesses between the 150-employee size standard and the $27.5 million receipts based size standard. Many contended that SBA did not provide in the proposed rule a detailed analysis of the ITVAR industry and the data to support its reasons that the ITVAR exception has created inconsistencies, confusion, and misuse. Many stated that there has been no material change in the ITVAR industry since the 2003 final rule, thereby a change to the size standard is not warranted. A few commenters argued that the proposed rule also violates the statutory requirements under the National Defense Authorization Act for Fiscal Year 2013 (NDAA 2013), Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA), while a few others also argued the rule is also against the intent of the Jobs Act. One commenter argued that SBA's proposal to eliminate the ITVAR exception runs counter to its decision to retain all other exceptions in other industries. Several commenters suggested that SBA should not proceed with the proposal until it conducts a detailed analysis of the ITVAR industry, while others advocated alternative measures to address the issues of inconsistencies, confusion, and misuse instead of eliminating the exception. These comments and SBA's responses are detailed below.

Comments That the Proposed Rule Would Have Adverse Impacts on Small Businesses

Most commenters argued that the SBA's proposed rule to eliminate the ITVAR exception and its 150-employee size standard (some referred to Footnote 18) and apply the $27.5 million receipts based size standard for NAICS 541519

to ITVAR contracts would have a devastating impact on many small businesses that are below the 150-employee size standard, but above the $27.5 million receipts based size standard. The commenters added that, if the ITVAR exception and its 150-employee size standard were eliminated, numerous companies (some said thousands) would become ineligible to compete for small business set-asides or reserves programs under DHS's FirstSource II, NASA's SEWP V and other GWAC or MAC vehicles because they easily exceed the $27.5 million receipts based size standard for NAICS 541519 due to high volumes and costs of products/goods sold under ITVAR contracts.

Many commenters argued that, without Footnote 18, the proposed rule would subject ITVAR firms to the $27.5 million receipts based size standard for NAICS 541519. The commenters claimed the proposed rule would make those firms lose their small business status, thereby forcing them to compete for computer hardware and software contracts with larger IT companies (including OEMs) with 500 employees to 1,000 employees and receipts in billions of dollars. Some commenters noted this would benefit large contractors, as small ITVARs do not have resources to compete with those large companies. One commenter acknowledged that small ITVARs are able to compete against large companies with hundreds of thousands of employees and against OEMs that sell IT products and services directly to the Government. However, several argued that this would reduce their ability to serve government customers or would even potentially force them out of the Federal IT marketplace entirely. Some commenters noted this would force them to downsize their businesses, which may limit business growth and small business job creation. A few other commenters claimed this would make many IT service companies ineligible for the type of contracts they have been performing over the years.

Numerous commenters stated that many small ITVARs seeking opportunities in the Federal IT marketplace do a significant amount of Federal business utilizing the ITVAR exception under NAICS 541519. They added that a considerable amount of money is allocated to the NAICS 541519 exception and it is not fair to take those opportunities away from small businesses. The proposed change, if adopted, the commenters indicated, would be detrimental to those businesses and Federal agencies that depend on them, because many small ITVARs would no longer be able to compete for Federal opportunities under NAICS 541519 as small businesses. Some seemed concerned that the loss of revenue would destroy many small ITVARs and force them to close their businesses, while others noted that this would have a negative impact on employment and economic growth in the region, including the Historically Underutilized Business Zones (HUBZones).

Some commenters stated that, without Footnote 18, ITVAR contracts would be classified either as a services contract under the $27.5 million receipts based size standard or as a supply contract under the NMR. They claimed that small ITVARs would become ineligible for services contracts because they exceed the receipts based size standard and for supply contracts, they would have to compete with larger businesses. One commenter noted that currently the ITVAR exception benefits ITVAR firms in three ways: (i) It enables them to sell supplies as a small business concern without the NMR, compliance of which is complicated and cumbersome, (ii) it shields the firms from competition with firms that have between 151 employees and 500 employees, and (iii) it has enabled ITVARs to sell some services as small businesses even though they exceed the receipts based size standard. The commenter argued that the proposed rule would wipe out all these benefits. As all IT supplies contracts would be under the NMR, ITVARs would have to compete with much larger companies for small business supplies contracts. In addition, ITVARs that exceed the receipts based size standard, could not compete for small business services contracts.

SBA's Response

SBA disagrees with commenters' interpretation that with the proposed elimination of the ITVAR exception and its 150-employee size standard, many businesses would lose their small business status because they exceed the $27.5 million receipts based size standard associated with NAICS code 541519. These comments indicate that there was some confusion concerning the impact of SBA's proposal, if adopted, on current small ITVARs. Many commenters incorrectly believed that, if the exception is eliminated, all contracts that currently use the ITVAR exception and 150-employee size standard would be subject to the $27.5 million receipts based size standard for NAICS 541519 and that many ITVARs with 150 or fewer employees would lose their small business status and hence become ineligible to bid on those contracts because they have annual receipts above $27.5 million. Some misunderstood SBA's proposed elimination of the ITVAR exception to change the size standard for procurement of IT products from 150 employees to $27.5 million in average annual receipts. As stated in the proposed rule, if the ITVAR exception is eliminated, all ITVAR contracts would be reclassified under the employee based size standard for the manufacturing industries or under the 500-employee nonmanufacturer size standard. By definition, the ITVAR exception is for contracts that are primarily supply contracts, with some services. The $27.5 million receipts based size standard is for contracts that are primarily service contracts, which is not the case under the exception. Accordingly, for IT supply contracts using the manufacturing size standards, the 500-employee nonmanufacturer size standard, and other elements of the NMR, would also apply. Thus, all firms that currently qualify under the 150-employee ITVAR size standard would continue to qualify for such contracts as small businesses under the 500-employee nonmanufacturer size standard.

In response to concerns that by eliminating the ITVAR exception and reclassifying ITVAR contracts under the manufacturing NAICS codes it would mainly benefit large companies with 500 employees to 1,000 employees, SBA analyzed the FPDS–NG data on IT supply contracts under NAICS Industry Group 3341, Computer and Peripheral Equipment Manufacturing. For fiscal years 2012–2014, the results showed that about 76 percent of dollars awarded to small businesses under NAICS Industry Group 3341 went to firms with 150 or fewer employees. Thus, the results do not support the argument that IT supply contracts would be dominated by larger companies if they are reclassified under the manufacturing NAICS codes. Additionally, while many commenters expressed concerns for having to compete with large companies if the exception is eliminated, several also noted that small ITVARs have capabilities and resources to outcompete large companies and to provide the best solution to the government. ITVARs would continue to benefit from those attributes if ITVAR contracts were reclassified under the manufacturing NAICS codes.

Some commenters contended that the proposed rule would cause thousands of small businesses to lose their small business status and become ineligible to compete for ITVAR contracts as small businesses. SBA disagrees for three

reasons. First, the commenters did not provide any data or data sources to support their claim that thousands of businesses will be affected. Second, as explained above, no ITVAR firms below 150 employees would actually lose their small business status under the proposed rule, because they would continue to qualify to compete for those contracts as small businesses under the 500-employee nonmanufacturer size standard. Third, SBA reviewed commenters' data on companies receiving contracts under various GWACs and tasks orders under the ITVAR exception and similar data that it compiled from other GWACs (such as GSA's Schedule 70 SIN 132–8) using FPDS–NG for fiscal years 2012–2014. The data showed that, of about 260 firms receiving contracts under those GWACs during fiscal years 2012–2014, about 60 or 25 percent had more than the $27.5 million in receipts but fewer than 150 employees. However, the proposed rule would have no impact on their small business status under the receipts based size standard for NAICS 541519. Moreover, of total contract dollars received by firms between the $27.5 million receipts level and 150-employee level during fiscal years 2012–2014, nearly half (46 percent) were from contracts they received under NAICS codes other than NAICS 541519. SBA agrees that, if the exception were eliminated, firms that currently qualify as small for ITVAR contracts would have to compete with larger companies with between 150 employees and 500 employees under the nonmanufacturer size standard, but the relevant data does not support that the impacts would be as detrimental as those characterized by the commenters. However, this was an important factor for the SBA's decision to maintain the current 150-employee size standard in this final rule.

In response to concerns that the proposed rule would wipe out the benefit the ITVAR exception provides to ITVAR firms by enabling them to sell supplies under small business set-aside contracts without the NMR, SBA believes that, similar to all other small business supply acquisitions, all small business acquisitions for computer hardware and software, including those classified under the ITVAR exception must also comply with the NMR. The arguments that the compliance with the NMR is complicated and cumbersome are not valid reasons for not following statutory provisions. It should be noted that the proposed rule would have no impact on qualifying as small for contracts that are primarily for services classified under the receipts based size standard for NAICS 541519. ITVAR firms that exceed the receipts based size standards currently would continue to be ineligible for IT services contracts, regardless of whether the ITVAR exception is retained or eliminated. Thus, SBA disagrees with the argument that the proposed rule would make ITVAR firms lose their eligibility to compete for IT services contracts under the receipts based size standard.

Comments That the Proposed Rule Would Have Adverse Impacts on Federal Agencies

Numerous commenters noted that Federal agencies set aside billions of dollars for small businesses under NAICS 541519 using the ITVAR exception and 150-employee size standard. The commenters identified several multi-year, multiple award IDIQ contracts that are currently set aside to small businesses to procure computer hardware and software and services, including DHS' FirstSource, Army's ITES–3H, NASA's SEWP, and NIH's CIO–CS programs. They argued that SBA's proposed rule would have a devastating impact on those Federal programs and small businesses that depend on them.

Several commenters argued that SBA's proposal to eliminate the 150-employee size standard and retain the $27.5 million receipts based size standard would render ineligible the vast majority of small businesses currently performing ITVAR contracts under the above programs. According to the commenters, there would not be enough qualified small businesses under the $27.5 million receipts based size standard to perform large volumes of complex ITVAR contracts. This would force, the commenters claimed, the agencies to procure such contracts directly through OEMs or classify them under NAICS codes where businesses with 1,000 or 500 employees are considered small. Some commenters contended that the SBA's proposed change would curtail the Government's ability to count on a reliable small business industrial base to provide these IT products and services, while others claimed that it would eliminate significant depth of products and services the Government receives from small ITVARs.

While some commenters seemed wary of having to compete with OEMs if the exception is removed, many others noted that most ITVARs have relationships with hundreds of OEMs, thereby enabling them to obtain the most competitive pricing for a given product and provide the best solution to a customer need by combining the best mix of products from multiple OEMs. One commenter stated that approximately 75 percent of Federal sales of many leading OEMs are fulfilled through their ITVAR partners. The same commenter argued that, without Footnote 18, this value-added ability of ITVARs will be lost, because the majority of ITVARs will no longer qualify as small businesses and likely be unable to compete against large businesses.

Several commenters argued that SBA' proposal, if adopted, would decrease the pool of responsible and qualified contractors for ITVAR acquisitions, as companies below the $27.5 million receipts based size standard lack financial resources, technical capabilities, experiences, and qualified personnel to meet the requirements. The commenters noted that the receipts based size standard would limit the government's ability to receive competitive pricing for a wide variety of products and services, because businesses at the $27.5 million receipts level have no buying power to leverage OEM cost down and qualified personnel to obtain the OEM certification to be able to resell, obtain discounts and provide authorized services. Thus, the commenters claimed, the companies with annual receipts of $27.5 million cannot effectively compete with large companies for Federal IT requirements, but ITVARs with higher revenue can. Some commenters claimed that the ITVARs have the revenue base and creditworthiness to purchase millions or tens of millions of dollars of products and that the companies with less than $27.5 million revenue are unable to obtain credit facilities necessary to purchase the product component of the solution. Several commenters argued that, if ITVAR contracts are subject to the $27.5 million receipts based size standard, agencies would not be able to use NAICS 541519 to procure a mix of services and large volumes of computer hardware and software.

Some commenters argued that the ITVAR exception has helped the Federal government to obtain information systems to improve efficiency and reach its goals. Small ITVARs provide, they explained, integrated solutions to complex IT challenges, allowing agencies to focus on their missions, and eliminating the ITVAR exception would negatively impact the delivery of these solutions and thus the missions of the agencies. One commenter claimed that small ITVARs play a significant role in maximizing Federal small business utilization, while another noted that the elimination of Footnote 18 will negatively impact the recent progress

made toward meeting the Federal government small business contracting goal.

SBA's Response

SBA does not agree with the commenters' contention that the proposed rule would have a devastating impact on Federal programs and small businesses that depend on them. As stated earlier in this preamble, under the proposed rule, not a single ITVAR firm below 150 employees would lose its small business status to qualify for ITVAR contracts as small businesses. Moreover, a size standard change would have no impact on small business status for current contracts; it would only affect future contracts. If Footnote 18 were removed as proposed, ITVAR contracts, which are by definition supply contracts, would be reclassified under a higher manufacturing size standard along with the 500-employee nonmanufacturer size standard. As a result, all currently small ITVARs would continue to qualify as small businesses to provide exactly the same products and services they are currently providing to the Federal government under the ITVAR exception.

SBA also does not agree with the concerns that, under the proposed rule, there would not be enough qualified small businesses below the $27.5 million receipts based size standard for the Government to choose from to perform large volumes of complex ITVAR contracts. First, if the exception is removed, ITVAR contracts would be reclassified under one of the manufacturing NAICS codes, with the higher manufacturing size standard along with the 500-employee nonmanufacturer size standard, not the $27.5 million receipts based standard for NAICS 541519. Second, because additional ITVARs between 150 employees and 500 employees could also compete on those contracts as small businesses, there would actually be more small businesses, not fewer, available for the agencies to choose from. Therefore, SBA does not believe that the proposed rule would necessarily lead the agencies, due to lack of small businesses, to procure IT products directly from OEMs or large businesses. SBA also does not believe that this would necessarily have any impact on quality or depth of products or services the government receives. Every year the agencies allocate billions of dollars to the manufacturing NAICS codes and NAICS 423430 (albeit incorrectly) to procure computer hardware and software. For example, during fiscal years 2012–2014, the Federal government procured computer hardware and software and some services valuing nearly $4 billion annually using NAICS Industry Group 3341 and NAICS 423430. Almost half (48%) of those dollars were awarded to small businesses, of which nearly 75 percent went to firms with fewer than 150 employees. Even with the ITVAR exception, agencies have used NAICS Industry Group 3341 and other manufacturing NAICS codes to classify IT supply acquisitions under various GWACs. For example, during fiscal years 2012–2014, NAICS Industry Group 3341 accounted for almost all contract dollars under NIH's ECS–3 and nearly three-fifths of dollars awarded under Army's ITES–2H, and nearly 15 percent under NASA's SEWP IV. Similarly, all contracts under Air Force's NETCENTS–2 were classified under NAICS 334210. The data on companies receiving contracts under various GWACs that utilized the ITVAR exception and 150-employee size standard does not appear to support the commenters' argument that the companies at or below the receipts based size standard lack financial resources and personnel to perform ITVAR contracts. During fiscal years 2012–2014, there were 155 GWAC contracts (*i.e.,* with dollar awards) set aside for small businesses using the ITVAR exception for a total of $5.4 billion in dollars obligated. Small businesses below the receipts based size standard accounted for more than 70 percent of those contracts and 40 percent of dollars awarded.

SBA does not agree with the argument that by losing small business status, under the proposed rule, ITVARs would also lose the relationships they have with OEMs to be able to provide the Government with best mix of products at most competitive prices. As explained elsewhere in this rule, even if the exception is removed, because they would maintain their small business status for ITVAR contracts under the 500-employee nonmanufacturer size standard, there is no reason why they would not be able to maintain their relationship with OEMs and use that in future contracts. While SBA recognizes that the relationship ITVARs have with OEMs plays an important role in the Federal IT marketplace, the Agency is concerned with the negative impact it could have on many small manufacturers of various IT products, especially given the fact that, according to one commenter, almost 75 percent of Federal sales of many leading OEMs are fulfilled through their ITVAR partners.

As discussed earlier, if the exception is eliminated, because ITVAR contracts would not be subject to the $27.5 million size standard that applies to services contracts under NAICS 541519, SBA disagrees with the commenters' arguments that the proposed rule would decrease the pool of qualified ITVAR contractors. However, these arguments support SBA's concerns that having the ITVAR exception under the services NAICS code and allowing agencies to include significant services in ITVAR contracts may have negatively impacted companies below the receipts based size standard by forcing them to compete for small business contracts with companies that have much higher revenue base and financial resources.

With respect to the commenter's argument that the ITVAR exception plays a role in maximizing small business participation in government contracting and meeting the Federal government small business contracting goal, SBA considers the share of contract dollars awarded to small businesses relative to their share in the overall industry as one of the primary factors in determining size standards for specific industries. However, whether the government is meeting its small business goal is not considered as a factor because that is influenced by a myriad of factors, mostly unrelated to size standards. Further, agencies can request that SBA waive the NMR, which would enable the agencies to set aside the very same acquisitions for small business concerns, under the manufacturing NAICS code and utilizing the nonmanufacturer size standard of 500 employees. Moreover, class waivers already exist for a wide range of IT products under computer and peripheral equipment manufacturing related NAICS codes that may cover the types of IT products purchased using the ITVAR exception.

Comments That the Proposed Rule Is Contrary to SBA's Previous Rules

Several commenters argued that the SBA's proposed rule is contrary to its justification and analysis it provided in its 2002 proposed rule (67 FR 48419 (July 24, 2002)) and 2003 final rule (68 FR 74833 (December 29, 2003)) for establishing the ITVAR exception and 150-employee based size standard, as well as its 2011 proposed rule (76 FR 14323 (March 16, 2011)) and 2012 final rule (77 FR 7490 (February 10, 2012)) on NAICS Sector 54 (Professional, Scientific and Technical Services), where the Agency reaffirmed the 150-employee size standard for the exception. The commenters argued that the SBA's 2002/2003 and 2011/2012 rationale that an employee based size standard, not the receipts, was an accurate and appropriate measure of

small business size for ITVARs is even more appropriate today. One commenter stated that selling a combination of computer hardware and software and services still exists as a distinctive industry category and that it should be retained. Another reiterated several reasons SBA provided when establishing the exception in its 2002/2003 rulemaking and argued they are still valid today. First, the ITVAR sub-industry serves the Federal government's preference to go to a single source to obtain IT equipment and supporting services. Second, most acquisitions are for numerous IT products, and it is unrealistic to expect one manufacturer to produce all of the required items. Third, IT contracts often require the contractor to customize the computer hardware or install specialized software to meet an individual user's needs. Fourth, the new industry category enables agencies to better utilize small business preference programs for their IT acquisitions.

Several commenters were concerned that SBA did not provide any explanation or reason why the justification, rationale, or industry analyses provided in its 2002/2003 and 2011/2012 rulemakings no longer apply in 2014. Commenters suggested SBA provided no facts or reasons showing changes in the ITVAR industry and Federal IT procurement to justify its proposal to eliminate the employee size standard in the current proposed rule. Some commenters argued that because SBA is not able to provide a convincing justification for its proposed removal of the ITVAR exception it established in the 2002/2003 rulemaking, it should retain it. Still some complained that SBA's decision to establish the ITVAR sub-industry and its 150-employee size standard in 2003 was based on a detailed analysis of market and industry data, but its current proposal to repeal it without similar analysis or other persuasive reasons cannot be justified.

SBA's Response

As the result of the review of its small business regulations and size standards as required by Executive Order 13563 and the Jobs Act, SBA now believes that the two key provisions of the 2003 final rule are inappropriate, which SBA is attempting to amend through this rulemaking.

First, the Agency's decision in its 2002/2003 rulemaking to place the ITVAR exception for supply contracts as a sub-industry category under NAICS 541519, a services NAICS code, is inconsistent with NAICS industry definitions. Under NAICS, as also noted in the 2003 final rule, ITVARs are primarily merchant wholesalers or distributors of the computer hardware and software products with a very different production function when compared to firms in NAICS 541519. The analyses many commenters provided to support their position that ITVAR firms have very different revenue and cost structure as compared to their counterparts in NAICS 541519 also demonstrate that including the ITVAR exception under NAICS 541519 is inconsistent with differences in economic realities between the ITVAR industry and NAICS 541519. Additionally, as discussed elsewhere in this rule, SBA now finds that its approach to creating the ITVAR industry by combining parts of NAICS Industry Group 5415 and NAICS 423430 was also not correct.

Second, the 2003 final rule defined ITVAR contracts as services contracts, even if services, by definition, never account for more than 50 percent of total values of such contracts, thereby exempting them from the manufacturing performance requirements and NMR. These rules are critical to ensure that small businesses are the ultimate beneficiaries of small business set-aside contracts. The statutory manufacturing performance requirements and NMR provisions apply to all supply contracts, and do not exempt information technology acquisitions.

SBA disagrees with the commenters' argument that the proposed rule is against its 2011/2012 rulemaking on NAICS Sector 54. It should be noted that SBA's decision to retain the 150-employee based size standard for the ITVAR exception under Footnote 18 in its 2011/2012 rulemaking was not based on the analysis of the relevant industry and market data. The SBA's decision to retain the 150-employee size standard was only temporary until the Agency reviewed employee based size standards. In the same rule, SBA had also retained the employee based size standards for NAICS codes 541711 and 541712, which the Agency proposed to change in the September 10, 2014 proposed rule.

SBA does not believe that reclassifying ITVAR contracts under the manufacturing NAICS codes would require the agencies to make significant changes to the ways they acquire computer hardware and software using the ITVAR exception, except that the agencies would be required to comply with the NMR. The proposed rule would have eliminated the ITVAR sub-industry only as an exception to NAICS 541519, but would not have eliminated the ITVAR industry in its entirety from the Federal IT market. As explained elsewhere in this rule, the proposed rule, would only have led to reclassifying ITVAR contracts using applicable manufacturing NAICS codes in which ITVAR firms would continue to qualify under the 500-employee nonmanufacturer size standard. The nature of the work under ITVAR contracts would remain intact. First, current small ITVARs would continue to qualify to participate in Federal IT market as small businesses and provide a combination of computer hardware and software and services to the Federal government. Second, under the NMR, Federal agencies would continue to be able to procure multiple products through a single distributer or reseller instead of having to go to individual manufacturers of different products. Third, classifying acquisitions of IT products under the manufacturing NAICS codes along with a higher 500-employee nonmanufacturer size standard should, in fact, help, not hinder, Federal agencies to better utilize small business set-aside programs for acquisitions of IT supplies, because agencies would have a larger pool of small businesses to draw from to meet their needs.

Comments That the Proposed Rule Lacks Industry Data and Analysis

Many commenters contended that the proposed rule does not provide the required industry analysis and latest economic data to justify the removal of the ITVAR exception and its 150-employee size standard similar to what SBA provided in its 2003 final rule to establish the exception and the size standard. Two commenters argued that the proposed rule does not provide the required analyses of the industry and competitive environment as required by the statute in support of the proposed elimination of the ITVAR exception. One of those two commenters also contended that the proposed rule does not provide the detailed impact analysis of the proposed change to the ITVAR size standard as required by the Regulatory Flexibility Act (RFA). The same commenter argued that SBA's rationale that the ITVAR exception has resulted in inconsistencies, confusion, and misuse does not in itself justify its elimination that will have a substantial impact on a significant number of small businesses. Several commenters argued that the proposed rule provides no discussion, analysis, data, or valid reasons as to why the SBA now considers the proposed approach to be appropriate, when in 2002–2003 it established the ITVAR exception and considered the receipts based size standard not appropriate for ITVARs.

Some commenters noted that the proposed rule is based on unfounded conclusions and represents an error in judgment that would have dire consequences for many small businesses and a number of government programs.

Many commenters challenged the results from the 2007 Economic Census data that SBA included in the proposed rule that ''150 employees is more or less equivalent to $27.5 million receipts in NAICS 541519 and that more than 99 percent of firms below the 150-employee level will continue to qualify as small under the $27.5 million receipts based size standard.'' Using a sample of small ITVARs awarded contracts under the various GWAC vehicles (such as DHS's FirstSource II, Air Force's NETCENTS–2, and NASA's SEWP V), one commenter countered the Economic Census results that the average size of small ITVAR companies was about $48 million in receipts and 45 employees and that more than 50 percent of ITVARs between $27.5 million and 150 employees would lose their small business status under the SBA's proposed change. The same commenter also stated that 12 of 13 of its small ITVAR clients had receipts in excess of $27.5 million (average $123 million) and averaging only 50 employees. Using a scenario analysis with various percentages of value added services and the average wage for the IT sector, another commenter demonstrated that 150 employees is not equivalent to $27.5 million in receipts. Another commenter countered the Economic Census results by saying that virtually all ITVARs have annual receipts exceeding $27.5 million, while employing significantly fewer than 150 employees and in many cases fewer than 50. Similarly, another contended that the Economic Census (but did not specify which Economic Census) shows 72 percent of ITVARs, not 99 percent, would qualify as small under the $27.5 million receipts based size standard. Several others also claimed that SBA's statements are not supportable, but did not provide or suggest the specific data to support their claims.

A number of commenters dismissed the above results as being based on the outdated data, arguing that the 2007 economic data has no relevance for contracts awarded in 2014 under NAICS 541519, especially to ITVAR contracts awarded under the 150-employee size standard. Some argued that SBA's results only apply to IT service provider firms in NAICS 541519, but not to ITVAR firms, while others contended that SBA provides no other recent economic data to support its conclusions from the 2007 Economic Census.

Other commenters also challenged SBA's seemingly conflicting statements in the proposed rule. For instance, in one place, SBA stated that, based on 2007 Economic Census, 99 percent of small ITVARs will retain their small business status under the receipts based size standard, while elsewhere in the rule it acknowledged that the Economic Census do not provide the data to analyze sub-industry categories or exceptions. The commenters argued that this shows SBA lacks an understanding of the economic realities and characteristics of the ITVAR industry and has no knowledge of the number of small businesses receiving contracts under the 150-employee size standard. This led, as some commenters contended, SBA to come to the faulty conclusion that 99 percent of firms below the 150-employee size standard would continue to qualify as small under the $27.5 million receipts based size standard.

SBA's Response

SBA's proposal to remove the ITVAR exception was not driven by the analysis of the industry data. Rather, the proposal was primarily driven by the need to eliminate obvious inconsistencies, confusion, and misuse that the ITVAR exception has created. In response to the comments, elsewhere in this final rule, SBA has provided a detailed analysis of data on firms receiving ITVAR contracts. Regarding the comment relating to the lack of the impact analysis of the proposed rule, as part of regulatory impact analysis as required by Executive Order 12866 and initial regulatory flexibility analysis (IRFA) as required by the RFA, SBA provided the estimate for the number of small businesses impacted by changes to industry size standards covered by the proposed rule, along with the estimates on the impacts on small business participation in Federal procurement and SBA financial assistance programs. As in all previous proposed and final rules on size standards for other NAICS sectors, SBA only provided the aggregate estimates of the impacts for all affected industries, instead of separate estimates for each industry or sub-industry.

As explained in the proposed rule, the Economic Census data SBA uses for size standards analysis are limited to the 6-digit NAICS industry codes and hence do not provide the data for sub-industry categories or ''exceptions,'' including the ITVAR sub-industry. Given the lack of data specific to the ITVAR sub-industry, to get some general sense about the potential impact the proposed rule would have on current small ITVARs, SBA analyzed the 2007 Economic Census data for NAICS 541519 because the ITVAR exception is under that NAICS code. That analysis suggested that 150 employees is more or less equivalent to $27.5 million for firms in that industry. The results also showed that 99 percent of firms with 150 or fewer employees would have receipts below $27.5 million. SBA agrees with the comments that these results most likely apply to all firms within NAICS 541519 and not necessarily to ITVAR firms, given the differences in economic characteristics between the two. In response to the comments, SBA analyzed the data on firms receiving ITVAR contracts and other contracts under NAICS 541519 and Economic Census data for NAICS 541519 and 423430. The results, as detailed elsewhere in this final rule, would support the commenters' claims that the results for NAICS 541519 do not provide an accurate description of ITVAR firms. The results would also support SBA's assessment that it would be inappropriate to include the ITVAR sub-industry as an exception to NAICS 541519.

With respect to the commenters' challenge to the SBA's statement on the equivalence between 150 employees and $27.5 million receipts, it should be noted that, using the 1997 Economic Census data, SBA had reached a similar conclusion in the 2003 final rule that 150 employees is equivalent to the average number of employees of firms under the then $21 million receipts based size standard for computer related services (NAICS Industry Group 5415) (68 FR 74833). In fact, the discussion in the 2003 final rule indicates that the equivalence between the receipts based size standard at that time and 150-employee level was the key factor for establishing the 150-employee size standard for the ITVAR exception, although the vast majority of the commenters on the SBA's proposed 500-employee size standard had suggested using a 100-employee size standard. Moreover, given the equivalence between 150 employees and the then $21 million size standard for NAICS Industry Group 5415, in the 2003 final rule, SBA even contemplated using the same receipts based size standard for the ITVAR industry.

Regarding some commenters' concerns that SBA's results based on the 2007 data are outdated and have no relevance to contracts awarded in 2014, it should be noted that the 2007 Economic Census is the latest and most comprehensive industry data available

to the Agency when the proposed rule was developed and this final rule was prepared. The data on the more recent 2012 Economic Census tabulation will not be available until late 2016. It should also be noted that the SBA's analysis in the 2003 final rule that established the 150-employee based size standard for ITVARs was also based on the similarly outdated 1997 Economic Census data. As discussed elsewhere in the rule, several commenters noted that there has been no material change in the ITVAR industry since the 2003 final rule, which bodes well with using the 2007 data. Many commenters criticized the 2007 Economic Census data as outdated, but except for a limited sample data on companies receiving ITVAR contracts under some GWACs or some general suggestions to look at the data on FPDS–NG and USASpending, commenters really did not provide or suggest alternative data to evaluate the ITVAR industry.

In response to the comments, using the data from small business goaling reports and FPDS–NG for fiscal years 2012–2014 (the latest available when the final rule was prepared), SBA analyzed receipts and number of employees for firms receiving contracts under various GWACs and task orders that used the ITVAR exception. The results showed, of about 260 such firms, about 60 firms had 150 or fewer employees and receipts above $27.5 million. Although this figure is higher than the one suggested by the 2007 Economic Census, this is quite small relative to some commenters' claim that thousands of currently small ITVARs exceed $27.5 million and lose their small business status under the proposed rule. More importantly, as stated elsewhere in this final rule, under the proposed rule, none of the firms between the $27.5 million receipts level and 150-employee employee level would actually lose their small business status because they would continue to qualify as small for the IT supply contracts under the 500-employee nonmanufacturer size standard. In fact, based on the same data, the majority of ITVARs below 150 employees and above $27.5 million receipts were already found to have received IT supply contracts as small businesses under the 500-employee nonmanufacturer size standard.

Comments That SBA Provides No Evidence for Its Rationale

Several commenters claimed that SBA provides no evidence, facts, or data to support its justification to eliminate the ITVAR exception because it has created inconsistencies, confusion, and misuse. One commenter noted that there has been no single investigation from the GAO or SBA's Inspector General to substantiate the SBA's position. Others argued that to eliminate the ITVAR exception, SBA did not provide similar data and analyses that the Agency provided in its 2003 final rule.

Several commenters dismissed SBA's justification for the proposed rule that the ITVAR exception has created some inconsistencies, confusion, and misuse as being vague, conjectural, and speculative. In response to SBA's statement about the confusion due to the inability of contracting officers to identify size standards exceptions in FPDS–NG, some commenters suggested that SBA should pursue modification of FPDS–NG, while others suggested adding an independent ITVAR NAICS code.

With respect to the SBA's statement that in many cases Federal agencies have applied the 150-employee size standard, instead of the receipts based size standard, for contracts that were primarily for services, thereby benefitting more successful or mid-sized companies at the expense of those below the receipts based size standard, one commenter noted that misapplications of NAICS codes are not limited to Footnote 18 and that SBA did not present any evidence to show that Footnote 18 is particular cause of error, while another argued that SBA did not provide the data to support its argument. The commenters suggested that training and guidance to procurement personnel would be a better remedy than eliminating the exception. On the same issue, one commenter noted that misuse is not the valid reason to eliminate the exception, because it is a training issue and it is SBA's responsibility to ensure that the exception is used correctly.

With regard to the SBA's statement that firms may or may not be eligible as small for the exact purchase simply based on the contracting officer's selection of the NAICS code and size standard, the commenter countered that this is not an issue limited to procurements using Footnote 18. The commenter argued that this is the nature of the Federal acquisition process, which gives discretion to contracting officers in selecting the NAICS code and the size standard.

With respect to the SBA's assessment that the combination of services and supplies in an acquisition is not unique to the IT industry, one commenter claimed that the general principle is that agencies classify procurements based on the principal purpose of the acquisition and that regardless of the relatively high dollar value of the IT product component of an ITVAR acquisition, the product is not the principal purpose of these acquisitions. Responding to the same issue, another commenter contended that SBA fails to account for numerous ways the Federal government treats IT purchases differently than other types of purchases, as reflected in the TechFAR. The same commenter went on to challenge the proposed rule for not addressing the concerns that led to the creation of the ITVAR size standard that still exist today.

In response to SBA's language that it is also unclear from the terms of the exception itself whether a contract using the ITVAR 150-employee size standard should be classified as a service contract or a supply contract, one commenter noted that with or without Footnote 18, NAICS 541519 is a service NAICS code and that, according to the 2003 rule, the NMR does not apply to small business, 8(a), or HUBZone set-aside contracts classified under the ITVAR exception.

Several commenters also challenged the SBA's statement that the lack of data on characteristics of firms in ITVAR activities in the Economic Census tabulation and FPDS–NG to evaluate the current 150-employee size standard also justifies the proposal to eliminate the ITVAR sub-industry category by arguing that the lack of data or government inability to collect or track the data are not valid reasons for the elimination of the exception or changing industry size standards. Some commenters criticized the Agency for making no attempt to obtain the necessary data, while others contended that the lack of data to support any change should mean that SBA should take no action in the first place. For the data, some commenters suggested either splitting the NAICS 541519 or creating a new NAICS code for ITVARs, while others suggesting reproducing the analysis from the SBA's 2002/2003 rulemaking.

SBA's Response

As stated elsewhere in this rule, SBA's proposal to remove the exception was not driven by the analysis of the Economic Census data. Rather SBA's proposal was primarily driven by the need to eliminate inconsistencies, confusion, and misuse that the ITVAR exception has created. In response to the comments, elsewhere in this rule, the Agency has provided a detailed analysis of the ITVAR industry, using both the Economic Census data and the relevant procurement data.

As explained in the proposed rule, the major source of confusion and misunderstanding with all ''exception'' size standards, including the 150-

employee ITVAR size standard, is that FPDS–NG (*https://www.fpds.gov/*) does not allow contracting offers to enter the specific size standard under which the awardee was ''small.'' The only designation they can enter is whether the awardee was ''SMALL'' or ''OTHER THAN SMALL.'' For example, if a contract under NAICS 541519 was awarded to a ''small'' business, the FPDS–NG data do not show whether the awardee qualified as ''small'' under the regular receipts based size standard or under the 150-employee ''exception'' size standard. SBA agrees with the commenters that such confusion applies to all exceptions, not just the ITVAR exception. However, in view of the large value of contracts the agencies award each year using the ITVAR exception and the data, as discussed below, indicating the inconsistent application of the exception in procuring the mix of products and services, SBA is particularly concerned with the ITVAR exception.

Some commenters suggested creating a separate NAICS industry code for ITVAR firms with its own size standard to address this issue. However, SBA disagrees for two reasons. First, SBA does not have authority to create or modify NAICS industry definitions. Second, a relevant NAICS code already exists—NAICS 423430 (Computer and Computer Peripheral Equipment and Software Merchant Wholesalers). The NAICS classifies establishments based on their primary activity. ITVAR firms may provide some value added IT services; however, since selling and distributing computer hardware and software is their primary activity, they are still classified under NAICS 423430. The SBA's 2003 final rule also noted that ITVAR firms are basically Computer and Computer Peripheral Equipment and Software Merchant Wholesalers. More importantly, many commenters also asserted that most of their revenues come from the sales of computer hardware and software. Under SBA's rules, agencies do not use wholesale or retail NAICS codes for small business set-aside supply contracts. Agencies use the manufacturing NAICS code that describes the product to be acquired, and firms may qualify under the manufacturing size standard or the 500-employee nonmanufacturer size standard.

Confusion also exists with respect to prime contractor performance requirements or ''limitations on subcontracting'' (*see* 13 CFR 125.6 and FAR 52.219–14). Since ITVAR contracts contain both services and supply (computer hardware) components, it is unclear whether the services or supply requirements of the limitation on subcontracting should apply to these contracts and whether the prime contractors are meeting those requirements. Similarly, confusion also exists both among contracting officers and industry participants with respect to the application of the NMR for the supply component of the contract. For the same reason, it is also difficult to ascertain if resellers provided the supplies produced by small domestic manufacturers, large OEMs, or other large manufacturers. If the resellers provided the supplies produced primarily by the large OEMs or other large manufacturers, without a waiver of the NMR that would be inconsistent with the intent of the Small Business Act. SBA is concerned that without the compliance with the NMR, the ITVAR exception may have allowed small IT resellers to simply serve as ''pass throughs'' for large OEMs and other large manufacturers. Some commenters stated that as much as 75 percent of total sales of many leading OEMs are fulfilled through their ITVAR partners.

With respect to the comment that, according to the 2003 final rule, the NMR does not apply to small business set-aside contracts classified under the ITVAR exception, SBA now determines that treating ITVAR contracts as services contracts and to exempt them from the NMR was an error in the 2002/2003 rule, which the agency is attempting to correct in the current rulemaking. Additionally, to include the ITVAR firms, which are, by NAICS definition, wholesalers and distributors of computer hardware and software, as part of a service NAICS code was also an error the proposed rule intended to correct. Finally, including ITVAR contracts, which are by definition supply contracts, as an exception under a service NAICS code was also inconsistent with SBA's regulations and NAICS industry definitions. Many commenters also argued and provided supporting data that economic characteristics of the ITVAR firms are significantly different from those for IT services firms in NAICS 541519. This provides further support to the SBA's determination in the proposed rule that the ITVAR exception should not be classified under NAICS 541519.

Regarding the comment that the proposed rule does not provide any data to support the reason that the ITVAR exception has created misuse, it should be noted that SBA's regulations do not require the agencies to use the ITVAR exception and its 150-employee size standard. The data show that different agencies acquiring the same mix of IT products and services are currently using the receipts based size standard, ITVAR exception with the 150-employee size standard, or the higher manufacturing size standards and nonmanufacturer size standard of 500 employees. SBA reviewed a sample of procurements posted on the Federal Business Opportunities (FBO) Web site at *http://www.fbo.gov* and found that procuring agencies appear to have struggled with selecting the appropriate NAICS code, or a size standard for set-aside procurements involving the mix of computer hardware and software and services. For example, solicitations that seemed to be for equipment, software and maintenance used the receipts based size standard, while those that appeared to be primarily for maintenance services applied the 150-employee size standard. Similarly, some solicitations that seemed to be primarily for supplies and some services used the receipt based size standard instead of the employee based size standard. In some cases, both the receipt based and the 150-employee based size standards were included. If a contract is primarily a supply contract, along with some services, that would qualify for the ITVAR exception, contracting officers can still use the higher manufacturing size standards (such as 1,000 employees for NAICS 334111, Electronic Computer Manufacturing) or the 500-employee nonmanufacturer size standard. SBA found several small business solicitations involving integration of IT hardware, software and services, but the contracting officer used NAICS 334112, Computer Storage Device Manufacturing, with a size standard of 1,000 employees, instead of the ITVAR exception with 150-employee size standard.

Some commenters believed that SBA used the lack of data as a reason to eliminate the exception, but, as explained in the proposed rule and elsewhere in the final rule, the lack of data was not the primary reason to eliminate the ITVAR exception. What SBA indicated in the proposed rule was that eliminating the exception would also address the challenge the Agency faces, due to the lack of data, when evaluating the exception size standard in the same manner the Agency evaluates the size standards for regular industries using the industry data from the Economic Census. For the reasons provided elsewhere in this rule, SBA does not agree with the commenters' suggestions for creating a new NAICS code for ITVAR firms or reproducing the analysis from the Agency's 2002/2003 rulemaking to address the concern for

the lack of data on the ITVAR exception. First, SBA does not see the need for creating a new NAICS code for ITVAR firms, because such a NAICS code already exists in NAICS 423430. Second, the analysis SBA provided in its 2002/2003 rules has several flaws. In accordance with its current size standards methodology, SBA has presented an alternative approach to analyzing the ITVAR industry and determining its size standard.

SBA is also concerned that by allowing contracting officers to combine services contracts with supply contracts, the ITVAR exception might be hurting small businesses that are primarily involved in IT services and are below the $27.5 million receipts based size standard. The commenters who supported the SBA's proposal also shared these concerns. As discussed elsewhere in this rule, after the exception, the share of supply dominated contracts in total dollars awarded under small business contracts in NAICS 541519 increased sharply at the expense of the share of purely services oriented contracts.

SBA also determines that some of the other reasons the Agency provided to create the ITVAR sub-industry category in its 2002/2003 rulemaking are not unique to the procurement of IT products. For example, the SBA's reason that IT acquisitions entail numerous products, making it unrealistic to expect one manufacturer to produce all products and that the agencies prefer to fulfill their requirements from a single source, also hold true for many other acquisitions that entail numerous items involving several manufacturers. They are still subject to the manufacturing performance requirements and the NMR.

Comments That There Has Been No Change in Federal IT Market or ITVAR Industry

Many commenters argued there has been no material change in the ITVAR industry, market conditions, or how the Federal government procures IT requirements since the 2003 final rule. Therefore a change to the ITVAR size standard is not warranted, they argued. The commenters argued that SBA's reasons to create the ITVAR sub-industry category are still valid—agencies' preference to procure IT equipment and supporting services from a single source; most IT acquisitions involve numerous IT products making it unrealistic to expect for a single manufacturer to fulfill all requirements; IT contracts require services involving customization of hardware and software; and a substantial portion of revenue of ITVARs comes from the sale of computer hardware and software.

One commenter noted that in creating the ITVAR exception, SBA identified ITVARs as a distinct industry from both IT product distributors and IT service providers. The key differentiator was the delivery of IT solutions involving both IT products and services, the commenter added. The commenter argued that significant changes in the IT landscape, especially the cloud, have validated the existence of ITVAR industry. The commenter claimed that cloud cannot be effectively delivered by a small business under a product based NAICS. Delivering cloud to the government is a perfect example of an ITVAR solution and the transition from a customer's current environment to the cloud requires significant services, the commenter added. ITVARs leverage the capabilities of a cloud provider with the addition of their own services to support delivery of a solution. The commenter argued that by treating an ITVAR contract as a service contract versus a product contract tied to the NMR makes small business participation in migration to cloud possible.

SBA's Response

SBA believes that many of the reasons the Agency provided in the 2003 final rule for creating the exception and the 150-employee size standard would remain intact when the ITVAR contracts are reclassified under the manufacturing NAICS codes. For example, using the 500-employee nonmanufacturer size standard, the agencies could still fulfill their needs for multiple products and services from a single source. Additionally, how ITVAR firms derive their revenues would not be an issue under the 500-employee based size standard. However, for the reasons discussed below, SBA disagrees with the commenters' argument that there has been no material change in Federal IT procurement and the ITVAR industry.

Prior to the exception, agencies procured computer hardware and software with some services as supply contracts under the manufacturing NAICS codes as long as the supplies remained the largest component of the total contract value. The agencies were required to comply with the NMR rule if the contracts were set aside for small businesses. For procurements that were primarily for IT services, the agencies applied one of the computer services related industry codes under NAICS Industry Group 5415. The 2003 final rule has resulted in significant changes in Federal IT procurement by allowing the agencies to procure computer hardware and software with services using the ITVAR exception under NAICS 541519. Moreover, the small business ITVAR contracts, although by definition they are predominantly supply contracts, are not subject to the NMR, thereby allowing small ITVARs to provide products from the large manufacturers, including foreign manufacturers.

In the 2003 final rule, to arrive at the Federal procurement factor to determine the ITVAR size standard, SBA used Product and Service Code (PSC) Category D ''Information Technology and Telecommunications'' (PSC codes D301 through D399) to identify the ''ITVAR type'' contracts (*i.e.,* those involving the mix of computer hardware and software and services). During fiscal years 2001–2003, such PSCs accounted for more than 81 percent of total dollars awarded under small business set-aside contracts in NAICS 541519 and about 70 percent for other industries in NAICS Industry Group 5415. That figure for fiscal years 2012–2014 decreased to 40 percent for NAICS 541519 and to 64 percent for other industries in NAICS Industry Group 5415. Much of this decrease in NAICS 541519 could be explained by the increased share of predominantly product oriented PSCs, including ADP Software (PSC 7030), ADP Support Equipment (PSC 7035) ADP Components (PSC 7050), ADP System Configuration (PSC 7010), and ADP Input/Output and Storage Devices (PSC 7025) that the agencies procure using the ITVAR exception. For example, of total small business set-aside dollars awarded in NAICS 541519, the share of contracts classified under PSC Group 70 (Automatic Data Processing Equipment, Software, Supplies and Support Equipment) increased from less than 3 percent during fiscal years 2001–2003 to 41 percent during fiscal years 2012–2014. That percentage decreased from about 9 percent to 3 percent for other industries in NAICS Industry Group 5415. During the same period, the average value of dollars obligated under the small business set-aside contracts classified under PSC Group 70 increased from less than $300,000 to nearly $2.8 million for NAICS 541519 and remained stagnant at around $500,000-$600,000 for other industries in NAICS Industry Group 5415. SBA believes that most of these changes in Federal IT procurement under NAICS 541519 are attributable to the ITVAR exception.

Despite the above facts, SBA's proposal to eliminate the exception from NAICS 541519 was not because it believed there have been changes to the

ITVAR industry, or in the Federal IT market. Nor was it based on an assumption that the ITVAR industry is no longer relevant. Rather, the proposal was to address the inconsistency, confusion, and misuse concerning the exception.

With respect to the argument from one commenter that because of ''cloud'' services the ITVAR exception is more relevant today, SBA's regulations would require the agencies to classify such contracts under one of the IT services NAICS codes with the $27.5 million receipts based size standard. Using the 150-employee size standard and allowing companies that typically have receipts in the range of $50 million to $200 million to qualify for a contract whose primary purpose is services would negatively impact small businesses at the $27.5 million receipts based size standard.

Comments That SBA Should Not Implement the Proposed Rule

Several commenters argued that the proposed rule should not be implemented because it represents a policy error from a judgmental, economic, and common sense standpoint. The commenters noted that with the absence of applicable, complete and relevant or current data regarding the impact of the proposal, the passage of the proposed rule would be arbitrary and capricious and constitute the abuse of the SBA's rule making authority. The commenters recommended that, to move forward with the proposal, SBA should conduct a thorough and detailed analysis of the procurement and industry data, evaluate alternatives to eliminate the confusion, and misuse, and publish the analysis for further industry comment. Specifically, they suggested that SBA analyze the current data on multiple award IDIQ contracts being used to procure combinations of computer hardware and software and services from the FPDS–NG and USASpending to more accurately estimate the number of businesses that would be impacted if the proposed rule is adopted. Some commenters added that without an adequate justification and analysis, SBA's proposed rule would harm small ITVARs and impede the ability of Federal agencies to fulfill their needs. Some commenters recommended that SBA should delay the proposed rule until it analyzes more current economic census data for a more accurate assessment of the impacts the rule would have on small ITVARs. One commenter suggested that since the ITVAR issue is related to the NMR, SBA should hold the rule until the forthcoming proposed rule clarifying changes to NMR rule are finalized. ITVARs should be given a chance to consider the impact of the proposed change in conjunction with any proposed changes or clarifications to the NMR.

SBA's Response

In response to the comments, elsewhere in the final rule, SBA has provided a detailed analysis of the available industry and Federal procurement data that are relevant to ITVAR firms. Similarly, SBA has also provided a detailed discussion on its position to and analyses of various alternatives that the commenters provided to eliminate the confusion, and misuse of the ITVAR exception. SBA does not agree with the suggestion to delay the proposed rule until SBA analyzes more current Economic Census data, which will not be available until late 2016.

SBA acknowledges that, if adopted, the proposed rule would have some impacts on businesses that currently perform ITVAR contracts under the 150-employee ITVAR size standard. Further, agencies would benefit by having a bigger pool of firms to compete for IT product contracts. The businesses that are currently small under the ITVAR size standard would continue to qualify as small, except for that they would need to compete with somewhat larger businesses between 150 employees and 500 employees and comply with the NMR. Without the exception, the agencies would reclassify IT supply contracts under the applicable manufacturing NAICS codes and be able to fulfill their requirements through a single reseller or distributor under the 500-employee nonmanufacturer size standard, except for that they would be required to comply with the NMR. This is how the agencies were procuring IT products prior to the exception. Based on the procurement data analyzed and discussed in this rule, SBA does not believe that the impacts from these changes would be as detrimental as projected by the commenters.

Comments on the Inapplicability of Manufacturing NAICS Codes and the NMR

Several commenters rejected SBA's statement that, under the proposed rule, agencies would reclassify computer hardware and software supply contracts under the manufacturing NAICS codes and ITVARs below 150 employees could qualify under the 500-employee nonmanufacturer size standard. They argued that it would not only be unfair to compel ITVARs with less than 150 employees to compete with large companies (including OEMs) with 500 employees to 1,500 employees, but it would also create significant problems for agencies to obtain the best combination of IT services, equipment and software in a timely manner. Some noted that SBA's assessment in the proposed rule that ITVAR contracts could easily transition to product based NAICS codes without significant harm to small businesses is incorrect. Others argued that using the manufacturing NAICS codes, instead of the ITVAR exception, would create an undue burden on small ITVARs by forcing them to compete in various manufacturing NAICS codes dominated by much larger companies.

The commenters expressed various concerns about classifying IT supply contracts under the manufacturing NAICS codes with a higher employee size standard or 500-employee nonmanufacturer size standard, instead of the 150-employee ITVAR size standard. One commenter argued that the existence of an alternative purchasing method does not justify the removal of a well-established NAICS exception. Some commenters stated that manufacturing NAICS codes are not designed to supply IT products and do not include value added services that ITVARs offer with the products. Others claimed that classifying IT supply contracts under the manufacturing NAICS codes would create a significant workload for SBA in responding to requests for waivers of the NMR and would substantially delay IT procurements.

Many commenters expressed concerns against classifying IT supply contracts under the manufacturing NAICS codes because of the NMR. They argued that resorting to a manufacturing NAICS code would force small ITVARs to a restrictive nonmanufacturer size standard unless there is a waiver from the NMR. The commenters contended that the waiver process is cumbersome and in some cases waivers are difficult to obtain in a timely manner. They further argued that the NMR would significantly limit the number of products a small business could offer to the government. This would, as the commenters added, not only restrict the small ITVARs from providing the full spectrum of desired products to agencies, but would also restrict the government's ability to procure the state-of-the-art technology products through small businesses. Some commenters argued that, from a practical standpoint, the ITVAR contracts would be unlikely to be set aside for small businesses because there

are not many small businesses that manufacture hardware and equipment to meet the demand. The commenters argued that if the exception is eliminated and contracts to procure computer hardware and software are reclassified under the manufacturing NAICS codes, many businesses considered small under the exception would not be able to participate because it would not be possible to comply with the NMR for every item that can be currently sold under the ITVAR exception.

One commenter noted that, by using the 150-employee ITVAR size standard, agencies are currently able to procure multiple IT products and services through a single procurement without the requirement to supply products manufactured by small business concerns or having to secure SBA's waivers for numerous products on the procurement. As the commenter continued, the ITVAR exception also allows small resellers to offer the most optimum combination of products from both small and large manufacturers, thereby providing the best value to the government, which would not be possible if they are compelled to offer the products from small manufacturers under the NMR. The commenter concluded that this can become very complex when there are similar products manufactured by small manufacturers that are not compatible with other IT equipment or software that must be used in combination to best meet agency requirements.

One commenter noted that if agencies are compelled to use the manufacturing NAICS codes to obtain both IT services and products, they would run the risk of the NMR delaying the procurement or preclude the utilization of the most optimum combination of IT products to meet their requirements. The need to justify and obtain waivers from the NMR, the commenter claimed, would discourage agencies from setting aside IT procurements for small businesses under the manufacturing NAICS codes. Thus, the commenter concluded, the elimination of the ITVAR exception and its 150-employee size standard could significantly reduce the number and magnitude of ITVAR contracts set aside for small businesses. Another commenter contended that using the 500-employee nonmanufacturer size standard would put small ITVARs (with 50–60 employees) in direct competition with larger companies with up to 500 employees. The commenter added that unless a company is allowed to separate hardware and software revenue from services for the purpose of being small under NAICS Industry Group 5415, very few value added resellers would remain small.

One commenter supporting SBA's proposal argued that it would be impossible to comply with the NMR for acquisitions of IT products (*e.g.,* software and hardware) even if they are properly classified under a manufacturing NAICS code, because many of the IT products desired by the government are not manufactured by small businesses and do not have waivers. As such, these procurements are fundamentally defective because no small businesses could perform the requirements of the contract without violating SBA's regulations. The commenter suggested that acquisitions for IT products should be competed on a full and open basis.

SBA's Response

If the ITVAR exception is eliminated as proposed and ITVAR contracts are reclassified under the manufacturing NAICS codes, the size standard for an IT reseller would be only 500 employees, although the size standard for computer and peripheral equipment manufacturing related NAICS codes is higher at 1,000 employees. While SBA acknowledges that these businesses would have to compete with businesses between 150 employees and 500 employees, it disagrees with the commenters' argument that eliminating the ITVAR exception would force them to compete with large companies up to 1,500 employees.

SBA did not propose to eliminate the ITVAR exception simply because there is an alternative method to procure IT supplies using the 500-employee nonmanufacturer size standard. The proposal was to ensure that small business IT supply contracts, like all other supply contracts, are in compliance with applicable statute and regulations, especially the NMR and limitations on subcontracting. The Small Business Act provides that, on a supply contract set aside for small business, the offeror must account for 50 percent of the cost of manufacturing the product, or qualify as a nonmanufacturer. Under the Small Business Act and implementing regulations, a firm may qualify as a nonmanufacturer on a supply contract set aside for small business by supplying the product of a small business or SBA must have issued a class or individual contract waiver of the NMR, which would allow the nonmanufacturer to supply the product on any size business. Additionally, the rule proposed to eliminate the ITVAR sub-industry only as an exception to NAICS 541519, but not the ITVAR activity altogether.

SBA does not agree with the comment that the manufacturing NAICS codes are not designed to supply IT products and do not include value added services that ITVARs offer with the products. The regulation allows agencies to include some services in IT supply contracts classified under the manufacturing NAICS codes as long as the products remained the principal purpose of the contract. Prior to the ITVAR exception, agencies were using the manufacturing NAICS codes to procure IT products that required some services. Even now with the exception, many agencies procure the mix of IT products and services using the manufacturing NAICS codes. As stated elsewhere, even with the ITVAR exception, agencies use the manufacturing NAICS codes to obtain computer hardware and software through various GWACs, including NIH's ECS–3 and Army's ITES–2H.

SBA does not believe that the waiver process of the NMR is cumbersome and that waivers are difficult to obtain in a timely manner are good reasons for not applying the statutory rule. SBA believes it is inconsistent and unlawful to require distributors or resellers of thousands of other products to comply with the NMR and exempt the resellers of IT products from the rule. While SBA recognizes that the NMR may work better for some products than for others, it strongly believes that the rule must apply to all supply contracts equally. Thus, similar to all other products and supplies, the NMR must also apply to IT products, including those purchased through the ITVAR exception. SBA is aware and agrees with some commenters that small business manufacturers may not be available to comply with the NMR for the procurement of some computer hardware and software. Under those instances, the regulations allow agencies to request waivers of the NMR from SBA, as they have done for hundreds of other products. In fact, waivers already exist for a wide range of IT products under computer and peripheral equipment manufacturing related NAICS codes (*see https://www.sba.gov/content/class-waivers*). However, based on SAM and FPDS–NG data, SBA believes that there are small manufacturers for a wide variety of IT products, which may have been deprived from Federal opportunities under the ITVAR exception because of the inapplicability of the NMR to procurements under the ITVAR exception.

Reclassifying ITVAR contracts under the manufacturing NAICS codes would

not change the agencies' ability to procure multiple IT products from a single source. They could continue to acquire multiple products from a single source by using the 500-employee nonmanufacturer size standard. Similarly, this would also not affect resellers' ability to provide the most optimum combination of IT products from multiple manufacturers. If the products from small manufacturers are not compatible with other hardware and software, agencies may request a waiver of the NMR for the items.

While ITVAR contracts include some services, they are basically supply contracts. Thus, according to the SBA's regulations, like all other supply contracts, ITVAR contracts should be classified under the applicable manufacturing NAICS codes. If such contracts are set aside for small businesses, they are also subject to the NMR. If there are no domestic small manufacturers of the products being procured to comply with the NMR, agencies can request waivers. The potential burden on agencies to obtain NMR waivers is not a convincing reason for not following the statute, because compliance with the NMR and obtaining waivers is ultimately in the interest of small businesses. Similarly, the arguments that it would create a significant workload for SBA to respond to requests for nonmanufacturer waivers and substantially delay IT procurements are not good reasons for not complying with the statute. SBA believes that potential delays, if any, resulting from the requests for waivers can be ameliorated by proper planning and scheduling of contracts. Even if agencies are currently setting aside many IT contracts for small businesses using the exception, without the NMR, most of the benefits of those contracts are simply passed through to large OEMs or other large manufacturers, including foreign companies. Many commenters themselves stated that small resellers have only small profit margins on ITVAR contracts. SBA disagrees with the suggestion to separate revenues from computer hardware and software sales from services to allow ITVARs to qualify as small under the receipts based size standard. First, for size standards purposes, SBA defines the size of a business concern in terms of its overall revenues or employees, not in terms of revenues or employees for specific products or services. Second, allowing ITVAR firms with revenues significantly higher than the receipts based size standard to qualify as small would negatively impact businesses below the receipts based size standard.

Finally, with respect to the comment that IT products should only be competed on a full and open basis, SBA believes that doing so would not only hurt many existing small businesses by forcing them to compete with the largest firms, which dominate the industry, it would also reduce competition and innovation in the economy.

Comments That the Proposed Rule Violates Statutory Requirements

One commenter applauded SBA for complying with the Jobs Act, but noted that the proposed rule violates the statutory language added to the Small Business Act by the National Defense Authorization Act for Fiscal Year 2013 (NDAA 2013). The commenter added that the provisions in the proposed rule concerning the ITVAR size standard fail to address the issues facing the IT industry and the misuse of the size standards.

The commenter noted that modifications to SBA's size standards have significant implications for SBA programs, Federal procurement opportunities for small businesses, the Regulatory Flexibility Act, Executive Order 12866, and Federal regulatory programs in which the term ''small business'' is used. For these reasons, the commenter urged SBA to withdraw the current proposed rule and directed it to undertake a rulemaking that is legally sufficient, withstands judicial scrutiny, and does not tempt Congress to take ameliorative action.

The commenter was concerned with limiting the number of size standards to choose from and applying common size standards for some industries. The commenter referred to the SBA's 2011 proposed rule on NAICS Sector 54 where the Agency had proposed the common size standards for industries in NAICS Industry Group 5413 (Architectural, Engineering, and Related Services) and Industry Group 5415 (Computer Systems Design and Related Services).

The commenter claimed that the proposed rule violated the statutory provisions of the NDAA 2013 relating to SBA's size standards. Specifically, the commenter noted that the proposed rule does not follow the statutory provisions of the proposed rulemaking, does not honor the statutory prohibition on common size standards, and ignores the statutory language on the number of size standards. The commenter considered that the proposed rule is fundamentally flawed because SBA applied the same methodology prior to NDAA 2013 without any change to increase the size standards for 30 industries and three sub-industries, and to eliminate the ITVAR sub-industry or exception to NAICS 541519.

With respect to the statutory provisions of the rulemaking, the commenter noted that for the majority of the 30 industries that face a changed size standard, the only description provided is the NAICS code and industry title. The commenter argued that the proposed rule did not provide the types of analyses SBA provided in its 2003 final rule to establish the ITVAR exception and the 150-employee size standard.

The commenter argued that with no justification for the use of the ''anchor size standard'' approach as a basis for evaluating characteristics of individual industries, the proposed rule violates the statutory requirement on using common size standards. The commenter also challenged the proposed rule for placing the ITVAR firms under one of the common size standards created in 2012 that, as the commenter contended, prompted Congress to change the statute.

The commenter noted that by limiting the number of employee based size standards to five levels (500 employees, 750 employees, 1,000 employees, 1,250 employees, and 1,500 employees), SBA disregarded the statute in the proposed rule. In response to SBA's approach against the practicality and need for establishing separate size standards for each of 1,000 plus industries, the commenter indicated that Congress would not oppose thousands of size standards as they would provide better insights into the small business industrial base, inform the creation of better scope of work for contracts, increase opportunities for small businesses, and mitigate the impact of outgrowing the size standard.

Another commenter argued that proposed rule does not comply with the RFA. The commenter noted that the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires the agency to consider the impact of the proposed rulemaking on small entities and analyze alternatives to minimize the impacts on small entities. The commenter argued that the SBA's IRFA does not include any discussion on the impact of eliminating Footnote 18.

SBA's Response

With respect to the impact of the NDAA 2013 on the comprehensive review required by the Jobs Act, SBA maintains its existing approach is consistent with those requirements. SBA's methodology, as outlined in its publicly available white paper and utilized in each proposed and final

rulemaking, discusses the impact on firms, provides an analysis of the competitive environment, discusses the sources of data, and the anticipated effect on firms. If SBA proposes common size standards, it will and does provide a justification in the proposed and final rule. Further, SBA is not limiting the number of size standards. It is important to note that much of the data available is based on ranges. It is not possible to establish size standards at such a granular level that size standards would vary by a single dollar or single employee. When conducting economic analysis using varying data sources and multiple factors, there must be some rounding to dollar values or employee numbers. However, for the review of employee based size standards, to the extent permitted by the 2007 Economic Census tabulation and other available data, SBA adjusted its size standards methodology in response to the NDAA 2013 requirements. Specifically, for manufacturing and other industries that have employee based size standards for which SBA published the proposed rules on September 10, 2014, the Agency added an additional size standard level of 1,250 employees between 1,000 employees and 1,500 employees. In addition, SBA increased the number of size standards for industries in Wholesale Trade for SBA's financial assistance. Currently, all industries in Wholesale Trade have one common size standard of 100 employees for SBA's loans. SBA had proposed three additional size levels, namely 150 employees, 200 employees and 250 employees and published the rule for comments (79 FR 28631 (May 19, 2014)). SBA proposed no common size standards for any industries that have employee based size standards. As part of preparation for the next round of the size standards review as required by the Jobs Act, SBA is currently reviewing and updating its current ''Size Standards Methodology'' White Paper to incorporate the provisions of the NDAA 2013 to the extent possible. SBA plans to issue the updated methodology for public comments and finalize it prior to launching the next round of size standards review, possibly in the first quarter of Fiscal Year 2017.

SBA disagrees with the comment that the proposed rule did not provide any analysis of industry data or the competitive environment to the industries that faced a size standard change. As explained in the proposed rule and the methodology white paper, when developing the proposed rule, SBA examined several factors (such as average firm size, measures of start-up costs and barriers, industry concentration, and distribution of firms by size) to evaluate the competitive environment in specific industries, not just the NAICS industry code and title. In addition, SBA also evaluated the Federal contract market place in terms of ability of small businesses to compete for Federal opportunities under the existing and changed size standards. As part of the regulatory impact analysis as required by Executive Order 12866 and the IRFA as required by the RFA, SBA provided the impacts of the proposed rule, including the number of businesses impacted and their participation in Federal contracting and SBA's financial assistance.

As discussed elsewhere in this rule, based on the review of the 2003 final rule, SBA has determined that the analysis the Agency used to create the exception had several flaws. In response, in this final rule, SBA has provided alternative approaches to analyzing the ITVAR activity that are more consistent with the SBA's current size standards methodology and NAICS industry definitions.

Since SBA did not receive major adverse comments against using the common size standard for industries under NAICS Industry Group 5415 (Computer Systems Design and Related Services), SBA retained the common size standard for those industries in the final rule. Moreover, adopting industry specific size standards would have meant lowering size standards for some industries in that group. It is not the current proposed rule that placed the ITVAR firms under NAICS 541519 that share a common size standard with three other computer services related industries (*i.e.,* 541511, 541512, and 541513). Rather, SBA decided to place the ITVAR exception under NAICS 541519 in its 2002–2003 rulemaking that created the ITVAR exception. It should be noted that SBA created the common size standard for ''Computer Programming, Data Processing and Other Computer Related Services'' in the early 1990s (56 FR 38364 (August 13, 1991) and 57 FR 27907 (June 23, 1992)), not in the 2012 final rule for NAICS Sector 54.

With respect to the anchor size standard, it should be noted that SBA provides a detailed justification for using the ''anchor size standard'' approach in its ''Size Standards Methodology'' White Paper, as cited in the proposed rule. In fact, SBA has been using the ''anchor'' approach since the 1980s when reviewing and modifying size standards without much concern from the public. As part of its effort to address new statutory requirements and improve the methodology, SBA is considering alternative approaches to evaluating industry characteristics in the next round of the review.

Regarding the comment on limiting the number of size standards, there have been concerns from businesses and the contracting community that size standards are too complex to understand and cumbersome to use. To simplify, SBA proposed to reduce the number of receipts based size standards to eight (8) from 31 different levels that existed at the start of the current size standards review. However, because of Agency general policy to not lower size standards except to exclude the dominant firms, there are still 17 different receipts based size standards in effect. In all proposed rules on receipts based size standards, SBA sought comments on the number of size standards available to apply for individual industries. Almost all comments addressing this issue strongly supported the SBA's proposed eight receipts based size standards. Since its publication for comments in 2009, SBA had received many comments specific to its size standards methodology and almost all of those comments supported using a fixed number of size standards. Moreover, SBA has received no concerns from the public and contracting communities that limiting the number of size standards is having an adverse impact on small businesses or contracting activities. Additionally, in the proposed rule, SBA did not reduce the number of employee based size standards. Rather, as mentioned elsewhere in the rule, SBA expanded the number of employee based size standards by adding an additional size standard level of 1,250 employees between 1,000 employees and 1,500 employees. Furthermore, in this rule, SBA has lowered size standards for three industries from 500 employees to 250 employees to prevent the largest and dominant firms from being qualified as small. Until this rule, for purposes of Federal procurement, no industry had an employee based size standard lower than 500 employees. As stated earlier, SBA is currently reviewing and updating its current ''Size Standards Methodology'' White Paper (methodology) to incorporate the provisions of the NDAA 2013 to the extent possible.

SBA does not agree with the comment that the proposed rule did not provide the impact analysis of the proposed elimination of the ITVAR exception. As part of regulatory impact analysis as required by Executive Order 12866 and IRFA as required by RFA, SBA provided

the estimate for the number of small businesses impacted by changes to industry size standards covered by the proposed rule, along with estimates on the impacts on small business participation in Federal procurement and SBA financial assistance programs. As in all previous proposed and final rules on size standards for other NAICS sectors, SBA only provided the aggregate estimates of the impacts for all affected industries, instead of separate estimates for each industry or sub-industry.

Comments That the Proposed Rule Violates Congress' Intent on the Jobs Act

Five commenters contended that by eliminating the ITVAR exception and its higher 150-employee size standard and replacing it with the lower $27.5 million receipts based size standard, the proposed rule violates Congress' intent in the Jobs Act to increase size standards. To support this contention, one of the commenters referred to Section 404 of the Report from the Committee on Small Business and Entrepreneurship where the Committee discussed Federal market conditions and the need for a reasonable increase in size standards (S. Rep. 343, 111th Cong., 2d Sess. (Sep. 29, 2010)).

SBA's Response

SBA disagrees for two reasons. First, with the proposed elimination of the ITVAR exception, ITVAR contracts, which by definition are primarily supply contracts, would be reclassified under applicable manufacturing NAICS codes for which all current small ITVARs would continue to qualify as small under the 500-employee nonmanufacturer size standard. As a result, ITVARs would actually see an increase in their size standard, not a decrease. Second, the Jobs Act required SBA to conduct a detailed review of size standards and make appropriate adjustments to reflect market conditions. SBA believes such adjustments would mean either increases or decreases to size standards, not only increases. Thus, even if the elimination had resulted in a decrease to the size standard, SBA does not believe that would constitute a violation of the Jobs Act.

Comments That the Proposed Rule Conflicts With Retention of Other Exceptions

A couple of commenters argued that SBA's reason to eliminate the ITVAR exception for lack of data in the Economic Census is inconsistent with its decisions to retain all other exceptions in other industries. Another commenter was concerned that the same reason may lead SBA to eliminate other size standards exceptions that were put in place for important reasons, which will negatively impacts those industries and Federal customers.

SBA's Response

As stated elsewhere in this final rule, lack of data was not SBA's primary reason for eliminating the ITVAR exception. SBA's primary reason for the proposal was to eliminate the inconsistency, confusion, and misuse that the exception has created. Only as an ancillary reason, SBA noted that the proposal would also ameliorate the challenge SBA faces when evaluating economic characteristics and size standards for exception categories. The challenge is especially acute here because the industry represented by Footnote 18 is already represented in the NAICS table under the wholesale NAICS code. In other words, the data challenge exists because SBA created an exception for suppliers under a services NAICS code.

As part of its comprehensive review of all size standards, SBA has considered whether each of the existing exceptions or footnotes to size standards could be eliminated. As a result, SBA eliminated Footnote 1 relating to the size standard for electric utilities (see 78 FR 77343 (December 23, 2013), the Map Drafting exception to NAICS 541340 (Drafting Services) (see 77 FR 7490 (February 10, 2012)), and Aircraft Dealers, Retail exception to NAICS 441229 (All Other Motor Vehicles Dealers) (see 75 FR 61597 (October 6, 2010)). More recently, in the same proposed rule, partly for the lack of data, SBA also proposed eliminating the Offshore Marine Air Transportation Services exception to NAICS 481211 (Nonscheduled Chartered Passenger Air Transportation) and NAICS 481212 (Nonscheduled Chartered Freight Air Transportation and Offshore Marine Services exception (along with Footnote 15) to NAICS Subsector 483 (Water Transportation).

Additionally, although SBA, after public comments, has decided to retain some of the exceptions in the final rules, the Agency had always discussed in the proposed rules the data issues related to evaluating all exception categories and associated size standards and sought comments if they could be removed. For these reasons, SBA does not agree with the commenter that the proposal to eliminate the ITVAR is totally inconsistent with its decision to retain other exceptions. In addition, SBA did not remove other exceptions mainly because doing so would have forced many small businesses to lose their small business status as in most cases exceptions have higher size standards than those for regular industries. That is not the case with removing the ITVAR exception because, as stated elsewhere in the rule, if the ITVAR exception is eliminated, the ITVAR contracts would be reclassified under applicable manufacturing NAICS codes and all ITVARs below 150 employees would continue to qualify as small for those contracts as small businesses under the 500-employee nonmanufacturer size standard.

Comments Suggesting Alternatives to SBA's Proposal

In response to SBA's rationale to remove the ITVAR exception because it has created inconsistencies, confusion, and misuse, many commenters suggested alternative measures or courses of action to address these issues rather than eliminating the exception. These include modifying FPDS–NG to enable contracting officers to identify or show the exception size standard, creating a new NAICS code for the ITVAR exception with its own size standard, requiring ITVAR contracts and task orders to indicate separate values for goods and services, and development of training and guidelines for procurement officials to ensure the proper application of the size standard exception.

With respect to the new ITVAR NAICS code, the commenters suggested that SBA should develop a new or independent NAICS industry code to represent the ITVAR activity, as defined in Footnote 18, with an employee based size standard of 150 employees, while keeping NAICS 541519 intact with its current $27.5 million receipts based size standard. The commenters further recommended that SBA should analyze the data on both the multiple award IDIQ contracts used to acquire the mix of IT products (hardware/software) and services under NAICS 541519 and small businesses that are selected to perform these acquisitions to support the creation of the new ITVAR NAICS code. One commenter also suggested making the new ITVAR NAICS code a service NAICS code, with a 150 employee size standard. As an alternative to creating a new ITVAR NAICS code, one commenter suggested creating a new IT services NAICS code with a size standard of 150 employees.

In response to SBA's reason to remove the exception due to the lack of data to evaluate the ITVAR industry, one commenter suggested refining the Economic Census to collect data on ITVARs, while another suggested

creating a product service code (PSC) for ITVAR contracts to track data on ITVARs in FPDS–NG. Another suggested that SBA should reproduce the type of the analysis it did in the 2002–2003 rulemaking by combining the data for Computer Systems Design and Related Services (NAICS Industry Group 5415) and for the Computer and Computer Peripheral Equipment and Software Merchant Wholesalers industry (NAICS 423430) from the Economic Census and data from the industry, such as Computer Reseller News. In addition, the commenter suggested GSA's Federal Supply Schedules for IT solutions and SAM as additional sources of data to analyze ITVAR firms. A number of commenters recommended that SBA should review the procurement data from FPDS–NG and USASpending.

Some commenters argued that, rather than eliminating the 150-employee size standard, the confusion from having two size standards in NAICS 541519 could best be cured by eliminating the $27.5 million receipts size standard and adopting the 150-employee size standard as the single size standard for entire NAICS 541519. On a different note, instead of removing the exception and its 150-employee size standard, one commenter suggested lowering its size standard to 50, 75, or 100 employees, without a dollar limit.

Another commenter argued that, if SBA eliminates the ITVAR exception, only the services provided by the small firms should be counted in the calculation of annual receipts and hardware and software obtained from other suppliers or manufacturers should be excluded. The commenter further argued that this is similar to excluding the amounts collected for a third party from the receipts by travel agents, real estate agents, advertising agents, conference organizers and freight forwarders.

SBA's Response

As explained elsewhere in the rule, SBA does not agree that there is the need to create a new NAICS code for ITVARs, because such a code already exists in NAICS 423430. The Economic Census data show that more than 80 percent of revenues of firms in NAICS 423430 come from the sales of computer hardware and software. Many commenters also affirmed this by saying that ITVARs' revenue merely reflects the sales of computer hardware and software. The SBA's 2003 final rule also stated that ITVARs are part of NAICS 423430. Additionally, SBA has no authority or expertise to create or modify NAICS industry codes or definitions. Creating or modifying NAICS industry definitions or codes is done through the U.S. Economic Classification Policy Committee under the Office of Management and Budget (OMB) in cooperation with statistical agencies from the U.S., Canada, and Mexico. If the industry believes that a new NAICS code is warranted for the ITVAR industry, it should approach OMB (see *http://www.census.gov/eos/www/naics/*). Every five years, OMB updates NAICS codes and definitions, the next being the NAICS 2017 updates to be effective January 1, 2017.

SBA also disagrees with the suggestion to apply a single size standard of 150 employees for both IT services firms in NAICS 541519 and ITVARs. SBA believes that such a size standard would negatively impact small businesses at or below the $27.5 million receipts level by forcing them to compete against some ITVARs with significantly larger receipts levels and more financial resources. Several commenters noted that ITVARs below 150 employees have a much stronger financial base and better creditworthiness as compared to their counterparts below the $27.5 million receipts based size standard. Without ITVARs, the industry data would actually support a 150-employee size standard for NAICS 541519. However, to conform to its general policy of using number of employees to measure business size of firms in manufacturing industries and receipts to measure business size in services industries, SBA will maintain the receipts based size standard for NAICS 541519.

Several commenters suggested reproducing the analysis SBA performed in its 2003 final rule. However, SBA disagrees with the 2003 analysis for the following reasons:

1. Both the 1997 Economic Census data used in the 2003 final rule and 2007 Economic Census data (still latest available) showed vast differences between the characteristics of firms in Industry Group 5415 and those in NAICS 423430. For example, based on the 1997 data, sales of computer hardware and software accounted for 81 percent of total receipts in NAICS 423430, as compared to less than 5 percent in NAICS Industry Group 5415. The corresponding figures for the 2007 Economic Census data were about 83 percent and 9.5 percent, respectively. Many commenters also argued that firms in NAICS Industry Group 5415 have vastly different economic characteristics as compared to ITVAR firms and that the two cannot be compared. The commenters further argued that most of the receipts of ITVAR firms come from the sales of computer hardware and software. Despite these differences, SBA combined the data from these very distinct NAICS industry categories into one and defined the result as the new ITVAR industry and included it as sub-industry or exception under NAICS 541519.

2. In combining the two industry categories, SBA only included the services segment in NAICS 423430, which accounted for only about 14 percent of total receipts in that industry. The sales of computer hardware and software segment, which is the primary activity of ITVARs and accounted for more than 80 percent of total sales in that industry, were excluded. SBA has reproduced that analysis and determined that, had the computer hardware and software segment in NAICS 423430 been included in creating the ITVAR industry, the results would have supported a substantially larger size standard than 150 employees.

3. There is no need to create a new industry for ITVAR firms. ITVARs, because they are primarily engaged in the distribution or resale of computer equipment and software, are already classified under NAICS 423430. In the 2003 final rule, SBA selected NAICS Industry Group 5415 and NAICS 423430 for constructing the ITVAR industry based on an assumption that ITVAR firms operate in either one of these categories. As reflected in the Economic Census data, some firms in NAICS Industry Group 5415 may provide some computer hardware and software, but most of their revenue comes from services. Similarly, firms in NAICS 423430 may provide some services, but the vast majority of their revenue comes from the sales of computer hardware and software.

4. As discussed exhaustively in this rule, SBA now disagrees with the decision to include the exception meant for primarily supply contracts as an exception to NAICS 541519, which is a service NAICS code. Furthermore, SBA sees no legal basis to treat ITVAR contracts as services contracts, thereby exempting them from the manufacturing performance requirements and the NMR.

SBA now believes that, in accordance with SBA's current ''Size Standards Methodology,'' any analysis for establishing industry characteristics of ITVAR firms should focus on data for NAICS 423430, which is their primary industry. All firms in Wholesale Trade (NAICS Sector 42) share the same 500-employee size standard for purposes of Federal procurement under the NMR. If ITVAR firms need any special

provisions from the size standard or from the NMR, such provisions should be addressed within the context of the same rule. If ITVAR firms needed a separate employee based size standard, it should be based on data from NAICS Sector 42.

With respect to data sources, SBA has obtained data from SAM and FPDS–NG to evaluate industries or sub-industries (''exceptions'') that are not covered by the Economic Census. However, SBA is concerned that this data does not provide an accurate and representative picture of all firms within the industry. The data from those sources only pertain to firms that are either registered in SAM or have received Government contracts. The results from these sources generally tend to support much larger size standards than those supported by the Economic Census data. Some commenters suggested that SBA should use the private data sources that SBA used in the 2003 final rule. However, in the 2003 final rule, SBA considered private sources for data on ITVAR firms, but for several reasons as explained in that rule, it did not utilize them in establishing the characteristics of the ITVAR industry.

SBA disagrees with the suggestion for creating a new IT services NAICS code with a 150-employee size standard. First, there already exist four NAICS codes under Industry Group 5415 to include a wide range of IT related services, including those that can be included under ITVAR contracts. Second, it would hurt small businesses under the $27.5 million receipts based size standard by forcing them to compete with businesses with much larger receipts and better financial resources. That would likely encourage contracting officers to use the 150-employee size standard for IT services contracts instead of the receipts based size standard. This would not only create more confusion, but also would have detrimental impact on small businesses that are currently receiving small business contracts under the receipts based size standard.

SBA also disagrees with the suggestion to allow ITVAR firms to exclude the revenue from computer hardware and software sales from the calculation of receipts, similar to travel agents, real estate agents, advertising agents, conference organizers and freight forwarders. In calculating receipts for size standards, SBA follows the U.S. Census Bureau's definition of receipts for its Economic Census. Accordingly, SBA defines receipts for travel agents, real estate agents, advertising agents, conference organizers, and freight forwarders based on their net commissions by excluding the amount they collect on behalf of the third parties. The same definition does not apply to ITVAR firms. Additionally, as explained elsewhere, by allowing the ITVAR firms to exclude sales from computer hardware and software from receipts and qualify under the receipts based size standard would hurt many IT services firms below the receipts based size standard.

Vendors of computer hardware and peripherals are not comparable to travel agents, real estate agents, advertising agents, conference organizers, and freight forwarders. Receipts from the sale of computer hardware substantially increase the size of a business. Those receipts can be used to replenish inventory, pay employees, reduce payables and debt, pay bonuses, and for other business purposes. They add to the business' asset base and net worth. However, travel agents and similarly operating businesses operate on a commission and/or fee basis. Their receipts are held in trust. The funds do not add to the business' asset base, and cannot be used to reduce payables or debt, or for any other business purposes. For sellers of computer hardware, the receipts constitute revenue. For travel agents and the like, although their total receipts may be high, most of their receipts do not constitute revenue.

Other Comments on the ITVAR Exception

A few commenters noted that instead of focusing its efforts on eliminating the exception and on solving the non-existent problem, SBA should focus its effort toward preventing small business contracts from being diverted to large Fortune 500 companies and their subsidiaries.

In response to SBA's justification to change size standards because of the comments that size standards have not kept up with changes to the economy, the commenter argued that those comments are false because there have been no changes to the percentage of U.S. firms that have less than 100 employees.

One commenter also countered a comment from another commenter in support of the SBA's proposal that the removing the ITVAR exception will help level the playing field for companies looking for Federal opportunities by stating that the exception is allowing companies making hundreds of millions of dollars to bid as small businesses on ITVAR contracts, thereby blocking true small businesses from Federal opportunities. The commenter dismissed the supporting comment as a misleading and improper comparison between ITVARs and IT services providers for failing to account for the ITVAR's business and operational model. The commenter stressed that although ITVARs with 150 or fewer employees have annual receipts substantially higher than $27.5 million, they are truly small. The commenter argued that since, unlike general IT service providers, ITVARs also provide products with very thin profit margins, it would be unfair to compare them using the same revenue levels.

SBA's Response

While SBA is committed to ensure that Federal government contracts set aside for small businesses only go to small businesses, not large businesses, the issue is beyond the scope of this rule. With respect to the comment regarding whether or not the size standards need to be adjusted, the U. S. Congress has required SBA to review all size standards and make necessary adjustments to reflect market conditions every five years (*see* Public Law 111–240, Section 1344). Although the percentage of firms below 100 employees has remained more or less constant over time, their market share in the economy has been shrinking. For example, the share of total sales/receipts of firms with less than 100 employees decreased from nearly 29 percent in 1997 to less than 26 percent in 2007 and those of larger firms has increased. The data would suggest bigger changes in many individual industries. The commenter's rebuttal of another comment in support of SBA's proposal also supports the Agency's current position that ITVARs should not be treated as an exception to the receipt based size standard that applies to IT services.

Comments on the Environmental Remediation Services Exception

On September 15, 1994, SBA issued a final rule designating Environmental Remediation Services (ERS) an ''exception'' under Standard Industrial Classification (SIC) code 8744, Facilities Support Management Services, with a size standard of 500 employees (59 FR 47236). Effective October 1, 2000, SBA adopted NAICS replacing the SIC system for its table of size standards (65 FR 30836). Currently, the 500-employee size standard for ERS is an ''exception'' to the $20.5 million receipts based size standard for NAICS code 562910, Remediation Services. The 500-employee size standard applies to Federal procurements that involve three or more services related to restoring a contaminated environment, such as

preliminary assessment, site inspection, testing, remedial investigation, remedial action, containment, and removal and storage of contaminated materials. The requirements that apply to the ERS exception and its 500-employee size standard for Federal procurement and SBA's financial assistance are in Footnote 14 to SBA's table of small business size standards (13 CFR 121.201).

In the September 10, 2014 proposed rule, SBA proposed to increase the size standard for the ERS exception under NAICS code 562910 from 500 employees to 1,250 employees. SBA sought public comments on its analyses of the industry and Federal market data and its justification for the proposal to increase the size standard for the ERS exception from 500 employees to 1,250 employees. SBA received 32 comments, 26 of which were from currently small businesses (*i.e.,* with 500 or fewer employees) and six from other than small businesses (*i.e.,* those with more than 500 employees). Commenters included women owned small businesses (WOSBs), current and former HUBZone and 8(a) businesses, service disabled veteran owned small businesses (SDVOSBs), and minority and Native American owned companies. As stated earlier, 23 commenters opposed SBA's proposal to increase the ERS size standard to 1,250 employees and nine supported it. Three of the commenters opposing the proposed 1,250-employee size standard suggested a smaller increase to 750 employees. One large business commenter supporting SBA's proposal suggested that SBA adopt a higher 1,500-employee size standard. These comments and SBA's responses are discussed below.

Comments Supporting SBA's Proposal To Increase the ERS Size Standard to 1,250 Employees

Commenters that supported the proposed increase of the ERS size standard to 1,250 employees reasoned that it would enable small businesses to grow beyond 500 employees. The commenters argued that the higher size standard would open doors to firms that have purposely remained under the 500-employee standard, and it would thereby spur business expansions and job creation. They noted that due to increased consolidation in the ERS industry there exists a large gap between firms below 500 employees and very large firms, thereby rendering smaller firms no longer able to compete for Federal opportunities on a full and open basis. The commenters argued that the higher size standard would close this gap between small and very large firms. They contended that the current size standard does not reflect the consolidated structure and current economic reality of the ERS industry and added that the proposed higher size standard represents a more accurate reflection of current market conditions in the ERS industry. Some commenters stated that since the size standard for ERS has not changed since 1994, the proposed increase would be a reasonable step toward matching current market conditions. With a disproportionately large amount of ERS work being set aside for small businesses with fewer than 500 employees, as some commenters maintained, the current size standard adversely affects larger businesses' ability to obtain work in the ERS market. They argued that the proposed higher size standard would help to establish balance and fairness in the Federal ERS market. Some stated that increasing the size standard would increase the number of set-aside contracts for small businesses and decrease the number of contracts under full and open competition.

The commenters stated that the higher size standard would increase the number of small businesses and allow the government to increase the number and size of small business set-aside contracts. They stated that no individual firm at the 1,250-employee size standard would dominate the ERS industry and that the number of firms that would become small under the proposed higher size standard would be insignificant relative to total firms in the ERS industry. One commenter stated that the increased size standard would not affect 8(a) businesses, HUBZone businesses, SDVOSBs, or WOSBs. Some argued that the higher size standard would provide small businesses with more opportunities to compete for a larger share of the Federal ERS market.

Some commenters noted that by increasing small business participation and job creation, the higher size standard would promote the Jobs Act initiative, while others stated that by increasing the pool of small businesses it would assist agencies to meet their small business contracting goals. Others argued that it would ensure that the government has an adequate pool of small businesses and it would increase competition in the small business ERS market and provide greater value for the dollars awarded to small businesses.

Some commenters pointed out that firms under 500 employees lack the capacity to handle the increasing volume, complexity, and size of ERS contracts. They added that mid-size firms have the capacity and expertise to perform more complex and larger jobs, but cannot compete for those opportunities under the 500-employee size standard. With small businesses more than doubling their size under the proposed size standard, there would be a corresponding increase in small business capabilities, they argued. Another commenter stated that many agencies solicit work under performance based remediation contracts, under which the prime contractor assumes all risk. Current small businesses under the 500-employee size standard are not in a position, according to the commenter, to undertake these risks, but the increased size standard would allow small businesses to assume those risks. The commenter added that because of the requirements, ''small businesses often end up serving as pass through for work that is ultimately performed by large businesses.''

One currently large company supporting SBA's proposal to increase the size standard believed that the size standard for ERS should be even higher at 1,500 employees. The commenter argued that its size is ''disadvantaged'' vis a vis both ''mega'' firms and small businesses. With mergers and acquisitions driving up the average size of businesses in the industry, the definition of a small business should increase as well, the commenter concluded. Among the others supporting SBA's proposal, one suggested delaying the adoption of the revised size standard by 12 months to allow companies to plan and prepare to compete with larger companies. Another suggested adding nuclear remediation services to the ERS definition because remediation of nuclear materials is a significant part of Federal ERS contracts, while another recommended including regulatory compliance.

SBA's Response

SBA is not adopting 1,500 employees as the size standard for ERS as suggested by one of the commenters for several reasons. First, besides consolidation in the ERS, the commenter did not provide specific data or analysis supporting the suggested 1,500-employee size standard. Second, the industry and Federal procurement data SBA analyzed in the proposed rule and in this final rule does not support a 1,500-employee size standard for ERS. Third, SBA is concerned that a 1,500-employee size standard would put many small ERS firms at a significant competitive disadvantage in competing for Federal opportunities. SBA does not agree with the suggestion from another commenter to delay the adoption of the revised size

standard for ERS by 12 months. The revised size standard that SBA adopts in the final rule becomes effective after 30 days from the date of publication of the final rule in the **Federal Register**. Delaying the effective date would hurt other businesses that would benefit from the timely adoption of a revised size standard. Some commenters suggested that nuclear remediation and regulatory compliance be included under the ERS definition. SBA believes that nuclear remediation is already covered under ''containment, remedial action, and removal and storage of contaminated materials'' of the current definition. Similarly, the term ''regulatory compliance'' is very broad to include under the ERS definition. Thus, SBA is not adopting these changes.

Comments Opposing SBA's Proposal To Increase the ERS Size Standard to 1,250 Employees

Commenters that were opposed to the proposed increase of the ERS size standard to 1,250 employees provided several reasons to support their positions. First, the commenters contended that the current ERS market is competitively fair under the 500-employee size standard, which was SBA's goal when it established the ERS exception and the 500-employee size standard in 1994. They argued that there is no need for an increase to the size standard for ERS because agencies already have a sufficiently large and robust pool of highly qualified and experienced small businesses with the capacity, capability, and reach to meet their environmental remediation requirements. The commenters stated that this is proven by the successful performance of partial and total small business set-asides under various multiple award task order contracts (MATOCs) and single award task order contracts (SATOCs) under the ERS exception. They added that most ERS contracts rarely require resources of a company with more than 500 employees. Some stated that Federal clients are not adversely affected by the existing 500-employee size standard. The commenters noted that, during 2009–2013, 37–39 percent of ERS dollar awards were made to small businesses, as compared to the Federal government's small business contracting goal of 23 percent. They stated that it is rare that an agency receives less than a dozen bids on contracting opportunities set aside for small businesses. One commenter stated that the 500-employee size standard has worked well for all these years and it provides robust competition and significant cost savings to the government. The commenters also maintained that the majority of small businesses are below 250 employees, suggesting that they have plenty of room to grow under the current size standard. Some explained that businesses with 500 or fewer employees represent 77 percent of total firms registered in the System for Award Management (SAM) under NAICS 562910. They added that up to 90 percent of the industry would qualify as small under the proposed size standard.

Second, the commenters argued that the environmental remediation services industry is in decline and that present and future requirements do not support the proposed increase to the ERS size standard. They alleged that SBA failed to consider this factor when proposing the increase. They stated that most sites identified in earlier decades have already been remediated or restored and fewer new sites are being designated. For example, as the commenters stated, of the more than 38,000 sites under DoD's restoration programs more than 29,000 are now in monitoring status or complete. The commenters added that Federal government spending on ERS work is down 42 percent in the last five years, and the average sizes of ERS contracts have decreased as well. They argued that to raise the size standard for an industry that is declining runs counter to the reality of the market. One commenter argued that expansion of the size standard when the Federal market is declining would harm those firms that have dedicated resources to support the Federal government as small businesses.

Third, a number of commenters expressed several concerns with SBA's analysis and the data it used in the proposed rule. The commenters contended that, by including very big and highly diversified firms for which ERS is not a major source of revenue, SBA's analysis inflated the average size, four-firm concentration and Gini coefficient of firms in this industry, and in turn inflated the size standard. Referring to the data on the top 200 environmental companies from *Engineering News-Record* (*http://enr.construction.com*), several commenters argued that most of the large businesses receiving contracts under NAICS 562910 have only a minor percentage of their employees participating in ERS work. Others argued that SBA evaluated all firms in NAICS 562910, instead of a subset of firms that are primarily engaged in the ERS activity. As a result, they argued, comparisons with anchor industry groups are unfair and not statistically valid. They recommended that SBA should either use the data on the number of employees associated with the ERS activity only or data on firms for which ERS is their primary industry. The Economic Census, SAM and FPDS–NG data do not depict an accurate picture of the ERS industry as they do not differentiate between small ERS firms and larger, more diverse firms, they added. One commenter noted that FPDS–NG may not capture the sufficient picture of the ERS industry, because it does not reflect subcontracting dollars. Some commenters suggested that SBA should use alternative data, such as market research and ''sources sought'' data from Department of Defense (DoD), Department of Energy (DoE), and Environmental Protection Agency (EPA).

One commenter attributed the high Gini coefficient value to limiting the analysis to two PSCs that SBA used in defining ERS contracts and to including the contract awards data under the American Recovery and Reinvestment Act of 2009 (ARRA). The commenter noted that the two PSCs SBA selected represented only 38 percent of dollar awards during 2009–2011, while the government used 716 PSCs under NAICS 562910 in 2009–2013. The commenter stated that 21 percent of contract dollars in ERS for 2009–2011 were awarded under ARRA, of which 24 percent were awarded to small businesses compared to 57 percent of non-ARRA awards. The commenter suggested excluding ARRA funds from the analysis and increasing the weight of the Federal contract factor five to ten times. In view of the sensitivity of the average firm size to size and number of firms, some commenters suggested using the median firm size instead of the average.

Fourth, many commenters expressed concerns that the proposed 1,250-employee size standard would allow more successful mid-sized and large businesses with significant financial capacity and resources to dominate the ERS small business market, thereby rendering the majority of businesses with fewer than 500 employees unable to compete for Federal opportunities. They added this would cause irreparable damage to existing and emerging small businesses that need SBA's support the most. They noted that this would be contrary to SBA's mission to aid, counsel, assist and protect small business interests. The higher size standard would mainly promote the interests of a very few larger, well-established businesses above 500 employees at the expense of many small businesses under 500 employees, the commenters added. One commenter

argued that increasing the size standard would decrease small business participation because this would discourage small businesses from competing for small business contracts as the market would be crowded with significantly larger players. A few commenters maintained that small businesses are already faced with difficulty in competing against companies with 500 employees, and if the size standard is increased to 1,250 employees they would go out of business. Some commenters noted that the higher size standard would not change the dominance of very large companies on unrestricted competitions, but, by increasing the number of small businesses, it would increase competition for set-asides. Some believed that with a larger pool of small businesses under the higher size standard more contracts would be set aside with no subcontracting requirements, thereby reducing subcontracting opportunities for some small businesses. Small businesses, according to some commenters, are reluctant to bid on unrestricted contracts, because those contracts are usually too large to take on without a large business partner. Raising the size standard would allow large businesses to compete on their own without the need for small business partners, they argued.

SBA's Response

With respect to commenters' concerns with including diversified firms in the analysis, SBA believes that, because by definition ERS procurements are composed of activities in three or more separate industries with separate NAICS codes, companies involved in ERS work are likely to be diversified. The FPDS–NG data depicts that companies receiving ERS contracts under NAICS 562910 have also received contracts under other NAICS codes. Accordingly, focusing on the data on firms that are primarily engaged in one of those activities may not provide an accurate and complete picture of the ERS sub-industry. Additionally, there really does not exist any data source for firms that are primarily engaged in ERS work. For example, as explained in the proposed rule, the Economic Census data for NAICS 562910 reflect all firms involved in remediation services, but not specifically those in the ERS sub-industry. Similarly, as the commenters have noted, SAM and FPDS–NG data also do not accurately reflect a company's primary industry. While many commenters expressed concerns with the Economic Census, SAM, and FPDS–NG data for evaluating the ERS sub-industry, the majority of them suggested no alternative data sources. A few suggested using the market research and sources sought data from Federal agencies. SBA is not aware that such data is stored or available, nor is it necessarily complete, since each contracting officer may conduct market research in a different way, and firms respond to sources sought notices in different ways, or sometimes not at all based on various factors.

While SBA agrees with the commenters that the presence of large firms would affect the magnitude of industry factors and supported size standards, it disagrees with their argument that large firms should be excluded from the analysis if ERS is not their primary activity. Even if ERS is not their primary activity in terms of its contribution to their total revenue or employment, large firms can have significant competitive advantage in the market over their smaller counterparts. For example, a 10,000-employee company, even if only 2.5 percent of its workforce (or 250 employees) is engaged in the ERS activity, would have a significant competitive edge over a 500-employee company that only performs ERS work, due to its considerable resources and economies of scale. However, in response to the comments, in this final rule SBA has updated its analysis of industry and Federal contracting factors for the ERS sub-industry by using more recent data for fiscal years 2012–2014 and by excluding the largest firms for which ERS work was not a significant source of their Federal revenues. This also addresses concerns from some commenters that the 2009–2011 data SBA used in the proposed rule were influenced by ARRA funds and the results in the proposed rule were not comparable to the Economic Census.

SBA also disagrees with the commenters' suggestion that SBA should only consider the number of employees associated with the ERS activity when a company operates in multiple NAICS codes. For size standards purposes, SBA defines business size in terms of total employees or receipts for the overall company, not based on employees or receipts associated with individual NAICS codes. Additionally, none of the data sources SBA considers in its size standards analysis (such as Economic Census, SAM, and FPDS–NG) would provide employees or receipts broken down by NAICS code or type of work performed.

The argument by some commenters that the SBA's analysis focused on all firms in NAICS 562910 is not correct. As explained in the proposed rule, SBA analyzed only about 700 firms receiving Federal contracts for environmental remediation services during fiscal years 2009–2011, as compared to more than 3,000 firms in NAICS 562910 from the 2007 Economic Census, nearly 9,300 firms registered in SAM (as of March 2015), and about 1,700–1,800 firms receiving Federal contracts during fiscal years 2012–2014 under that NAICS code. On the other hand, analyses from other commenters applied to total NAICS 562910, instead of the ERS sub-industry. For example, some noted that 77 percent of firms in NAICS 562910 are below 500 employees and that would increase to 90 percent if the size standard is increased to 1,250 employees. For the majority of industries, the current size standards cover 90–95 percent of firms. Thus, even if the 1,250-employee size standard would include 90 percent firms within the ERS sub-industry, that would not be inconsistent with most other industries. One commenter argued that the two PSCs SBA used to identify the ERS contracts accounted for only 38 percent of awards in NAICS 562910, but did not specify what other PSCs SBA should consider in identifying the ERS contracts. SBA agrees that there exist a large number of other PSCs associated with contracts under NAICS 562910, but it should be noted that they all do not apply to ERS contracts. The FPDS–NG data for fiscal years 2012–2014 show 432 PSCs under NAICS 562910, significantly fewer than 716 PSCs suggested by the commenter. SBA selected the two PSCs based on its thorough review of contract awards data on FPDS–NG.

In response to comments that the Federal ERS market has been in decline, SBA examined Federal contracting trends under NAICS 562910 for fiscal years 2001–2014 using the data from FPDS–NG. Total contract dollars for overall NAICS 562910 showed continuous growth from a little above $1.0 billion in 2001, peaking at a little over $7.0 billion in 2009 in conjunction with the ARRA. Since then annual contract dollars for NAICS 562910 have remained at about the same level as that for several pre-ARRA years. Similarly, total dollar awards under the two PSCs (*i.e.,* F108 and F999) that SBA used to identify ERS contracts also showed a similar trend. That is, total dollars under ERS contracts also showed continuous growth, increasing from nearly $0.64 billion in 2001 to nearly $2.0 billion in 2009. ERS contract dollars declined during fiscal years 2010–2011, but bounced back averaging

a little over $2.0 billion during fiscal years 2012–2014. Although the growth in Federal ERS market has slowed and seen some ups and downs in recent years, these trends do not necessarily support the argument that the ERS industry is shrinking.

Comments Supporting SBA's Proposed Size Standards in General

An association representing small business investment companies (SBICs) applauded SBA's effort to review and increase size standards for the 30 industries covered by the proposed rule. The association also supported SBA's approach to maintaining the current size standards for 24 industries. Specifically, it supported the proposed increases to size standards in the Mining, Freight Transportation and Publishing and Technology Sectors because SBICs have substantial investments in those sectors. The association noted that proposed size standards increases will expand investment opportunities for SBICs and promote job creation and suggested that SBA should review and update size standards on a regular basis.

Comments Opposing SBA's Proposed Size Standards in General

One commenter opposed SBA's proposed increases to size standards. The commenter argued that instead of focusing on the 98 percent of businesses that are truly small businesses, SBA is focusing on the 2 percent of the largest corporations and classifying them as small businesses so that they can take business and loans away from truly small businesses. The commenter added that SBA's small business definitions are much larger than those used by other countries (such as Australia and European Union) and by the U.S Congress, for example, for the Affordable Health Care Act. The commenter further stated that since 2008, SBA, by expanding small business definitions, has allowed more than 74,000 larger corporations to be classified as small. The commenter claimed that the average size of SBA's loan increased from $185,000 in 2008 to $534,000 in 2013, while the share of loans under $100,000, which the commenter claimed generally go to truly small businesses, decreased from 24 percent to 9 percent. The commenter used these statistics to conclude that the expansion of small business size definitions has excluded truly small businesses from SBA's loans programs. Lastly, the commenter claimed that large corporations that qualify as small under the expanded definition of small businesses will take away government contracts from truly small businesses that SBA is supposed to be supporting.

SBA's Response

SBA acknowledges that some of its proposed size standards could include as much as 97 percent to 99 percent of firms in a given industry. However, it is very important to point out that while it may appear to be a large segment of an industry in terms of the percentage of firms, small firms in those industries represent only about a third of total industry receipts.

What constitutes a small business in other countries does not apply and has no relevance to SBA's small business definitions and U.S. Government programs that use them. Depending on their economic and political realities, other countries have their own programs and priorities that can be very different from those in the U.S. Accordingly, small business definitions other countries use for their government programs can be vastly different from those established by SBA for U.S. Government programs. From time to time, the U.S. Congress has used different thresholds, sometimes below the SBA's thresholds, to define small firms under certain laws or programs, but those thresholds apply only to those laws and programs and generally are of no relevance to SBA's size standards. SBA establishes size standards, in accordance with the Small Business Act, for purposes of establishing eligibility for Federal small business procurement and financial assistance programs. The primary statutory definition of a small business is that the firm is not dominant in its field of operation. Accordingly, rather than representing the smallest size within an industry, SBA's size standards generally designate the largest size that a business concern can be relative to other businesses in the industry and still qualify as small for Federal government programs that provide benefits to small businesses.

The commenter's figures on average loan size for 2008 and 2013 are not correct. Based on numbers and amounts of loans issued under SBA's 7(a) and CDC/504 loan programs, the average loan size increased from about $230,500 in 2008 to about $426,900 in 2013, rather than from $185,000 to $534,000 as claimed by the commenter.

SBA does not agree that increases in average loan amounts and decreases in smaller loans are solely due to the increases in size standards for two reasons. First, with the passage of the Jobs Act in 2010, Congress increased the limits for SBA's 7(a) loans from $2 million to $5 million, for CDC/504 loans from $1.5 million to $5.5 million, and for SBA Express loans made during the one year period following the Jobs Act from $350,000 to $1 million. Second, at the same time, Congress also increased the tangible net worth and net income limits of the alternative size standard from $8.5 million and $3 million to $15 million and $5 million, respectively. Under the alternative size standard, businesses that are above their industry size standards can qualify for SBA's loans. These statutory changes are important factors behind the increase in the average size of an SBA loan. However, such changes do not necessarily mean that truly small businesses are getting fewer loans now than in 2008. In fact, businesses with less than 10 employees received a total of $12.1 billion in loans through SBA's 7(a) and 504 programs in 2014, as compared to $10.6 billion in 2008. That was an increase of more than 14 percent.

With respect to the claim that large corporations that qualify as small under the expanded definition of small businesses will take away government contracts from truly small businesses, the commenter did not provide any supporting data.

Analyses and Conclusions

ITVAR Industry Analysis

In the 2003 final rule, SBA used a hybrid approach to create and evaluate the ITVAR exception. Specifically, based on the assumption that ITVARs operate in NAICS Industry Group 5415 (Computer System Design and Related Services) and in NAICS 423430 (Computer and Computer Peripheral Equipment and Software Merchant Wholesalers), SBA used the 1997 Economic Census data and combined part of NAICS Industry Group 5415 with part of NAICS 423430 and defined the result as the ITVAR industry and used it as the basis to establish the characteristics of ITVAR firms. As discussed elsewhere in this final rule, SBA now finds several problems with that approach. First, there is no need to create the ITVAR industry in that manner because, based on their primary activity of selling computer hardware and software, ITVARs are included in NAICS 423430. Accordingly, SBA now believes the industry data for NAICS 423430 alone would provide a more accurate description of ITVAR firms than the hybrid approach, especially given significant differences in economic structure between firms in NAICS Industry Group 5415 and ITVAR firms, as suggested by the Economic Census data and also confirmed by

many commenters. Second, in combining the two industry categories, the sale of computer hardware and software segment of NAICS 423430 was excluded even if that segment accounted for more than 80 percent of total receipts of that industry. Many commenters also argued that the sales of computer hardware and software account for the majority of receipts of ITVAR firms. SBA has determined that had the computer hardware and software segment been included, the analysis would have supported the same 500-employee nonmanufacturer size standard for ITVAR firms as well. Third, by construction, the ITVAR exception applies to procurements that are predominantly supply contracts, yet the 2003 final rule included it as an exception to NAICS 541519, which is a services NAICS code. For these reasons, in this final rule, SBA is not adopting the 2003 hybrid approach although some commenters suggested using the same approach to evaluate the ITVAR exception and its 150-employee size standard.

SBA's analysis in this final rule is based on the premise that ITVARs are basically wholesalers and supply computer hardware and software as nonmanufacturers and that all firms in Wholesale Trade (NAICS Sector 42) share the same 500-employee size standard for purposes of Federal procurement of supplies under the NMR. Thus, any size standard exception to the ITVARs, if warranted, should be addressed within the context of the NMR.

In response to the comments and reevaluation of all available industry and Federal procurement data relating to the ITVAR exception, SBA analyzed economic characteristics of ITVAR firms and their size standard using two data sources. The first is the 2007 Economic Census data (the latest available) for NAICS Sector 42, including NAICS 423430. Second is the FPDS–NG and small business goaling data on firms receiving contracts under the ITVAR exception to NAICS 541519 during fiscal years 2012–2014. SBA also looked at the data from USASpending (*www.usaspending.gov*), but business size information of some contractors was found to be outdated. Therefore, for Federal procurement data SBA relied on FPDS–NG and small business goaling data, and relied on SAM for business size data.

As stated in the proposed rule, the Economic Census industry data are limited to the 6-digit NAICS codes and do not provide economic characteristics for the exception. As explained above and also noted in the 2003 final rule, based on their primary activity, ITVARs are classified under NAICS 423430 in Wholesale Trade Sector (NAICS Sector 42). Given that ITVARs are part of one of the industries in Wholesale Trade and that the current size standard for Federal procurement of supplies for all firms in the Wholesale Trade sector is 500 employees under the NMR, SBA believes it is pertinent to examine the characteristics of ITVAR firms relative to those for other industries in the sector to determine if a different size standard is appropriate for ITVAR firms. For this, using the 2007 Economic Census data, SBA ranked all industries in NAICS Sector 42 based on each industry factor and placed them in one of the five ranked quintiles (*i.e.,* less than the 20th percentile, the 20th to less than the 40th percentile, the 40th to less than the 60th percentile, the 60th to less than the 80th percentile, and the 80th or higher percentile). The quintile ranges of values for each industry factor are shown in Table 1, ''Values of Industry Factors for NAICS Sector 42 by Quintile.'' The second row from the bottom shows the values for firms in NAICS 423430, while values for industry factors for NAICS 541519 are in the last row for comparison.

TABLE 1—VALUES OF INDUSTRY FACTORS FOR NAICS SECTOR 42 BY QUINTILE

Quintile	Percentile (%)	Simple average firm size (number of employees)	Weighted average firm size (number of employees)	Average assets size ($million)	Average number employees of largest four firms	Gini coefficient
1st quintile	<20%	<13.5	<78.0	<2.8	<700.0	<0.680
2nd quintile	20% to <40%	13.5 to <17.0	78.0 to <141.0	2.8 to <4.5	700.0 to <1,096.3	0.680 to <0.731
3rd quintile	40% to <60%	17.0 to <20.8	141.0 to <202.8	4.5 to <6.5	1,096.3 to <1,648.8.	0.731 to <0.786
4th quintile	60% to <80%	20.8 to <26.0	202.8 to <448.9	6.5 to <8.8	1,648.8 to <4,034.3.	0.786 to <0.844
5th quintile	≥80%	≥26.0	≥448.9	≥8.8	≥4,034.3	≥0.844
NAICS Sector 42 (total)		18.7	606	5.4	7,562	0.814
NAICS 423430		36.0	1,249	8.8	25,321	0.891
NAICS 541519		10.2	283	0.6	3,860	0.756

As can be seen from the above table, NAICS 423430 falls in the fifth or highest quintile for all industry factors. This means that for all factors NAICS 423430 ranked above more than 80 percent of the industries in Sector 42. Thus, the data do not support a lower size standard for firms in NAICS 423430 than for other industries in the sector. In other words, the current 150-employee size standard for ITVARs is inconsistent with their characteristics as compared to the characteristics of firms in other wholesale trade industries for which the size standard for Federal procurement is 500 employees. In the proposed rule, published on May 19, 2014 (79 FR 28631), SBA proposed retaining the current 500-employee size standard for procurement of supplies under the NMR. Additionally, the results also depict that firms in NAICS 423430 differ from those in NAICS 541519.

To determine characteristics of ITVAR firms and the impact of SBA's proposal, many commenters recommended that SBA evaluate the data on employees and receipts of firms receiving contracts under various GWACs (*e.g.,* DHS's FirstSource I/II, Air Force's NETCENTS–2, Army's ITES–3H, NASA's SEWP IV/V, and NIH's CIO–CS) which, according to the commenters, have used the ITVAR exception and 150-employee size standard. However, the review of the FPDS–NG data showed that, of various GWACs suggested by the commenters, only DHS's FirstSource I/II and NASA's SEWP IV/V used the ITVAR exception and 150-employee size standard. Among others, no awards have been made yet under NIH's CIO–CS and Army's ITES–3H. Their predecessor programs used

manufacturing NAICS codes. Specifically, NIH's ECS–3 used NAICS 334111, while Army's ITES–2H mostly used NAICS 334111, 334112 and 334119. Air Force's NETCENTS–2 used NAICS 334210. Additionally, based on review of FPDS–NG data and various GSA supply schedules, SBA found that agencies have also procured new computer and networking hardware through GSA's Schedule 70 SIN 132–8 using NAICS 541519.

SBA examines the data from SAM, small business goaling statistics and FPDS–NG to evaluate all exceptions and industries that are not covered by the Economic Census. Accordingly, using the FPDS–NG and small business goaling data, SBA identified 259 unique firms that received contracts under DHS's FirstSource I and II, NASA's SEWP IV and V, and GSA's Schedule 70 SIN 132–8 using the ITVAR exception to NAICS 541519 during fiscal years 2012–2014. By program, 37 firms received contracts under FirstSource I and II, 174 firms under SEWP IV and V, and 111 firms under Schedule 70. These figures add up to more than 259 firms because some firms received contracts under more than one program. SBA obtained latest information on average annual receipts and number of employees of those firms from their SAM profiles. Of those 259 unique firms, SBA excluded some very large manufacturing firms for which the ITVAR activity was not a major source of their Federal revenues, as well as others with missing or questionable employee and revenue information, yielding a total of 231 firms. This group of firms still contained quite large firms for which the ITVAR activity did not appear to be a major source of their Federal revenues. To prevent such large firms from skewing the results and obtain a more representative group of ITVAR firms, SBA further excluded 7.5 percent of the largest firms based on number of employees and another 5 percent of the largest firms based on revenue, resulting in a total of 204 firms. SBA analyzed the employee and revenue data on these firms to establish industry characteristics of ITVAR firms in terms of average size, industry concentration, and distribution by size. Firms that received contracts under NASA's SEWP V did not yet have dollars awarded to them. Thus, SBA excluded those firms when calculating the Federal contracting factor (*i.e.,* the difference between small business share of total industry receipts and the similar share of total contracts dollars). SBA derived the size standard for each factor using the methodology for employee based size standards that the Agency used in the proposed rule. These results along with supported size standards by each of those factors are provided in Table 2 ''Size Standards Supported by Each Factor for Firms Receiving ITVAR Contracts (No. of Employees),'' below. As shown in the table, the results support a 500-employee size standard for ITVAR firms.

Many commenters expressed concerns about having to compete with larger ITVARs if the ITVAR exception is eliminated and ITVAR contracts are reclassified under the manufacturing NAICS codes, thereby subjecting them to the 500-employee nonmanufacturer size standard. To validate these concerns, SBA analyzed characteristics of firms receiving computer hardware and software contracts under NIH's ECS–3, NASA's SEWP IV, Army's ITES–2H, and GSA's Schedule 70 SIN 132–8 that used the manufacturing codes under Industry Group 3411 (Computer and Peripheral Equipment Manufacturing), NAICS 423430 (Computer and Computer Peripheral Equipment and Software Merchant Wholesalers), or NAICS 443142/443120 (Electronic Stores (NAICS 2012)/ Computer and Software Stores (NAICS 2007)).

TABLE 2—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR FIRMS RECEIVING ITVAR CONTRACTS

[Number of employees]

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
NAICS Code/GWAC Program	Simple average firm size (number of employees)	Weighted average firm size (number of employees)	Average assets size ($million)	Four-firm ratio (%)	Four-firm average size (number of employees) *	Gini coefficient	Federal contract factor (%)	Calculated size standard (number of employees)	Current size standard (number of employees)
ITVAR Exception, 541519	63	298	$9.5	11.3	NA	0.359	23.0	500	150
NASA SEWP IV and V, DHS First Source I and 2, and GSA Schedule 70 SIN 132 8	500	500	500			500	150		
3341, 423430 and 443142/443120	57	438	$7.1	11.3	NA	0.519	3.2	500	500
NASA SEWP IV, NIH ECS–3, ARMY ITES–2H, and GSA Schedule 70 SIN 132–8	500	750	500			500	500		

* Size standard for four-firm average size is not calculated as the four-firm ratio is less than 40%.

Using the FPDS–NG and small business goaling data, SBA identified 446 unique firms that received contracts during fiscal years 2012–2014 through those programs using NAICS Industry Group 3411, NAICS 423430, and NAICS 443142/443120. After the exclusion of manufacturing firms and very large firms for which the sales of computer hardware and software was not a major source of their Federal revenue, as well as others with missing or questionable employee and revenue information, there remained 421 firms. This group of firms still included some large firms for which computer hardware and software contracts did not appear to be a principal source of their Federal sales. To prevent such large firms from biasing the results, SBA further removed 7.5 percent of the remaining largest firms based on the number of employees and another 5 percent based on revenue, yielding a total of 371 firms. Using these firms, SBA derived industry factors (*e.g.,* average size, average assets, industry concentration, and the Gini coefficient) and Federal contracting factor and supported size standards using the ''SBA's Size Standards Methodology'' (available at *www.sba.gov/size*) used in the proposed rule. These results are also shown in

Table 2, ''Size Standards Supported by Each Factor for Firms Receiving ITVAR Contracts (No. of Employees), above. The results on individual factors and size standards supported by them do not seem to suggest that firms receiving computer hardware and software contracts under the manufacturing NAICS codes are larger than those receiving similar contracts under the ITVAR exception to NAICS 541519. The data from both groups of firms support the same 500-employee size standard for ITVARs.

Thus, based on the characteristics of firms in NAICS 423430 relative to those for all firms in NAICS Sector 42 and data on firms receiving computer hardware and software contracts both under the ITVAR exception and manufacturing NAICS codes, the data suggests that the size standard for ITVAR firms should be the same as the 500-employee nonmanufacturer size standard. However, in view of concerns from most commenters that with the elimination of the ITVAR exception small ITVARs with fewer than 150 employees would be forced to compete for Federal opportunities with large companies up to 500 employees under the 500-employee nonmanufacturer size standard, SBA has decided to leave the exception under NAICS 541519 with the 150-employee size standard.

As discussed elsewhere in this final rule SBA has determined that there is no legal basis to exclude ITVAR contracts, which by definition are primarily supply contracts, from the manufacturing performance requirements or the NMR. Accordingly, in this final rule, SBA has amended Footnote 18 by adding the requirement that the offeror on small business set-aside ITVAR contracts must comply with the manufacturing performance requirements or the NMR. That means products being supplied must be of a small business manufacturer made in the U.S., unless no small business manufacturers exist. If an agency determines that no small businesses manufacturers can be expected to meet requirements under a particular solicitation, they can request a waiver of the NMR, as discussed in more detail at 13 CFR 121.406 and 121.1204. This would eliminate the current confusion on the applicability of the manufacturing performance requirements or the NMR to the ITVAR contracts. This would also eliminate inconsistency in the current regulations that exempt the ITVAR contracts from the manufacturing performance requirements or the NMR, even if by definition they are primarily supply contracts.

The current definition of the ITVAR exception in Footnote 18 also provides for eligibility of ITVARs for SBA's financial assistance. For firms in NAICS Sectors 42 and 44–45, the applicable size standard for SBA's financial assistance is the size standard for their primary industry. Accordingly, for SBA's financial assistance, ITVARs will qualify under the industry-specific size standard for NAICS 423430, which SBA recently increased from 100 employees to 250 employees. Because this size standard is higher than the 150-employee ITVAR size standard and ITVARs that exceed the 150-employee size standard can still qualify for financial assistance under the tangible net worth and net income based alternative size standard, SBA does not see the need to include the eligibility requirement for SBA's financial assistance under the ITVAR exception. SBA's amendments to Footnote 18 to SBA's table of size standards also reflect this change.

Given the above amendment to Footnote 18 to the table of size standards that the offeror on small business set-aside ITVAR contracts must comply with the manufacturing performance requirements or the NMR, SBA is also amending paragraph b(3) under 13 CFR 121.406 to provide that the NMR also applies to procurements that have been assigned the Information Technology Value Added Resellers (ITVAR) exception to NAICS code 541519. Similarly, SBA is also amending paragraph b(4) under 13 CFR 121.406 to provide that the NMR also applies to the supply component of a requirement classified as an ITVAR contract.

Finally, SBA is also amending introductory text in paragraph b(5) under 13 CFR 121.406 to correct a typo in paragraph citation from paragraph b(1)(iii) to paragraph b(1)(iv).

ERS Industry Analysis

In response to the comments, SBA reevaluated the methodology and data sources it used in the proposed rule. Specifically, in this final rule, SBA has analyzed the data on firms receiving ERS contracts during fiscal years 2012–2014 and the 2014 top 200 environmental firms from *Engineering News-Record (ENR)* (*http://enr.construction.com/toplists/*) that some commenters provided. The review of the 2012–2014 Federal contracting data confirms that the two PSC codes SBA used in the proposed rule to identify ERS contracts were correct. SBA believes that this more recent data not only provides a better reflection of the ERS market conditions, but also addresses the commenters' concerns for including ARRA funds in the 2009–2011 data used in the proposed rule. Additionally, in computing the industry and Federal contracting factors, SBA excluded the largest environmental firms for which ERS contracts did not appear to be a major source of their total revenues.

Using the FPDS–NG and small business goaling data, SBA identified 921 unique firms that received ERS contracts during fiscal years 2012–2014. With the exclusion of known non-environmental firms and those with missing or questionable employee and revenue information, there remained 882 firms. To prevent very large, diversified firms from biasing the results, SBA further excluded 5 percent of the largest firms for which ERS activity did not generally appear to be a principal source of their total sales. Additionally, using the information on the top 200 environmental firms from ENR that the commenters provided, SBA excluded five more very large firms for which environmental work (including both Federal and non-Federal) accounted for less than 25 percent of their total revenues. This yielded a total of 833 firms. SBA analyzed the employment and revenue data on these firms to obtain industry factors (*e.g.,* average size, industry concentration, and the Gini coefficient) and the Federal contracting factor and supported size standards using the SBA's size standards methodology used in the proposed rule. As in the proposed rule, SBA is unable to compute the average assets due to the lack of data. The results of this analysis are provided in Table 3, ''Size Standards Supported by Each Factor for the ERS Sub-industry (No. of Employees),'' below.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR THE ERS SUB-INDUSTRY

[Number of employees]

	Simple average firm size (number of employees)	Weighted average firm size (number of employees)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size (number of employees) *	Gini coefficient	Federal contract factor (%)	Calculated size standard (number of employees)
Factor	89	492	NA	38.5	NA	0.749	10.1	750
Size standard	750	1,000	NA		NA	500	500	

* Size standard for four-firm average size is not calculated as the four-firm ratio is less than 40%.

Thus, based on the results above, in this final rule, SBA is adopting 750 employees as the size standard for the ERS exception under NAICS 562910. Based on FPDS–NG and SAM data, about 10–15 additional firms will gain small business status under the new 750-employee size standard for ERS. SBA believes that this will not have a significant impact on small businesses below the current 500-employee size standard.

Exceptions Under NAICS 541712, Research and Development in the Physical, Engineering, and Life Sciences (Except Biotechnology)

NAICS 541712, Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology), has three sub-industries or ''exceptions.'' As stated in Footnote 11 to SBA's table of size standards, for research and development (R&D) contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the corresponding manufacturing industry. To better match the exceptions under NAICS 541712 to the corresponding proposed industry specific size standards in manufacturing, SBA proposed to modify the titles of the three exceptions. The Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment category was dropped from the third exception because the proposed size standard for the corresponding manufacturing industry (NAICS 336419) was the same as the proposed size standard for rest of NAICS 541712. In the absence of adverse comments, SBA is adopting the modified exceptions as shown in Table 4, ''Modified Exceptions to NAICS 541712 and Their Revised Size Standards,'' as proposed.

TABLE 4—MODIFIED EXCEPTIONS TO NAICS 541712 AND THEIR REVISED SIZE STANDARDS

Current		Proposed	
Exception	Size standard (number of employees)	Exception	Size standard (number of employees)
Aircraft	1,500	Aircraft, Aircraft Engine, and Engine Parts	1,500
Aircraft Parts and Auxiliary Equipment, and Aircraft Engine Parts.	1,000	Other Aircraft Parts and Auxiliary Equipment	1,250
Space Vehicles and Guided Missiles, Their Propulsion Units Parts, and Their Auxiliary Equipment and Parts.	1,000	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts.	1,250

Additionally, to eliminate possible confusion and provide more clarity, SBA also proposed to amend Footnote 11 by converting the introductory paragraph to a new sub-paragraph (b) and renaming existing sub-paragraphs (b) and (c) to sub-paragraphs (c) and (d), respectively. SBA is adopting the proposed amendments to Footnote 11 to BA's table of size standards.

Offshore Marine Air Transportation Services and Offshore Marine Services

Offshore Marine Air Transportation Services is a sub-industry or ''exception'' under both NAICS 481211, Nonscheduled Chartered Passenger Air Transportation, and NAICS 481212, Nonscheduled Chartered Freight Air Transportation. The size standards are 1,500 employees for both NAICS codes 481211 and 481212 and $30.5 million in average annual receipts for the exception. Similarly, as indicated in Footnote 15 to SBA's table of size standards, Offshore Marine Services is an exception to all industries under NAICS Subsector 483, Water Transportation, with the size standard of $30.5 million in average annual receipts. All industries within Subsector 483 currently have a 500-employee size standard. SBA did not review the receipts based exceptions when it reviewed receipts based size standards in NAICS Sector 48–49, Transportation and Warehousing. For the reasons provided in the proposed rule, SBA proposed to eliminate both exceptions and their $30.5 million receipts based size standard and only apply the applicable employee based size standard. As a result, SBA also proposed to eliminate Footnote 15 from SBA's table of size standards. Since there were no comments against the proposed change, SBA is eliminating both exceptions and their receipts based size standard, as proposed. This will not affect the eligibility of firms that are small under the $30.5 million receipts based size standard because they will continue to be eligible under the employee based size standard.

Conclusions

Based on SBA's analyses of the latest available industry and Federal market data and its evaluation of public comments on the proposed rule, in this final rule, SBA is adopting all proposed changes, with two exceptions. SBA is not adopting its proposed elimination of the ITVAR exception to NAICS 541519 or its proposed increase to the size standard for ERS exception to NAICS 562910 from 500 employees to 1,250 employees.

With regard to the ITVAR exception to NAICS 541519, in response to the comments, SBA retains the ITVAR

exception to NAICS 541519 with the 150-employee size standard. However, SBA amends Footnote 18 to SBA's table of size standards by adding the requirement that the supply (*i.e.,* computer hardware and software) component of small business set-aside ITVAR contracts must comply with the manufacturing performance requirements, or comply with the NMR by supplying the products of small business concerns, unless SBA has issued a class or contract specific waiver of the NMR. With regard to the ERS exception under NAICS 562910, based on its analysis of more recent data and evaluation of public comments, in this final rule, SBA increases the size standard for the ERS exception from 500 employees to 750 employees, instead of the proposed 1,250 employees. All revisions adopted in this final rule are shown in Table 5, ''Summary of Adopted Size Standards Revisions,'' below.

TABLE 5—SUMMARY OF ADOPTED SIZE STANDARDS REVISIONS

NAICS code	NAICS industry title	Current size standard (millions of dollars)	Current size standard (number of employees)	Adopted size standard (number of employees)
211111	Crude Petroleum and Natural Gas Extraction		500	1,250
211112	Natural Gas Liquid Extraction		500	750
212111	Bituminous Coal and Lignite Surface Mining		500	1,250
212112	Bituminous Coal Underground Mining		500	1,500
212113	Anthracite Mining		500	250
212210	Iron Ore Mining		500	750
212221	Gold Ore Mining		500	1,500
212222	Silver Ore Mining		500	250
212231	Lead Ore and Zinc Ore Mining		500	750
212234	Copper Ore and Nickel Ore Mining		500	1,500
212291	Uranium-Radium-Vanadium Ore Mining		500	250
212299	All Other Metal Ore Mining		500	750
212312	Crushed and Broken Limestone Mining and Quarrying		500	750
212313	Crushed and Broken Granite Mining and Quarrying		500	750
212324	Kaolin and Ball Clay Mining		500	750
212391	Potash, Soda, and Borate Mineral Mining		500	750
212392	Phosphate Rock Mining		500	1,000
213111	Drilling Oil and Gas Wells		500	1,000
221210	Natural Gas Distribution		500	1,000
481211	Offshore Marine Air Transportation Services	$30.5		Eliminate
Except,				
481212	Offshore Marine Air Transportation Services	30.5		Eliminate
Except,				
482112	Short Line Railroads		500	1,500
483112	Deep Sea Passenger Transportation		500	1,500
483113	Coastal and Great Lakes Freight Transportation		500	750
483211	Inland Water Freight Transportation		500	750
511110	Newspaper Publishers		500	1,000
511120	Periodical Publishers		500	1,000
511130	Book Publishers		500	1,000
511140	Directory and Mailing List Publishers		500	1,250
511191	Greeting Card Publishers		500	1,500
512220	Integrated Record Production/Distribution		750	1,250
512230	Music Publishers		500	750
519130	Internet Publishing and Broadcasting and Web Search Portals		500	1,000
541711	Research and Development in Biotechnology[11]		500	1,000
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology)[11].		500	1,000
Except,	Aircraft Engine and Engine Parts		1,000	1,500
Except,	Other Aircraft Parts and Auxiliary Equipment		1,000	1,250
Except,	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts.		1,000	1,250
562910	Environmental Remediation Services		500	750
Except,				

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries for which it is revising size standards in this final rule, no individual firm at or below the revised size standard will dominate its field of operation. Among the industries for which the size standards are revised in this rule, the small business share of total industry receipts is, on average, 3.4 percent, with an interval showing a minimum of less than 0.01 percent to a maximum of 20.0 percent. These market shares effectively preclude a firm at or below the proposed size standards from exerting control over any of the industries.

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

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section, SBA

provides a Regulatory Impact Analysis of this rule. However, this rule is not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the size standards adopted in this rule better reflect the economic characteristics of small businesses in the affected industries and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The Jobs Act also requires SBA to review all size standards and to make whatever adjustments are necessary to reflect market conditions. The supplementary information section of this rule explains SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses becoming small because of this rule is gaining or retaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), economically disadvantaged women-owned small businesses (EDWOSB), and service-disabled veteran-owned small businesses (SDVOSB). Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. SBA estimates that in 30 industries and three sub-industries (''exceptions'') for which it has increased size standards in this rule, more than 370 firms, not small under the existing size standards, will become small under the revised size standards and eligible for these programs. That is about 0.5 percent of all firms classified as small under the current size standards in all industries and sub-industries reviewed in this rule. This should increase the small business share of total receipts in those industries from 18.3 percent to 21.3 percent. In the three industries for which reduced size standards apply, only the one or two largest firms will be impacted in each of them.

Three groups will benefit from the size standards revisions in this rule: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thus enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards may retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

SBA estimates that, based on Federal contracting data for fiscal years 2012–2014, firms gaining small business status under the revised size standards might receive Federal contracts totaling $85 million to $95 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, EDWOSB, and SDVOSB Programs, and other unrestricted procurements. The added competition for many of these procurements may also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2012–2014 data, SBA estimates up to about five SBA 7(a) and 504 loans totaling about $2.0 million might be made to these newly defined small businesses under the revised size standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it is impractical to try to estimate exactly the number and total amount of loans. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) as described above, the Jobs Act established a higher alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it difficult to quantify the actual impact of the revised size standards on its 7(a) and 504 Loan Programs.

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

In addition, newly defined small businesses will also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses throughout the Federal government.

To the extent that those 375 newly defined additional small firms could become active in Federal procurement programs, the revisions to size standards may entail some additional administrative costs to the government as a result of more businesses being eligible for Federal small business programs. For example, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the System of Award Management (SAM) database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, EDWOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking SBA's assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business or other status. However, SBA believes that these added administrative costs will be minimal because mechanisms are already in place to handle these requirements.

Additionally, in some cases, Federal government contracts may have higher costs. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses only rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, EDWOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

The new size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts from large businesses to newly eligible small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone businesses instead of large businesses since these firms may be eligible for a price evaluation preference for contracts when they compete on a full and open basis.

Similarly, some businesses defined small under the previous size standards may receive fewer Federal contracts due to increased competition from more businesses defined as small under the revised size standards. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal government will limit the potential transfer of contracts from large and small businesses under the current size standards. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The revisions to the employee based size standards for these 33 industries and three sub-industries are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

Descriptions of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included in the Regulatory Impact Analysis under Executive Order 12866, above.

In an effort to engage interested parties in this action, SBA presented its size standards methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with a number of industry groups and individual businesses to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tour. The presentation also included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on its size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this rule.

The review of size standards in industries and sub-industries covered in this rule is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. The majority of employee based size standards have not been reviewed since they were first established. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

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

Executive Order 13132

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

Paperwork Reduction Act

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

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this final rule may have a significant impact on a substantial number of small businesses in the industries and sub-industries covered by this rule. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

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

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

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many

industries reviewed for this rule. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised size standards in this final rule more appropriately reflect the size of businesses that need Federal assistance. The Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

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

SBA estimates that about 375 additional firms may become small because of increased size standards for the 30 industries and three sub-industries covered by this rule. That represents 0.5 percent of total firms that are small under the previous size standards in all industries reviewed by SBA in the September 10, 2014 proposed rule. This will result in an increase in the small business share of total industry receipts for those industries from 18.3 percent under the current size standards to 21.3 percent under the proposed size standards. In the three industries for which SBA has proposed to reduce their size standards, only the one or two largest firms will be impacted in each of those industries. The revised size standards will enable more small businesses to retain their small business status for a longer period. Many firms may have lost their eligibility and find it difficult to compete at current size standards with companies that are significantly larger than they are. SBA believes that revisions to size standards will have a positive competitive impact on existing small businesses and on those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

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

The revised size standards impose no additional reporting or recordkeeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the SAM database and certify in SAM that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with SAM requirements. However, there are no costs associated with SAM registration or certification. Changing size standards alters the access to SBA's programs that assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

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

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57982 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

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

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

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

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

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

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

■ 2. Amend § 121.201 in the table ''Small Business Size Standards by NAICS Industry'' as follows:
■ a. Revise the entries for ''211111'', ''211112'', ''212111'', ''212112'', ''212113'', ''212210'', ''212221'', ''212222'', ''212231'', ''212234'', ''212291'', ''212299'', ''212312'', ''212313'', ''212324'', ''212391'', ''212392'', ''213111'', ''221210'', ''482112'', ''483112'', ''483113'', ''483211'', ''511110'', ''511120'', ''511130'', ''511140'', ''511191'', ''512220'', ''512230'', ''519130'', ''541711'', ''541712'' introductory entry and first, second and third sub-entry, and ''562910'' sub-entry.''
■ b. Amend the entry for ''481211'' by removing the sub-entry ''Except,'' ''Offshore Marine Air Transportation Services'' ''$30.5''.
■ c. Amend the entry for ''481212'' by removing the sub-entry ''Except,'' ''Offshore Marine Air Transportation Services'' ''$30.5''.
■ d. Amend the entry for ''Subsector 483—Water Transportation'' by removing superscript ''15''.
■ e. Revise Footnote 11.
■ f. Remove Footnote 15 and reserve Footnote 15.
■ g. Revise Footnote 18.

The revisions read as follows:

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

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
211111	Crude Petroleum and Natural Gas Extraction		1,250

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
211112	Natural Gas Liquid Extraction		750
* * * * * * *			
212111	Bituminous Coal and Lignite Surface Mining		1,250
212112	Bituminous Coal Underground Mining		1,500
212113	Anthracite Mining		250
212210	Iron Ore Mining		750
212221	Gold Ore Mining		1,500
212222	Silver Ore Mining		250
212231	Lead Ore and Zinc Ore Mining		750
212234	Copper Ore and Nickel Ore Mining		1,500
212291	Uranium-Radium-Vanadium Ore Mining		250
212299	All Other Metal Ore Mining		750
* * * * * * *			
212312	Crushed and Broken Limestone Mining and Quarrying		750
212313	Crushed and Broken Granite Mining and Quarrying		750
* * * * * * *			
212324	Kaolin and Ball Clay Mining		750
* * * * * * *			
212391	Potash, Soda, and Borate Mineral Mining		750
212392	Phosphate Rock Mining		1,000
* * * * * * *			
213111	Drilling Oil and Gas Wells		1,000
* * * * * * *			
221210	Natural Gas Distribution		1,000
* * * * * * *			
481211	Nonscheduled Chartered Passenger Air Transportation		1,500
481212	Nonscheduled Chartered Freight Air Transportation		1,500
* * * * * * *			
482112	Short Line Railroads		1,500
	Subsector 483—Water Transportation		
* * * * * * *			
483112	Deep Sea Passenger Transportation		1,500
483113	Coastal and Great Lakes Freight Transportation		750
* * * * * * *			
483211	Inland Water Freight Transportation		750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* *	* * * * *	*	*
511110	Newspaper Publishers		1,000
511120	Periodical Publishers		1,000
511130	Book Publishers		1,000
511140	Directory and Mailing List Publishers		1,250
511191	Greeting Card Publishers		1,500
* *	* * * * *	*	*
512220	Integrated Record Production/Distribution		1,250
512230	Music Publishers		750
* *	* * * * *	*	*
519130	Internet Publishing and Broadcasting and Web Search Portals		1,000
* *	* * * * *	*	*
541711	Research and Development in Biotechnology [11]		[11] 1,000
541712	Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology) [11].		[11] 1,000
Except,	Aircraft, Aircraft Engine, and Engine Parts		1,500
Except,	Other Aircraft Parts and Auxiliary Equipment		1,250
Except,	Guided Missiles and Space Vehicles, Their Propulsion Units and Propulsion Parts.		1,250
* *	* * * * *	*	*
562910	Remediation Services	$20.5.0	
Except,	Environmental Remediation Services [14]		[14] 750
* *	* * * * *	*	*

Footnotes

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11. *NAICS code 541711 and 541712*—

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

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

(c) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

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

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14. *NAICS 562910*—Environmental Remediation Services:

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts), although the general purpose of the procurement need not necessarily include remedial actions. Also, the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.,* engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Specialty Trade Contractors; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services, Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code

with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

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18. *NAICS code 541519*—An Information Technology Value Added Reseller (ITVAR) provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant value added services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this exception and 150-employee size standard must consist of at least 15% and not more than 50% of value added services, as measured by the total contract price. In addition, the offeror must comply with the manufacturing performance requirements, or comply with the non-manufacturer rule by supplying the products of small business concerns, unless SBA has issued a class or contract specific waiver of the non-manufacturer rule. If the contract consists of less than 15% of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50% of value added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement.

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■ 3. Amend § 121.406 by revising paragraph (b)(3) and paragraphs (b)(4) introductory text and (b)(5) introductory text to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products or other supply items under a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, or 8(a) contract?

* * * * *

(b) * * *

(3) The nonmanufacturer rule applies only to procurements that have been assigned a manufacturing or supply NAICS code, or the Information Technology Value Added Resellers (ITVAR) exception to NAICS code 541519. The nonmanufacturer rule does not apply to contracts that have been assigned a service (except for the ITVAR exception to NAICS code 541519), construction, or specialty trade construction NAICS code.

(4) The nonmanufacturer rule applies only to the supply component of a requirement classified as a manufacturing, supply, or ITVAR contract. If a requirement is classified as a service contract, but also has a supply component, the nonmanufacturer rule does not apply to the supply component of the requirement.

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(5) The Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iv) of this section under the following two circumstances:

* * * * *

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–00922 Filed 1–25–16; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG50

Small Business Size Standards for Manufacturing

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing small business size standards for 209 industries in North American Industry Classification System (NAICS) Sector 31–33, Manufacturing. SBA is also modifying the size standard for NAICS 324110, Petroleum Refiners, by increasing the refining capacity component of the size standard to 200,000 barrels per calendar day for businesses that are primarily engaged in petroleum refining and by eliminating the requirement that 90 percent of the output to be delivered be refined by the successful bidder from either crude oil or bona fide feedstocks. The Agency is also updating Footnote 5 to NAICS 326211 to reflect the current Census Product Classification Codes 3262111 and 3262113. As part of its ongoing comprehensive size standards review, SBA evaluated employee based size standards for all 364 industries in NAICS Sector 31–33 to determine whether they should be retained or revised. This rule is one of a series of rules that result from SBA's review of size standards of industries grouped by NAICS Sector.

DATES: This rule is effective February 26, 2016.

FOR FURTHER INFORMATION CONTACT: Jorge Laboy-Bruno, Ph.D., Economist, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. The SBA's size standards generally use two primary measures of business size, average annual receipts and average number of employees. Financial assets, electric output, and refining capacity are used as size measures for a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (CDC/504) and 7(a) Loan Programs determine small business eligibility using either the industry based size standards or an alternative size standard based on both net worth and net income. At the start of the current comprehensive review of size standards, there were 41 different size standards, covering 1,141 NAICS industries and 18 ''exceptions.'' in SBA's table of size standards. Of these, 31 were based on average annual receipts, seven on average number of employees, and three on other measures. Presently, there are 28 different size standards, covering 1047 NAICS industries and 16 ''exceptions.'' Of these NAICS industries and exceptions, 533 are covered by size standards based on average annual receipts, 509 on average number of employees, and five on average assets.

Over the years, some members of the public have remarked that SBA's size standards have not kept up with changes in the economy, and in particular, that they do not reflect changes in the Federal contracting marketplace and industry structure. The last comprehensive size standards review was in the late 1970s and early 1980s. Size standards reviews since then, until this comprehensive review, were generally limited to a few specific industries in response to requests from the public and from Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The latest inflation adjustment to size standards was effective July 14, 2015 (79 FR 33647 (June 12, 2014)).

Because of changes in industry structure and the Federal marketplace since the last overall review, current data no longer supported existing size standards for some industries. Accordingly, in 2007, SBA began a comprehensive review to determine whether existing size standards are consistent with current data, and to revise them, when necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act), 111 Public Law 240, 124 Stat. 2504, Sep. 27, 2010. The Jobs Act

directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every18-month period from the date of its enactment and review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563, ''Improving Regulation and Regulatory Review.''

SBA has chosen not to review all size standards at one time. Rather, the Agency is reviewing groups of related industries on an NAICS Sector by Sector basis.

As part of SBA's comprehensive size standards review, grouped by NAICS Sector, the Agency reviewed the 364 size standards for industries in NAICS Sector 31–33, Manufacturing, to determine whether they should be retained or revised. After its review, SBA published in the September 10, 2014 issue of the **Federal Register** (79 FR 54145) a proposed rule to increase size standards for 209 industries in NAICS Sector 31–33, Manufacturing. SBA also proposed to amend Footnote 4 to NAICS 324110, Petroleum Refiners, in its table of size standards in two ways: (1) By increasing the refining capacity component of the size standard from 125,000 to 200,000 barrels per calendar day total capacity for businesses that are primarily engaged in petroleum refining, and (2) by eliminating the requirement that 90 percent of the output to be delivered be refined by the successful bidder from either crude oil or bona fide feedstocks. SBA also proposed amending Footnote 5 to NAICS 326211, Tire Manufacturing (except Retreading), to reflect the current Census Product Classification Codes 3262111 and 3262113.

As part of ongoing comprehensive size standards review, SBA developed a ''Size Standards Methodology'' White Paper for developing, reviewing, and modifying size standards, when necessary. SBA published the document on its Web site at *www.sba.gov/size* for public review and comments, and included it as a supporting document in the electronic docket of the proposed rule at *www.regulations.gov.*

In evaluating an industry, SBA generally examines its characteristics (such as average firm size, startup costs, industry competition, and distribution of firms by size) and the level and share of Federal contract dollars that small businesses receive. SBA also examines the potential impact a size standard revision might have on its financial assistance programs, and whether a business under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of every industry in NAICS 31–33, using mostly a special tabulation obtained from the U.S. Bureau of the Census from its 2007 Economic Census (the latest available). For the proposed rule, SBA also evaluated the small business share of Federal contracts in each of those industries using data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2009–2011. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data on its guaranteed loan programs for fiscal years 2010–2012. In this final rule, SBA has updated the impacts of size standards changes using the FPDS–NG and loan data for fiscal years 2012–2014.

SBA's ''Size Standards Methodology'' White Paper provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to establish and revise size standards. In the September 10, 2014 proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify when necessary, the existing size standards for industries in NAICS Sector 31–33. SBA sought comments from the public on a number of issues about its ''Size Standards Methodology,'' such as whether SBA should consider other approaches; whether SBA should evaluate alternative or additional factors or data sources; whether SBA's manner of establishing small business size standards makes sense in the current economic environment; whether SBA's application of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of current or comprehensive data; and whether there are other facts or issues that SBA should consider.

SBA sought comments on its proposed size standards together with other issues that could affect a final determination. Specifically, SBA requested comments on the following:

1. SBA proposed five levels of employee based size standards for industries in Manufacturing and for industries in other Sectors that have employee based size standards (except for Wholesale Trade and Retail Trade): 500 employees, 750 employees, 1,000 employees, 1,250 employees, and 1,500 employees. SBA invited comments on whether these were appropriate levels and requested suggestions for alternatives, if commenters thought them more appropriate.

2. Consistent with its policy of not lowering any size standards in its recently completed proposed and final rules on receipts based size standards, SBA proposed retaining the current 500-employee minimum and 1,500-employee maximum size standards for all industries in the Manufacturing Sector. In its ''Size Standards Methodology,'' available at *www.sba.gov/size,* SBA had proposed setting the minimum size standard for these industries at 250 employees and the maximum size standard at 1000 employees. That would entail lowering size standards for some industries. SBA invited comments on whether it should maintain the 500-employee minimum and the 1,500-employee maximum size standards or lower them to 250 employees and 1,000 employees, respectively, as the Agency proposed in its ''Size Standards Methodology.'' SBA requested suggestions on alternative minimum and maximum levels, if commenters thought them more appropriate. For the same reason, SBA also proposed to retain the current size standards for 19 industries when analytical results might support lowering them. SBA had sought comments on whether SBA should lower them solely based on its analysis or retain them at their current levels in view of current economic conditions.

3. SBA sought feedback on whether it should adjust employee based size standards for labor productivity growth. SBA periodically increases receipts based size standards for inflation. Should SBA take labor productivity growth and technological change into consideration when it reviews employee based standards? If so, what data are available to assist SBA in evaluating such factors? What if such an evaluation leads to lower size standards for some industries? How should SBA apply the results to its size standards?

4. SBA sought feedback on whether its proposal to increase size standards for 209 industries and retain current size standards for 155 industries is appropriate, given the economic characteristics of each industry reviewed in the proposed rule. SBA also sought feedback and suggestions on alternative size standards, if commenters thought them more appropriate.

5. SBA invited comments on its proposal to increase the capacity component of the Petroleum Refiners (NAICS 324110) size standard from 125,000 barrels per calendar day (BPCD)

total Operable Atmospheric Crude Oil Distillation capacity to 200,000 BPCD and retain the employee component at the current 1,500-employee level. SBA also welcomed comments on its proposal to allow business concerns to qualify either under the 1,500-employee size standard or under the 200,000 BPCD capacity size standard, if the firm, together with its affiliates, is primarily engaged in petroleum refining. Finally, SBA also requested feedback on its proposal to eliminate the requirement that ''[t]he total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.''

6. SBA's proposed size standards were based on five primary factors—average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size, and the level and small business share of Federal contracting dollars of the evaluated industries. SBA invited comments on these factors and/or suggestions on other factors that it should consider when evaluating or revising employee based size standards. SBA also sought information on relevant data sources, other than what it uses, if available.

7. SBA gave equal weight to each of the five primary factors in all industries. SBA asked for feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. SBA requested that recommendations to weigh some factors more than others include suggested weights for each factor along with supporting information.

8. For analytical simplicity and efficiency, in the proposed rule, SBA refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values, as in its past size regulations. SBA welcomed any comments on this procedure and suggestions on alternative methods.

Summary and Discussion of Comments

SBA received 26 comments to the proposed rule, but only 17 were unique comments as some commenters submitted the same comment more than once. All of the comments are available at *www.regulations.gov* (RIN 3245–AG50) and are summarized and discussed below.

Comments on NAICS 324110, Petroleum Refiners

Footnote 4 of SBA's table of size standards relates to NAICS 324110, Petroleum Refiners. SBA proposed to amend Footnote 4 in two ways: (1) By increasing the refining capacity component of the size standard from 125,000 barrels per calendar day (BPCD) total capacity to 200,000 BPCD total capacity for businesses that are primarily engaged in petroleum refining, and (2) by eliminating the requirement that 90 percent of the output to be delivered be refined by the successful bidder from either crude oil or bona fide feedstocks.

SBA received only one comment on these proposed changes. Specifically, the commenter expressed concerns about removing the requirement that 90 percent of the output to be delivered be refined by the successful bidder from either crude oil or bona fide feedstocks. The commenter contended that the change would have an adverse impact on small businesses under NAICS 424720, Petroleum and Petroleum Product Merchant Wholesalers, particularly those wishing to participate in the Defense Logistics Agency's (DLA) bulk fuel small business set aside program. To mitigate this, the commenter suggested a provision allowing the procuring agency to source refined petroleum products from small businesses in NAICS 424720 under a small business set-aside program. Assuming that waivers of the nonmanufacturer rule will be eliminated under the proposed rule, the commenter suggested some changes to the waiver rule.

SBA's Response

The changes affect only the small business eligibility of petroleum refiners. They do not affect the eligibility of wholesalers and other suppliers of petroleum products. Companies that qualify as small for supplying petroleum products they did not manufacture or produce can continue to qualify as small under SBA's nonmanufacturer rule (13 CFR 121.406(b)). Under the nonmanufacturer rule, a business is deemed small if it has 500 or fewer employees (including its affiliates), is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied, takes ownership or possession of the product, and provides the product of a small manufacturer (in this case, the product of a small petroleum refiner). The proposed changes do not affect the 500-employee nonmanufacturer size standard and hence the eligibility of wholesalers and dealers of petroleum products under the nonmanufacturer rule.

Based on evaluation of relevant industry and procurement data and public comments to the proposed rule, in this final rule, SBA is adopting the changes to the size standard for NAICS 324110, as proposed. Specifically, SBA is increasing the refining capacity component of the Petroleum Refiners (NAICS 324110) size standard from 125,000 BPCD to 200,000 BPCD total capacity for businesses that are, together with their affiliates, primarily engaged in refining crude petroleum into refined petroleum products. A firm's ''primary industry'' is determined in accordance with 13 CFR 121.107. In addition, the final rule eliminates the requirement that 90 percent of output being delivered is refined by a successful bidder. Accordingly, SBA also revises Footnote 4 of SBA's table of size standards to reflect these changes.

Under the revised size standard, for purposes of Federal procurement, a petroleum refiner can qualify as small under the 1,500-employee size standard or under the 200,000 BPCD total capacity size standard. To qualify under the capacity size standard, the firm, together with its affiliates, must be primarily engaged in refining crude petroleum into refined petroleum products. SBA is removing the requirement that 90 percent of the output to be delivered be refined by the successful bidder from either crude oil or bona fide feedstocks because the general requirement on a supply contract that is set aside for small business is that the small business manufacturer must perform 50 percent of the cost of manufacturing, or may not subcontract more than 50 percent of the contract to another firm.

Comments on NAICS 316210, Footwear Manufacturing

SBA received seven comments on NAICS 316210, Footwear Manufacturing. The current size standard for NAICS 316210 is 1,000 employees and SBA proposed to retain it at the current level. Four comments supported SBA's proposal, while two opposed it. The seventh comment was ambiguous with respect to the size standard. These comments and SBA's responses are discussed below.

Comments Supporting the Current 1,000-Employee Size Standard for NAICS 316210

Three footwear manufacturers supported maintaining the current 1,000-employee size standard for NAICS 316210. All three stated that they are the major and continuous suppliers to the U.S. military, and footwear products they manufacture meet the specifications as required by the U.S. Department of Defense (DoD) and the

Berry Amendment (10 U.S.C. 2533a). The Berry Amendment requires DoD to give preference in procurement to domestically produced, manufactured, or home-grown products, most notably food, clothing, fabrics, and specialty metals. Normally, one would expect special manufacturing requirements to point to the need for a larger size standard, not lower. Additionally, all three argued that, unlike large footwear manufacturers with diversified market and product bases, they rely heavily on small business contracts from the U.S. Defense Logistics Agency (DLA) for their survival. Two of these commenters also agreed with SBA's position of not reducing size standards in the current economic environment.

The first commenter explained that footwear contractors to DoD are often torn between two forces: (1) The need to increase the number of employees to meet DoD's needs, and (2) the need to maintain small business status to compete for DoD contracts. The commenter maintained that footwear manufacturing is highly labor intensive and DoD contract awards and their completions are associated with significant changes in employee headcounts. Significant swings in employee counts also occur with elevated demands for footwear by DoD during times of war, the commenter added. The commenter argued that retaining the current 1,000-employee size standard enables small businesses to meet DoD's needs without jeopardizing their small business status. This would also minimize the frequency of swings between small and large business status among footwear contractors and the impact on the DoD's supply chain, the commenter added. The same commenter stated that it relies on its small business status to be able to compete with large businesses. Many large businesses in the footwear industry are diverse, multi-national corporations with several thousand employees with significantly more resources and cost efficiencies, the commenter explained. The commenter asserted that DoD contracts are often awarded based on the lowest price where large businesses have significant cost advantages, and would be able to squeeze out small businesses if there were no small business protection. The 1,000-employee size standard helps small footwear manufacturers protect themselves as suppliers to DoD, the commenter concluded.

The second commenter also maintained that many contracts it received to supply combat boots to the U.S. military were awarded because of its small business status. Unless the small business size standard remains at 1,000 employees, its future will be in jeopardy, the commenter added. The commenter asserted that lowering the size standard would have a negative impact on its business and employees it supports. Any change in the size standard below the 1,000-employee level would definitely have a negative impact on its ability to continue manufacturing footwear for DoD and the industry, the commenter noted.

The third commenter, whose primary customers include DoD/DLA, supported keeping the 1,000-employee size standard because it allows for employment fluctuations during the course of contract performance. The commenter stated that, prior to October 1, 2012, when the size standard for NAICS 316210 was 500 employees, the majority of DoD contracts for combat boots went to large businesses with several thousand employees against which the company had a difficult time competing on a full and open basis. There are significant differences in resources available to companies with many thousands of employees versus those with less than 1,000 employees, the commenter added. To demonstrate that the company has been the foremost innovator for military footwear, the commenter provided numerous new combat boots it developed over the years. In light of the decimation of U.S. footwear manufacturing industry by imports reducing its share of all footwear purchase in the U.S. to less than 2 percent in 2013, the 500-employee footwear manufacturing size standard established more than a half century ago has grown out of date with the realities of the industry, the commenter explained. This commenter also stated that because the footwear industry is highly labor intensive, one DoD award can easily cause a contractor's employment level to increase by 10–20 percent or more, resulting in a change to its status from a small business to a large business during the course of the contract. This can be very disruptive to the company and its employees, the commenter added. The commenter also provided a detailed analysis of average firm size, startup costs and entry barriers, industry competition, and Federal contracting trends in support of SBA's proposal to maintain the 1,000-employee size standard for Footwear Manufacturing. If the size standard were to revert to 500 employees for NAICS 316210, it would have a lasting negative impact on its business and harm the areas where its employees live, the commenter concluded.

SBA also received a joint comment from two elected officials supporting the 1,000-employee size standard for Footwear Manufacturing on behalf of a footwear manufacturer operating factories in their Districts. They maintained that the company manufactures its Berry Amendment-compliant footwear in the U.S. and is a major supplier to the U.S. military. They supported SBA's proposal to maintain the current 1,000-employee size standard for Footwear Manufacturing in light of decreases in DLA contracts for military boots as it would help the company remain competitive in the market. The commenters added that lowering the size standard is not in the best interest of small footwear manufacturers in the current economic environment.

Comments Opposing the Current 1,000-Employee Size Standard for NAICS 316210

SBA received two comments opposing the 1,000-employee size standard for footwear manufacturers. One was from a footwear manufacturing subsidiary of a large multi-national company and the other was from an elected official. These comments and SBA's responses are below.

The first commenter argued that in 2012, SBA, without prior notice or opportunity to comment, issued an interim final rule to revise size standards to conform to NAICS 2012. The commenter also questioned SBA's justification for using an interim final rule (IFR). The commenter asserted that the 1,000-employee size standard for Footwear Manufacturing was adopted solely for administrative reasons without substantive analyses of industry and Federal contracting data as required by the Small Business Act or SBA's own size standards methodology. The commenter further argued that SBA consolidated five separate footwear manufacturing NAICS codes into one footwear manufacturing code (NAICS 316210) and changed the size standard from 500 employees to 1,000 employees by arbitrarily selecting the highest size standard in the group. The commenter added that SBA did not provide a detailed analysis and justification to establish a single size standard for a group of 4-digit NAICS codes as required by 15 U.S.C. 632(a)(7). The commenter maintained that the increase of size standard to 1,000 employees has allowed one or two firms between 500 employees and 1,000 employees to become dominant in the military footwear industry. The commenter contends that has harmed truly small businesses by forcing them to compete

against much larger firms even in small business set aside procurements, as well as large businesses by forcing agencies to use small business set asides and precluding them from participating in the market.

The commenter claimed that the current proposed rule and proposed size standards are fundamentally flawed. The commenter contended that the proposed rule does not meet the requirements of the Jobs Act because the Agency has not held two public forums in different geographic regions of the country as required by the Jobs Act. The commenter claimed that the actual industry data not only fails to support the current 1,000-employee size standard for Footwear Manufacturing, but supports lowering it to below 500 employees. In addition, the commenter argued that SBA failed to explain how the 1,000-employee size standard is appropriate for Footwear Manufacturing. The commenter stated that in addition to being based on the faulty 2012 IFR, the proposed size standard for Footwear Manufacturing is based on insufficient data and is not supported by the publicly available data. The commenter argued that the proposed rule provides no data for start-up costs, industry competition, or size distribution of firms relating to the footwear manufacturing industry. Similarly, there is no discussion on secondary factors (such as technological changes, industry growth trends, and SBA financial assistance and program factors), the commenter contended. The commenter maintained that SBA has not published data related to the vast majority of the primary factors it must consider and has not provided sufficient analysis of the size standard. SBA's failure to gather and consider data on each of the required factors demonstrates that the rulemaking is legally deficient, the commenter argued.

The commenter argued that the limited data SBA provides does not support the 1,000-employee size standard for military footwear manufacturing; the actual data require a lower size standard. The commenter stated that, with the 1,000-employee size standard, every significant domestic manufacturer of military footwear, except for two companies, is now considered a small business. The commenter maintained that publicly available Federal procurement data show that SBA's improper change to a 1,000-employee size standard has allowed ''small business'' to take a substantial share of the military footwear market. The commenter alleged that SBA's data on Federal contracting is inaccurate because the Agency has willfully and arbitrarily excluded Federal contracting data after October 2012 from its analysis. For example, SBA asserts that small businesses account for 7.8 percent of the Federal footwear market, while FPDS–NG demonstrates that the actual percentage is much higher, the commenter claimed.

The commenter contended that the 1,000-employee size standard for the footwear manufacturing industry has created a situation where one firm is now dominant in the industry. By raising the size standard from 500 employees to 1,000 employees, SBA has allowed two previously large firms to be reclassified as small, such that six of the eight companies in the industry are ''small'' businesses, the commenter maintained. Accounting for more than 28 percent of fiscal year 2014 dollars spent in NAICS 316210 nationwide and more than twice the share of other small business, one small business has become dominant in the industry, the commenter argued. SBA cannot adopt size standards which would cause a concern to become dominant in its field of operation, the commenter added. The commenter argued that SBA has provided no data to support its statement that no individual firm at or below the proposed size standards will be large enough to dominate its field of operation. SBA has not performed such an analysis with respect to the footwear manufacturing industry and failed to comply with the statutory requirement that small businesses are only those that are not dominant in their field of operation, the commenter alleged.

The commenter argued that SBA's position not to lower size standards, even when its analysis might support a reduction, is arbitrary and capricious and violates the requirements of the Act and SBA's own methodology. This ''policy'' is inconsistent with congressional intent and SBA's mission to aid, counsel, assist and protect the interests of small business concerns, the commenter maintained. The commenter added that this policy results in otherwise large businesses being identified as small and being afforded special treatment that was intended for small businesses, with repercussions for the entire industry that SBA is required to consider. The commenter contended that there is no basis to support SBA's assertion that not lowering size standards would create jobs. Changing size standards would have no impact on the government's demands for goods and services and job creation, the commenter explains. In other words, the commenter suggested that there is no impact on the economy and job creation whether the contracts are performed by large or small businesses. The commenter further argued that SBA failed to consider the impacts the size standard changes would have by precluding certain companies from Federal opportunities or by forcing truly small businesses to compete against otherwise large businesses.

The commenter argued that to comply with U.S. military requirements and the Berry Amendment, military footwear manufacturing involves a very distinct production process from commercial footwear manufacturing. Thus, the commenter recommended that SBA create a military footwear manufacturing exception to NAICS 316210, with a size standard of 500 employees. The commenter argued that, given the special production requirements necessary to comply with the Berry Amendment, the military footwear industry supports a separate industry designation as an exception to NAICS 316210. The commenter recommended that SBA return the size standard for Footwear Manufacturing to 500 employees and create a separate size standard for the military footwear industry as an exception to NAICS 316210 with a size standard well below 500 employees.

The second commenter, an elected official, expressed concerns about the size standard for Footwear Manufacturing. The commenter contended that the size standard for Footwear Manufacturing, increased in 2012 from 500 employees to 1,000 employees, not only endangers an already fragile footwear manufacturing base, but also negatively affects the small businesses the proposed rule is designed to assist. The commenter maintained that, with only a limited number of companies remaining that can produce Berry Amendment compliant footwear, the size standard change for Footwear Manufacturing will have a detrimental impact on the military's ability to procure high quality and consistent products. The commenter added that the proposed 1,000-employee size standard for Footwear Manufacturing has created a dominant firm within the size standard contradicting the intent of the proposed rule. The commenter recommended that SBA reconsider the proposed rule and return the small business size standard for Footwear Manufacturing to 500 employees. This will not only ensure fair competition among the few remaining Berry compliant footwear manufacturers, but will also preserve the military's ability to obtain consistent quality footwear, the commenter concluded.

Another commenter supported a change to NAICS 316210 allowing a separate classification for the Berry Amendment footwear. The commenter also supported changing the small business classification to make the business field more competitive. However, it was not clear whether the comment was for increasing or decreasing the size standard for Footwear Manufacturing.

SBA's Response

Every five years, with a notice and comment process, the Office of Management and Budget (OMB) reviews and updates the NAICS industry definitions to reflect changes in the U.S. economy. In each NAICS update, OMB may create new industries and merge or modify others. In the 2012 update, effective January 1, 2012, OMB merged the five footwear manufacturing industries into a single, new NAICS industry—NAICS 316210, Footwear Manufacturing. Thus, the commenter's statement that SBA consolidated the five industries into one category is not accurate.

When OMB merges multiple NAICS industries or their parts into a single industry, SBA must determine a size standard for the new industry when adopting the updated NAICS to its table of size standards. For this, as explained in the IFR, SBA used a bright-line approach to adopting the highest size standard among the merged industries as the size standard for the new industry. Of the five merged footwear manufacturing industries, one had a 1,000-employee size standard, while four had a 500-employee size standard. Accordingly, SBA adopted a 1,000-employee size standard for the new footwear manufacturing industry. SBA applied the same approach to determine the size standard for about 25 other new or modified industries in NAICS 2012. SBA had applied this approach to update its size standards in response to the 2002 and 2007 NAICS updates with no adverse comments. To do otherwise and adopt a lower size standard would result in firms being disqualified from small business status without any analysis, comment or opportunity for review. There is no evidence that SBA's approach has ever resulted in firms that are dominant in the industry qualifying as small business concerns.

After receiving no inter-agency comments, SBA published the updated size standards as an IFR on August 20, 2012 (77 FR 49991), with an effective date of October 1, 2012. SBA provided a detailed justification for using the IFR with an effective date of October 1, 2012. The commenter's argument that SBA provided no opportunity to comment on the rule is incorrect. SBA provided a 60-day comment period for the public and other concerned parties to comment on the size standards changes adopted in the interim final rule. SBA received only one comment on the IFR, which was unrelated to the 1,000-employee size standard for NAICS 316210, Footwear Manufacturing. Therefore, the 1,000-employee size standard for NAICS 316210, Footwear Manufacturing, has been in effect since October 1, 2012.

SBA does not agree with the commenter's assertion that SBA did not provide a detailed analysis and justification for establishing a single size standard for a group of industries at the 4-digit NAICS level as required by 15 U.S.C. 632(a)(7). That requirement only applies when SBA intends to establish a common size standard for a group of existing 6-digit NAICS codes at the 4-digit NAICS Industry Group level. It does not apply to the size standard that SBA adopted for NAICS 316210, Footwear Manufacturing, the new industry that OMB created by merging multiple NAICS industries as part of its NAICS 2012 updates because the five industries have similar production processes.

SBA disagrees with most of the arguments from the commenter regarding the Jobs Act and the analysis in the proposed rule. The commenter's allegation that SBA has not held any public forums under the Jobs Act is simply not correct. To obtain public input on numerous provisions under the Jobs Act, in 2011, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input. SBA also provided information on the status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on the size standards review.

SBA does not agree with the commenter's claim that the Agency failed to explain how the 1,000-employee size standard is appropriate for the footwear manufacturing industry. In the proposed rule, SBA detailed what industry and Federal contracting factors the Agency considered, how they were calculated, what data sources it examined, and how the results were translated to size standards supported by each factor. The 2012 IFR had no impact on the SBA's September 10, 2014 proposed rule to retain the 1,000-employee based size standard for Footwear Manufacturing.

As explained in the September 10, 2014 proposed rule, due to the lack of data on actual start-up costs, SBA uses average assets as a proxy for start-up costs. SBA calculates average assets by combining the sales to total assets ratio for an industry from the Risk Management Association's (RMA) Annual eStatement Studies with average receipts from the Economic Census data. The 2009–2011 RMA data, the latest available when SBA prepared the proposed rule, did not contain the sales to assets ratio for the Footwear Manufacturing industries. Therefore, the average assets factor was left blank for Footwear Manufacturing. SBA measures industry competition using the four-firm concentration ratio and estimates a size standard only if its value is 40 percent or more. SBA did not have the data to compute the four-firm ratio for Footwear Manufacturing. Thus, that factor was not included in the analysis. As explained in the proposed rule as well as in SBA's size standards methodology, SBA analyzes the size distribution of firms using the Gini coefficient. The Gini coefficient factor was included for Footwear Manufacturing. As part of its review, SBA evaluates small business participation on Federal contracting and SBA's loan programs under both existing and proposed size standards as well.

The Federal contracting factor was evaluated for every industry, including Footwear Manufacturing. The impact on loan programs was evaluated on a more general basis as the vast majority of businesses receiving SBA's loans are well below the size standards. Aggregated impacts of proposed size standards on SBA's financial assistance and Federal procurement were provided as part of the regulatory impact analysis of the proposed rule. It was not practical to include the results for each of the 364 industries covered by the proposed rule. SBA considers secondary factors on a case by case basis. While the commenter complained that SBA did not consider secondary factors, it did not indicate what secondary factors SBA should consider in reviewing the size standard for Footwear Manufacturing. Regarding the publication of data, SBA provided the results for every primary factor and each industry, unless the data were not available or the results were not relevant. Additionally, the majority of the data SBA used in the proposed rule are publicly available.

While the commenter claimed that actual industry data support lowering the size standard for Footwear Manufacturing to below 500 employees, it did not provide any specific industry data or analysis to support its claim. The commenter's allegation that SBA willfully and arbitrarily excluded the Federal contracting data from October 2012 is incorrect. When SBA prepared

the proposed rule, the latest Federal contracting data that were available was for fiscal year 2011. The commenter wrongly interpreted the 7.8 percent Federal contracting factor for Footwear Manufacturing as the small business share of Federal footwear market. As explained in the proposed rule, that value represents the difference between small business share of total industry receipts (36.2%) and small business share of total contract dollars (44.0%) for Footwear Manufacturing.

SBA disagrees with the comment that the 1,000-employee size standard has allowed firms that are dominant in the footwear manufacturing industry to qualify as small. Similarly, SBA also disagrees with the argument that SBA did not perform the dominant analysis for Footwear Manufacturing. SBA examined the market share (*i.e.,* share of total industry's receipts) of firms that would become small under the proposed size standard in each industry and determined that no individual firm at or below the proposed size standard would be large enough to dominate its field of operation. Since it was not practical to include the market share for each of the 364 industries, SBA provided a range of values. Among the industries for which the Agency proposed to change the size standards in Manufacturing, the small business market share varied from 0.02 percent to 18.9 percent, averaging 1.7 percent. For Footwear Manufacturing, that value was 1.9 percent, suggesting that at that level market share no individual firm would be dominant under the proposed 1,000-employee size standard. SBA looks at the share of total industry receipts, not Federal contract dollars, to determine if a firm is dominant in the industry. Again, SBA considers a firm to be dominant when it is dominant in the entire industry, which in this case is NAICS 316210, Footwear Manufacturing. It does not relate to a specific product line manufactured by a particular company in that industry, or a particular agency. Otherwise, the number of companies dominant in their industries, based on a specific product they manufacture, would be too numerous to identify.

Furthermore, the data does not support the argument that the 1,000-employee size standard has harmed the companies below 500 employees by forcing them to compete against companies with 500–1,000 employees for small business set aside procurements. The results from small business goaling data shown in Table 1, ''Contract Dollars in Footwear Manufacturing by Business Size,'' show that the share of companies below 500 employees in total contract dollars in Footwear Manufacturing related industries increased from about 31 percent during fiscal years 2011–2012 (*i.e.,* prior to the 1,000-employee size standard) to 46 percent during fiscal years 2013–2014 (*i.e.,* after the 1,000-employee size standard). More importantly, small business dollars awarded to firms below 500 employees increased from $32 million to $49 million, an increase of more than 50 percent. Similarly, the results also do not support the argument that the 1,000-employee size standard has reduced Federal opportunities for firms that are above the size standard. As can be seen from the table, dollars awarded to firms above 1,000 employees have increased more than 50 percent from $18 million per year during fiscal years 2011–2012 to more than $27 million during fiscal years 2013–2014. It is not that firms between 500 and 1,000 employees that became small under the 1,000-employee size standard are getting more contracts now, thereby reducing opportunities for firms below 500 employees and those above 1,000 employees. The data shows that they continued to get those contracts, but as small businesses under the 1,000-employee size standard. In fact, firms between 500 and 1,000 employees lost some of their market share to firms below 500 employees and those above 1,000 employees under the higher size standard.

TABLE 1—CONTRACT DOLLARS IN FOOTWEAR MANUFACTURING BY BUSINESS SIZE

[In $ million]

Business size (number of employees)	Average 2011–2012	Average 2013–2014
Other than small business		
NA	3.2	0.1
>=500	0.3	0.5
>500 to >=1,000	45.4	5.3
>1,000	18.4	27.6
Other than small total	67.3	33.4
Small business		
NA	3.3	1.0
>=500	31.6	48.6
>500 to >=1,000	1.8	23.1
>1,000	0.3	0.2
Small total	36.9	72.9
Overall		
NA	6.5	1.1
>=500	31.9	49.1
>500 to >=1,000	47.2	28.4
>1,000	18.7	27.8
Overall total	104.3	106.4

SBA is unable to verify the argument that one previously large business that became small under the 1,000-employee size standard captured more than 28 percent of total small business dollars awarded under NAICS 316210 in 2014.

Based on the analysis of contract data for Fiscal year 2014, SBA found no individual firm receiving more than 12 percent of small business dollars awarded under for NAICS 316210. Moreover, because agencies still continued to apply older footwear manufacturing NAICS codes (albeit incorrectly) for footwear contracts, the results based on NAICS 316210 alone would be misleading. Using the data for all footwear manufacturing related NAICS codes, SBA found that no individual firm accounted for more than 19 percent of small business dollars awarded in those NAICS codes for fiscal year 2014. These levels of market share do not suggest that the size standard has classified dominant firms as small.

SBA disagrees with the comment that the Agency's decision not to lower any size standards was arbitrary and capricious and violates the statute and Agency's methodology. Although not lowering small business size standards has been SBA's general policy to enhance small business participation in Federal programs in the current economic environment, SBA does make exceptions. For example, in a final rule (RIN 3245–AG51) published elsewhere in this **Federal Register**, SBA has lowered size standards for three mining industries that are not part of Manufacturing, Wholesale Trade, or Retail Trade. In the September 10, 2014 proposed rule, SBA provided a detailed analysis to explain why lowering size standards would be against the best interests of small businesses. SBA believes that businesses below 500 employees will be better off competing with companies up to 1,000 employees for small business set aside procurements than competing for unrestricted procurements against companies that have several thousand employees. Because small businesses do not have the economies of scale (automation, marketing, production, technology, etc.) that larger enterprises have, small businesses generally increase their employees, resources, and tools when they get a new contract. As a result, SBA believes that small businesses will add more to the economy by hiring people, and purchasing equipment, materials, and technology that larger businesses might already have on hand.

SBA disagrees and does not see the need for creating an exception for military footwear manufacturing. According to the information provided by the commenter, there exist numerous firms that are already in compliance with the Berry Amendment. SBA is not convinced with the rationale why a lower size standard is warranted to comply with contracts with certain requirements. The Berry Amendment requires DoD to give preference in procurement to domestically produced, manufactured, or home-grown products, most notably food, clothing, fabrics, and specialty metals. Normally, one would expect special manufacturing requirements to point to the need for a larger size standard, not lower.

In addition, the available industry data does not support a 500-employee size standard for Footwear Manufacturing, especially for military footwear manufacturing. Firms serving the military footwear market are, on average, considerably larger than the rest of the firms in the industry. Thus, it would be inconsistent to have a lower size standard for the military footwear market and a higher standard for the rest of the industry. Furthermore, compliance with the Berry Amendment is not a function of the size of the business performing a contract. Rather, it is a function of the origin of the products, which small businesses can certainly manufacture. Moreover, there are several small footwear manufacturers that manufacture footwear that is compliant with the Berry Amendment.

Most importantly, SBA is concerned that lowering the size standard would reduce the pool of small businesses that are available to meet the DLA/DoD requirements under small business procurements for military footwear. This would cause the Government to procure its needs through more full and open competition, thereby forcing smaller firms, including those between 500 employees and 1,000 employees, to compete with firms many times their size.

In response to the comments, SBA updated the Federal contracting factor for Footwear Manufacturing using FPDS–NG data for fiscal years 2013–2014. It should be noted that the Federal contracting factor is calculated based on the 1,000-employee size standard for NAICS 316210. Following OMB's merging of five footwear manufacturing industries to one industry, RMA's eStatement Studies started publishing the sales to total assets ratio for the new industry (NAICS 316210). Accordingly, using that data for years 2012–2014, SBA is now also able to calculate the average assets factor for NAICS 316210, which was not included in the proposed rule. The updated results are shown in Table 2 ''Updated Size Standards Analysis for Footwear Manufacturing (No. of Employees),'' below. As can be seen from the table, the updated results reconfirm the 1,000-employee size standard for NAICS 316210, Footwear Manufacturing.

TABLE 2—UPDATED SIZE STANDARDS ANALYSIS FOR FOOTWEAR MANUFACTURING

[Number of Employees]

	Simple average firm size (number of employees)	Weighted average firm size (number of employees)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size (number of employees)*	Gini coeffi-cient	Federal contract factor (%)	Calculated size standard (number of employees)
Factor	55	550	3.7		NA	0.827	3.8	1,000
Size standard	500	1,500	500		NA	1,500	1,000	

*Size standard for four-firm average size is not calculated because there is no data to compute the four-firm ratio.

Therefore, based on the analyses of all supportive and opposing comments on the proposed rule and latest industry and contracting data available when this final rule was prepared, SBA is retaining the 1,000-employee size standard for Footwear Manufacturing (NAICS 316210), as proposed.

Comments on Subsector 315, Apparel Manufacturing

SBA received four comments on size standards for industries within NAICS Subsector 315, Apparel Manufacturing. SBA proposed to increase the size standard for seven industries in that subsector from 500 employees to 750 employees.

A commenter supported proposed increases to size standards for the apparel manufacturing industries from

500 employees to 750 employees. The commenter argued that the current 500-employee size standard has been a major deterrent in its ability to hire and retain employees to meet unexpected surges in demand of clothing items by DLA from small businesses, especially in times of war. Higher size standards are important for small clothing manufacturers to remain eligible to compete for small business set aside purchases by DoD and DLA, the commenter observed. The commenter pointed out that, because these industries are labor intensive, higher size standards will offer small businesses greater opportunities to hire more people in different areas of the country.

A labor organization also supported proposed increases to size standards for NAICS codes 315210 (Cut and Sew Apparel Contractors), 315220 (Men's and Boys' Cut and Sew Apparel Manufacturing), 315240 (Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing), and 315280 (Other Cut and Sew Apparel Manufacturing) from 500 employees to 750 employees. These NAICS codes apply to procurement of military apparel by DoD and DLA to support U.S. troops, and the current 500-employee size standard has made it difficult for small business apparel contractors to meet demands during surges in troop support acquisitions (also referred to as surge capability), the commenter maintained. The 500-employee size standard has created persistent capacity and price problems for small businesses, the commenter added. The organization stated that small apparel contractors find themselves torn between the need to maintain the surge capabilities expected by the DLA and the need to maintain the small business status necessary to compete for DLA uniform contracts. Therefore, the 750-employee size standard will allow small apparel and clothing contractors to expand production temporarily when demand surges without jeopardizing their small business status, the commenter maintained. The capability to meet unexpected surges in demand for items such as uniforms and body armor is critical to maintaining warfighter readiness, the organization noted. Citing a May 2013 survey of DLA's clothing and apparel contractors, the organization stated that 90 percent of respondents were dependent on DoD contracts for their financial viability.

An Alaska Native Corporation representative opposed the proposed 750-employee size standard for Subsector 315, Apparel Manufacturing. The Corporation owns several small disadvantaged businesses in the apparel manufacturing industry, the commenter observed. The commenter argued that raising the size standard would negatively affect the growth of their company and profits of their shareholders. Raising size standards would make a greater number of large companies eligible for small business status, thereby increasing competition in the apparel manufacturing market and reducing opportunities for their company and other small businesses, the commenter explained. This would be detrimental in light of decreases in Federal government spending in the apparel manufacturing market over the last 5 years because there would be more companies bidding on fewer contracts and fewer opportunities for true small businesses, the commenter concluded.

Another commenter recommended a 250-employee size standard for several industries within Subsector 315, namely NAICS 315210 (Cut and Sew Apparel Contractors), 315220 (Men's and Boys' Cut and Sew Apparel Manufacturing), 315240 (Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing), 315280 (Other Cut and Sew Apparel Manufacturing), and 315990 (Apparel Accessories and Other Apparel Manufacturing). The commenter argued that the 250-employee size standard would offer protection for emerging small businesses, given the fragility of the clothing and textile industry. However, the commenter provided no data or analysis to support the argument.

SBA's Response

Based on its analysis of industry and Federal procurement data and public comments, SBA has determined that it will adopt the 750-employee size standard for the seven industries in Subsector 315, Apparel Manufacturing, as proposed. In recent years, DLA has strived to increase its awards for procuring military clothing through small businesses. This has put strains on many small businesses, according to the commenters, to meet DLA's expected surge capabilities while maintaining their small business size status. The increase from 500 employees to 750 employees will allow a number of small businesses to take on these contracts and to hire more workers without jeopardizing their eligibility. Based on data from the Economic Census and System of Award Management (SAM), only about 10 additional businesses that are primarily involved in Apparel Manufacturing will qualify as small under the 750-employee size standard. SBA does not believe that the higher size standard will cause a significant negative impact on existing small businesses. Therefore, SBA is adopting the 750-employee size standard for all industries in NAICS Subsector 315, Apparel Manufacturing.

Comments on NAICS 327993, Mineral Wool Manufacturing

A comment from a trade association for manufacturers of fiber glass and rock and slag wool insulation addressed the size standard for NAICS 327993, Mineral Wool Manufacturing. Specifically, the association supported SBA's proposal to increase the size standard for NAICS 327993 from 750 employees to 1,500 employees.

SBA's Response

Because there were no comments opposed to this increase, SBA is adopting the 1,500 employee size standard for NAICS 327993, as proposed.

Comments on NAICS 336412, Aircraft Engine and Engine Parts Manufacturing; and NAICS 336413, Other Aircraft Part and Auxiliary Equipment Manufacturing

SBA proposed increasing the size standards for NAICS 336412 from 1,000 employees to 1,500 employees and for NAICS 336413 from 1,000 employees to 1,250 employees. A military aircraft parts and auxiliary equipment manufacturer supported the proposed increases to size standards for both industries, but recommends that SBA adopt the same 1,500-employee size standard for NAICS 336413 as well, instead of the proposed 1,250-employee size standard. The commenter argued that the differences in manufacturing engine parts and other aircraft equipment are minimal. The single size standard for both industries would provide uniform employee levels for small business eligibility and offer them more flexibility to adjust to the requirements of the marketplace, the commenter explained.

SBA's Response

SBA has not adopted the recommendation for three reasons. First, although product lines and production methods may be related, there exist significant differences in industry characteristics between the two industries. For example, based on the 2007 Economic Census, the average size of firms is 230 employees for NAICS 336412 as compared to 146 employees for NAICS 336413. Similarly, average assets size is about $74 million for NAICS 336412 as opposed to only $26 million for NAICS 336413. Second, the

size standards for aircraft, aircraft parts and equipment related exceptions to NAICS 541712 (Research and Development in the Physical, Engineering and Life Sciences (except Biotechnology)) are tied to size standards for industries within NAICS Industry Group 3364 (Aerospace Product and Parts Manufacturing). Therefore, changing size standards for any of the industries in NAICS Industry Group 3364 would also require changing the size standards for exceptions under NAICS 541712. Third, the National Defense Authorization Act of fiscal year 2013 (NDAA 2013) limits establishing a single or common size standard for multiple industries without proper justification and without publishing such a size standard for public comments. Obviously, given the industry data that support different size standards for the two industries, it would be difficult to justify the single size standard for them in accordance with NDAA 2013. As part of its quinquennial review of all size standards required by the Jobs Act, SBA will reevaluate the size standards for those industries in the coming years and consider the recommendation at that time.

For the above reasons, in this final rule, SBA is adopting the 1,500-employee size standard for NAICS 336412 and the 1,250-employee size standard for NAICS 336413, as proposed.

Comments on NAICS 611512, Flight Training

A commenter supported increasing size standards for NAICS Sector 31–33 manufacturing, specifically increasing the size standard for NAICS 336413 from 1,000 employees to 1,250 employees. The commenter, operating primarily in NAICS 611512 (Flight Training), advocated for the creation of a separate manufacturing NAICS code for ''Military Defense Training'' with a size standard of 1,500 employees. Contracting Officers have recently been utilizing NAICS 336413 for solicitations for services contracts involving military training due to its higher size standard and technical nature of military training, the commenter explained. NAICS 611512 and its $27.5 million receipts based size standard do not reflect the requirements for military defense training, the commenter added. The commenter argued that flight training can more realistically be categorized under NAICS Sector 31–33 (Manufacturing) rather than under Sector 61 (Education).

SBA's Response

SBA cannot make the suggested change for several reasons. First, the September 10, 2014 proposed rule and this final rule only apply to industries in NAICS Sector 31–33, Manufacturing. The September 10, 2014 proposed rule did not address NAICS 611512, Flight Training. SBA evaluated NAICS 611512 and its size standard in a proposed rule (76 FR 70667 (November 15, 2011)) that was part of its comprehensive review of Sector 61, Educational Services. In the final rule, SBA determined that data did not support an increase in the size standard for NAICS 611512. The final rule (77 FR 58739 (September 24, 2012)) fully explains and justifies how SBA arrived at its determination that the then existing $25.5 million size standard for NAICS 611512 should remain unchanged. It was increased for inflation to $27.5 million, effective July 14, 2014, along with increases to all other monetary based size standards (79 FR 33647 (June 12, 2014)).

Second, SBA has no authority or expertise to create new NAICS codes or modify existing ones. Creating or modifying NAICS industry definitions or codes is done through the U.S. Economic Classification Policy Committee under the Office of Management and Budget (OMB) in cooperation with statistical agencies from the U.S., Canada, and Mexico. If the commenter believes that a new NAICS code is warranted for military flight training, it should approach OMB (see *http://www.census.gov/eos/www/naics/*). Every five years, OMB updates NAICS codes and definitions, the next being the NAICS 2017 updates.

For Federal procurement, the contracting officer must specify the NAICS code and size standard in accordance with the principal purpose of the procurement (13 CFR 121.402(b)). When the government purchases manufactured products, the contracting officer must assign the appropriate NAICS code and size standard from Sector 31–33. There may be ancillary services that accompany the manufactured product, but if the principal purpose of the procurement action is to purchase product, then the NAICS code and small business size standard are from the manufacturing sector. If a service is the primary purpose of the procurement, it should be classified under the appropriate services NAICS code and size standard. When the government procures both products and services, it must determine which is the greater part of the contract, and must assign the appropriate NAICS code and size standard (13 CFR 121.402(b)). Any interested party adversely affected by a contracting officer's NAICS code designation may appeal that designation to SBA's Office of Hearings and Appeals (OHA) (see 13 CFR 121.1101–1103).

Comments on NAICS 321212, Softwood Veneer and Plywood Manufacturing

A commenter opposed SBA's proposal to increase the size standard for Softwood Veneer and Plywood Manufacturing (NAICS 321212) from 500 employees to 1,250 employees. The commenter maintained that the increase would have an impact on the majority of manufacturers in this industry by affecting the availability of Federal timber, because it would increase the competition for the timber sale set aside for small businesses in this industry by enlarging the pool of eligible small business manufacturers. The commenter argued that the proposed size standard increase is not warranted because companies that qualify as small under the current size standard already exist. The commenter was concerned that by allowing larger companies to qualify as small the proposed increase to the size standard for NAICS 321212 would negatively impact a number of companies that have made business decisions to remain below the 500-employee size standard to benefit from the SBA's timber set-aside program. With the proposed 1,250-employee size standard, the plywood and veneer manufacturers below 500 employees would lose the protection provided by the program, the commenter concluded.

SBA's Response

With respect to the argument that an increase to the size standard for NAICS 321212 or any other wood product manufacturing industry would negatively impact firms participating in the SBA's Commercial Timber Sale Set-Aside Program, the wood manufacturing industry size standards do not apply to determine eligibility for purposes of that program. Rather, the size standard for the timber sale set-aside program (except for salvage timber) is 500 employees (see 13 CFR 121.507), which SBA did not propose to increase.

The arguments that there are already small businesses under the existing size standard, that firms have made business decisions to remain small to benefit from the program, and that they would lose small business protection if additional firms qualify as small, are not valid reasons for not revising the size standard when the relevant industry data warrants doing so. Of the 14 industries in NAICS Subsector 321, Wood Product Manufacturing, based on

the results of the evaluation of industry characteristics (such as average firm size, industry concentration, and distribution of firms by size) and the Federal contracting factor, SBA proposed increasing the size standards for NAICS 321212 and four others, and retaining the current 500-employee size standard for nine industries. As can be seen from the results in Table 3 of the September 10, 2014 proposed rule, the industries for which SBA proposed increasing the size standards had significantly higher average firm size, four-firm concentration ratio and Gini coefficient than others. To still maintain their size standard at the 500-employee level would be inconsistent with SBA's mandate to adjust size standards based on current industry and market data. Moreover, based on the Economic Census and SAM data for NAICS 321212, only about five additional firms will qualify as small under the 1,250-employee size standard, suggesting that the higher size standard will have very minimal impact on businesses below the current 500-employee size standard. For these reasons, SBA is adopting the 1,250-employee size standard for NAICS 321212, as proposed. Similarly, SBA is adopting proposed size standards increases for four other industries in Subsector 321.

Other Comments

Two commenters offered general assessments of SBA's proposed rule. Both supported SBA's proposed five employee based size standard levels for Manufacturing and their incremental increases of 250 employees rather than 500 employees; however, one suggested that SBA should incorporate the sixth level at 250 employees and set the maximum employee based standard at 1,000 employees. A lower size standard would protect emerging manufacturers that are not able to compete with established larger businesses, the commenter explained. One opposed proposed increases to size standards in Manufacturing arguing that higher size standards would allow manufacturers to create less productive, low paying jobs, while the other commenter supported the increases except for industries in Subsector 315 for which the commenter suggested a lower 250-employee size standard.

Both commenters argued that the Agency should lower size standards when the analysis supports lowering them. One argued that not lowering size standards would encourage manufacturers not to upgrade their facilities with advanced manufacturing techniques and allow larger manufacturers to compete with true small manufacturers. While one commenter suggested that SBA should not adjust employee based size standards for labor productivity growth and focus on protecting emerging businesses instead, the other pointed out that the lack of data on labor productivity would make adjusting size standards based on labor productivity difficult. One commenter supported weighing all factors equally, while the other suggested weighing some factors more than others for certain industries. In addition to employee counts, the second commenter suggested other criteria for establishing size standards, including business tenure (5 years), subcontracting limitations, revenue limits ($30 million), and net worth limits ($5 million). Lastly, both commenters endorsed SBA's approach to use a single value as a size standard as opposed to a range of values.

SBA's Response

Some of the issues the commenters have raised (such as lowering minimum and maximum size standards, using different factors and weighing them differently from others, lowering size standards, etc.) will be addressed when SBA updates its ''Size Standards Methodology'' for the next round of size standards review. With respect to SBA's policy of not lowering size standards when the data support doing so, SBA provided a detailed explanation in the proposed rule with respect to why lowering size standards is not in the best interest of small businesses in the current economic climate. SBA is concerned that lowering maximum and minimum levels of size standards would cause untold numbers of small businesses to lose their eligibility for Federal programs.

Incorporation of net worth into SBA's table of size standards is not practicable. It is not a value that lends itself to comparing businesses in a particular industry. A company's net worth can be affected by a number of things, such as debt, repurchased corporate stock, etc. Furthermore, data on net worth is not available by industry.

Other criteria proposed by the commenter would, SBA believes, be too nebulous, temporary, and subjective and therefore not useful when establishing size standards that usually must remain static and in place for a number of years. Establishing small business eligibility based on multiple criteria (such as revenue limit, net worth limit, and employee count), as suggested by the commenter, would create unnecessary complexity and confusion in size standards.

NAICS 326211, Tire Manufacturing (Except Retreading)

In the September 10, 2014 proposed rule, SBA proposed amending Footnote 5 to the table of size standards relating to NAICS 326211, Tire Manufacturing (except Retreading). In the absence of comments opposing the proposed amendment, SBA is amending Footnote 5, as proposed, by replacing the former Census classification codes 30111 and 30112 with the new Census Product Classification Codes 3262111 and 3262113 respectively.

Conclusions

Based on the analyses of the latest industry and Federal contracting data available and thorough evaluation of all public comments on the proposed rule, SBA is adopting all size standards changes in NAICS Sector 31–33, Manufacturing, as proposed. Specifically, SBA is increasing size standards for 209 industries in NAICS Sector 31–33. These industries, along with their current and revised size standards are shown in Table 3 ''Summary of Size Standards Revisions in NAICS Sector 31–33.'' SBA is also increasing the refining capacity component of the size standard for NAICS 324110 (Petroleum Refiners) from 125,000 barrels per calendar day (BPCD) to 200,000 BPCD for businesses that are primarily engaged in petroleum refining and eliminating the requirement that 90 percent of the output to be delivered be refined by the successful bidder from either crude oil or bona fide feedstocks. To qualify under the capacity size standard, the firm, together with its affiliates, must be primarily engaged in refining crude petroleum into refined petroleum products. To reflect these changes, SBA is also amending Footnote 4 of SBA's table of size standards. Finally, the Agency is also updating Footnote 5 to NAICS 326211 to reflect the current Census Product Classification Codes 3262111 and 3262113.

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTOR 31–33

NAICs code	NAICS U.S. industry title	Current size standard (number of employees)	Revised size standard (number of employees)
311111	Dog and Cat Food Manufacturing	500	1,000
311211	Flour Milling	500	1,000
311221	Wet Corn Milling	750	1,250
311314	Cane Sugar Manufacturing	750	1,000
311340	Nonchocolate Confectionery Manufacturing	500	1,000
311351	Chocolate and Confectionery Manufacturing from Cacao Beans	500	1,250
311352	Confectionery Manufacturing from Purchased Chocolate	500	1,000
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	500	1,000
311412	Frozen Specialty Food Manufacturing	500	1,250
311421	Fruit and Vegetable Canning	500	1,000
311422	Specialty Canning	1,000	1,250
311423	Dried and Dehydrated Food Manufacturing	500	750
311511	Fluid Milk Manufacturing	500	1,000
311512	Creamery Butter Manufacturing	500	750
311513	Cheese Manufacturing	500	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	500	750
311520	Ice Cream and Frozen Dessert Manufacturing	500	1,000
311611	Animal (except Poultry) Slaughtering	500	1,000
311612	Meat Processed from Carcasses	500	1,000
311613	Rendering and Meat Byproduct Processing	500	750
311615	Poultry Processing	500	1,250
311710	Seafood Product Preparation and Packaging	500	750
311812	Commercial Bakeries	500	1,000
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing	500	750
311821	Cookie and Cracker Manufacturing	750	1,250
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour	500	750
311830	Tortilla Manufacturing	500	1,250
311911	Roasted Nuts and Peanut Butter Manufacturing	500	750
311919	Other Snack Food Manufacturing	500	1,250
311920	Coffee and Tea Manufacturing	500	750
311930	Flavoring Syrup and Concentrate Manufacturing	500	1,000
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing	500	750
312111	Soft Drink Manufacturing	500	1,250
312112	Bottled Water Manufacturing	500	1,000
312113	Ice Manufacturing	500	750
312120	Breweries	500	1,250
312130	Wineries	500	1,000
312140	Distilleries	750	1,000
312230	Tobacco Manufacturing	1,000	1,500
313110	Fiber, Yarn, and Thread Mills	500	1,250
313230	Nonwoven Fabric Mills	500	750
314110	Carpet and Rug Mills	500	1,500
314120	Curtain and Linen Mills	500	750
315110	Hosiery and Sock Mills	500	750
315190	Other Apparel Knitting Mills	500	750
315210	Cut and Sew Apparel Contractors	500	750
315220	Men's and Boys' Cut and Sew Apparel Manufacturing	500	750
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	500	750
315280	Other Cut and Sew Apparel Manufacturing	500	750
316992	Women's Handbag and Purse Manufacturing	500	750
321212	Softwood Veneer and Plywood Manufacturing	500	1,250
321213	Engineered Wood Member (except Truss) Manufacturing	500	750
321219	Reconstituted Wood Product Manufacturing	500	750
321911	Wood Window and Door Manufacturing	500	1,000
321991	Manufactured Home (Mobile Home) Manufacturing	500	1,250
322121	Paper (except Newsprint) Mills	750	1,250
322130	Paperboard Mills	750	1,250
322211	Corrugated and Solid Fiber Box Manufacturing	500	1,250
322219	Other Paperboard Container Manufacturing	750	1,000
322220	Paper Bag and Coated and Treated Paper Manufacturing	500	750
322230	Stationery Product Manufacturing	500	750
322291	Sanitary Paper Product Manufacturing	500	1,500
323117	Books Printing	500	1,250
324191	Petroleum Lubricating Oil and Grease Manufacturing	500	750
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	750	1,250
325199	All Other Basic Organic Chemical Manufacturing	1,000	1,250
325211	Plastics Material and Resin Manufacturing	750	1,250
325312	Phosphatic Fertilizer Manufacturing	500	750
325320	Pesticide and Other Agricultural Chemical Manufacturing	500	1,000

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTOR 31–33—Continued

NAICs code	NAICS U.S. industry title	Current size standard (number of employees)	Revised size standard (number of employees)
325411	Medicinal and Botanical Manufacturing	750	1,000
325412	Pharmaceutical Preparation Manufacturing	750	1,250
325413	In-Vitro Diagnostic Substance Manufacturing	500	1,250
325414	Biological Product (except Diagnostic) Manufacturing	500	1,250
325510	Paint and Coating Manufacturing	500	1,000
325611	Soap and Other Detergent Manufacturing	750	1,000
325612	Polish and Other Sanitation Good Manufacturing	500	750
325613	Surface Active Agent Manufacturing	500	750
325620	Toilet Preparation Manufacturing	500	1,250
325992	Photographic Film, Paper, Plate, and Chemical Manufacturing	500	1,500
326111	Plastics Bag and Pouch Manufacturing	500	750
326112	Plastics Packaging Film and Sheet (including Laminated) Manufacturing	500	1,000
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing	500	750
326122	Plastics Pipe and Pipe Fitting Manufacturing	500	750
326140	Polystyrene Foam Product Manufacturing	500	1,000
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing	500	750
326160	Plastics Bottle Manufacturing	500	1,250
326191	Plastics Plumbing Fixture Manufacturing	500	750
326211	Tire Manufacturing (except Retreading)	1,000	1,500
326220	Rubber and Plastics Hoses and Belting Manufacturing	500	750
326291	Rubber Product Manufacturing for Mechanical Use	500	750
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing	750	1,000
327212	Other Pressed and Blown Glass and Glassware Manufacturing	750	1,250
327213	Glass Container Manufacturing	750	1,250
327215	Glass Product Manufacturing Made of Purchased Glass	500	1,000
327310	Cement Manufacturing	750	1,000
327332	Concrete Pipe Manufacturing	500	750
327410	Lime Manufacturing	500	750
327420	Gypsum Product Manufacturing	1,000	1,500
327910	Abrasive Product Manufacturing	500	750
327993	Mineral Wool Manufacturing	750	1,500
331110	Iron and Steel Mills and Ferroalloy Manufacturing	1,000	1,500
331315	Aluminum Sheet, Plate, and Foil Manufacturing	750	1,250
331511	Iron Foundries	500	1,000
331512	Steel Investment Foundries	500	1,000
332111	Iron and Steel Forging	500	750
332112	Nonferrous Forging	500	750
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing	500	750
332216	Saw Blade and Handtool Manufacturing	500	750
332311	Prefabricated Metal Building and Component Manufacturing	500	750
332313	Plate Work Manufacturing	500	750
332321	Metal Window and Door Manufacturing	500	750
332410	Power Boiler and Heat Exchanger Manufacturing	500	750
332420	Metal Tank (Heavy Gauge) Manufacturing	500	750
332431	Metal Can Manufacturing	1,000	1,500
332510	Hardware Manufacturing	500	750
332911	Industrial Valve Manufacturing	500	750
332912	Fluid Power Valve and Hose Fitting Manufacturing	500	1,000
332913	Plumbing Fixture Fitting and Trim Manufacturing	500	1,000
332919	Other Metal Valve and Pipe Fitting Manufacturing	500	750
332991	Ball and Roller Bearing Manufacturing	750	1,250
332992	Small Arms Ammunition Manufacturing	1,000	1,250
333111	Farm Machinery and Equipment Manufacturing	500	1,250
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing	500	1,500
333120	Construction Machinery Manufacturing	750	1,250
333132	Oil and Gas Field Machinery and Equipment Manufacturing	500	1,250
333242	Semiconductor Machinery Manufacturing	500	1,500
333244	Printing Machinery and Equipment Manufacturing	500	750
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	750	1,250
333611	Turbine and Turbine Generator Set Units Manufacturing	1,000	1,500
333612	Speed Changer, Industrial High-Speed Drive, and Gear Manufacturing	500	750
333613	Mechanical Power Transmission Equipment Manufacturing	500	750
333618	Other Engine Equipment Manufacturing	1,000	1,500
333911	Pump and Pumping Equipment Manufacturing	500	750
333912	Air and Gas Compressor Manufacturing	500	1,000
333913	Measuring and Dispensing Pump Manufacturing	500	750
333921	Elevator and Moving Stairway Manufacturing	500	1,000
333923	Overhead Traveling Crane, Hoist, and Monorail System Manufacturing	500	1,250

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTOR 31–33—Continued

NAICs code	NAICS U.S. industry title	Current size standard (number of employees)	Revised size standard (number of employees)
333992	Welding and Soldering Equipment Manufacturing	500	1,250
333995	Fluid Power Cylinder and Actuator Manufacturing	500	750
333996	Fluid Power Pump and Motor Manufacturing	500	1,250
334111	Electronic Computer Manufacturing	1,000	1,250
334112	Computer Storage Device Manufacturing	1,000	1,250
334210	Telephone Apparatus Manufacturing	1,000	1,250
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	750	1,250
334412	Bare Printed Circuit Board Manufacturing	500	750
334413	Semiconductor and Related Device Manufacturing	500	1,250
334417	Electronic Connector Manufacturing	500	1,000
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing	500	750
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing	500	1,250
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	750	1,250
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.	500	750
334514	Totalizing Fluid Meter and Counting Device Manufacturing	500	750
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals	500	750
334516	Analytical Laboratory Instrument Manufacturing	500	1,000
334517	Irradiation Apparatus Manufacturing	500	1,000
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing	750	1,250
335110	Electric Lamp Bulb and Part Manufacturing	1,000	1,250
335121	Residential Electric Lighting Fixture Manufacturing	500	750
335210	Small Electrical Appliance Manufacturing	750	1,500
335221	Household Cooking Appliance Manufacturing	750	1,500
335222	Household Refrigerator and Home Freezer Manufacturing	1,000	1,250
335224	Household Laundry Equipment Manufacturing	1,000	1,250
335228	Other Major Household Appliance Manufacturing	500	1,000
335312	Motor and Generator Manufacturing	1,000	1,250
335313	Switchgear and Switchboard Apparatus Manufacturing	750	1,250
335911	Storage Battery Manufacturing	500	1,250
335932	Noncurrent-Carrying Wiring Device Manufacturing	500	1,000
336111	Automobile Manufacturing	1,000	1,500
336112	Light Truck and Utility Vehicle Manufacturing	1,000	1,500
336120	Heavy Duty Truck Manufacturing	1,000	1,500
336212	Truck Trailer Manufacturing	500	1,000
336213	Motor Home Manufacturing	1,000	1,250
336214	Travel Trailer and Camper Manufacturing	500	1,000
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing	750	1,000
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing	750	1,000
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	750	1,000
336340	Motor Vehicle Brake System Manufacturing	750	1,250
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing	750	1,500
336360	Motor Vehicle Seating and Interior Trim Manufacturing	500	1,500
336370	Motor Vehicle Metal Stamping	500	1,000
336390	Other Motor Vehicle Parts Manufacturing	750	1,000
336412	Aircraft Engine and Engine Parts Manufacturing	1,000	1,500
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing	1,000	1,250
336414	Guided Missile and Space Vehicle Manufacturing	1,000	1,250
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing	1,000	1,250
336510	Railroad Rolling Stock Manufacturing	1,000	1,500
336611	Ship Building and Repairing	1,000	1,250
336612	Boat Building	500	1,000
336991	Motorcycle, Bicycle, and Parts Manufacturing	500	1,000
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing	1,000	1,500
336999	All Other Transportation Equipment Manufacturing	500	1,000
337110	Wood Kitchen Cabinet and Countertop Manufacturing	500	750
337121	Upholstered Household Furniture Manufacturing	500	1,000
337122	Nonupholstered Wood Household Furniture Manufacturing	500	750
337124	Metal Household Furniture Manufacturing	500	750
337125	Household Furniture (except Wood and Metal) Manufacturing	500	750
337211	Wood Office Furniture Manufacturing	500	1,000
337214	Office Furniture (except Wood) Manufacturing	500	1,000
337910	Mattress Manufacturing	500	1,000
337920	Blind and Shade Manufacturing	500	1,000
339112	Surgical and Medical Instrument Manufacturing	500	1,000
339113	Surgical Appliance and Supplies Manufacturing	500	750
339114	Dental Equipment and Supplies Manufacturing	500	750
339115	Ophthalmic Goods Manufacturing	500	1,000

TABLE 3—SUMMARY OF SIZE STANDARDS REVISIONS IN NAICS SECTOR 31–33—Continued

NAICs code	NAICS U.S. industry title	Current size standard (number of employees)	Revised size standard (number of employees)
339920	Sporting and Athletic Goods Manufacturing	500	750
339940	Office Supplies (except Paper) Manufacturing	500	750
339992	Musical Instrument Manufacturing	500	1,000
339993	Fastener, Button, Needle, and Pin Manufacturing	500	750
339995	Burial Casket Manufacturing	500	1,000

Evaluation of Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets a specific small business definition or size standard established by SBA's Administrator. SBA considers as part of its evaluation whether a business concern at a proposed or revised size standard would be dominant in its field of operation. SBA has determined that for the industries for which it has revised size standards in this final rule, no individual firm at or below the revised size standard will be large enough to dominate its field of operation. At the revised size standards that are adopted in this final rule, the small business share of total industry receipts among those industries for which SBA has revised size standards is, on average, 1.7 percent, ranging from a minimum of 0.02 percent to a maximum of 18.9 percent. SBA determines that these market shares effectively preclude a firm at or below the revised size standards from exerting control on any of the industries.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, in the next section SBA provides a Regulatory Impact Analysis of this rule. However, this rule is not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the size standards revisions in this rule are a better reflection of the economic characteristics of small businesses and the Federal government marketplace in the affected industries. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To determine the intended beneficiaries of these programs, SBA establishes distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The Jobs Act further requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this rule explains SBA's methodology for analyzing a size standard for a particular industry.

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

The most significant benefit to businesses affected by this rule is their gaining or maintaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), economically disadvantaged women-owned small businesses (EDWOSB), and service-disabled veteran-owned small businesses (SDVOSB). Federal agencies may also use SBA's size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. SBA estimates that in the 209 industries for which it is increasing size standards about 1,250 firms, not small under the current size standards, will become small and therefore eligible for these programs. That is about 0.4 percent of all firms classified as small under the current size standards in all industries that SBA reviewed for the September 10, 2014 proposed rule and this final rule. SBA anticipates that the small business share of total receipts in those industries will increase from 26 percent to 29 percent.

Four groups can benefit from the revised size standards: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; (3) Federal agencies that will have a larger pool of small businesses from which to draw for their small business procurement programs; and, (4) wholesalers and dealers that sell products to the Federal government as small businesses under the nonmanufacturer rule (13 CFR 121.406(b)) will have additional sources of goods to fill their orders.

SBA estimates that firms gaining small business status under the revised size standards might receive Federal contracts totaling $150 million to $160 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, EDWOSB, and SDVOSB Programs, as well as other unrestricted procurements. The added competition for many of these procurements can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

SBA provides financial assistance to small businesses under its 7(a) and 504 Loan Programs. Under SBA's 7(a) and 504 Loan Programs, based on the fiscal years 2012–2014 data, SBA estimates approximately 20 to 25 SBA loans

totaling about $10 million to $15.0 million could be made to these newly defined small businesses under the revised size standards. However, it is impractical to try to estimate the number and total amount of loans with any precision. There are two reasons for this: (1) Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past; and (2) as described above, the Jobs Act established a higher alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry.

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

In addition, newly defined small businesses will also benefit through reduced fees, less paperwork, and fewer compliance requirements that are available to small businesses throughout the Federal government.

To the extent that 1,250 newly defined small firms may become active in Federal procurement programs, the revised size standards might also add administrative costs to the government because there are now more businesses eligible for Federal small business programs. For example, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the SAM database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, EDWOSB, SDVOSB, and SDB status. Among those newly defined small businesses seeking Federal assistance, there could be additional costs associated with compliance and verification of small business status and administration of size protests. However, SBA believes that these added administrative costs will be minimal because there are mechanisms in place to handle these requirements.

Additionally, some Federal government contracts might have higher costs. With a greater number of businesses defined as small under the revised size standards, Federal agencies may set aside more contracts to small businesses, rather than use full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, by law, procurements may be set aside or reserved for the small business, 8(a), HUBZone, WOSB, EDWOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices. In addition, there may be higher costs when more full and open contracts are awarded to HUBZone businesses that receive price evaluation preferences.

Revised size standards might have distributional effects among large and small business contractors. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. Some Federal contracts may be transferred to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone concerns instead of large businesses since they are eligible for price evaluation preferences when they compete on a full and open basis.

Similarly, some businesses defined small under the current size standards may receive fewer Federal contracts due to increased competition from more businesses now defined as small under higher size standards. This transfer may be offset by a greater number of small business set-aside procurements. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal government will limit the potential transfer of contracts from large and currently defined small businesses. Because there are so many variables affecting the Federal market, SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision.

The increased size standards for 209 industries and the modification of the size standard for NAICS 324110 in Sector 31–33 are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

Descriptions of the need for this regulatory action and benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included in the Regulatory Impact Analysis under Executive Order 12866, above.

In an effort to engage interested parties in this action, SBA presented its size standards methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with a number of industry groups and individual businesses to get their feedback on its methodology and other size standards issues. The Agency additionally conferred with Federal procurement officials that purchase products manufactured by a number of industries for which SBA proposed to increase size standards. In addition, as part of its Jobs Act tour SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input. The presentations included information on the latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards.

Moreover, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA's size standards and whether current size standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this rule.

Finally, the SBA has maintained a roster of parties (government and industry) that have expressed interest in various manufacturing industries over the last few years, and sent each of them a copy of the September 10, 2014 proposed rule to assure they had ample time and opportunity to provide comments.

Increasing size standards for the industries covered in this rule is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size

standards were limited to a few specific industries in response to requests from the public and from Federal agencies. The majority of employee based size standards, including those in NAICS Sector 31–33, have not been reviewed since they were first established. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, in 2007, SBA began a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, the Jobs Act requires SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

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

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule has no substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule imposes no new reporting or record keeping requirements.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small businesses in the industries covered by this rule. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

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

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

Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions have changed the structure of many industries reviewed in the September 10, 2014 proposed rule and this final rule. Such changes can be sufficient to warrant revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised size standards in this rule more appropriately reflect the size of businesses that need Federal assistance. The Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

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

SBA estimates that about 1,250 additional firms will become small because of revised size standards for 209 industries in NAICS Sector 31–33. That represents 0.4 percent of total firms that are small under current size standards in all industries in that Sector. This will result in an increase in the small business share of total industry receipts in Sector 31–33 from 26 percent under the current size standards to 29 percent under the size standards adopted in this final rule. The revised size standards will enable more small businesses to retain their small business status for a longer period and many others to regain small business status that may have exceeded current size standards, making it difficult for them to compete with companies that are significantly larger than they are. SBA believes that the overall impact of this rule will be positive for existing small businesses, as well as for those that exceed the current size standards but are on the low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is a small business concern. That is, entities that do not meet SBA's small business size standards are considered ''other than small.''

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

The size standard changes impose no additional reporting or record keeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses register in the SAM database and certify in SAM that they are small at least once annually. Therefore, businesses opting to participate in those programs must comply with SAM requirements. Additionally, businesses affected by the changes, if they are already registered in SAM, must update their certifications and affirmations. However, there are no costs associated with SAM registration or certification. Changing size standards alters access to SBA's programs designed to assist small businesses, but does not impose a regulatory burden because they neither regulate nor control business behavior.

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

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a ''Table of Statutory and Regulatory Size Standards Set by Agencies Other than SBA'' (60 FR 57988, November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

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

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

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the system of numerical size standards.

List of Subjects in 13 CFR Part 121

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

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

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

2. Amend § 121.201 in the table ''Small Business Size Standards by NAICS Industry'' as follows:

a. Revise the entries for ''311111'', ''311211'', ''311221'', ''311314'', ''311340'', ''311351'', ''311352'', ''311411'', ''311412'', ''311421'', ''311422'', ''311423'', ''311511'', ''311512'', ''311513'', ''311514'', ''311520'', ''311611'', ''311612'', ''311613'', ''311615'', ''311710'', ''311812'', ''311813'', ''311821'', ''311824'', ''311830'', ''311911'', ''311919'', ''311920'', ''311930'', ''311941'', ''312111'', ''312112'', ''312113'', ''312120'', ''312130'', ''312140'', ''312230'', ''313110'', ''313230'', ''314110'', ''314120'', ''315110'', ''315190'', ''315210'', ''315220'', ''315240'', ''315280'', ''316992'', ''321212'', ''321213'', ''321219'', ''321911'', ''321991'', ''322121'', ''322130'', ''322211'', ''322219'', ''322220'', ''322230'', ''322291'', ''323117'', ''324110'', ''324191'', ''325194'', ''325199'', ''325211'', ''325312'', ''325320'', ''325411'', ''325412'', ''325413'', ''325414'', ''325510'', ''325611'', ''325612'', ''325613'', ''325620'', ''325992'', ''326111'', ''326112'', ''326113'', ''326122'', ''326140'', ''326150'', ''326160'', ''326191'', ''326211'', ''326220'', ''326291'', ''327110'', ''327212'', ''327213'', ''327215'', ''327310'', ''327332'', ''327410'', ''327420'', ''327910'', ''327993'', ''331110'', ''331315'', ''331511'', ''331512'', ''332111'', ''332112'', ''332215'', ''332216'', ''332311'', ''332313'', ''332321'', ''332410'', ''332420'', ''332431'', ''332510'', ''332911'', ''332912'', ''332913'', ''332919'', ''332991'', ''332992'', ''333111'', ''333112'', ''333120'', ''333132'', ''333242'', ''333244'', ''333415'', ''333611'', ''333612'', ''333613'', ''333618'', ''333911'', ''333912'', ''333913'', ''333921'', ''333923'', ''333992'', ''333995'', ''333996'', ''334111'', ''334112'', ''334210'', ''334220'', ''334412'', ''334413'', ''334417'', ''334418'', ''334510'', ''334511'', ''334513'', ''334514'', ''334515'', ''334516'', ''334517'', ''334614'', ''335110'', ''335121'', ''335210'', ''335221'', ''335222'', ''335224'', ''335228'', ''335312'', ''335313'', ''335911'', ''335932'', ''336111'', ''336112'', ''336120'', ''336212'', ''336213'', ''336214'', ''336310'', ''336320'', ''336330'', ''336340'', ''336350'', ''336360'', ''336370'', ''336390'', ''336412'', ''336413'', ''336414'', ''336415'', ''336510'', ''336611'', ''336612'', ''336991'', ''336992'', ''336999'', ''337110'', ''337121'', ''337122'', ''337124'', ''337125'', ''337211'', ''337214'', ''337910'', ''337920'', ''339112'', ''339113'', ''339114'', ''339115'', ''339920'', ''339940'', ''339992'', ''339993'', and ''339995''; and

■ b. Revise footnotes 3, 4, 5, and 7.

The revisions read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
311111	Dog and Cat Food Manufacturing		1,000
*	* * * * *	*	*
311211	Flour Milling		1,000
*	* * * * *	*	*
311221	Wet Corn Milling		1,250
*	* * * * *	*	*
311314	Cane Sugar Manufacturing		1,000
311340	Nonchocolate Confectionery Manufacturing		1,000
311351	Chocolate and Confectionery Manufacturing from Cacao Beans		1,250
311352	Confectionery Manufacturing from Purchased Chocolate		1,000
311411	Frozen Fruit, Juice, and Vegetable Manufacturing		1,000
311412	Frozen Specialty Food Manufacturing		1,250
311421	Fruit and Vegetable Canning[3]		[3]1,000
311422	Specialty Canning		1,250
311423	Dried and Dehydrated Food Manufacturing		750
311511	Fluid Milk Manufacturing		1,000
311512	Creamery Butter Manufacturing		750
311513	Cheese Manufacturing		1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing		750
311520	Ice Cream and Frozen Dessert Manufacturing		1,000
311611	Animal (except Poultry) Slaughtering		1,000
311612	Meat Processed from Carcasses		1,000

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
311613	Rendering and Meat Byproduct Processing		750
311615	Poultry Processing		1,250
311710	Seafood Product Preparation and Packaging		750
*	* * * * * * *		
311812	Commercial Bakeries		1,000
311813	Frozen Cakes, Pies, and Other Pastries Manufacturing		750
311821	Cookie and Cracker Manufacturing		1,250
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour		750
311830	Tortilla Manufacturing		1,250
311911	Roasted Nuts and Peanut Butter Manufacturing		750
311919	Other Snack Food Manufacturing		1,250
311920	Coffee and Tea Manufacturing		750
311930	Flavoring Syrup and Concentrate Manufacturing		1,000
311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing		750
*	* * * * * * *		
312111	Soft Drink Manufacturing		1,250
312112	Bottled Water Manufacturing		1,000
312113	Ice Manufacturing		750
312120	Breweries		1,250
312130	Wineries		1,000
312140	Distilleries		1,000
312230	Tobacco Manufacturing		1,500
313110	Fiber, Yarn, and Thread Mills		1,250
*	* * * * * * *		
313230	Nonwoven Fabric Mills		750
*	* * * * * * *		
314110	Carpet and Rug Mills		1,500
314120	Curtain and Linen Mills		750
*	* * * * * * *		
315110	Hosiery and Sock Mills		750
315190	Other Apparel Knitting Mills		750
315210	Cut and Sew Apparel Contractors		750
315220	Men's and Boys' Cut and Sew Apparel Manufacturing		750
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing		750
315280	Other Cut and Sew Apparel Manufacturing		750
*	* * * * * * *		
316992	Women's Handbag and Purse Manufacturing		750
*	* * * * * * *		
321212	Softwood Veneer and Plywood Manufacturing		1,250
321213	Engineered Wood Member (except Truss) Manufacturing		750
*	* * * * * * *		
321219	Reconstituted Wood Product Manufacturing		750
321911	Wood Window and Door Manufacturing		1,000
*	* * * * * * *		
321991	Manufactured Home (Mobile Home) Manufacturing		1,250
*	* * * * * * *		
322121	Paper (except Newsprint) Mills		1,250
*	* * * * * * *		
322130	Paperboard Mills		1,250
322211	Corrugated and Solid Fiber Box Manufacturing		1,250
*	* * * * * * *		
322219	Other Paperboard Container Manufacturing		1,000
322220	Paper Bag and Coated and Treated Paper Manufacturing		750
322230	Stationery Product Manufacturing		750
322291	Sanitary Paper Product Manufacturing		1,500
*	* * * * * * *		
323117	Books Printing		1,250

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * * * *		
324110	Petroleum Refineries [4]		[4] 1,500
*	* * * * * * *		
324191	Petroleum Lubricating Oil and Grease Manufacturing		750
*	* * * * * * *		
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing		1,250
325199	All Other Basic Organic Chemical Manufacturing		1,250
325211	Plastics Material and Resin Manufacturing		1,250
*	* * * * * * *		
325312	Phosphatic Fertilizer Manufacturing		750
*	* * * * * * *		
325320	Pesticide and Other Agricultural Chemical Manufacturing		1,000
325411	Medicinal and Botanical Manufacturing		1,000
325412	Pharmaceutical Preparation Manufacturing		1,250
325413	In-Vitro Diagnostic Substance Manufacturing		1,250
325414	Biological Product (except Diagnostic) Manufacturing		1,250
325510	Paint and Coating Manufacturing		1,000
*	* * * * * * *		
325611	Soap and Other Detergent Manufacturing		1,000
325612	Polish and Other Sanitation Good Manufacturing		750
325613	Surface Active Agent Manufacturing		750
325620	Toilet Preparation Manufacturing		1,250
*	* * * * * * *		
325992	Photographic Film, Paper, Plate, and Chemical Manufacturing		1,500
*	* * * * * * *		
326111	Plastics Bag and Pouch Manufacturing		750
326112	Plastics Packaging Film and Sheet (including Laminated) Manufacturing		1,000
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing		750
*	* * * * * * *		
326122	Plastics Pipe and Pipe Fitting Manufacturing		750
*	* * * * * * *		
326140	Polystyrene Foam Product Manufacturing		1,000
326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing		750
326160	Plastics Bottle Manufacturing		1,250
326191	Plastics Plumbing Fixture Manufacturing		750
*	* * * * * * *		
326211	Tire Manufacturing (except Retreading) [5]		[5] 1,500
*	* * * * * * *		
326220	Rubber and Plastics Hoses and Belting Manufacturing		750
326291	Rubber Product Manufacturing for Mechanical Use		750
*	* * * * * * *		
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing		1,000
*	* * * * * * *		
327212	Other Pressed and Blown Glass and Glassware Manufacturing		1,250
327213	Glass Container Manufacturing		1,250
327215	Glass Product Manufacturing Made of Purchased Glass		1,000
327310	Cement Manufacturing		1,000
*	* * * * * * *		
327332	Concrete Pipe Manufacturing		750
*	* * * * * * *		
327410	Lime Manufacturing		750
327420	Gypsum Product Manufacturing		1,500
327910	Abrasive Product Manufacturing		750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
327993	Mineral Wool Manufacturing		1,500
*	* * * * *	*	*
331110	Iron and Steel Mills and Ferroalloy Manufacturing		1,500
*	* * * * *	*	*
331315	Aluminum Sheet, Plate, and Foil Manufacturing		1,250
*	* * * * *	*	*
331511	Iron Foundries		1,000
331512	Steel Investment Foundries		1,000
*	* * * * *	*	*
332111	Iron and Steel Forging		750
332112	Nonferrous Forging		750
*	* * * * *	*	*
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing		750
332216	Saw Blade and Handtool Manufacturing		750
332311	Prefabricated Metal Building and Component Manufacturing		750
*	* * * * *	*	*
332313	Plate Work Manufacturing		750
332321	Metal Window and Door Manufacturing		750
*	* * * * *	*	*
332410	Power Boiler and Heat Exchanger Manufacturing		750
332420	Metal Tank (Heavy Gauge) Manufacturing		750
332431	Metal Can Manufacturing		1,500
*	* * * * *	*	*
332510	Hardware Manufacturing		750
*	* * * * *	*	*
332911	Industrial Valve Manufacturing		750
332912	Fluid Power Valve and Hose Fitting Manufacturing		1,000
332913	Plumbing Fixture Fitting and Trim Manufacturing		1,000
332919	Other Metal Valve and Pipe Fitting Manufacturing		750
332991	Ball and Roller Bearing Manufacturing		1,250
332992	Small Arms Ammunition Manufacturing		1,250
*	* * * * *	*	*
333111	Farm Machinery and Equipment Manufacturing		1,250
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing		1,500
333120	Construction Machinery Manufacturing		1,250
*	* * * * *	*	*
333132	Oil and Gas Field Machinery and Equipment Manufacturing		1,250
*	* * * * *	*	*
333242	Semiconductor Machinery Manufacturing		1,500
*	* * * * *	*	*
333244	Printing Machinery and Equipment Manufacturing		750
*	* * * * *	*	*
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.		1,250
*	* * * * *	*	*
333611	Turbine and Turbine Generator Set Units Manufacturing		1,500
333612	Speed Changer, Industrial High-Speed Drive, and Gear Manufacturing		750
333613	Mechanical Power Transmission Equipment Manufacturing		750
333618	Other Engine Equipment Manufacturing		1,500
333911	Pump and Pumping Equipment Manufacturing		750
333912	Air and Gas Compressor Manufacturing		1,000
333913	Measuring and Dispensing Pump Manufacturing		750
333921	Elevator and Moving Stairway Manufacturing		1,000

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
333923	Overhead Traveling Crane, Hoist, and Monorail System Manufacturing		1,250
*	* * * * *	*	*
333992	Welding and Soldering Equipment Manufacturing		1,250
*	* * * * *	*	*
333995	Fluid Power Cylinder and Actuator Manufacturing		750
333996	Fluid Power Pump and Motor Manufacturing		1,250
*	* * * * *	*	*
334111	Electronic Computer Manufacturing		1,250
334112	Computer Storage Device Manufacturing		1,250
*	* * * * *	*	*
334210	Telephone Apparatus Manufacturing		1,250
334220	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing		1,250
*	* * * * *	*	*
334412	Bare Printed Circuit Board Manufacturing		750
334413	Semiconductor and Related Device Manufacturing		1,250
*	* * * * *	*	*
334417	Electronic Connector Manufacturing		1,000
334418	Printed Circuit Assembly (Electronic Assembly) Manufacturing		750
*	* * * * *	*	*
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing		1,250
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.		1,250
*	* * * * *	*	*
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.		750
334514	Totalizing Fluid Meter and Counting Device Manufacturing		750
334515	Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals		750
334516	Analytical Laboratory Instrument Manufacturing		1,000
334517	Irradiation Apparatus Manufacturing		1,000
*	* * * * *	*	*
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing		1,250
335110	Electric Lamp Bulb and Part Manufacturing		1,250
335121	Residential Electric Lighting Fixture Manufacturing		750
*	* * * * *	*	*
335210	Small Electrical Appliance Manufacturing		1,500
335221	Household Cooking Appliance Manufacturing		1,500
335222	Household Refrigerator and Home Freezer Manufacturing		1,250
335224	Household Laundry Equipment Manufacturing		1,250
335228	Other Major Household Appliance Manufacturing		1,000
*	* * * * *	*	*
335312	Motor and Generator Manufacturing		1,250
335313	Switchgear and Switchboard Apparatus Manufacturing		1,250
*	* * * * *	*	*
335911	Storage Battery Manufacturing		1,250
*	* * * * *	*	*
335932	Noncurrent-Carrying Wiring Device Manufacturing		1,000
*	* * * * *	*	*
336111	Automobile Manufacturing		1,500
336112	Light Truck and Utility Vehicle Manufacturing		1,500
336120	Heavy Duty Truck Manufacturing		1,500
*	* * * * *	*	*
336212	Truck Trailer Manufacturing		1,000
336213	Motor Home Manufacturing		1,250
336214	Travel Trailer and Camper Manufacturing		1,000

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing		1,000
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing		1,000
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing		1,000
336340	Motor Vehicle Brake System Manufacturing		1,250
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing		1,500
336360	Motor Vehicle Seating and Interior Trim Manufacturing		1,500
336370	Motor Vehicle Metal Stamping		1,000
336390	Other Motor Vehicle Parts Manufacturing		1,000
*	* * * * * * *		
336412	Aircraft Engine and Engine Parts Manufacturing		1,500
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing [7]		[7] 1,250
336414	Guided Missile and Space Vehicle Manufacturing		1,250
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing		1,250
*	* * * * * * *		
336510	Railroad Rolling Stock Manufacturing		1,500
336611	Ship Building and Repairing		1,250
336612	Boat Building		1,000
336991	Motorcycle, Bicycle, and Parts Manufacturing		1,000
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing		1,500
336999	All Other Transportation Equipment Manufacturing		1,000
337110	Wood Kitchen Cabinet and Countertop Manufacturing		750
337121	Upholstered Household Furniture Manufacturing		1,000
337122	Nonupholstered Wood Household Furniture Manufacturing		750
337124	Metal Household Furniture Manufacturing		750
337125	Household Furniture (except Wood and Metal) Manufacturing		750
*	* * * * * * *		
337211	Wood Office Furniture Manufacturing		1,000
*	* * * * * * *		
337214	Office Furniture (except Wood) Manufacturing		1,000
*	* * * * * * *		
337910	Mattress Manufacturing		1,000
337920	Blind and Shade Manufacturing		1,000
*	* * * * * * *		
339112	Surgical and Medical Instrument Manufacturing		1,000
339113	Surgical Appliance and Supplies Manufacturing		750
339114	Dental Equipment and Supplies Manufacturing		750
339115	Ophthalmic Goods Manufacturing		1,000
*	* * * * * * *		
339920	Sporting and Athletic Goods Manufacturing		750
*	* * * * * * *		
339940	Office Supplies (except Paper) Manufacturing		750
*	* * * * * * *		
339992	Musical Instrument Manufacturing		1,000
339993	Fastener, Button, Needle, and Pin Manufacturing		750
*	* * * * * * *		
339995	Burial Casket Manufacturing		1,000
*	* * * * * * *		

* * * * *

Footnotes

* * * * *

3. *NAICS code 311421*—For purposes of Government procurement for food canning and preserving, the standard of 1,000 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

4. *NAICS code 324110*—To qualify as small for purposes of Government procurement, the petroleum refiner, including its affiliates, must be a concern that has either no more than 1,500 employees or no more than 200,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes all domestic and foreign affiliates, all owned or leased facilities, and all facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. To qualify

under the capacity size standard, the firm, together with its affiliates, must be primarily engaged in refining crude petroleum into refined petroleum products. A firm's ''primary industry'' is determined in accordance with 13 CFR 121.107.

5. *NAICS code 326211*—For Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census NAICS Product Classification codes 3262111 and 3262113, provided that:

(a) The value of tires within Census NAICS Product Classification codes 3262113 that it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(b) The value of pneumatic tires within Census NAICS Product Classification codes 3262113 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(c) The value of the principal product that it manufactured, produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

* * * * *

7. *NAICS code 336413*—Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.

* * * * *

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–00924 Filed 1–25–16; 8:45 am]

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FEDERAL REGISTER

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Part IV

Department of Labor

Office of the Secretary

29 CFR Part 38

Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 38

RIN 1291–AA36

Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The U.S. Department of Labor (Department) is proposing to issue nondiscrimination and equal opportunity regulations replacing its regulation which implemented Section 188 of the Workforce Innovation and Opportunity Act (WIOA). Signed by President Obama on July 22, 2014, WIOA supersedes the Workforce Investment Act of 1998 (WIA) as the Department's primary mechanism for providing financial assistance for a comprehensive system of job training and placement services for adults and eligible youth. Section 188 of WIOA prohibits the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with, any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA. These proposed regulations would update the nondiscrimination and equal opportunity regulation consistent with current law and address its application to current workforce development and workplace practices and issues.

Most of the provisions of WIOA took effect on July 1, 2015, except where otherwise specified in the law. WIOA contains the identical provisions of Section 188 as appeared in WIA, and these WIOA provisions took effect on July 1, 2015. To ensure no regulatory gap while this proposed rulemaking progresses toward a final rule, the Department issued a final rule implementing Section 188 of WIOA, which applies until issuance of the final rule based on this NPRM. The final rule issued separately in July 2015 retains the provisions in part 37 but substitutes all references to WIA with WIOA to reflect the proper statutory authority. This NPRM revises the final rule issued in July 2015. This NPRM generally carries over the policies and procedures found in Department regulations, which implement the equal opportunity and nondiscrimination provisions of WIA and WIOA. Like the final rule issued separately in July 2015, this rule is organized by the same subparts A through E, and refers to ''changes'' or ''revisions'' made to the final rule. Certain sections in each subpart have significant revisions.

DATES: To be assured of consideration, comments must be received on or before March 28, 2016.

ADDRESSES: Comments may be submitted, identified by Regulatory Information Number (RIN) 1291–AA36, by any one of the following methods:

- *Federal e-Rulemaking Portal www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 693–6505 (for comments of six pages or less).
- *Mail or Hand Delivery/Courier:* Naomi Barry-Perez, Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4123, Washington, DC 20210.
- Email at *CRC–WIOA@dol.gov*.

Please submit comments by only one method. Receipt of comments will not be acknowledged; however, the Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal, and all comments posted there are available and accessible to the public.

The Department cautions commenters not to include personal information, such as Social Security Numbers, personal addresses, telephone numbers and email addresses, in comments, as such submitted information will become viewable by the public via *http://www.regulations.gov*. It is the responsibility of the commenter to safeguard personal information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as a part of a comment.

Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

The Department will also make all the comments it receives available for public inspection during normal business hours at the Civil Rights Center at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of this NPRM available, upon request, in large print and as an electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact CRC at (202) 693–6500 (VOICE) or (202) 877–8339 (TTY).

FOR FURTHER INFORMATION CONTACT: Naomi Barry-Perez, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4123, Washington, DC 20210. *CRC–WIOA@dol.gov*, telephone (202) 693–6500 (VOICE) or (202) 877–8339 (Federal Relay Service—for TTY).

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

The Civil Rights Center (CRC) of the Department is charged with enforcing Section 188 of WIA and, successively, WIOA, which prohibits exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with, any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, applicants, and participants only, citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA. Section 188 of WIOA incorporates the prohibitions against discrimination in programs and activities that receive Federal financial assistance under certain civil rights laws including Title VI of the Civil Rights Act of 1964 (prohibiting discrimination based on race, color, and national origin in programs and activities receiving federal financial assistance),[1] Title IX of the Education Amendments of 1972 (prohibiting discrimination based on sex in education and training programs receiving federal financial assistance),[2] Age Discrimination Act of 1975 (prohibiting discrimination based on age),[3] and Section 504 of the Rehabilitation Act (prohibiting discrimination based on disability).[4]

[1] 42 U.S.C. 2000d *et seq.*

[2] 20 U.S.C. 1681 *et seq.*

[3] 42 U.S.C. 6101 *et seq.*

[4] 29 U.S.C. 794.

CRC interprets the nondiscrimination provisions of WIOA consistent with the principles of Title VII of the Civil Rights Act (Title VII),[5] the Americans with Disabilities Act (ADA),[6] as amended by the Americans with Disabilities Act Amendments Act (ADAAA),[7] and Section 501 of the Rehabilitation Act, as amended,[8] which are enforced by the Equal Employment Opportunity Commission (EEOC); Executive Order 11246, as amended,[9] and Section 503 of the Rehabilitation Act, as amended,[10] which are enforced by the Department's Office of Federal Contract Compliance Programs (OFCCP); Title VI of the Civil Rights Act (Title VI), the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act, which are enforced by each Federal funding agency; and Title IX of the Education Amendments of 1972 (Title IX), which is enforced by each Federal funding agency that assists an education or training program.

The regulations at 29 CFR part 38 set forth the equal opportunity and nondiscrimination requirements and obligations for recipients of financial assistance under Title I of WIOA and the enforcement procedures for implementing the nondiscrimination and equal opportunity provisions of WIOA. As set forth in the Part 38 final rule, WIOA did not change the nondiscrimination and equal opportunity provisions in Section 188, but Congress mandated that the Department issue regulations to implement the section not later than one year after the date of enactment of WIOA.[11] The regulations must contain standards for determining discrimination and enforcement procedures, including complaint processes for Section 188 of WIOA.[12]

Since their promulgation in 1999, the regulations implementing Section 188 of WIA at part 37 have only been amended once, in 2004, specifically to revise § 37.6 to provide that faith-based and community organizations are able to participate in the Department's social service programs without regard to their religious character or affiliation.[13] Because the part 38 regulations made only technical revisions from the part 37 rule, changing references from ''WIA'' to ''WIOA,'' the current rule does not reflect recent developments in equal opportunity and nondiscrimination jurisprudence. Moreover, procedures and processes for enforcement of the nondiscrimination and equal opportunity provisions of Section 188 have not been revised to reflect changes in the practices of recipients since 1999, including the use of computer-based and Internet-based systems to provide aid, benefit, service, and training through WIOA Title I-financially assisted programs and activities.

For the reasons stated above, the Department proposes to revise the regulations at part 38 to set forth recipients' nondiscrimination and equal opportunity obligations under WIOA Section 188 in accordance with existing law and policy. This NPRM proposes to update the regulations to address current compliance issues in the workforce system, and to reflect existing law under Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the ADA and the Rehabilitation Act as related to WIOA Title I-financially assisted programs and activities. This NPRM also incorporates developments and interpretations of existing law by the Department of Justice (DOJ), the EEOC, the Department of Education, and this Department's corresponding interpretation of Title VII and the Rehabilitation Act, as amended, into the workforce development system. The proposed rule is intended to reflect current law and legal principles applicable to a recipient's obligation to refrain from discrimination and to ensure equal opportunity.

The first category of proposed updates to the part 38 regulations in this NPRM improves the overall readability of the regulations through revisions, limited reorganization of sections and more explicit descriptions of recipient obligations. The NPRM revises the current question and answer format in the title of each section to make it more straightforward and to more closely mirror other nondiscrimination and equal opportunity regulations issued by the Department. This NPRM also replaces ''he or she'' with ''the individual,'' ''person,'' or other appropriate identifier wherever possible to avoid the gender binary. The plain language of the regulations is retained for ease of comprehension and application.

The second category of proposed changes in this NPRM updates the nondiscrimination and equal opportunity provisions to align them with current law and legal principles. As discussed above, in enforcing the nondiscrimination obligations of recipients set forth in this part, CRC follows the case law principles developed under, among other statutes, Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, as amended by the ADAAA. Since the issuance of the WIA Section 188 regulations in 1999, the principles of nondiscrimination and equal opportunity law under these statutes have evolved significantly and the ADA has been amended. Agencies enforcing these statutes have issued regulations and guidance impacting WIOA Title I-financially assisted programs and activities to reflect these legal developments.[14] During that time, the Department has issued final rules under Section 503 of the Rehabilitation Act and Executive Order 13672, which amended Executive Order 11246.[15]

The third category of proposed changes in this NPRM improves the effectiveness of the Department's enforcement program to support compliance with this rule. The compliance review and complaint procedures sections have been updated based on the Department's experience enforcing 29 CFR part 37. The proposed changes also reflect feedback received from stakeholders such as recipients and their Equal Opportunity Officers (EO Officers) and are intended to increase compliance through clearer descriptions of recipient responsibilities, more effective EO, enhanced data collection, and consistent monitoring and oversight by Governors. The Department maintains regular contact with the regulated community, and this contact has informed certain proposed revisions to the provisions in the part 38 rule. For example, proposed § 38.35 provides that recipients must include in their equal opportunity notice or poster a parenthetical noting that sex, as a prohibited basis for discrimination, includes pregnancy, childbirth and related medical conditions, sex stereotyping, transgender status, and gender identity. Similarly, the notice or

[5] 42 U.S.C. 2000e *et seq.*

[6] 42 U.S.C. 12101 *et seq.*

[7] 42 U.S.C. 12101 *et seq.*, Public Law 110–325, § 2(b)(1), 122 Stat. 3553 (2008).

[8] 29 U.S.C. 791.

[9] Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), Executive Order 12086 (43 FR 46501), Executive Order 13279 (67 FR 77141), Executive Order 13665 (79 FR 20749) and Executive Order 13672 (79 FR 42971).

[10] 29 U.S.C. 793.

[11] 29 U.S.C. 3248(e).

[12] *Id.*

[13] 69 FR 41894, July 12, 2004.

[14] *See* 29 CFR part 1630, 76 FR 16978, March 25, 2011 (EEOC regulations implementing ADA Title I); 79 FR 4839, January 30, 2014 (DOJ NPRM amending ADA Title II and III regulations).

[15] 41 CFR part 60–741, 78 FR 58862, Sept. 24, 2013 (OFCCP final rule implementing Section 503); 41 CFR parts 60–1 through 60–50, 79 FR 72985, Dec. 9, 2014 (OFCCP final rule implementing E.O. 13672).

poster would be modified to note in another parenthetical that includes limited English proficiency (LEP) as a form of national origin discrimination. These changes, although slight, identify the scope of the nondiscrimination obligation with more specificity and inform those who may not otherwise be aware of the developments in law.

The Department has participated in annual training conferences, including national conferences on equal opportunity attended by officials and staff of the State and local agencies that are responsible for ensuring nondiscrimination in the programs receiving financial assistance under WIA and/or WIOA Title I. The Department's participation in conferences offered leaders of State and other local agencies the opportunity to exchange—with each other and with the CRC—tips, tools, and practices, and to discuss more efficient and effective means of supporting compliance with this rule. Those exchanges have informed this NPRM. For example, to assist with compliance, the NPRM includes an Appendix that lists best practices for a recipient to consider when developing a written LEP plan. By including this information, recipients may be better prepared to meet their obligations.

The Department also received feedback from EO Officers at trainings and listening sessions conducted by the CRC and through technical assistance calls. EO Officers, designated by the recipients, are responsible for carrying out the recipients' obligations under Section 188 and its implementing regulations. Their feedback reflects a shared concern among EO Officers that the regulations at 29 CFR part 38 applicable to the role of the EO Officers do not sufficiently reflect the responsibilities of the role. For example, EO Officers have advised that the part 37 rule did not provide them with sufficient authority or require the recipients to provide EO Officers with sufficient resources to enable them to effectively meet their obligations. Many of the changes, both substantive and stylistic, that are proposed in this rule reflect their input. Specifically, proposed § 38.28 would require that the Governor designate a State level EO Officer who reports directly to the Governor, and that this EO Officer be given staff and resources sufficient to carry out the required responsibilities. These requirements are designed to provide the EO Officer with sufficient authority to fulfill the obligation to coordinate statewide compliance with the nondiscrimination and equal opportunity provisions in WIOA; current part 38 does not similarly support the work of the EO Officer.

Statement of Legal Authority

Statutory Authority

The statutory authorities for this NPRM are: Section 134(b), 116(d)(2)(F), 116(e), 169(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187 and 188 of WIOA. Public Law 113–128, 128 Stat. 1429; Title VI of the Civil Rights Act of 1964, as amended. Public Law 88–352, 78 Stat. 252 (42 U.S.C. 2000d, *et seq.*); Section 504 of the Rehabilitation Act of 1973, as amended, Public Law 93–112, 87 Stat. 390 (29 U.S.C. 794); the Age Discrimination Act of 1975, as amended, Public Law 94–135; 89 Stat. 728 (42 U.S.C. 6101); and Title IX of the Education Amendments of 1972, as amended, Public Law 92–318, 86 Stat. 373 (20 U.S.C. 1681).

Departmental Authorization

Secretary's Order 04–2000 delegated to CRC responsibility for developing, implementing and monitoring the Department's civil rights enforcement program under all equal opportunity and nondiscrimination requirements applicable to programs or activities financially assisted or conducted by the Department, including Section 188 of WIA. Section 5 of the Secretary's Order also authorized the Assistant Secretary for Administration and Management, working through the CRC Director, to establish and formulate all policies, standards, and procedures for, as well as to issue rules and regulations governing, the enforcement of statutes applying nondiscrimination and equal opportunity requirements to programs and activities receiving financial assistance from the Department.[16] Section 5(j) of the Order also delegates authority and assigns responsibility to CRC for ''other similarly related laws, executive orders and statutes.'' Thus, this delegation also covers CRC's enforcement of Section 188 of WIOA, and no new delegation is necessary.

Interagency Coordination

The DOJ, under Section 1–201 of Executive Order 12250, 45 FR 72995 (November 4, 1980), is responsible for coordinating Federal enforcement of most nondiscrimination laws that apply to federally-assisted programs and activities. Executive Order 12067, 43 FR 28967 (July 5, 1978) requires Federal departments and agencies to consult with the EEOC about regulations involving equal employment opportunity. Pursuant to Executive Order 12067, the EEOC is the lead federal agency responsible for defining the nature of employment discrimination on the basis of race, color, religion, sex, national origin, age, or disability under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity. The Age Discrimination Act of 1975, as amended, assigns the Secretary of Health and Human Services the responsibility for coordinating the federal enforcement effort of that Act. Accordingly, this NPRM has been coordinated with the DOJ and the EEOC as well as the Department of Health and Human Services.

In addition, this NPRM has been coordinated with other appropriate Federal grant-making agencies, including the Departments of Education and Housing and Urban Development.

I. Overview of the Rule

This rule retains the organization of 29 CFR part 38 as well as the majority of the provisions in part 38.

Subpart A—General Provisions. This subpart outlines the purpose and application of part 38, provides definitions, outlines prohibited grounds for and forms of discrimination, and establishes CRC's enforcement authority and recipients' nondiscrimination obligations.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients. This subpart sets forth the affirmative obligations of recipients of, and grant applicants for, financial assistance under WIOA Title I, including the role of EO Officers, notice and communication requirements, and the data and information collection and maintenance obligations of recipients.

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of WIOA. This subpart describes a Governor's responsibilities to implement the nondiscrimination and equal opportunity provisions of WIOA and this part, including oversight and monitoring of WIOA Title I-financially assisted State Programs, and development of a Nondiscrimination Plan.

Subpart D—Compliance Procedures. This subpart describes procedures for compliance reviews, complaint processing, issuing determinations, and procedures for breaches of conciliation agreements.

Subpart E—Federal Procedures For Effecting Compliance. This subpart describes the procedures for effecting compliance, including actions the Department is authorized to take upon

[16] 65 FR 69184, Nov. 15, 2000.

finding noncompliance when voluntary compliance cannot be achieved, the rights of parties upon such a finding, and hearing procedures, sanctions, and post-termination procedures.

Reasons for Proposed Revisions Generally

These revisions incorporate current jurisprudence under Title VII and EEOC Guidance interpreting the nondiscrimination obligation in the employment context, because WIOA Section 188 also applies to employment in the administration of or in connection with Title I-financially assisted programs and activities. Pursuant to Executive Order 12067, because the EEOC is the lead federal agency responsible for defining the nature of employment discrimination on the basis of race, color, religion, sex, national origin, age, or disability under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity, the Department generally defers to the EEOC's interpretations of Title VII law as it applies to applicants and employees of employers receiving WIOA Title I financial assistance.

Pursuant to Executive Order 12250 [17] and Title VI, the DOJ is the lead federal agency responsible for defining the nature and scope of the nondiscrimination prohibition based on, among other things, race, color and national origin in programs and activities receiving Federal financial assistance. Thus, CRC generally defers to the DOJ's interpretations of Title VI regarding discrimination based on race, color and national origin in programs and activities receiving Federal financial assistance. Further, pursuant to ADA Title II, DOJ is the lead federal agency responsible for defining the parameters of the nondiscrimination and equal opportunity provisions of Title II of the ADA.

Developments in National Origin and Language Access Jurisprudence

Consistent with Title VI case law and the DOJ's guidance on ensuring equal opportunity and nondiscrimination for individuals who are limited English proficient (LEP),[18] this rule proposes to create a provision stating that discrimination against individuals based on their limited English proficiency may be unlawful national origin discrimination.

Title VI provides that ''[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance.'' [19] Prohibited discrimination under Title VI and its implementing regulations includes: (1) Intentional acts; and (2) unintentional acts that result in an unjustified disparate impact on the basis of race, color, or national origin. 29 CFR 31.3 (DOL Title VI regulations). Indeed, the Supreme Court in *Lau* v. *Nichols,* 414 U.S. 563 (1974), held that excluding LEP children from effective participation in an educational program because of their inability to speak and understand English constitutes national origin discrimination prohibited by Title VI. Courts have consistently found that a recipient's failure to provide meaningful access to LEP individuals can violate Title VI's prohibition of national origin discrimination. *See, e.g., Colwell* v. *Dep't of Health & Human Servs.,* 558 F.3d 1112, 1116–17 (9th Cir. 2009) (noting that *Lau* concluded ''discrimination against LEP individuals was discrimination based on national origin in violation of Title VI''); *United States* v. *Maricopa Cnty.,* 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (citing *Lau*); *Faith Action for Cmty. Equity* v. *Hawaii,* No. 13–00450 SOM, 2014 WL 1691622 at *14 (D. Haw. Apr. 28, 2014) (Title VI intent claim was properly alleged by LEP plaintiffs when it was based on the ''foreseeable disparate impact of the English-only policy,'' a pretextual justification for the policy, and potentially derogatory comments by a state agency). As a result, the proposed rule indicates that the definition of national origin discrimination includes discrimination based on limited English proficiency. Accordingly, the proposed rule sets forth the responsibilities of recipients to meet their compliance obligations for ensuring that LEP individuals have meaningful access to WIOA programs and services.

This proposal is also generally consistent with guidance issued by the Department in 2003,[20] advising Federal financial assistance recipients of the Title VI prohibition against national origin discrimination affecting LEP individuals. This 2003 DOL Recipient LEP Guidance was issued pursuant to Executive Order 13166, which directed each federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation.[21] Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in the Department of Justice (DOJ) Policy Guidance entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' [22] The LEP provisions of this NPRM are drawn from, and thus are consistent with, the DOJ Title VI LEP Guidance.

Developments in ADA Jurisprudence

Congress passed the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), amending the ADA and the Rehabilitation Act, both of which apply, in distinct ways, to different groups of recipients of WIOA Title I-financial assistance. Consistent with Executive Order 13563's instruction to Federal agencies to coordinate rules across agencies and harmonize regulatory requirements where appropriate, this rule proposes, where appropriate, to adopt regulatory language that is consistent with the ADAAA and corresponding revisions to the EEOC regulations implementing Title I [23] of the ADA and the NPRM issued by the DOJ implementing Title II and Title III of the ADA.[24] This proposal will promote consistent application of nondiscrimination obligations across Federal enforcement programs and accordingly enhance compliance among entities subject to WIOA Section 188 and the various titles of the ADA. If the DOJ changes its proposal in its final rule implementing ADA Titles II and III, the Department will review those changes to determine their impact on this proposal and take appropriate action.

Title I of the ADA prohibits private employers, State and local governments, employment agencies and labor unions with 15 or more employees from discriminating in employment against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions,

[17] 45 FR 72995, November 2, 1980.

[18] *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,* 67 FR 41455, June 18, 2002.

[19] 42 U.S.C. 2000d.

[20] Civil Rights Center; Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice, 68 FR 32290, May 29, 2003 [hereinafter DOL LEP Guidance].

[21] 65 FR 50121, August 16, 2000.

[22] 65 FR 50123, August 16, 2000.

[23] *See* 76 FR 16978, Mar. 25, 2011.

[24] *See* 79 FR 4839, Jan. 30, 3014.

and privileges of employment.[25] Title I applies to WIOA Title I-financially assisted programs and activities because WIOA Section 188 prohibits discrimination in employment in the administration of or in connection with WIOA Title I financially-assisted programs and activities. The EEOC issued final regulations implementing the amendments to Title I of the ADA in March 2011.[26]

Title II of the ADA applies to State and local government entities, many of which may also be recipients of WIOA Title I financial assistance, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities.[27] Title II extends the prohibition against discrimination established by Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive financial assistance [28] and requires compliance with the ADA Standards of Accessible Design.[29] The Department is responsible for implementing the compliance procedures of Title II for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in ''relating to labor and the work force.'' [30]

Title III, enforced by the DOJ, prohibits discrimination on the basis of disability in the full enjoyment of the goods, services, facilities, privileges or advantages, or accommodations of any place of public accommodation by a person who owns, leases, or operates that place of public accommodation.[31] Title III applies to businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA, such as restaurants, day care facilities, and doctor's offices,[32] and requires newly constructed or altered places of public accommodation—as well as commercial facilities (privately owned, nonresidential facilities such as factories, warehouses, or office buildings)—to comply with the ADA Standards for Accessible Design.[33] Many recipients of WIOA Title I financial assistance are places of public accommodation and thus are subject to Title III of the ADA and its accessible design standards. The DOJ issued an NPRM in January 2014 that would implement amendments to Title II and Title III of the ADAAA.[34] The DOJ is responsible for handling complaints of noncompliance with Title III.

This rule proposes making revisions to part 38 consistent with the ADA Amendments Act of 2008 (ADAAA) and the implementing regulations issued by the EEOC and the proposed regulations issued by the DOJ. The ADAAA and implementing regulations made it easier for an individual seeking protection under the ADA to establish that the individual has a disability within the meaning of the statute.[35] This NPRM proposes to incorporate the rules of construction set out in the ADAAA that specify that the definition of ''disability'' is to be interpreted broadly, that the primary inquiry should be whether covered entities have complied with their statutory obligations and that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis. This NPRM also proposes revisions to the definition of ''disability'' and its component parts, including ''qualified individual,'' ''reasonable accommodation,'' ''major life activity,'' ''regarded as having a disability,'' and ''physical or mental impairment'' based on specific provisions in the ADAAA, as well as the EEOC's final and the DOJ's proposed implementing regulations. For example, the proposed revisions expand the definition of ''major life activities'' by providing a non-exhaustive list of major life activities, which specifically includes the operation of major bodily functions. The revisions also add rules of construction that should be applied when determining whether an impairment substantially limits a major life activity. If the DOJ changes its proposal in its final rule implementing ADA Titles II and III, the Department will review those changes to determine their impact on this proposal and take appropriate action.

Developments in Sex Discrimination Jurisprudence

Pregnancy

The proposed rule also includes a new section to provide direction regarding an existing obligation of recipients of WIOA Title I-financially assisted programs and activities to refrain from discrimination based on pregnancy, childbirth or related medical conditions as a form of sex discrimination. Although the Pregnancy Discrimination Act (PDA) was enacted in 1978,[36] the WIA Section 188 regulations, and the part 38 final rule implementing WIOA, do not refer specifically to pregnancy discrimination as a form of sex discrimination. This NPRM corrects that omission and sets out the standards that CRC would apply in enforcing the prohibition against pregnancy discrimination, consistent with the PDA, Title IX, and Title VII, in WIOA Title I-financially assisted programs, activities, training, and services.

Because the PDA amended Title VII, it does not directly govern the nondiscrimination obligations of a program or activity receiving Federal financial assistance outside of the employment context. The principles underlying the PDA, however, rest on Title IX's prohibitions against discrimination on the basis of pregnancy and actual or potential parental status and thus are applicable to WIOA Title I recipients.[37]

Pregnancy discrimination remains a significant issue. Between fiscal year 2001 and fiscal year 2013, charges of pregnancy discrimination filed with the EEOC and state and local agencies increased from 4,287 to 5,342.[38] In addition, a 2011 review of reported ''family responsibility discrimination'' cases (brought by men as well as women) found that low-income workers face ''extreme hostility to pregnancy.'' [39] The EEOC's findings and related research are relevant to this NPRM because the workforce development system is the pipeline through which many women find employment opportunities, and thus these programs must operate free of pregnancy discrimination. In other words, the discrimination that pregnant women experience in the private sector is

[25] 29 CFR 1630.2(e).

[26] *See* 76 FR 16978, March 25, 2011.

[27] *See* 42 U.S.C. 12131–12165.

[28] 42 U.S.C. 12132.

[29] 28 CFR part 35 (Title II); 28 CFR part 36 (Title III).

[30] 28 CFR 35.190(b)(7).

[31] 42 U.S.C. 12182.

[32] 42 U.S.C. 12181.

[33] 28 CFR part 35 (Title II); 28 CFR part 36 (Title III).

[34] *See* 76 FR 16978, March 25, 2011; 79 FR 4839, January 30, 3014.

[35] *See* 42 U.S.C. 12102(1)(A)–(C).

[36] 42 U.S.C. 2000e(k).

[37] *See infra* Section by Section § 38.8 discussing the intersection of both the PDA and Title IX.

[38] U.S. Equal Employment Opportunity Commission, *Pregnancy Discrimination Charges,* EEOC & FEPAs Combined: FY 1997–FY 2011, *available at http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm* (last accessed Oct. 6, 2014); U.S. Equal Employment Opportunity Commission, *Enforcement Guidance: Pregnancy Discrimination and Related Issues,* (July 14, 2014), *available at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm* (last accessed Oct. 6, 2014).

[39] Stephanie Bornstein, Center for WorkLifeLaw, UC Hastings College of the Law, *Poor, Pregnant and Fired: Caregiver Discrimination Against Low-Wage Workers* 2 (2011), *available at http://worklifelaw.org/pubs/PoorPregnantAndFired.pdf* (last accessed Oct. 3, 2014).

relevant to federally financially assisted programs and activities.

Sex Stereotyping

One of the most significant barriers for women in access to services, benefits, training, programs and employment in and through the workforce development system is sex stereotyping. Decades of social science research has documented the extent to which sex stereotypes about the roles of women and men and their respective capabilities in the workplace can influence decisions about hiring, training, promotions, pay raises, and other conditions of employment.[40] The NPRM adopts the well-recognized principle that employment decisions made on the basis of stereotypes about how males and/or females are expected to look, speak, or act are forms of sex-based employment discrimination and applies that principle to the provisions of aid, benefit, service, and training through WIOA Title I programs and activities. The Supreme Court recognized in 1989 that an employer violates Title VII if its employees' chances of promotion depend on whether they fit their managers' preconceived notions of how men or women should dress and act.[41] As the Supreme Court stated in *Price Waterhouse* v. *Hopkins,* ''we are beyond the day when an employer can evaluate employees by assuming or insisting that they match the stereotype associated with their . . . [sex].'' [42] In *Price Waterhouse,* the Court held that an employer's failure to promote a female senior manager to partner because of the decision-maker's sex-stereotyped perceptions that she was too aggressive and did not ''walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry'' was unlawful sex-based employment discrimination.[43] The principle that sex stereotyping is a form of sex discrimination has been applied consistently in subsequent Supreme Court and lower-court decisions. *See, e.g., Nevada Dep't of Human Res.* v. *Hibbs,* 538 U.S. 721 (2003) (stereotype-based beliefs about the allocation of family duties on which state employers relied in establishing discriminatory leave policies held to be sex discrimination under the Constitution); *Chadwick* v. *Wellpoint, Inc.,* 561 F.3d 38 (1st Cir. 2009) (making employment decision based on the belief that women with young children neglect their job responsibilities is unlawful sex discrimination); *Prowel* v. *Wise Bus. Forms,* Inc., 579 F.3d 285 (3d Cir. 2009) (harassment based on a man's effeminacy); *Terveer* v. *Billington,* Civil Action No. 12–1290, 2014 WL 1280301 (D. D.C. March 31, 2014) (hostile work environment based on stereotyped beliefs about the appropriate gender with which an individual should form an intimate relationship). *Cf. U.S.* v. *Virginia,* 518 U.S. 515, 533 (1996) (in making classifications based on sex, state governments ''must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females'').

Research demonstrates that widely held social attitudes and biases can lead to discriminatory decisions, even where there is no formal sex-based (or race-based) policy or practice in place.[44] Sex stereotyping may have even more severe consequences for transgender applicants and employees, the vast majority of whom report that they have experienced discrimination in the workplace.[45]

As the EEOC has recognized, claims of gender identity discrimination, including discrimination grounded in stereotypes about how persons express their gender, are claims of sex discrimination under Title VII. *See Macy* v. *Dep't of Justice,* E.E.O.C. Appeal No. 0120120821, 2012 WL 1435995 (April 20, 2012).[46] The Commission also has found that ''discrimination against lesbian, gay, and bisexual individuals based on sex-stereotypes is discrimination on the basis of sex under Title VII.'' [47] See *e.g., Veretto* v. *United States Postal Service,* E.E.O.C. Appeal No. 0120110873, 2011 WL 2663401 (July 1, 2011)) (finding allegation of sexual orientation discrimination was a claim of sex discrimination because it was based on the sex stereotype that marrying a woman is an essential part of being a man); *Castello* v. *United States Postal Service,* E.E.O.C. Request No. 0520110649, 2011 WL 6960810 (Dec. 20, 2011) (finding allegation of sexual orientation discrimination was a claim of sex discrimination because it was based on the sex stereotype that having relationships with men is an essential part of being a woman); *Complainant* v. *Dep't of Homeland Sec.,* E.E.O.C. Appeal No. 0120110576, 2014 WL 4407422 (Aug. 20, 2014) (finding that sex discrimination claims intersect with sexual orientation discrimination claims such that allegations of discrimination on the basis of sexual orientation can be construed as claims of discrimination on the basis of sex); *Baldwin* v. *Dep't of Transp.,* E.E.O.C. Appeal No. 012013080, 2015 WL 4397641 (July 15, 2015).

The Department of Education has interpreted Title IX's prohibition against discrimination on the basis of sex in federally-funded education programs and activities as including claims of sex discrimination related to a person's failure to conform to stereotypical

[40] *See, e.g.,* Susan Fiske et al., *Controlling Other People: The Impact of Power on Stereotyping,* 48 Am. Psychol. 621 (1993); Marzarin Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem and Stereotypes,* 102 Psychol. Rev. 4 (1995); Brian Welle & Madeline Heilman, *Formal and Informal Discrimination Against Women at Work in Managing Social and Ethical Issues in Organizations* 23 (Stephen Gilliland, Dirk Douglas Steiner & Daniel Skarlicki eds., 2007); Susan Bruckmüller et al., *Beyond the Glass Ceiling: The Glass Cliff and Its Lessons for Organizational Policy,* 8 Soc. Issues & Pol. Rev. 202 (2014) (describing the role of sex stereotypes in the workplace).

[41] *Price Waterhouse* v. *Hopkins,* 490 U.S. 228 (1989).

[42] Id. at 251.

[43] Id. at 235.

[44] *See, e.g.,* Kevin Lang & Jee-Yeon K. Lehmann, *Racial Discrimination in the Labor Market: Theory and Empirics* (NBER Working Paper No. 17450, 2010), available at *http://www.nber.org/papers/w17450* (last accessed March 19, 2015); Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Brendan More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination,* 94(4) American Econ. Rev. 991 (2004); Ian Ayres & Peter Siegelman, Race and Gender Discrimination in Bargaining for a New Car, 85(3) Am. Econ. Rev. 304 (1995); Marc Bendick, Charles Jackson & Victor Reinoso, Measuring Employment Discrimination Through Controlled Experiments, 23 Rev. of Black Pol. Econ. 25 (1994).

[45] Jaime M. Grant, Lisa M. Mottet, & Justin Tanis, National Center for Transgender Equality & National Gay and Lesbian Task Force, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, (2011), *available at http://transequality.org/issues/resources/national-transgender-discrimination-survey-full-report* (last accessed March 19, 2015).

[46] The EEOC also has concluded that discrimination on the basis of gender identity is inherently discrimination on the basis of sex and that a transgender plaintiff can prove sex discrimination without tying the discrimination to a sex stereotype. *See Macy, E.E.O.C. Appeal No. 0120120821, 2012 WL 1435995* at *10 (''While evidence that an employer has acted based on stereotypes about how men or women should act is certainly one means of demonstrating disparate treatment based on sex, ''sex stereotyping'' is not itself an independent cause of action . . . [I[f Complainant can prove that the reason that she did not get the job is [because the employer] was willing to hire her when he thought she was a man, but was not willing to hire her once he found out that she was now a woman—she will have proven that the [employer] discriminated on the basis of sex.'').

[47] In the *Baldwin* decision, the EEOC stated that sexual orientation discrimination is inherently discrimination on the basis of sex because it involves treatment that would not have occurred but for the sex of the employee; because it takes the employee's sex into account by treating him or her differently due to the sex of the person he or she associates with; and because it is premised on fundamental sex stereotypes, norms, or expectations. *Baldwin* v. *Dep't of Transp.,* E.E.O.C. Appeal No. 0120133080, 2015 WL 4397641,*10 (July 15, 2015).

norms of masculinity and femininity.[48] A Department of Education guidance document states: ''Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and [the Department of Education's Office for Civil Rights] accepts such complaints for investigation.'' [49]

These agency interpretations are consistent with court opinions holding that disparate treatment of a transgender employee may constitute discrimination because of the individual's non-conformity to sex stereotypes. *Barnes* v. *City of Cincinnati,* 401 F.3d 729 (6th Cir. 2005) (holding that transgender woman was a member of a protected class based on her failure to conform to sex stereotypes and thus her title VII claim was actionable); *Smith* v. *City of Salem,* 378 F.3d 566, 574 (6th Cir. 2004) (''discrimination against a plaintiff who is a transsexual [sic]—and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against [the plaintiff] in Price Waterhouse who, in sex-stereotypical terms, did not act like a woman''). *See also Glenn* v. *Brumby,* 663 F.3d 1312 (11th Cir. 2011) (termination of a transgender employee constituted discrimination on the basis of gender non-conformity and sex-stereotyping discrimination under Equal Protection Clause). Cf. *Oncale* v. *Sundowner Offshore Servs.,* 523 U.S. 75, 78 (1998) (same-sex harassment may be sex discrimination under Title VII).

In addition to these cases, ''[t]here has likewise been a steady stream of district court decisions recognizing that discrimination against transgender individuals on the basis of sex-based stereotyping constitutes discrimination because of sex.'' *Macy,* 2012 WL 1435995. *See also* Schroer, 577 F. Supp. 2d at 305–06 (withdrawal of a job offer from a transgender applicant constituted sex-stereotyping discrimination in violation of title VII).[50] There are also a growing number of courts recognizing that sexual orientation discrimination constitutes discrimination on the basis of sex when the discrimination is rooted in fundamental sex-based norms and stereotypes. *See, e.g., Centola* v. *Potter,* 183 F. Supp. 2d 403, 410 (D. Mass. 2002); *Heller* v. *Columbia Edgewater,* 195 F. Supp. 2d 1212, 1224 (D. Or. 2002); *Koren* v. *Ohio Bell,* 894 F. Supp. 2d 1032, 1038 (N.D. Ohio 2012); *Terveer* v. *Billington,* 34 F. Supp. 3d 100, 116, 2014 WL 1280301 (D.D.C. 2014); *Isaacs* v. *Felder Servs.,* 2015 WL 6560655, *3–4 (M.D. Ala. 2015) (slip op.); *Videckis* v. *Pepperdine Univ.,* 2014 WL 8916764 (C.D. Cal. 2015) (slip op); *cf. Latta* v. *Otter,* 771 F.3d 456, 495 (9th Cir. 2014) (Berzon, J. concurring).

Furthermore, Federal contractors that operate Job Corps Centers, who are covered by Section 188 and this part,[51] may also be covered by the requirements of Executive Order 11246, which requires that contractors meeting certain dollar threshold requirements refrain from discrimination in employment based on race, color, religion, national origin, sex, sexual orientation, and gender identity and take affirmative action to ensure equal employment opportunity. Executive Order 13672, issued on July 21, 2014, amended Executive Order 11246 to add sexual orientation and gender identity as protected bases, and applies to government contracts entered into or modified on or after April 8, 2015, the effective date of OFCCP's implementing regulations promulgated thereunder.[52]

Consistent with the above jurisprudence and agency interpretations, the Department proposes that complaints of discrimination based on transgender status and gender identity be treated as complaints of sex discrimination. The Department also proposes that for purposes of this rule, complaints of discrimination based on sex stereotyping be treated as complaints of sex discrimination.

Harassment

This rule also proposes a new section to provide direction as to a recipient's existing obligation regarding unlawful harassment. Courts have recognized for many years that harassment on the basis of a protected category may give rise to a violation of Title VI and Title VII of the Civil Rights Act, Section 504, and Title IX and that unlawful harassment may take many forms.[53] The NPRM adds a section that sets out the prohibition against these various forms of unlawful harassment.

In 2001, 2011, and 2014, the Department of Education issued guidance documents interpreting the scope of prohibitions against sexual harassment including acts of sexual violence, under Title IX that apply to WIOA Title I-financially assisted educational and training programs.[54] Title IX protects individuals from discrimination based on sex in education programs or activities that receive Federal financial assistance, including WIOA Title I programs and activities that are education and training programs.[55] The proposed rule incorporates language in Subpart A that reflects the current Department of Education interpretation of the scope of Title IX's prohibition against harassment based on sex. In doing so, this rule makes the Department's enforcement of current legal standards

[48] *See* Questions and Answers on Title IX and Sexual Violence B–2 at 5 (available at *http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf* (last accessed March 19, 2015) (stating that Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity) (April 29, 2014); Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 66 FR 5512, January 19, 2001 (available at *http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf*).

[49] *See* Questions and Answers on Title IX and Sexual Violence B–2 at 5 (available at *http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf* (last accessed March 19, 2015).

[50] *See also id.* at 306–07 (analogizing to cases involving discrimination based on an employee's religious conversion, which undeniably constitutes discrimination ''because of . . . religion'' under Title VII). *See also Michaels* v. *Akal Security, Inc.,* No. 09-cv-1300, 2010 WL 2573988, at * 4 (D. Colo. June 24, 2010); *Lopez* v. *River Oaks Imaging & Diag. Group, Inc.,* 542 F. Supp. 2d 653, 660 (S.D. Tex. 2008); *Mitchell* v. *Axcan Scandipharm, Inc.,* No. Vic. A. 05–243, 2006 WL 456173 (W.D. Pa. Feb. 17, 2006); *Tronetti* v. *TLC HealthNet Lakeshore Hosp.,* No. 03–CV–0375E(SC), 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003); *Doe* v. *United Consumer Fin. Servs.,* No. 1:01 CV 111, 2001 WL 34350174 (N.D. Ohio Nov. 9, 2001).

[51] See 29 CFR 38.2(b)(4).

[52] 79 FR 72985, December 9, 2014.

[53] *See, e.g., Harris* v. *Forklift Sys.,* 510 U.S. 17 (1993) (harassment based on sex); *Meritor Savings Bank* v. *Vinson,* 477 U.S. 57 (1986) (sex); *Daniels* v. *Essex Group, Inc.,* 937 F.2d 1264, 1274 (7th Cir. 1991) (race); *Rogers* v. *Western-Southern Life Ins. Co.,* 792 F. Supp. 628 (E.D.Wis.1992) (race); *Gebser* v. *LagoVista Independent School District,* 524 U.S. 274 (1998) (school can be held liable if a teacher sexually harasses a student); *Davis* v. *Monroe County Board of Education,* 526 U.S. 629 (1999) (holding a school liable when one student sexually harasses another student; *Zeno* v. *Pine Plains Center School District,* 702 F.3d 655 (2nd Cir. 2011) (racial harassment under Title VI); Booth v. Houston, 2014 WL 5590822 (M.D. Alabama 2014) (disability harassment); *See* Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 66 FR 5512, January 19, 2001 (available at *http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf*); Dear Colleague letter concerning recipients' obligations to protect students from student-on-student harassment on the basis of sex, race, national origin, and disability (October 26, 2010), *available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html* (last accessed March 13, 2015).

[54] *See* Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 66 FR 5512, January 19, 2001 (available at *http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf*); April 4, 2011 Dear Colleague letter on Sexual Violence, *available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf*; April 29, 2014 Questions and Answers on Title IX and Sexual Violence, *available at http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.*

[55] 20 U.S.C. 1681 *et seq.*

consistent with those of one of the agencies that also regulate the same recipient community.

Increased Provision of Services Using Technology, Including the Internet

The increased turn toward the integration of, and in some instances complete shift to, online service delivery models in the public workforce development system since 1999 requires that the part 38 regulations be updated to address the nondiscrimination and equal opportunity implications raised by these changes. As of 2011, one in five American adults did not use the Internet.[56] In particular, research suggests that a larger percentage of older individuals may not possess sufficient knowledge and understanding of computers and web-based programs to be able to access information via a Web site or file for benefits through an online system.[57] Additionally, as of 2011, 32% of Hispanic individuals (including those who are proficient in English) and 29% of Black, non-Hispanic individuals, respectively, were not using the Internet.[58] Similarly, adults with disabilities were significantly less likely to use the Internet than adults without a disability.[59]

Revisions to Subparts B Through E

Subpart B, Recordkeeping and Other Affirmative Obligations, includes revisions to written assurance language that grant applicants are required to include in their grant applications, as well as revisions to the sections regarding the role of Equal Opportunity Officers, and recipient's responsibilities to ensure that they designate EO Officers with sufficient expertise, authority, staff and resources to carry out their responsibilities. The NPRM also proposes revised requirements regarding data and information collection and maintenance and revises the section on outreach responsibilities of recipients.

Proposed changes to Subpart C, regarding the Governor's responsibilities to implement the nondiscrimination and equal opportunity requirements of WIOA, include changing the title of the Methods of Administration, the tool used by Governors to implement their monitoring and oversight responsibilities, to ''Nondiscrimination Plan.'' In addition, the proposal provides more direction as to the Governor's responsibilities and the CRC's procedures for enforcing those responsibilities, thus addressing an inadvertent gap in the existing regulations.

Proposed changes to Subpart D regarding compliance procedures includes language to strengthen the preapproval compliance review process by requiring Departmental grant-making agencies to consult with the Director of the CRC to review whether CRC has issued a Notice to Show Cause or a Final Determination against an applicant that has been identified as a probable awardee. This rule also proposes to expand the situations under which CRC may issue a Notice to Show Cause, merges some of the existing sections about the complaint processing procedures for better readability, and adds some language to clarify that any person or their representative may file a complaint based on discrimination and retaliation under WIOA and this part. The NPRM proposes that complainants and recipients may use a form of alternative dispute resolution, rather than mediation alone, to resolve complaints so as to expand the options available to recipients and complainants to use to achieve resolution of complaints.

Subpart E, Federal Procedures for Effecting Compliance, substitutes the Administrative Review Board for the Secretary as the entity that issues final agency decisions, and makes several other technical revisions.

Benefits of the Proposed Rule

The proposed rule would benefit both recipients of financial assistance under Title I of WIOA and the beneficiaries of that assistance in several ways. First, by updating and clearly and accurately stating the existing principles of applicable law, the proposed rule will facilitate recipient understanding and compliance, thereby reducing costs incurred when noncompliant. The NPRM would also benefit recipients' beneficiaries, employees, and job applicants by allowing them to participate in programs and activities or work free from discrimination. Importantly, recipients are already subject to the nondiscrimination federal laws that these updated regulations incorporate, so many of the new substantive nondiscrimination provisions do not impose new obligations.

This regulation would increase equality of opportunity for the thousands of applicants, participants, beneficiaries and employees of recipients. It would clarify that adverse treatment of applicants, beneficiaries, or participants of recipients' WIOA Title I programs and activities and their employees or applicants for employment, because of gender-based assumptions constitutes sex discrimination. By stating that discrimination against an individual because of their gender identity or transgender status is unlawful sex discrimination, the NPRM would provide much-needed regulatory protection to transgender individuals, the majority of whom report they have experienced discrimination in the workplace.[60] In addition, by providing that pregnant employees or applicants may be entitled to accommodations when such accommodations or modification are provided to other participants not so affected but similar in their ability or inability to work, this NPRM will protect pregnant individuals who work for recipients, and applicants for job training programs and similar activities from losing jobs or access to educational and training opportunities.

Finally, the NPRM would benefit public understanding of the law. This public interest is reflected in Section 6 of Executive Order 13563, which requires agencies to engage in retrospective analyses of their rules ''and to modify, streamline, expand, or repeal [such rules] in accordance with what has been learned.''

The detailed Section-by-Section Analysis below identifies and discusses all proposed changes in each section. The Department welcomes comments on all of the provisions discussed below.

II. Section-By-Section Analysis

As explained above, the Department is proposing a revised part 38 and in doing so has adopted much of the language of current part 38. Therefore, this NPRM refers to the changes made to the existing part 38 rule to highlight differences. The Department proposes several global changes to the current part 38 rule.

First, this NPRM removes the question and answer format of the section titles and replaces each title with statements or phrases to make them easier to understand.

[56] *Digital differences: While increased Internet adoption and the rise of mobile connectivity have reduced many gaps in technology access over the past decade, for some groups, digital disparities still remain* at 5, Pew Internet & American Life Project, Pew Research Center (April 2013) available at *http://pewinternet.org/–/media//Files/Reports/2012/PIP_Digital_differences_041312.pdf.* (last accessed March 19, 2015).

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] Jaime M. Grant, Lisa M. Mottet, & Justin Tanis, *National Center for Transgender Equality and National Gay and Lesbian Task Force, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), *available at http://transequality.org/PDFs/Executive_Summary.pdf* (last accessed March 19, 2015).

Second, this NPRM makes technical revisions to ensure that the regulations are consistent with terms used in WIOA and the proposed regulations published by the Department to implement the program obligations under Title I of WIOA.

Third, the proposed rule removes and replaces the term ''on the grounds of'' with ''on the basis of'' throughout the regulatory text for purposes of consistency with other nondiscrimination regulations and Federal statutes.

Fourth, it replaces the terms ''her'' and ''him'' with ''individual'' wherever possible.

Fifth, the proposed rule also includes substantive revisions related to the nondiscrimination obligation to reflect changes in the law since publication of part 37 in 1999.

Sixth, this proposal contains changes to certain enforcement procedures that will enhance their effectiveness and provide clearer direction to the recipient community as to the scope of their obligations under this part. Each of these revisions is explained below.

Subpart A—General Provisions

Purpose § 38.1

Proposed § 38.1 makes minor revisions to the language that is used in § 38.1. First, the title of proposed § 38.1 is revised to read: ''Purpose.'' The NPRM replaces the term ''on the grounds of'' with ''on the basis of'' to be consistent with nondiscrimination language in other Department civil rights regulations.

Applicability § 38.2

This NPRM makes minor revisions to the language that is used in § 38.2. First, the title of this section is changed to ''Applicability.'' Reference to the Job Training Partnership Act of 1982, ''JTPA,'' [61] is replaced with reference to ''WIA'' in paragraph (b)(1) to reflect the ongoing applicability of the nondiscrimination and equal opportunity regulations at 29 CFR part 37 to WIA Title I-financially assisted programs and activities after the effective date of WIOA. Subpart (a)(3) is revised to explain that the scope of this rule regarding employment practices is limited to any program or activity that is operated by a recipient and/or a One-Stop [62] partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as a part of WIOA Title I or the One-Stop delivery system. This limitation tracks the statutory provision in Section 188(a)(2) of WIOA.[63] Finally, the proposed rule deletes subsection (b)(5), which under § 38.2 excludes Federally-operated Job Corps Centers from application of the provisions of part 38. The Department's Employment and Training Administration (ETA), which has responsibility for administering WIOA generally, proposes new language in its WIOA NPRM at 20 CFR 686.350, stating that nondiscrimination requirements, procedures, complaint processing, and compliance reviews applicable to Federally-operated Job Corps Centers would be governed by provisions of Department of Labor regulations, as applicable.[64] This provision is consistent with the language of WIOA Section 188(d), which does not distinguish between Federally- and privately-operated Job Corps Centers. ''For purposes of this section, Job Corps members shall be considered to be the ultimate beneficiaries of Federal financial assistance.'' [65] Moreover, based on complaints arising in Federally-operated Job Corps Centers, it has become apparent to CRC that uniform complaint handling processes need to apply throughout the Job Corps system. Additionally, this section is consistent with the Job Corps' Policy and Requirements Handbook (PRH), particularly Section 6.8, R5, Appendix 602 and Exhibit 6–11, which makes no distinction between Federally- and privately-operated centers with regard to student complaints. Moreover, this revised section memorializes the current practice used by federally-operated Job Corps Centers.[66]

Effect on Other Obligations § 38.3

The title of § 38.3 is revised to read: ''Effect on other obligations.'' Proposed § 38.3 retains the majority of the language in this section from § 38.3. To establish parity with parallel provisions in other federal nondiscrimination regulations,[67] proposed § 38.3 also includes paragraph (c) explaining that ''This part does not invalidate or limit the remedies, rights and procedures under any Federal law, or the law of any State or political subdivision, that provides equal or greater protection for the rights of persons as compared to this part.'' This addition replaces § 38.3(f) of this subsection which states, ''This rule does not preempt consistent State and local requirements.'' The NPRM also adds Executive Order 13160 [68] to the provision that states that compliance with this part does not affect additional obligations under the listed laws. Executive Order 13160 prohibits discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in federally conducted education and training programs and activities. This Executive Order is added because of its application to the Job Corps program which, as a Federally-conducted education and training program, is covered by this part.

Definitions § 38.4

This NPRM revises the title of § 38.4 to read: ''Definitions.'' The proposed rule retains the majority of the definitions contained in § 38.4. Revisions in proposed § 38.4 include updating existing definitions consistent with applicable law, such as the definition of ''disability'' and its component definitions. This section also adds new definitions, which are discussed below. These changes also include edits to update existing definitions, based on developments in the law, as well as feedback from stakeholders and the CRC's investigative and enforcement experiences over the past fifteen years. This NPRM retains the alphabetical order of the definitions. This ordering makes it easier to locate specific terms within the section. However, the proposed rule incorporates a letter designation before each definition to make it easier to find definitions when they are referenced. The headings that appear in this preamble to guide the reader do not appear as headings in the regulatory text. The discussion below addresses revisions to the definitions section in the part 38 rule.

Aid, Benefit, Service, or Training § 38.4(b)

In the definition for ''Aid, benefit, service, or training,'' the proposed rule replaces ''core and intensive services'' with ''career services'' in § 38.4(b)(1) to be consistent with the text of Title I of WIOA [69] and the proposed ETA regulations implementing Title I of WIOA,[70] which made the same replacement.

[61] 29 U.S.C. 1501 *et seq.*

[62] One-Stop Career Centers are designed to provide a full range of assistance to job seekers under one roof. The centers offer training referrals, career counseling, job listings, and similar employment-related services.

[63] 29 U.S.C. 3248(a)(2).

[64] *See* 20 CFR 686.985.

[65] 29 U.S.C. 3248(d).

[66] Reference Guide, Key EEO and Civil Rights Laws, Statutes, and Regulations, USDA Forest Service WO/Civil Rights Staff (April 2010).

[67] 41 CFR 60–741.1(c)(3); 41 CFR 60–300.1(c)(3).

[68] 65 FR 39775, June 27, 2000.

[69] 29 U.S.C. 3303(a)(1)(A).

[70] 80 FR 20690, April 16, 2015.

Auxiliary Aids or Services § 38.4(h)

This NPRM revises the definition of ''Auxiliary aids or services'' to include new technology alternatives that have become available since the current regulations were drafted in 1999, such as video remote interpreting services and real-time computer-aided transcription services. This provision mirrors the language in the DOJ regulations implementing Title II of the ADA, which prohibits discrimination on the basis of disability by public entities,[71] some of which are also recipients of WIOA Title I financial assistance.

Babel Notice § 38.4(i)

This NPRM adds a definition for ''Babel Notice.'' A Babel Notice is a short notice in multiple languages informing the reader that the document or electronic media (*e.g.,* Web site, ''app,'' email) contain vital information, and explaining how to access language services to have the contents of the document or electronic media provided in other languages. The Department proposes adding this definition because Babel Notices are an integral tool for ensuring that recipients meet their nondiscrimination and equal opportunity obligations under WIOA and this part regarding LEP individuals. The Department welcomes comments on this definition.

Direct Threat § 38.4(p)

This NPRM adds a definition for ''direct threat.'' This term is used in the context of determining whether the employment of or program participation by an individual with a disability poses a health or safety risk such that the employer or recipient can lawfully exclude the individual from employment or participation. A ''direct threat'' is ''a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced by auxiliary aids and services, reasonable accommodations, or reasonable modifications in policies, practices, or procedures.'' The definition describes the four factors that a recipient must consider when making a direct threat determination: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. This proposed definition tracks the definition of direct threat contained in the Americans with Disabilities Act and used by DOJ[72] in interpreting Title II of the ADA. This proposed definition ensures consistency with current law. To reflect the specific context of federal financially-assisted programs and activities, the proposed definition includes considering whether provision of auxiliary aids or services or reasonable modifications to policies, practices, or procedures, in addition to reasonable accommodations, will mitigate risk.

Disability § 38.4(q)

The rule proposes a definition of ''disability'' that is updated to reflect the current status of the law. As under the current part 38, the overall definition is: ''with respect to an individual: (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) A record of such an impairment; or (3) Being regarded as having such an impairment.'' The proposed definition of ''disability'' integrates updated definitions of terms that are components of this definition, including ''major life activities,'' ''physical or mental impairment,'' ''record of,'' ''regarded as,'' and ''substantially limits.'' As is explained below, these revised definitions are taken directly from the ADA Amendments Act,[73] regulations promulgated by the EEOC to implement the ADA Amendments Act,[74] and the DOJ's Notice of Proposed Rulemaking to amend Title II regulations to implement the ADA Amendments Act.[75] If the DOJ changes its proposal in its final rule implementing ADA Titles II and III, the Department will review those changes to determine their impact on this proposal and take appropriate action.

Definition of Disability, Rules of Construction § 38.4(q)(1)

Consistent with the ADAAA, the EEOC regulations implementing the ADAAA and DOJ's NPRM to amend the ADA Title II regulations in conformance with the ADAAA,[76] this section sets forth rules of construction that provide the standards for application of the definition of disability.

Proposed § 38.4(q)(1)(ii) provides that an individual may establish coverage under any one or more of the prongs in the definition of disability. To be covered under the ADA, however, an individual is only required to satisfy one prong. The term ''actual disability'' is used in these rules of construction as short-hand terminology to refer to an impairment that substantially limits a major life activity within the meaning of the first prong of the definition of disability. The terminology selected is for ease of reference. It is not intended to suggest that an individual with a disability who is covered under the first prong has any greater rights under the ADA than an individual who is covered under the ''record of'' or ''regarded as'' prongs, with the exception that the ADA, as amended, expressly states that an individual who meets the definition of disability solely under the ''regarded as'' prong is not entitled to reasonable accommodations, auxiliary aids or services, or reasonable modifications of policies, practices, or procedures.[77]

This section also amends the definition of ''disability'' to incorporate Congress's expectation that consideration of coverage under the first and second prongs of the definition of ''disability'' will generally not be necessary except in cases involving requests for reasonable accommodations and reasonable modifications.[78] See § 38.4(q)(1)(ii)(B).

Physical or Mental Impairment § 38.4(q)(3)

This rule revises the definition of ''physical or mental impairment,'' in the definition of disability, to include ''immune and circulatory illnesses'' as well as ''pregnancy-related medical conditions'' and states that the definition of ''mental and psychological disorder'' includes ''intellectual disability (formerly termed ''mental retardation'') and specific learning disabilities (including but not limited to dyslexia).'' This update to the definition conforms to the same definition proposed by the DOJ in their NPRM implementing Title II of the ADA[79] and in OFCCP's final rule implementing Section 503,[80] apart from the inclusion of pregnancy-related medical conditions. This term is added here to

[71] *See* 28 CFR 35.104.

[72] 28 CFR 35.139.

[73] Public Law 110–325 (2008).

[74] 29 CFR part 1630.

[75] 79 FR 4839, January 30, 2014. *See also* 28 CFR 35.104 (DOJ's current Title II regulations).

[76] *See* Introduction to the Final Rule ''The primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the Amendment Act's purpose of reinstating a broad scope of protection under the ADA, the definition of ''disability'' in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA.'' 29 CFR 1630.1(c) (citing 42 U.S.C. 12102(4)(A)).

[77] *See* 42 U.S.C. 1. *See* Introduction to the Final Rule, ''The primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA, Consistent with the Amendment Act's purpose of reinstating a broad scope of protection under the ADA, the definition of ''disability'' in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA.'' 29 CFR 1630.

[78] 154 Cong. Rec. S8840 (daily ed. Sept. 16, 2008) (Statement of Managers).

[79] 79 FR 4839, 4844, January 30, 2014.

[80] 78 FR 58682, 58735, September 24, 2013.

recognize that, under the ADA as amended by the ADAAA, Section 504 and this part, pregnancy itself is not a disability, but pregnancy-related medical conditions may meet the ADA definition of a physical or mental impairment; for example, preeclampsia (pregnancy-induced high blood pressure), placenta previa, and gestational diabetes, disorders of the uterus and cervix, or other medical conditions; symptoms such as back pain; complications requiring bed rest; and the after-effects of a delivery may be a disability.

Major Life Activities § 38.4(q)(4)

The proposed rule adds to the definition of disability a new definition for ''major life activities'' that is consistent with the definitions in the ADA, as amended,[81] and regulations promulgated by the EEOC[82] and the DOJ[83] implementing the ADA. Prior to the ADAAA, the ADA did not define ''major life activities,'' leaving delineation of illustrative examples to agency regulations. Subparagraph (2) of the definition of ''disability'' in the Department's current part 38 rule states that ''[t]he phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.''[84] The ADAAA incorporates into the statutory language a non-exhaustive list of major life activities that includes, but is not limited to, ''caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.''[85] This list reflects Congress's concern that courts were interpreting the term ''disability,'' which includes ''major life activities,'' more narrowly than Congress intended.[86] For the same reason, the ADA as amended also explicitly defines ''major life activities'' to include the operation of ''major bodily functions.'' Examples in the amended statute or the EEOC's amended regulations include functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system. In § 38.4(q)(4), the Department proposes to revise its part 38 definitions of disability to incorporate the statutory examples as well as to provide additional examples of major life activities included in the EEOC Title I final regulation—reaching, sitting, and interacting with others, and the examples of major bodily functions.[87]

The Department cautions that both the lists of major life activities and major bodily functions are illustrative. The absence of a particular life activity or bodily function from the list should not create a negative implication as to whether such activity or function constitutes a major life activity or major bodily function under the statute or the implementing regulation.[88]

Consistent with the ADAAA, proposed § 38.4(q)(4)(iii) also states that ''[i]n determining other examples of major life activities, the term 'major' must not be interpreted strictly to create a demanding standard for disability.''[89] Further, consistent with the ADAAA, the proposed regulations provide that ''[w]hether an activity is a 'major life activity' is not determined by reference to whether the activity is of 'central importance to daily life.' ''[90]

Substantially Limits—Rules of Construction § 38.4(q)(5)

The revisions also add rules of construction to be applied when determining whether an impairment substantially limits a major life activity, including that the term ''substantially limits'' is not meant to be a demanding standard, and should be construed broadly in favor of expansive coverage. In addition, consistent with the ADAAA, the determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures.[91]

The determination of whether an impairment substantially limits a major life activity requires an individualized assessment.[92] Section 38.4(q)(5)(i)(D) applies the principles set forth in the rules of construction in order to provide examples of the types of impairments that will virtually always be found to substantially limit a major life activity.

A Record of an Impairment § 38.4(q)(6)

This proposed rule updates the definition to state that an individual has ''a record of such an impairment,'' ''if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.'' This is the same language used by the EEOC in their implementing regulations.[93] The DOJ NPRM has identical language.[94]

In addition, the rule proposes adding a new paragraph at § 38.4(q)(6)(ii), which states that ''[w]hether an individual has a record of an impairment that substantially limited a major life activity must be construed broadly to the maximum extent permitted by Federal disability nondiscrimination law and this part and should not demand extensive analysis.'' An individual will be considered to fall within this definitional prong if the individual has a history of an impairment that substantially limited a major life activity, in comparison to most people in the general population, or was misclassified as having such an impairment. Moreover, an individual under this definitional prong may be entitled to a reasonable accommodation or a reasonable modification if needed, and related to the past disability. This provision is consistent with the DOJ NPRM implementing Title II of the ADA, as amended.[95] If the DOJ changes its proposal in its final rule implementing ADA Titles II and III, the Department will review those changes to determine their impact on this proposal and take appropriate action.

Is Regarded as Having Such an Impairment § 38.4(q)(7)

This rule revises the term ''regarded as having an impairment'' to conform to the ADAAA.[96] This updated language provides that an individual meets the definition if it is established that the individual is subject to an action prohibited by WIOA Section 188 and this part, because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity. However, impairments that are transitory and minor cannot form

[81] 42 U.S.C. 12102(2).

[82] 29 CFR 1630.2(i).

[83] 79 FR 4839, 4844, January 30, 2014.

[84] 29 CFR 38.4(q)(4).

[85] 42 U.S.C. 12102(2)(a).

[86] *See* Congressional Record—Senate S8840, S8841 (September 16, 2008).

[87] 29 CFR 1630.2(i)(1).

[88] 29 CFR 1630, App, Section 1630.2(i). Major Life Activities (EEOC Title I).

[89] 42 U.S.C. 12101(b)(4).

[90] 29 CFR 1630.2(i)(2).

[91] 42 U.S.C. 12102(4)(E).

[92] 29 CFR 1630.2(j)(1)(v).

[93] 29 CFR 1630.2(k)(1).

[94] 79 FR 4839, 4848, Jan. 30, 2014.

[95] 70 FR 4839, 4859, Jan. 30, 2014.

[96] 42 U.S.C.12102(3).

the basis of a finding that an ''individual is regarded as having a disability.''

Employment Practices § 38.4(s)

A minor revision to the definition of ''Employment practices'' has been made to read: ''Employment Practices of a recipient include, but are not limited to'' to make it easier to read and understand. The enumerated examples in the part 38 definition have not changed.

Employment-Related Training § 38.4(t)

The definition of ''Employment-related training'' has been revised to make the definition less circular. The new definition is ''training that allows or enables an individual to obtain skills, abilities and/or knowledge that are designed to lead to employment.''

Individual With a Disability § 38.4(ff)

The rule revises the definition of ''individual with a disability'' to be consistent with the ADAAA and implementing regulations issued by the EEOC [97] and proposed by the DOJ.[98] The majority of the text lists conditions that are not included in the definition of an individual with a disability.

The proposed rule separates ''transvestism, transsexualism, and gender dysphoria not resulting from physical impartments'' from ''pedophilia, exhibitionism, voyeurism and other sexual behavior disorders.'' Previously, these terms were listed together and are listed together in the same definition in the ADA [99] and in the EEOC [100] regulations and the DOJ [101] proposed regulations implementing the ADA. The terms remain but have been separated into two groups. This change is intended to highlight the distinction between the first three terms (transvestism, transsexualism, or gender dysphoria not resulting from physical impairment) from those in the second group (pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders) which carry distinctly negative connotations.

In this regard, CRC notes that Section 504 specifically excludes from the definition of disability, among other conditions, gender identity disorders that are not the result of physical impairments.[102]

Finally, subparagraph (2)(i) of this definition has been changed so that it states that an individual who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs is not excluded from the definition of an individual with a disability. By adding the characterization of ''illegal drugs'' to the last part of this subparagraph, it is easier to read and understand such use.

Limited English Proficient (LEP) Individual § 38.4(hh)

This rule proposes a new definition for ''limited English proficient (LEP) individual.'' The proposed definition of ''limited English proficient individual'' is ''an individual whose primary language for communication is not English and who has a limited ability to read, speak, write and/or understand English. LEP individuals may be competent in English for certain types of communication (*e.g.,* speaking or understanding), but still be LEP for other purposes (*e.g.,* reading or writing).'' Similarly, LEP designations are context specific. For example, an individual may possess sufficient English language skills to function in one setting (*e.g.,* reading a recipient's hours of operation or greeting an individual), but the individual's skills may be insufficient in other settings (*e.g.,* completing a legal document or discussing eligibility requirements). This definition is added because discrimination based on limited English proficiency may be a form of unlawful national origin discrimination.[103] The term is used elsewhere in this proposed rule, in § 38.9 defining national origin discrimination as including discrimination based on limited English proficiency. This definition is consistent with decisions interpreting the scope of national origin discrimination under Title VI [104] and regulations interpreting national origin-based discrimination,[105] and has been adopted from those DOJ regulations implementing Title VI to ensure consistency. Finally, this term is being added to provide direction to the regulated recipient community because the population attempting to apply for, participate in, and benefit from WIOA Title I-financially assisted programs and activities is increasingly diverse, speaking many languages in addition to and sometimes instead of English. According to a report issued by the U.S. Census Bureau in 2013, as of 2011, 21 percent of people aged 5 and over living in the U.S. spoke a language other than English at home, 22.4 percent of whom either spoke English not well or not at all.[106] As a result, WIOA Title I-financially assisted programs and activities have increasingly interacted with and provided services to individuals who are limited English proficient. Since fiscal year 2013, of the compliance reviews of state programs that CRC has conducted, six have revealed significant language access violations. Thus, there is a need for increased direction for recipients regarding their obligations to meet the needs of these LEP applicants, participants, and beneficiaries.

National Programs § 38.4(ii)

This proposed rule includes the National Dislocated Worker Grant Programs and YouthBuild programs in the definition of ''National Programs.'' This change reflects the language in WIOA Title I Subpart D, Section 170 and Sec. 171[107] and ETA's proposed implementing regulations.[108]

Nondiscrimination Plan § 38.4(ll)

This proposed rule changes the name ''Methods of Administration'' for the document described in § 38.54 to ''Nondiscrimination Plan,'' but retains the definition of the document. This change more clearly represents the contents and purpose of this document, which is created, maintained, and implemented by the Governor to ensure compliance on the part of state programs with WIOA's nondiscrimination and equal opportunity obligations and this part.

Other Power-Driven Mobility Device § 38.4(nn)

This rule adds a definition for ''other power-driven mobility device.'' The term is used in the proposed rule in § 38.17, setting out the programmatic and physical accessibility requirements applicable to individuals with disabilities. This definition mirrors the definition in the DOJ ADA Title II regulations.[109] This definition is

[97] 29 CFR 1630.3.

[98] 70 FR 4839, 4859–60, Jan. 30, 2014.

[99] 42 U.S.C. 12211(b).

[100] 29 CFR 1630.3(d).

[101] 70 FR 4839, 4859–60, January 30, 2014.

[102] 29 U.S.C. 705(20)(F)(i).

[103] *Lau* v. *Nichols,* 414 U.S. 563 (1974) (federal fund recipient's denial of an education to a group of non-English speakers was national origin discrimination in violation of Title VI).

[104] *Sandoval* v. *Hagan,* 197 F.3d 484, 510–11 (11th Cir. 1999) (holding that English-only policy for driver's license applications constituted national origin discrimination under Title VI), rev'd on other grounds, 532 U.S. 275 (2001); *Almendares* v. *Palmer,* 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI).

[105] 28 CFR 42.104.

[106] American Community Survey Reports, Language Use in the United States: 2011 (August 2013).

[107] 29 U.S.C. 3225–3226.

[108] 80 FR 20690, April 16, 2015.

[109] 28 CFR 35.104.

updated because, as the technology available for mobility devices advances, devices with new capabilities, such as the Segway©, are increasingly used by individuals with mobility impairments.

Programmatic Accessibility § 38.4(tt)

The rule adds a definition for ''programmatic accessibility.'' WIOA states in no fewer than ten places in Title I that recipients will comply with section 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990, regarding the physical and programmatic accessibility of facilities, programs, services, technology, and materials, for individuals with disabilities.[110] However, WIOA does not define programmatic accessibility for this purpose. The Department's proposed definition, ''policies, practices, and procedures providing effective and meaningful opportunity for persons with disabilities to participate in or benefit from aid, benefit, service and training,'' provides needed direction for recipients and beneficiaries. It is important to note that the term ''programmatic accessibility'' in this context has a different meaning than the similar term ''program accessibility'' that is used in Title II of the ADA.

Qualified Individual With a Disability § 38.4(ww)

This rule revises the title of the definition of ''qualified individual with a disability'' to match the definition of ''qualified'' in the EEOC regulations [111] implementing Title I of the ADAAA.

Qualified Interpreter § 38.4(xx)

This NPRM amends the existing definition of ''qualified interpreter'' to reflect the existence of new technologies used by interpreters. The revised language states that interpreting services may be provided ''either in-person, through a telephone, a video remote interpreting (VRI) service or via internet, video, or other technological methods.[112] This revision is also intended to delineate the skills and abilities that an individual must possess in order to provide interpretation services. This change to the definition is intended to assist recipients who are seeking to meet their nondiscrimination and equal opportunity responsibilities as defined in this part. This change is also intended to benefit applicants, participants, and beneficiaries.

The rule adds two new subdefinitions to further explain the different meanings of ''qualified interpreter'' when working with individuals with disabilities and with individuals who are limited English proficient. The first new definition specifies that ''qualified interpreter for an individual with a disability'' includes sign language interpreters, oral transliterators, and cued-language transliterators, and describes the essential functions required to be performed by a qualified interpreter for a deaf or hard of hearing individual. This language is taken from the ADA Best Practices Tool Kit for State and Local Governments.[113]

The second subdefinition is for ''qualified interpreter for an individual who is limited English proficient.'' This new subdefinition is taken from the DOL LEP guidance and refers to an individual who demonstrates expertise in and ability to communicate information accurately in both English and in the other language and to identify and employ the appropriate mode of interpreting, such as consecutive, simultaneous, or sight translation.[114] Recipients are strongly encouraged to use certified interpreters where individual rights depend on precise, complete and accurate translations. Such situations may include, *e.g.,* a hearing on eligibility for unemployment insurance benefits or a test for obtaining certification or credentials. A certified interpreter may be someone who has been certified by the federal courts to be a qualified interpreter for legal purposes, or someone who has been certified by a national interpreter association. Certification indicates a particular level of expertise in the specific skill of interpretation, which is distinct from being bilingual.

Reasonable Accommodation § 38.4(yy)

This NPRM revises the definition of ''reasonable accommodation'' to add a new paragraph (4), which reads as follows: ''A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who has an 'actual disability' or 'record of' a disability, but is not required to provide a reasonable accommodation to an individual who is only 'regarded as' having a disability.'' This change to the definition of reasonable accommodation makes it consistent with the ADAAA [115] and regulations issued by the EEOC [116] and proposed by the DOJ [117] interpreting the ADA.

Recipient § 38.4(zz)

This NPRM revises the definition of ''recipient.'' The definition retains most of the language contained in the § 38.4 definition except that the rule removes the language excluding the operators of federally-operated Job Corps Centers from the definition of recipient. As described above, WIOA Title I [118] and ETA's proposed implementing regulations [119] set forth CRC's jurisdiction to enforce the WIOA nondiscrimination and equal opportunity provisions as to Federally-operated Job Corps Centers. Thus, this NPRM revises the definition to include as recipients all Job Corps contractors and Center operators. This proposed addition to the existing definition is intended to provide consistency by placing all Job Corps Centers under CRC's jurisdiction to ensure that participants in all Job Corps Centers have the identical enforcement mechanism.

Service Animal § 38.4(fff)

This NPRM adds a definition for ''service animal.'' The proposed rule refers to the term ''service animal'' in § 38.16; therefore, the term has been defined in this section. This provision is drawn from the DOJ ADA Title II regulations at 28 CFR 35.104 and is intended to provide uniformity.[120]

State Workforce Agency § 38.4(lll)

This NPRM proposes to change the term ''State Employment Service Agencies'' to ''State Workforce Agencies'' to be consistent with the change to this term contained in WIOA Title I [121] and the proposed ETA regulations implementing Title I.[122]

Undue Burden or Hardship § 38.4(rrr)

This NPRM amends the definition of ''undue hardship'' in the context of religious accommodation to read as follows: ''For the purposes of religious accommodation only, 'undue hardship'

[110] *See, e.g.,* 29 U.S.C. 102(b)(2)(c)(vii); 29 U.S.C. 102(b)(2)(e)(vi).

[111] 29 CFR 1630.2(m).

[112] *See* 28 CFR 35.104, definition of ''auxiliary aids and services'' (paragraph 1) and definition of ''qualified interpreter.''

[113] ADA Best Practices Tool Kit for State and Local Governments, General Effective Communication Requirements Under Title II of the ADA, Chapter 3, available at: *http://www.ada.gov/pcatoolkit/chap3toolkit.htm* (last accessed March 19, 2015).

[114] DOL LEP Guidance, supra note 24 at 32296.

[115] 42 U.S.C. 12101 *et seq.*

[116] 29 CFR 1630.9(e).

[117] 70 FR 4839, January 30, 2014.

[118] 29 U.S.C. 3248(d).

[119] 80 FR 20690, April 16, 2015.

[120] The EEOC has not addressed whether or not this definition would apply to employers and employment agencies covered under Title I of the ADA or Section 501 of the Rehabilitation Act.

[121] 80 FR 20690, April 16, 2015.

[122] Id.

means anything more than a de minimis cost or operational burden that a particular accommodation would impose on a recipient.'' This minor change to the current rule's definition removes the reference to case law and makes it consistent with EEOC's interpretation of Title VII.[123]

Video Remote Interpreting (VRI) Service § 38.4(sss)

This NPRM adds the definition of ''video remote interpreting (VRI) service'' because it is an interpreting service that is increasingly integrated into services provided to individuals with disabilities and LEP individuals. The definition of ''video remote interpreting service'' means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images, as provided in § 38.15. This definition mirrors the term used by the DOJ regulations implementing Title II of the ADA.[124]

Vital Information § 38.4(ttt)

This NPRM adds a new definition for ''vital information.'' The proposed rule uses the term ''vital information'' in setting forth a recipient's responsibility to meet its language access requirements. The proposed definition reads as follows: ''information, whether written, oral or electronic, that is necessary for an individual to understand how to obtain any aid, benefit, service and/or training; necessary for an individual to obtain any aid, benefit, service, and/or training; or required by law. Examples of documents containing vital information include, but are not limited to, applications, consent, and complaint forms; notices of rights and responsibilities; notices advising LEP individuals of their rights under this part, including the availability of free language assistance; rulebooks; written tests that do not assess English language competency, but rather assess competency for a particular license, job, or skill for which English proficiency is not required; and letters or notices that require a response from the beneficiary or applicant, participants, or employee.

This definition is intended to provide clear direction for recipients so that they can determine what information is necessary to be translated or interpreted for limited English proficient individuals in order for recipients to meet their obligations under this part and WIOA Section 188. The definition builds upon and is consistent with the discussion of vital written materials and documents contained in the DOL LEP Guidance.[125] The guidance does not define ''vital documents'' or ''vital information'' and CRC has received feedback from Equal Opportunity Officers that this omission has caused some confusion on the part of recipients. The DOL LEP Guidance uses the term ''vital documents'' when discussing written language services and which documents should be translated. It explains that an effective LEP plan for a particular program or activity includes the translation of vital written materials into the languages of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. The Guidance then provides a non-exhaustive list of examples of documents that would qualify as vital written materials, including letters containing important information regarding participation in a program or activity and notices that require a response from beneficiaries. When the LEP Guidance was issued in 2003, recipients still provided a significant percentage of aid, service, benefit, and training in person. Since then, many recipients, including unemployment insurance programs, moved to a phone-based system and then to a Web site- and Internet-based system of provision of services. Today, many WIOA Title I-financially assisted programs and activities, including unemployment insurance programs, are made available to the public largely through a Web site and the internet. While web-based services and programs offered by recipients provide beneficiaries the convenience of accessing resources remotely at almost any time, ineffectually designed or implemented Web sites may create barriers that prevent or limit access for some LEP individuals. As a result, it has become necessary to define vital information to include information delivered orally, such as in a telephone recording or phone conversation with a recipient's staff member, as well as electronically, such as contained in a recipient's Web page or email. The Department welcomes comments on this new definition.

Wheelchair § 38.4(uuu)

The proposed rule adds a definition for ''wheelchair'' to read as follows: ''A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion.'' This definition mirrors the definition in the DOJ ADA Title II regulations at 28 CFR 35.104. CRC has proposed a separate definition for wheelchair to distinguish it from other power driven mobility devices.

General Prohibitions on Discrimination § 38.5

The title of proposed § 38.5 revises the part 37 title to read as follows: ''General Prohibitions on Discrimination.''

Specific Discriminatory Actions Prohibited on Bases Other Than Disability § 38.6

The title of proposed § 38.6 revises the part 37 title to: ''Specific discriminatory actions prohibited on bases other than disability.'' In addition, this section replaces the term ''ground'' with the term ''basis.''

Discrimination Prohibited Based on Sex § 38.7

The proposed rule incorporates a new section, § 38.7, titled ''Discrimination prohibited based on sex.'' This proposed section incorporates certain obligations already set forth in the current part 37 rule. This new section in paragraph (a) states that discrimination in WIOA Title I-financially assisted programs and activities based on pregnancy, childbirth, or related medical conditions is sex discrimination. This principle has been the law since Congress enacted the Pregnancy Discrimination Act (PDA) to amend Title VII in 1978 and is now being incorporated into the WIOA regulations consistent with current law interpreting the PDA.[126] Pregnancy discrimination is also addressed separately in proposed § 38.8.

In addition, paragraph (a) states that discrimination based on gender identity or transgender status is also a form of unlawful sex discrimination. As described above, the Department follows the jurisprudence developed under Title VII cases brought by the EEOC and the Department of Justice. In the EEOC's decision in *Macy* v. *Holder,* the EEOC concluded that discrimination because of gender identity or transgender status is sex discrimination in violation of Title VII, by definition, because the discriminatory act is ''related to the sex of the victim.'' [127] The EEOC cited both the text of Title VII and the reasoning in *Schroer* v.

[123] 29 CFR 1605.2(e).

[124] *See* 28 CFR 35.104.

[125] DOL LEP Guidance, supra note 24 at 32298.

[126] 42 U.S.C. 2000e(k).

[127] *Macy,* 2012 WL 1435995 at *7. Macy also held that discrimination on the basis of transgender status could be unlawful under Title VII as sex stereotyping. *Id.*

Billington, supra, for its conclusion.[128] *See also* Memorandum from Attorney General Eric Holder to United States Attorneys and Heads of Department Components (Dec. 15, 2014) (citing EEOC's decision in *Macy* v. *Holder* as support for DOJ's position that ''[t]he most straightforward reading of Title VII is that discrimination 'because of . . . sex' includes discrimination because an employee's gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex''). Note that discrimination on the basis of gender identity or transgender status can arise regardless of whether a transgender individual has undergone, is undergoing, or plans to undergo sex-reassignment surgery or other processes or procedures designed to facilitate the adoption of a sex or gender other than the individual's assigned sex at birth.[129]

Subsection (b) provides a nonexhaustive list of distinctions based on sex that are unlawful. The nonexhaustive list of examples included in this proposed section are intended to assist recipients in meeting their nondiscrimination and equal opportunity responsibilities under this section. The examples include: Making a distinction between married and unmarried persons that is not applied equally to individuals of both sexes as an example of a sex-based discriminatory practice (proposed paragraph 38.7(b)(1)); denying individuals of one sex who have children access to aid, benefit, service, or training opportunities that is available to individuals of another sex who have children is an unlawful sex-based discriminatory practice (proposed paragraph 38.7(b)(2)); adversely treating unmarried parents of one sex, but not unmarried parents of another sex (proposed paragraph 38.7(b)(3)); distinguishing on the basis of sex in formal or informal job training and/or educational programs, or other opportunities (proposed paragraph 38.7(b)(4)); posting job announcements that recruit or advertise for individuals for certain jobs on the basis of sex, including through the use of gender-specific terms (proposed paragraph 38.7(b)(5)); treating an individual adversely because the individual identifies with a gender different from that individual's sex assigned at birth or the individual has undergone, is undergoing, or is planning to undergo, processes or procedures designed to facilitate the adoption of a sex or gender other than the individual's assigned sex at birth (proposed paragraph 38.7(b)(6)); denying individuals who are pregnant, who become pregnant, or who plan to become pregnant opportunities for or access to aid, benefit, service, or training on the basis of pregnancy (proposed paragraph 38.7(b)(7)); making any facilities associated with WIOA Title I-financially assisted program or activities available only to members of one sex, except that if the recipient provides restrooms or changing facilities, the recipient must provide separate or single-user restrooms or changing facilities to assure privacy (proposed paragraph 38.7(b)(8)); and denying employees access to the bathrooms used by the gender with which they identify (proposed paragraph 38.7(b)(9)).[130]

Proposed paragraph 38.7(c) provides that a recipient's policies or practices that have an adverse impact on the basis of sex and are not program-related and consistent with program necessity, constitute sex discrimination in violation of WIOA. Traditionally, disparate impact claims have involved selection criteria that are not necessary to the performance of the job, but which instead reflect stereotypical notions about the skills required for the position in question. *Mehus* v. *Emporia State Univ.,* 295 F. Supp. 2d 1258, 1271 (D. Kan. 2004) (''Plaintiff is not required to allege discriminatory intent.''); *Sharif by Sala-huddin* v. *N.Y. State Educ. Dep't.,* 709 F. Supp. 345 (S.D.N.Y. 1989) (disparate impact theory to challenge use of Scholastic Aptitude Test to allocate state merit scholarships was appropriate under Title IX). *See also Blake* v. *City of Los Angeles,* 595 F.2d 1367 (9th Cir. 1979) (striking down height requirements by the Los Angeles police department because they were not job related and had a disparate impact on women, who in general are shorter than men); *EEOC* v. *Dial Corp.,* 469 F.3d 735 (8th Cir. 2006) (striking down a strength test used in a sausage factory because the test was more physically demanding than the job in question and had a significant disparate impact on women). This sex discrimination analysis may also apply to policies or practices that are unrelated to selection procedures. For instance, an employer policy requiring crane operators to urinate off the back of the crane instead of using a restroom was held to be a neutral employment policy that was not job-related and that produced an adverse effect on women, who, the court found, have ''obvious anatomical and biological differences'' that require the use of bathrooms. *Johnson* v. *AK Steel Corp.,* 1:07–cv–291, 2008 WL 2184230, *8 (S.D. Ohio May 23, 2008).

Proposed paragraph 38.7(d) clarifies that discrimination based on sex stereotypes, such as stereotypes about how persons of a particular sex are expected to look, speak, or act, is a form of unlawful sex discrimination. The proposed rule states the well-recognized principle that employment-related decisions made on the basis of stereotypes about how males and/or females are expected to look, speak, or act are a form of sex-based employment discrimination. As the Supreme Court stated in *Price Waterhouse* v. *Hopkins,* 490 U.S. 228, 251 (1989), ''we are beyond the day when an employer can evaluate employees by assuming or insisting that they match the stereotype associated with their . . . [sex].'' In *Price Waterhouse,* the Court held that an

[128] Consistent with *Macy,* this NPRM defines discrimination on the basis of gender identity or transgender status as a form of sex discrimination. Gender identity is also a stand-alone protected category (as is sexual orientation) under Executive Order 13672. Executive Order 13672 amended Executive Order 11246 to add sexual orientation and gender identity as protected bases, and applies to certain government contracts entered into or modified on or after April 8, 2015, the effective date of OFCCP's implementing regulations promulgated thereunder. Section 188 of WIOA and this part apply to Federal contracts to operate Job Corps Centers (see § 38.2(b)(4)), so persons that hold such contracts may be subject to Executive Order 11246, as amended, including the obligation not to discriminate in employment based on gender identity and sexual orientation.

[129] *See Macy* v. *Holder,* 2012 WL 1435995 (discrimination against a transgender individual is discrimination related to the sex of the victim including when the employer is uncomfortable with the fact that the person has transitioned or is in the process of transitioning from the person's sex assigned at birth to another sex)); *Shroer* v. *Billington,* 577 F. Supp. at 293 (discrimination against a transgender individual on the basis of an intended, ongoing, or completed gender transition is discrimination because of sex).

[130] Office of Personnel Management (OPM) Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, available at *http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/* (last accessed March 20, 2015), citing DOL Occupational Safety and Health Administration (OSHA) Interpretations, Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities (April 6, 1998), available at *http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932* (last accessed March 20, 2015); Letter from Thomas Galassi to Maine Human Rights Comm'n (April 16, 2013), available at *http://www.dol.gov/oasam/programs/crc/23603JohnP.GauseLetter.pdf* (last accessed March 20, 2015); *see also Lusardi* v. *Dep't of the Army,* EEOC Appeal No. 0120133395, 2015 WL 1607756 (April 1, 2015) (denying employees use of a restroom consistent with their gender identity and subjecting them to intentional use of the wrong gender pronouns constitutes discrimination because of sex, and violates Title VII); Statement of Interest of the United States in *G.G.* v. *Gloucester County School Board,* No. 15–2056 (4th Cir.) (arguing that the Gloucester County School Board violated Title IX when it denied a transgender male access to the restroom consistent with his gender identity).

employer's failure to promote a female senior manager to partner because of the sex-stereotyped perceptions that she was too aggressive and did not ''walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry'' was unlawful sex-based employment discrimination.[131] The principle that sex stereotyping is a form of sex discrimination has been applied consistently in Supreme Court and lower-court decisions. *See, e.g., Nevada Dep't of Human Res.* v. *Hibbs,* 538 U.S. 721 (2003) (stereotype-based beliefs about the allocation of family duties on which state employers relied in establishing discriminatory leave policies held to be sex discrimination under the Equal Protection Clause of the Constitution); *Chadwick* v. *Wellpoint, Inc.,* 561 F.3d 38 (1st Cir. 2009) (making employment decision based on the belief that women with young children neglect their job responsibilities is unlawful sex discrimination under Title VII); *Prowel* v. *Wise Bus. Forms, Inc.,* 579 F.3d 285 (3d Cir. 2009) (harassment based on a man's so-called effeminacy is a form of sex discrimination under Title VII); *Terveer* v. *Billington,* Civil Action No. 12–1290, 2014 WL 1280301 (D.D.C. Mar. 31, 2014) (hostile work environment based on stereotyped beliefs about the appropriateness of same-sex relationships is a form of sex discrimination under Title VII).[132] *Cf. U.S.* v. *Virginia,* 518 U.S. 515, 533 (1996) (in making classifications based on sex, state governments ''must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females'').[133]

As a matter of policy, we support banning discrimination on the basis of sexual orientation in the administration of, or in connection with, any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA. Current law is mixed on whether existing Federal nondiscrimination laws prohibit discrimination on the basis of sexual orientation as a part of their prohibitions on sex discrimination. To date, no Federal appellate court has concluded that Title VII's prohibition on discrimination ''on the basis of sex''—or Federal laws prohibiting sex discrimination more generally—prohibits discrimination on the basis of sexual orientation, and some appellate courts previously reached the opposite conclusion.[134]

However, a recent EEOC decision concluded that Title VII's prohibition of discrimination ''on the basis of sex'' precludes sexual orientation discrimination because discrimination on the basis of sexual orientation necessarily involves sex-based considerations. The EEOC relied on several theories to reach this conclusion: A plain interpretation of the term ''sex'' in the statutory language, an associational theory of discrimination based on ''sex,'' and the gender-stereotype theory announced in *Price Waterhouse.*[135] The EEOC's decision cited several district court decisions that similarly concluded that sex discrimination includes sexual orientation discrimination, using these theories.[136] The EEOC also analyzed and called into question the appellate decisions that have concluded that sexual orientation discrimination is not covered under Title VII.[137] The EEOC decision applies to workplace conditions, as well as hiring, firing, and promotion decisions, and is one of several recent developments in the law that have resulted in additional protections for individuals against discrimination based on sexual orientation.[138] Two federal district courts have since concurred with the EEOC's legal analysis in *Baldwin.*[139]

The final rule should reflect the current state of nondiscrimination law, including with respect to prohibited bases of discrimination. We seek comment on the best way of ensuring

[131] *Price Waterhouse,* 490 U.S. at 235.

[132] *See also Centola,* 183 F. Supp. 2d at 410 (''Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women.''); *Heller* v. *Columbia Edgewater Country Club,* 195 F. Supp. 2d 1212 (D. Or. 2002) (''[A] jury could find that Cagle repeatedly harassed (and ultimately discharged) Heller because Heller did not conform to Cagle's stereotype of how a woman ought to behave. Heller is attracted to and dates other women, whereas Cagle believes that a woman should be attracted to and date only men.''); *Videckis* v. *Pepperdine Univ.,* 2015 WL 8916764 (C.D. Cal. 2015) (slip op) (''The type of sexual orientation discrimination Plaintiffs allege falls under the broader umbrella of gender stereotype discrimination. Stereotypes about lesbianism, and sexuality in general, stem from a person's views about the proper roles of men and women—and the relationships between them.''). The EEOC has recognized in a number of federal sector decisions that adverse actions taken on the basis of sex stereotypes related to sexual orientation, such as the stereotype that men should only date women, violate Title VII. *Castello* v. *U.S. Postal Service,* EEOC Request No. 0520110649, 2011 WL 6960810 (Dec. 20, 2011) (sex-stereotyping evidence entailed offensive comment by manager about female subordinate's relationships with women); *Veretto* v. *U.S. Postal Service,* EEOC Appeal No. 0120110873, 2011 WL 2663401 (July 1, 2011) (complainant stated plausible sex-stereotyping claim alleging harassment because he married a man); *Culp* v. *Dep't of Homeland Security,* EEOC Appeal 0720130012, 2013 WL 2146756 (May 7, 2013) (Title VII covers discrimination based on associating with lesbian colleague); *Couch* v. *Dep't of Energy,* EEOC Appeal No. 0120131136, 2013 WL 4499198, at *8 (Aug. 13, 2013) (complainant's claim of harassment based on his ''perceived sexual orientation''); *Complainant* v. *Dep't of Homeland Security,* EEOC Appeal No. 0120110576, 2014 WL 4407422 (Aug. 20, 2014) (''While Title VII's prohibition of discrimination does not explicitly include sexual orientation as a basis, Title VII prohibits sex discrimination, including sex-stereotyping discrimination and gender discrimination'' and ''sex discrimination claims may intersect with claims of sexual orientation discrimination.''); *Baldwin,* EEOC Appeal No. 0120133080, 2015 WL 4397641 at *7 (''Sexual orientation discrimination is also sex discrimination because it necessarily involves discrimination based on gender stereotypes.'').

[133] The Seventh Circuit articulated this principle as early as 1971. *Sprogis* v. *United Air Lines, Inc.,* 444 F.2d 1194, 1198 (7th Cir. 1971) (''In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women *resulting from sex stereotypes.*'') (emphasis added).

[134] *See, e.g., Kiley* v. *Am. Soc'y for Prevention of Cruelty to Animals,* 296 Fed. App'x 107, 109 (2d Cir. 2008); *Vickers* v. *Fairfield Med. Ctr.,* 453 F.3d 757, 759 (6th Cir. 2006); *Bibby* v. *Philadelphia Coca Cola Bottling Co.,* 260 F.3d 257, 260 (3d Cir. 2001); *but cf. Latta* v. *Otter,* 771 F.3d 456 (9th Cir. 2014) (Berzon, J., concurring) (in striking down State law prohibition on same sex marriage, observing that ''the same sex marriage laws treat the subgroup of men who wish to marry men less favorably than the otherwise similarly situated subgroup of women who want to marry men'' and therefore constitute sex discrimination); see also *Muhammad* v. *Caterpillar,* 767 F.3d 694 (7th Cir. 2014), 2014 WL 4418649 (7th Cir. Sept. 9, 2014, as Amended on Denial of Rehearing, Oct. 16, 2014) (removing statements from previously issued panel decision that relied on outdated precedents about coverage of sexual orientation discrimination under Title VII as requested in EEOC Amicus Brief).

[135] *Baldwin* v. *Foxx,* EEOC Appeal No. 0120133080, Agency No. 2012–24738–FAA–03, at 5–6 (July 15, 2015) (finding that sexual orientation is inseparable from and inescapably linked to sex and thus that an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination).

[136] See id. at *4–*8.

[137] See id. at *9–*10.

[138] For example, just this year, the Supreme Court ruled that States may not prohibit same-sex couples from marrying and must recognize the validity of same-sex couples' marriages. *Obergefell* v. *Hodges,* 135 S. Ct. 2071 (2015).

[139] *Isaacs,* 2015 WL 6560655 at *3–4 (''This court agrees instead with the view of the Equal Employment Opportunity Commission that claims of sexual orientation discrimination are cognizable under Title VII. In [*Baldwin*], the Commission explains persuasively why an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII.'') (internal citations and quotations omitted); *Videckis,* 2015 8916764 at *8 (''This Court's conclusion [that sexual orientation discrimination is necessarily sex discrimination] is in line with a recent Equal Employment Opportunity Commission decision ('EEOC') holding that sexual orientation discrimination is covered under Title VII, and therefore that the EEOC will treat sexual orientation discrimination claims the same as other sex discrimination claims under Title VII.''); *Cf. Roberts* v. *United Parcel Serv.,* 2015 WL 4509994, *14–18 (E.D. N.Y. 2015) (referring to *Baldwin* as a ''landmark ruling,'' noting its criticism of federal courts for citing to dated rulings without additional analysis in the sexual orientation context, and quoting favorably from the decision at length).

that this rule includes the most robust set of protections supported by the courts on an ongoing basis.

Paragraph (d) provides examples of sex stereotyping to assist recipients in preventing, identifying, and remedying such examples of sex discrimination in their programs. Examples of practices that constitute sex stereotyping include: Denying an individual access to, or otherwise subjecting an individual to adverse treatment in accessing aid, benefit, service, and training (proposed paragraph 38.7(d)(1)); harassment or adverse treatment of a male because he is considered effeminate or insufficiently masculine (proposed paragraph 38.7(d)(2)); adverse treatment of an applicant, participant, or beneficiary of a WIOA Title I-financially-assisted program or activity because of the individual's actual or perceived gender identity (proposed paragraph 38.7(d)(3)); adverse treatment of an applicant to, participant in, or beneficiary of, a WIOA Title I-financially assisted program or activity based on sex stereotypes about caregiver responsibilities such as assuming that a female applicant has (or will have) family caretaking responsibilities, and that those responsibilities will interfere with her ability to access aid, benefit, service, or training (proposed paragraph 38.7(d)(4)); adverse treatment of a male applicant to, or beneficiary of, a WIOA Title I-financially assisted program or activity because he has taken, or is planning to take care of, his newborn or recently adopted or fostered child, based on the sex-stereotyped belief that women, and not men, should care for children (proposed paragraph 38.7(d)(5)); denying a woman access to, or otherwise subjecting her to adverse treatment in accessing aid, benefit, service, or training, under a WIOA Title I-financially assisted program or activity based on the sex-stereotyped belief that women with children should not work long hours, regardless of whether the recipient is acting out of hostility or belief that it is acting in her or her children's best interest (proposed paragraph 38.7(d)(6)); denying an individual access to, or otherwise subjecting the individual to adverse treatment in accessing aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity based on sex stereotyping including the belief that a victim of domestic violence would disrupt the program or activity and/or may be unable to access aid, benefits, services, or training (proposed paragraph 38.7(d)(7)). Proposed paragraph 38.7(d)(7) is based upon the technical assistance document issued by the EEOC interpreting Title VII's prohibition against sex discrimination in employment to include an individual's status as a victim of domestic violence.[140] The technical assistance publication states: ''Title VII prohibits disparate treatment based on sex, which may include treatment based on sex-based stereotypes. For example: An employer terminates an employee after learning that she has been a subjected to domestic violence, saying he fears the potential drama battered women bring to the workplace.'' The EEOC publication refers to the DOJ definition of domestic violence, which defines the term as: ''a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.'' [141] CRC has drawn from this existing EEOC interpretation in this proposed rule.

Proposed § 38.7(d)(8) addresses stereotyping based on an applicant's, participant's, or beneficiary's nonconformity with norms about how people with the applicant's, participant's, or beneficiary's assigned sex at birth should look, speak, and act. Proposed § 38.7(d)(8) states adverse treatment of a woman applicant, participant, or beneficiary of a WIOA Title I-financially assisted program or activity because she does not dress or talk in a feminine manner is an example of discrimination based on sex.

The final example in this non-exhaustive list addresses adverse treatment that occurs because of an applicant's, participant's, or beneficiary's nonconformity with stereotypes about a certain sex not working in a particular job, sector, or industry.

Discrimination Prohibited Based on Pregnancy § 38.8

The rule proposes a new § 38.8 entitled, ''Discrimination prohibited based on pregnancy.'' This section is intended to incorporate an existing obligation into the current rule, *i.e.,* that the prohibition against sex discrimination includes discrimination based on pregnancy, childbirth, and related medical conditions. This new section explains that limiting or denying access to any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity based on an individual's pregnancy, childbirth, or related medical conditions is sex discrimination and is thus prohibited.

Title IX of the Education Amendments of 1972 [142] prohibits sex discrimination in any educational program or activity receiving federal financial assistance, including those that are financially assisted by WIOA Title I.[143] Specifically, Title IX provides in part: ''No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.'' [144] When it enacted Title IX, Congress was concerned with ending the ''persistent, pernicious discrimination which [was] serving to perpetuate second-class citizenship for American women.'' [145] Congress wanted to provide equal opportunity in education as a way to provide greater access to jobs, employment security, financial security, and ending the far-reaching effects of educational discrimination for women.[146]

As far back as 1974, federal agency regulations, promulgated under Title IX, have included pregnancy as a basis of prohibited discrimination in programs and activities receiving Federal financial assistance.[147] The Department of Education's regulations unequivocally apply Title IX's prohibition against sex discrimination to discrimination on the basis of pregnancy and parental status, stating: ''A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently

[140] ''Questions and Answers,'' The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault or Stalking,'' available at: *http://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm* (issued in 2013) (last accessed Feb. 2, 2015).

[141] *See DOJ Office on Violence Against Women/ Domestic Violence available at http://www.justice.gov/ovw/domestic-violence* (last accessed March 19, 2015).

[142] 20 U.S.C. 1681 *et seq.*

[143] 20 U.S.C. 1687 (Title IX provision applicable to vocational education and training programs).

[144] 20 U.S.C. 1681(a).

[145] 118 Cong. Rec. 5804 (1972) (statement of Sen. Bayh).

[146] *Emily McNee, Pregnancy Discrimination in Higher Education: Accommodating Student Pregnancy,* 20 Cardozo J. L & Gender 63 (2013).

[147] The Department of Health Education and Welfare's (HEW) Title IX regulations at 45 FR 24128 included pregnancy as a protected basis. HEW's regulations were adopted by the Department of Education in 1980. 34 CFR 106.40.

on the basis of sex.'' [148] Section 106.40(b) specifically provides that a recipient must not ''discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.'' The substantive provisions of DOL's Title IX regulations at 29 CFR part 36, like those of approximately twenty other federal agencies, were modeled on and are essentially identical to the Department of Education's regulations.[149] Thus, DOL's regulations likewise prohibit discrimination based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

When Congress amended Title VII in 1978 by enacting the Pregnancy Discrimination Act (PDA), the protections against sex discrimination in the context of employment were expanded to include protections against discrimination based on pregnancy, childbirth, and related medical conditions. While the PDA does not directly govern the nondiscrimination obligations of a program or activity receiving Federal financial assistance, the principles underlying the PDA were built on Title IX's prohibitions against discrimination on the basis of pregnancy and actual or potential parental status.[150] Section 38.8 relies on both the PDA and Title IX. It is not uncommon for courts to do so as well.[151] Further, because there is significantly more available jurisprudence under Title VII,[152] courts apply the Title VII burdens of proof to allegations of pregnancy discrimination under Title IX.[153]

Proposed paragraph (a) of § 38.8 adopts the principle set forth in Title IX and the PDA [154] that discrimination on the basis of sex includes ''because of or on the basis of pregnancy, childbirth, or related medical conditions.'' [155] It requires that employers treat employees and job applicants of childbearing capacity and those affected by pregnancy, childbirth or related medical conditions the same for all employment-related purposes as other persons not so affected but similar in their ability or inability to work and defines the term ''related medical conditions.'' Proposed paragraphs 38.8(a–d) provide the following examples that may be prohibited pregnancy discrimination: Refusing to provide aid, benefit, service, training or employment under a WIOA Title I-financially assisted program or activity to a pregnant individual or an individual of childbearing capacity, or otherwise subjecting such individuals to adverse treatment on the basis of pregnancy, related medical conditions, or childbearing capacity; limiting an individual's access to any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity based on that individual's pregnancy, or requiring a doctor's note in order for a pregnant individual to continue participation while pregnant; and denying accommodations or modifications to a pregnant applicant or participant who is temporarily unable to participate in a program or activity because of pregnancy, childbirth, and/or related medical conditions, when such accommodations or modifications are provided to other participants who are similarly affected.[156] Without such accommodations, many pregnant individuals are unable to participate in job training programs or activities. Consequently, some pregnant individuals who need reasonable accommodations lose opportunities to receive job training and other WIOA Title I-financially assisted aid, benefits, services, or training to assist them in obtaining employment.

The range of accommodations to address the temporary limitations of a pregnant applicant, participant, or beneficiary in a WIOA Title I-financially assisted program or activity may include simple things that involve little or no cost, such as permitting more frequent bathroom breaks and allowing the pregnant individual to sit down during a training program or applications or interview process.[157] Other temporary limitations, however, may require a temporary light-duty assignment to accommodate lifting or bending restrictions that a pregnant participant or trainee may have.

Denying an alternative assignment, modified duties, or other accommodations to a pregnant applicant, participant, or beneficiary who is temporarily unable to perform some program or activity duties because of pregnancy, childbirth, or a related medical condition may be sex discrimination when such assignments, modifications, or other accommodations are provided, or are required to be provided, by a recipient's policy or other relevant laws, to other individuals whose abilities to perform some of their program or activity duties are similarly affected (proposed Sec. 38.7). Thus, for example, a recipient that permits light-duty assignments for individuals who are unable to perform their regular assignments due to on-the-job injuries or disabilities may also be required to permit light-duty assignments for individuals who are unable to perform their regular assignments due to pregnancy. The approach set forth in the proposed rule with respect to pregnancy accommodation is intended to align with the U.S. Supreme Court's decision in *Young* v. *United Parcel Serv., Inc.,* 135 S. Ct. 1338 (2015). Thus, in analyzing pregnancy-based sex

[148] 34 CFR 106.40(a).

[149] 65 FR 52858 at 52859.

[150] *See* 123 Cong. Rec. 29662 (1977) (statement of Sen. Cranston (D—CA)), *reprinted in* Legis. History of the Pregnancy Discrimination Act of 1978, at 128 (1980).

[151] *See Chipman* v. *Grant County School Dist.,* 30 F.Supp.2d 975 (E.D. Ky. 1998) (''Although [the] language [of Title IX] is somewhat different, its purpose is generally the same as the Pregnancy Discrimination Act.''), citing *Pfeiffer* v. *Marion Ctr. Area Sch. Dist.,* 917 F.2d 779, 784 (3d Cir. 1990) (''regulations promulgated pursuant to Title IX specifically apply its prohibition against gender discrimination to discrimination on the basis of pregnancy''); *Cooper* v. *Rogers,* Case No. 2:11–CV–964–MEF, 2012 WL 2050577, *8 (M.D. Ala. June 06, 2012).

[152] Since the passage of Title IX, there have been fewer than fifteen reported cases where a federal court has heard a claim of pregnancy discrimination under Title IX. Kendra Fershee, *An Act For All Contexts: Incorporating The Pregnancy Discrimination Act Into Title IX To Help Pregnant Students Gain And Retain Access To Education,* 39 Hofstra L. Rev. 281 (2010) citing Michelle Gough, Parenting and Pregnant Students: An Evaluation of the Implementation of the ''Other'' Title IX, 17 Mich. J. Gender & L. 211, 220–47 (2011).

[153] *Darien* v. *University of Massachusetts,* 980 F. Supp. 77, 92 (D. Mass. 1997), citing *Lipsett* v. *University of Puerto Rico,* 864 F.2d 881, 897 (1st Cir. 1988) (holding claims under Title IX will be analyzed using the Title VII burden shifting analysis in the employment context).

[154] 42 U.S.C. 2000e(k).

[155] The statutory term ''related medical conditions'' appears in the PDA only.

[156] This Pregnancy Discrimination Act obligation applies even though ''pregnancy itself is not an impairment within the meaning of the [Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* as amended], and thus is never on its own a disability.'' EEOC, *Enforcement Guidance: Pregnancy Discrimination and Related Issues, sec. II.A* (July 14, 2014) (footnote omitted), available at *http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm* (last accessed March 19, 2015). Under the ADA, accommodation is required for qualified individuals absent undue hardship when a physical or mental impairment (including one caused by pregnancy) substantially limits a major life activity.

[157] In addition, the Fair Labor Standards Act, 29 U.S.C. Section 207(r), requires FLSA-covered employers to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth, each time such employee has need to express the milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. FLSA-covered employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with this provision would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

discrimination allegations that seek to show disparate treatment related to accommodation requests by using indirect evidence, CRC will apply the three-part analytical framework set forth by the Supreme Court in *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 802–805 (1973). Specifically with respect to demonstrating pretext, CRC will follow the analysis described in *Young,* supra at 1354–55.[158] CRC solicits comments from the public on how best to operationalize application of the Court's pretext analysis.

Discrimination Prohibited Based on National Origin, Including Limited English Proficiency § 38.9

In an effort to facilitate consistent Federal enforcement, the NPRM proposes adding a new section on national origin discrimination. Proposed paragraph (a) states the existing obligation that a recipient must not discriminate on the basis of national origin in providing any aid, benefit, service, or training under any WIOA Title I-financially assisted program or activity. It also explains that national origin discrimination includes ''treating individual beneficiaries, participants, or applicants for aid, benefit, service or training adversely because they (or their ancestors) are from a particular country or part of the world, because of ethnicity or accent (including adverse treatment because they have the physical, linguistic, and cultural characteristics closely associated with a national origin group).''

Proposed paragraph (b) adopts the well-established principle under Title VI of the Civil Rights Act of 1964, as amended,[159] that recipients of Federal financial assistance must take reasonable steps to provide meaningful access to each LEP individual whom they serve or encounter. This same principle has applied to recipients in their WIA Title I-financially assisted programs and activities and likewise applies to all recipients in their WIOA Title I financially-assisted programs or activities. This provision reflects the fundamental obligation of recipients to provide meaningful access to LEP individuals, *e.g.,* to effectively understand communications and to make themselves understood. This paragraph provides examples of reasonable steps: ''Reasonable steps generally may include, but are not limited to, an assessment of an LEP individual to determine language assistance needs; providing oral interpretation and written translation of both hard-copy and electronic materials, in the appropriate non-English languages to LEP individuals; or outreach to limited English proficient communities to improve service delivery in needed languages.'' The Department intends this to be a flexible standard that evaluates the level, type, and manner of language services required in light of the particular facts, such as the nature of the communication, the language of the LEP individual, and the recipient involved.[160] The proposed section further provides direction regarding the application of the term ''reasonable steps'' in the context of training programs. ''Reasonable steps to provide meaningful access to training programs may include, but are not limited to providing: (1) Written training materials in appropriate non-English languages by written translation or by oral interpretation or summarization; and (2) Oral training content in appropriate non-English languages through in-person interpretation or telephone interpretation.''

The proposed language provides familiarity and consistency for recipients about the scope of their obligations. It is particularly critical that LEP individuals be provided meaningful access to information in the context of access to any aid, benefit, service, and/or training, because that information—including, for example, how to apply for unemployment insurance benefits, how to appeal a denial of benefits, how to apply for and participate in job training and employment opportunities—is often essential to ensure beneficiaries' access to necessary employment-related opportunities.

Additionally, the NPRM proposes adding paragraphs (c) through (i), which specify the actions recipients must take to ensure language access. Proposed paragraph (c) makes clear that a recipient should ensure that every program delivery avenue, including electronic, in person, and/or telephonic communication, conveys in the appropriate languages how an individual can effectively learn about, participate in, and/or access any aid, benefit service or training that the recipient provides. This provision would ensure that, as recipients convert to on-line delivery systems, language access is not lost in the transition.

Paragraph (d) specifies that any language assistance services whether oral interpretation or written translation, must be provided free of charge and in a timely manner.[161] Consistent with the approach in the Department's LEP Guidance that there is no one definition for ''timely'' that applies to every type of interaction with every type of recipient at all times, CRC declines to define ''timely'' for the purposes of this section. A determination of whether language assistance services are timely will depend on the specific circumstances of each case. However, CRC echoes the LEP Guidance's recognition that language assistance is timely when it is provided at a time and place that avoids the effective denial of or imposition of an undue burden on or delay in important aid, benefits, services, or training to LEP individuals.[162]

Paragraph (e) states that a recipient must provide adequate notice to LEP individuals of the existence of interpretation and translation services and that they are free of charge. The provision would ensure that LEP individuals are aware that they do not have to navigate the workforce system unassisted.

Paragraph (f) identifies restrictions on the use of certain persons to provide language assistance services for an LEP individual. This paragraph applies regardless of the appropriate level, type, or manner of language assistance services a recipient is required to provide. Based upon the CRC's experience, the use of incompetent or ad hoc interpreters, such as family members, including children, and friends, is not uncommon and can have negative consequences if the interpretation is not accurate. Thus, proposed paragraph (f) prohibits a recipient from requiring an LEP individual to provide his/her own interpreter. Proposed paragraphs (f)(1)–(2), however, identify narrow and finite situations in which a recipient may rely on an adult accompanying an LEP individual to interpret. Proposed paragraph (f)(2)(i) provides that an LEP individual's minor child or adult family or friend(s) may interpret or facilitate communication in emergency situations while awaiting a qualified interpreter. Proposed paragraph (f)(2)(ii) states that an accompanying adult may interpret or

[158] The EEOC has issued guidance in the employment context. *See U.S. Equal Employment Opportunity Commission, Enforcement Guidance: Pregnancy Discrimination and Related Issues* (July 25, 2015), available at *http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm* (last accessed Sept. 24, 2015).

[159] 42 U.S.C. 2000d *et seq.*

[160] DOL LEP Guidance, 68 FR 32293–32295 (describing the factors recipients should consider, and the factors that CRC will consider, in determining the extent of recipients' obligations to LEP individuals).

[161] This principle is consistent with long-standing concepts reflected in the DOL LEP Guidance. *See* 68 FR at 32297 (with respect to privacy), 32296 (with respect to timeliness), and 32300 (with respect to services free of charge).

[162] *Id.* at 47316.

facilitate communication when the information conveyed is of minimal importance to the services to be provided or when the LEP individual requests that the accompanying adult provide language assistance, the adult agrees, and reliance on that adult is appropriate. If the LEP individual voluntarily chooses to provide their own interpreter, a recipient must make and retain a record of the individual's decision to use their own interpreter. This provision allows the LEP individual to rely on an adult of their own choosing, but requires that the recipient document that choice so that there can be no question regarding the voluntariness of the choice of interpreter. Proposed paragraph (f)(3) outlines that when precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient may decide to provide its own, independent interpreter, even if an LEP individual wants to use their own interpreter as well.

Paragraph (g) addresses recipients' LEP requirements as to vital information. Paragraph (g)(1) provides that, for languages spoken by a significant number or portion of the population eligible to be served or likely to be encountered, recipients must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site. Written training materials offered or used within employment-related training programs as defined under § 38.4(t) are excluded from these translation requirements. The Department is cognizant of the challenge posed by translating the variety of training materials into so many languages as may be necessary in an employment-related training program. The vital information these materials contain can be provided to LEP participants by oral interpretation or summarization during the training program itself. However, recipients must still take reasonable steps to ensure meaningful access to training programs as stated in (b) of this section. Reasonable steps to ensure meaningful access for LEP individuals to employment-related training programs may include offering courses such as English as a Second Language (ESL) to the individual concurrent with the training program, or enrollment in such a program to attain a sufficient level of English proficiency to become eligible for a specific job or training program. Importantly, whenever possible, the LEP individual's access to the training program, and thus any resulting employment opportunity, should not be delayed by enrollment in an ESL course.

Paragraph (g)(2) states: ''For languages not spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must make reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service or training that the recipient provides. Vital information may be conveyed orally if not translated.'' For these languages, recipients are not obligated to provide written translations of vital information in advance of a request by an LEP individual. Recipients are, however, required to take reasonable steps, including oral translation, to provide access to vital information. Paragraph (g)(3) states that recipients must include a ''Babel notice'' indicating that language assistance is available, in all communications of vital information, such as hard-copy letters or decisions or those communications posted on Web sites. This requirement would ensure that LEP individuals know how to obtain language assistance for vital information that has not been translated into the LEP individual's preferred, non-English language.

Paragraph (h) addresses the situation in which a recipient becomes aware of the particularized language needs of an individual. The proposed provision states: ''To the extent otherwise required by this part, once a recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant, or applicant for aid, benefit, service or training, the recipient must convey vital information in that language.'' This obligation to provide meaningful access as soon as the entity becomes aware that the individual is LEP exists regardless of whether the LEP individual's language is spoken by a significant number or portion of the population to be served.

Paragraph (i) provides that recipients should develop a written language access plan to ensure LEP individuals have meaningful access to their programs and activities and references Appendix A of this part where the Department has provided guidance to recipients on developing a language access plan.

In evaluating the scope of a recipient's obligations to provide meaningful access, recipients should, and CRC proposes to, give substantial weight to the nature and importance of the program or activity, including the particular communication at issue, in determining the appropriate level, type and manner of language assistance services to be provided. At the same time, CRC recognizes that a recipient's operations and capacity may be relevant in evaluating the level, type, and manner of language assistance services it is required to provide. Thus, recipients may also consider the proportion of LEP individuals of a particular language group eligible to be served or likely to be encountered by the recipient; the frequency of contacts between LEP individuals who speak that language and the recipient's program or activity; [163] and the resources available to the recipient and the costs of language assistance services. Importantly, while these criteria may be used in an assessment of how, and at what level, language assistance services must be provided, they are not intended to relieve a recipient of its core obligation to take reasonable steps to enable LEP individuals to gain meaningful access to its programs and activities.

For instance, a recipient may choose to consider whether the preferred language of an LEP individual is one that is frequently spoken or one that the recipient only rarely encounters. In the latter circumstance, and depending on the importance of the communication at issue, the recipient might satisfy the requirements of Section 188 and this proposed part by providing an oral summary of the information rather than a written translation. Given the widespread commercial availability of relatively low-cost language assistance services such as remote oral interpretation, as well as the nature and importance of covered entities' employment-related programs or activities, CRC expects that most recipients will, at a minimum, have the capacity to provide LEP individuals with remote oral interpretation via telephone.

Recipients may not use their analysis of these various factors as a defense or excuse for providing language assistance services in an untimely manner. CRC recognizes that a recipient may wish to conduct thorough assessments of its language assistance needs and

[163] As described in the DOL LEP Guidance, the first and second factors evaluate the proportion of LEP individuals in the relevant area and the frequency of the recipient's contact with those individuals. Further explanatory material in the Guidance makes clear, however, that the focus of the inquiry should be on the proportion of individuals in, and frequency of contact with, speakers of a particular language group, not all LEP individuals. CRC intends for recipients to apply the criteria to this narrower group of LEP individuals.

comprehensively create the operational infrastructure to execute a variety of high quality language assistance services. CRC urges recipients to pursue such high standards and to create language access plans that will identify in advance the types and levels of services that will be provided in each of the contexts in which the recipient entity encounters LEP individuals. At the same time, the pursuit of such goals cannot come at the expense of failing to provide language assistance services at all or in an untimely manner if such services are reasonable steps to provide meaningful access. Recipients should consider how they can ensure that language assistance services are available in their programs and activities as they simultaneously conduct further language needs assessments or improve their operational capacities to provide effective language assistance services.

The Department acknowledges that its LEP guidance long has employed ''four factors'' when assessing a recipient's compliance with its obligation to provide meaningful access.[164] This proposal does not include them in the regulatory text because the obligation of a recipient is to provide meaningful access in the form of language assistance of some type. Recipients should, and CRC will, review each situation based on the facts presented. Thus, the Department does not want to impose a formulaic analysis that would detract from the primary weight to be placed on the nature and importance of the program or activity. The Department seeks comment on this approach, particularly whether the four factors should instead be incorporated into the regulatory text, whether the weight to be accorded the ''nature and importance'' factor is appropriate, and whether there are additional factors that should be part of the analysis.

The DOL LEP Guidance issued in 2003 did not specifically define what constitutes a ''significant number or proportion of the eligible service population.'' To provide the regulated community with more direction, the Department is considering a regulatory scheme requiring recipients to provide a range of language assistance services in the non-English languages spoken by state-wide populations with limited English proficiency that meet defined thresholds. Such thresholds would address the requirements for written translation of vital documents and Web site content. For instance, CRC is considering thresholds triggering a requirement to translate standardized vital documents based upon the number of languages (*e.g.,* top ten languages spoken by LEP individuals); percentage of language speakers (*e.g.,* languages spoken by at least 5% of LEP individuals); the number of language speakers (*e.g.,* languages spoken by at least 1,000 LEP individuals); and composite thresholds combining these approaches, *e.g.,* language spoken by at least 5% of LEP individuals or 1,000 LEP individuals, whichever is lower.

The Department seeks comment on what thresholds, if any, should be required, and to what geographic areas or service areas, State-level or lower, the threshold should apply. If thresholds should be required, CRC seeks comment on the time that should be allowed for recipients to come into compliance with the threshold, including whether this regulation should permit recipients to implement their obligations with a phased-in approach. CRC is also seeking comment on other methodologies for formulating language access thresholds regarding written materials containing vital information that would result in meaningful access for individuals regardless of national origin, while being mindful of the potential burden on recipients.

These concepts are broadly recognized as essential components of an effective language assistance plan for LEP individuals. Recipients should be familiar with these concepts, as they are contained in the DOL LEP Guidance that was issued in 2003 and various guidance documents issued by the Department of Justice.[165]

Although the requirement that recipients take reasonable steps to provide meaningful access for LEP individuals to access and participate in WIOA Title I-financially assisted programs and activities is not new, the CRC has received feedback from EO Officers and others that achieving compliance with these requirements has been difficult in part because of the resources necessary and the need for guidance about implementation. Thus, the Department recognizes that there is a need for additional technical assistance to assist recipients in achieving compliance with their language access requirements. The CRC, along with the Employment and Training Administration, is committed to providing the necessary technical assistance and guidance to the field in the years immediately following the effective date of the final rule containing these provisions.

Harassment Prohibited § 38.10

This rule proposes a new § 38.10 to provide additional direction for an existing obligation. Harassment is a form of discrimination that currently is prohibited under WIA and Section 188. Courts have recognized for many years that harassment on the basis of race, color, religion, sex, or national origin, including the existence of a work environment that is hostile to members of one race, color, religion, sex, or national origin, may give rise to a violation of Title VII.[166] Despite this longstanding precedent, current part 38 does not include any references to harassment. Proposed § 38.10 remedies this omission.

Harassment on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, applicants, and participants only, citizenship status or participation, that occurs in WIOA Title I-financially assisted programs and activities may give rise to a violation of WIOA Section 188 and this part. This new section provides recipients with direction concerning the conduct that may constitute unlawful harassment so that they may better prevent, identify, and remedy it.

Proposed paragraphs 38.10(a)(1)–(3) describe situations in which unlawful harassment may exist under WIOA and this part. Unwelcome sexual advances, requests for sexual favors, or offensive remarks may constitute unlawful harassment when: Submission to such conduct is made explicitly or implicitly a term or condition of accessing the aid, benefits, services, training or employment (proposed paragraph 38.10(a)(1)); submission to or rejection of such conduct is used as the basis for limiting that person's access to any aid, benefits, services, training or employment (proposed paragraph 38.10(a)(2)); or such conduct has the purpose or effect of unreasonably interfering with an individual's participation in a WIOA Title I-financially assisted program or activity, creating an intimidating, hostile or offensive program or activity environment (proposed paragraph 38.10(a)(3)). This language mirrors provisions of EEOC's Guidelines on Discrimination Because of Sex[167] and

[164] *See* 68 FR 32293–32295.

[166] *Harris* v. *Forklift Sys.,* 510 U.S. 17 (1993) (harassment based on sex); *Meritor Savings Bank* v. *Vinson,* 477 U.S. 57 (1986) (sex); *Daniels* v. *Essex Group, Inc.,* 937 F.2d 1264, 1274 (7th Cir. 1991) (race); *Barnes* v. *Costle,* 561 F.2d 983 (D.C. Cir. 1977) (sex); *Rogers* v. *Western-Southern Life Ins. Co.,* 792 F. Supp. 628 (E.D. Wis. 1992) (race); *Moore* v. *Secretary of Defense, Army and Air Force Exchange,* E.E.O.C. Appeal No. 01933575, 1994 WL 1754483 at *1 (Mar. 16 1994) (religion). *See also* U.S. Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, 41 CFR 1604.11 (1980) (provision on harassment).

[167] *See* 29 CFR 1604.11(a).

OFCCP's proposed rule addressing Discrimination Based on Sex [168] relating to sexual harassment, but also addresses harassment based on any of the other protected bases covered by this part. These provisions are also consistent with established case law holding that isolated or stray remarks generally cannot form the basis of a harassment claim. The harassment, to be unlawful, must create a hostile or offensive program environment.[169]

Proposed paragraph § 38.10(b) defines harassment because of sex under WIOA broadly to include sexual harassment (including harassment based on gender identity and failure to comport with sex stereotypes), harassment based on pregnancy, childbirth, or related medical conditions, and harassment that is not sexual in nature but is because of sex (including harassment based on gender identity or failure to comport with sex stereotypes), or where one sex is targeted for the harassment. This aligns the meaning of ''because of sex'' for purposes of sexual harassment with its meaning under current Title VII law.

Discrimination Prohibited Based on Citizenship Status § 38.11

This NPRM adds a new § 38.11 titled ''Discrimination prohibited based on citizenship status'' to provide additional direction to recipients regarding the protections certain noncitizens have from discrimination based on their citizenship status. Please note that other statutes and regulations may define citizenship discrimination differently than it is defined for the purposes of this NPRM.

The new language assists recipients in identifying citizenship-based discrimination as treating individual beneficiaries, applicants, and participants, adversely because of their status as U.S. citizens or nationals of the U.S., lawful permanent residents, refugees, asylees, and parolees or other immigrants authorized by the Secretary of Homeland Security or his or her designee to work in the U.S. Although Section 188(a)(5) refers to immigrants authorized ''by the Attorney General'' to work in the U.S., Congress transferred that authority from the Attorney General to the Secretary of Homeland Security in the Homeland Security Act of 2002.[170] The new text regarding Section 188(a)(5) reflects the transfer of noncitizen work authorization authority to the Secretary of Homeland Security and specifies that a recipient's maintenance or use of policies or procedures that have the effect of discriminating on the basis of citizenship status is also prohibited by Section 188 and this part.

Discrimination Prohibited Based on Disability § 38.12

This NPRM revises the title of § 38.7 to ''Discrimination prohibited based on disability'' and makes minor changes to this section. This rule retains much of the language from the current part 38 section and proposes adding paragraph § 38.12(p) to address claims of no disability. The proposed paragraph states that nothing in this part provides the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted auxiliary aids or services, reasonable modifications, or reasonable accommodations that were denied to an individual without a disability. This new subsection incorporates the ADAAA's prohibition on claims of discrimination because of an individual's lack of disability. The ADAAA expressly prohibits claims that ''an individual without a disability was subject to discrimination because of the lack of disability.'' [171]

Accessibility Requirements § 38.13

This rule adds a new § 38.13 titled ''Physical and programmatic accessibility requirements'' to address the new emphasis Congress has placed on ensuring programmatic and physical accessibility to WIOA Title I-financially assisted service, program or activity. In no less than ten provisions of Title I of WIOA, Congress referred to recipients' obligation to make WIOA Title I-financially assisted programs and activities accessible.[172]

Proposed paragraph (a) addresses physical accessibility requirements and proposed paragraph (b) addresses programmatic accessibility requirements. Proposed paragraph (a) states the physical accessibility requirements for existing facilities, as well as those for new construction or alterations under Title II of the ADA. Recipients that receive federal financial assistance are also responsible for meeting their accessibility obligations under Section 504. Proposed paragraph (b) describes the obligations of recipients to ensure programmatic accessibility to WIOA Title I-financially assisted programs and activities for individuals with disabilities. Congress included this description of how to achieve programmatic accessibility in 2005 in the context of considering amendments to WIA in an effort to improve accessibility to the workforce development system for individuals with disabilities.[173] Therefore, the Department proposes to include it here. The Department welcomes comments on this section.

Reasonable Accommodations and Reasonable Modifications for Individuals With Disabilities § 38.14

The title of § 38.14 is revised to ''Reasonable accommodations and reasonable modifications for individuals with disabilities.'' The section retains the existing text from § 38.8.

Communications With Individuals With Disabilities § 38.15

The title of proposed § 38.15 revises the § 38.9 title to read as follows, ''Communications with individuals with disabilities'' and proposes revised text for paragraph (a) and (b) of § 38.15 to be consistent with DOJ's ADA Title II proposed regulations, which have been updated since the current WIA regulations were promulgated in 1999. These changes provide that the communication requirements apply to beneficiaries, registrants, applicants, participants, members of the public and companions with disabilities. If the DOJ changes its proposal in its final rule implementing ADA Titles II and III, the Department will review those changes to determine their impact on this proposal and take appropriate action.

This rule proposes a new subparagraph (a)(5) addressing the obligation that recipients currently have, under § 38.9 and this proposed section, as well as the ADA, to take appropriate steps to ensure that

[168] *See* 80 FR 5279, January 30, 2015.

[169] *See Price Waterhouse* v. *Hopkins,* 490 U.S. 228, 277–78 (1989); *Faragher* v. *City of Boca Raton,* 524 U.S. 775, 788 (1998); *Caver* v. *City of Trenton,* 420 F.3d 243 (3d Cir. 2005); *Jordan* v. *Alternative Res. Corp.,* 458 F.3d 332, 340–44 (4th Cir. 2006); *Herrera* v. *Lufkin Indus., Inc.,* 474 F.3d 675, 680 (10th Cir. 2007); *Morales-Cruz* v. *Univ. of Puerto Rico,* 676 F.3d 220, 226 (1st Cir. 2012).

[170] See Homeland Security Act of 2002, Public Law 107–296, 8 U.S.C. 1103(a)(1). Section 1517 of the Homeland Security Act (codified at 6 U.S.C. 557) provides that a reference in any other Federal law to any function transferred by the Act ''and exercised on or after the effective date of the Act'' shall refer to the Secretary of Homeland Security or other official or component of DHS to whom that function is transferred. See also *Clark* v. *Martinez,* 543 U.S. 371, 374 n.1 (2005) (noting that, with limited exception, the immigration authorities previously exercised by the Attorney General and the former Immigration and Naturalization Service ''now reside in the Secretary of Homeland Security'' and the Department of Homeland Security).

[171] 42 U.S.C.12201(g).

[172] *Id.*

[173] Sen Rep. 109–134 109th Congress, 1st Section, Workforce Investment Act Amendments of 2005 (September 7, 2005) p. 11, 2005 WL 2250857 at *11.

communications with individuals with disabilities are as effective as communications with others. This responsibility includes, for example, the provision of auxiliary aids and services to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity.[174] Thus, the proposed language states that when developing, procuring, maintaining, or using electronic and information technology, a recipient must utilize electronic and information technologies, applications, or adaptations which incorporate accessibility features for individuals with disabilities in order to achieve the goal of equally effective communication.

The section defines the term ''companion'' for the purposes of this part and provides detailed descriptions of requirements for telecommunications in subpart (b) and communications of information and signage in subpart (c). It also explains the limitations of fundamental alterations in subpart (d), *i.e.,* that a recipient is not required to take action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity. CRC has drawn these provisions from the ADA Title II regulations to ensure that recipients' responsibilities under this part are consistent with those under the ADA.

Service Animals § 38.16

This NPRM adds a new § 38.16 entitled ''Service animals'' to provide direction to recipients regarding their obligation to modify their policies, practices or procedures to permit the use of a service animal by an individual with a disability. This proposed section tracks the ADA Title II regulations issued by the DOJ found at 28 CFR part 35.136 because applicants, beneficiaries of and participants in WIOA Title I financially-assisted programs include individuals with disabilities with service animals. The Department's discussions with recipients' EO Officers demonstrate that there has been some confusion on the part of recipients as to what constitutes a service animal and what constitutes a pet. This section is intended to resolve that confusion. This provision as to service animals is also in direct response to the inclusion of disability accessibility obligations throughout Title I of WIOA.[175]

Mobility Aids and Devices § 38.17

This NPRM adds a new § 38.17 entitled ''Mobility aids and devices'' to provide direction to recipients regarding the use of wheelchairs and manually-powered mobility aids by program participants and employees. This language is taken from the DOJ ADA Title II regulations at 28 CFR 35.137. This new section is being added in direct response to the inclusion of disability accessibility obligations throughout Title I of WIOA.[176]

Employment Practices Covered § 38.18

The NPRM proposes to change the title of § 38.10 to ''Employment practices covered'' and makes minor changes to section (a) that only restructures the introductory language to read ''It is an unlawful employment practice to discriminate on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, or political affiliation or belief in the administration of, or in connection with. . . .'' The word ''basis'' is included instead of ''ground.'' Consistent with existing law, the Department proposes to add a parenthetical to define the scope of the sex discrimination prohibition to include: Pregnancy, child birth, related medical conditions, transgender status, and gender identity.

Intimidation and Retaliation Prohibited § 38.19; Administration of This Part § 38.20; Interpretations of This Part § 38.21; Delegation of Administration and Interpretation This Part § 38.22

This rule proposes revising only the titles and section numbers of the following sections: § 38.11 to § 38.19, ''Intimidation and retaliation prohibited;'' § 38.12 to § 38.20, ''Administration of this part,'' § 38.21, ''Interpretations of this part,'' and § 38.22, Delegation of the administration and interpretation of this part.''

Coordination With Other Agencies § 38.23

This rule revises the title and number for § 38.15, ''Coordination with other agencies.''

Effect on Other Laws and Policies § 38.24

The proposed rule includes a new title and section number for § 38.16, of § 38.23, ''Effect on other laws and policies'' and one minor change. In paragraph (a), CRC proposes to change ''ground'' to ''basis.''

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

In describing the recordkeeping and other affirmative obligations that recipients must meet in order to comply with the nondiscrimination and equal opportunity provisions of WIOA and this part, the Department proposes to set forth several changes to the role of the Equal Opportunity Officer and the responsibilities of recipients previously set forth in the counterpart provisions of WIA and current part 38.

A Grant Applicant's Obligation To Provide a Written Assurance § 38.25

Proposed § 38.25 generally contains the same requirements as § 38.20 with some revisions and new requirements for grant applicants. This rule proposes revising the title for this section to, ''A grant applicant's obligation to provide a written assurance.'' Proposed § 38.25(a)(1) emphasizes an existing obligation that, as a condition of an award of financial assistance under Title I of WIOA, a grant applicant assures that it ''has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance.'' The existing part 38 rule does not explain that this requirement applies for the duration of the award. This new language makes explicit the existing continuing obligation for grant applicants and is intended to better effectuate compliance. The Department's experience is that when a grant applicant fully understands its legal obligations at the outset of the grant application process, there is greater compliance and greater transparency between the Department and grant applicants that become recipients.

Duration and Scope of Assurance § 38.26 and Covenants § 38.27

Proposed § 38.26 and § 38.27 retain the exact language of § 38.21 and § 38.22, respectively, with the exception of section headings. This rule proposes as the heading for § 38.21, ''Duration and scope of the assurance,'' rather than the current heading of § 38.21. This rule also proposes as the heading for § 38.26, ''Covenants,'' rather than the heading of § 38.22.

Designation of Equal Opportunity Officer § 38.28

Proposed § 38.28 makes significant changes to current § 38.23. This rule proposes changing the title of § 38.23 to,

[174] 28 CFR 35.160(b)(1).

[175] *See, e.g.,* WIOA sections 102(b)(2)(C)(vii); 102(b)(2)(E)(vi); 107(b)(4)(iii). The EEOC has not addressed whether or not this definition would apply to employers and employment agencies covered under Title I of the ADA or Section 501 of the Rehabilitation Act.

[176] *See, e.g.,* WIOA sections 102(b)(2)(C)(vii); 102(b)(2)(E)(vi); 107(b)(4)(iii).

''Designation of Equal Opportunity Officer.'' All states currently have at least one EO Officer who coordinates the Governor's equal opportunity and nondiscrimination requirements, so this provision formalizes an existing practice. This change is intended to address feedback from EO Officers at the State level that they lack sufficient authority to carry out their responsibilities. The rule also proposes that the Governor is responsible for making that designation, to avoid confusion about who is authorized to designate the EO Officer for the Governor at the State level and in the Governor's role as a recipient.

Under the current rule at § 38.27, every recipient, including Governors in their capacity as recipients, is required to designate an EO Officer. Proposed paragraph (a) requires the Governor to designate a State level EO Officer who reports directly to the Governor. Proposed § 38.27(a) would also require that the State level EO Officer have sufficient staff and resources to carry out the requirements of this section. Within each state, the Governor is a unique recipient because the State is responsible for disseminating WIOA Title I funds. As a recipient, the Governor must designate an EO Officer like all other recipients; however, the State level EO Officer has distinct responsibilities for coordinating compliance with the nondiscrimination and equal opportunity provisions in WIOA and this part, throughout the State, as described in the Nondiscrimination Plan, formerly the Methods of Administration. Requiring the Governor to designate a State level EO Officer and imbuing that Officer with the requisite authority is intended to address the concerns raised to the Department by the EO Officers.

EO Officers at the recipient level also have reported to CRC staff that they have neither the staff nor the resources to carry out their responsibilities, including investigating complaints, and conducting necessary monitoring of nondiscrimination policies as required in their Nondiscrimination Plans. Thus, proposed § 38.28(b) provides that EO Officers at the recipient level be provided with resources sufficient to carry out the requirements of this part. The changes made to this section are intended to ensure that the EO officers at all levels are able to fulfill their responsibilities.

Recipient Obligations Regarding Its Equal Opportunity Officer § 38.29

The NPRM proposes moving existing § 38.26 to proposed § 38.29. The rule proposes as a new title, ''Recipient obligations regarding its Equal Opportunity Officer.'' This section is moved up in the subpart to elevate the importance of the recipient's responsibilities regarding its EO Officer. This section, together with §§ 38.29 and 38.30, describes the obligations of all recipients as to their EO Officers. Thus, these provisions also apply to the EO Officers designated by the Governors in their role as recipients, as well as to the State level EO Officer that the Governor must designate to coordinate statewide compliance pursuant to proposed § 38.27(a).

In addition, proposed § 38.29 adds a new paragraph (a) retaining the existing obligation in § 38.29, consistent with the language about the EO Officer in § 38.28, that the EO Officer of recipients be a senior level employee. The rule proposes a new provision requiring the recipient's EO Officer to report directly to the Chief Executive Officer, Chief Operating Officer, or equivalent top-level official. In response to the feedback from EO Officers described above, the rule proposes this change to ensure that EO Officers have the authority they need to complete their responsibilities. Proposed paragraph (b) of this section adds a requirement that the recipient designate an EO Officer who can fulfill the responsibilities of an EO Officer as described in § 38.29. This provision was added to ensure that recipients' designated EO Officers have the knowledge, skills and abilities to comply with their obligations under this part.

Requisite Skill and Authority of Equal Opportunity Officer § 38.30

This rule proposes a new title for § 38.24 to ''Requisite skill and authority of Equal Opportunity Officer'' and a new paragraph section number 38.30. This proposed rule adds language to the existing provisions in this section that is consistent with the other sections in this subpart addressing the EO Officer's skills and authority. The proposed provision explains that the EO Officer must be a senior level employee of the recipient who possesses the knowledge, skills, and abilities necessary to carry out the responsibilities of the role as described in this subpart. This provision is intended to emphasize the level of authority that recipients must give to the Equal Opportunity Officer and the importance that the recipient places on the role of the EO officer in effecting compliance with Section 188 and this part. Much (though by no means all) of the responsibility for a recipient's nondiscrimination and equal opportunity program rests on the shoulders of the EO Officer. While the proposed regulatory text is new, the Department recognized the importance of the EO Officer role when it issued the WIA Section 188 regulations in 1999. As stated in that preamble:

> CRC's experience has demonstrated that in order for such programs to function fairly and effectively, the EO Officer must be a senior-level employee whose responsibilities in the position present no conflicts of interest with his or her other responsibilities. In addition, the recipient must establish clear lines of authority and accountability for the program, and must provide the EO Officer with appropriate levels of support.[177]

Equal Opportunity Officer Responsibilities § 38.31

The proposed rule has a new title and section number for current § 38.25, ''Equal Opportunity Officer responsibilities.'' Section 38.31 proposes new language in paragraph (d) specifying that the EO Officer's obligation to develop and publish the recipient's procedures for processing discrimination complaints includes development of procedures for investigating, resolving, and tracking complaints filed against the recipient and making available to the public, in appropriate languages and formats, the procedures for filing a complaint. These additions are intended to provide consistency in the processing of complaints and increase efficiency through the use of standardized procedures for processing discrimination complaints. The provision also reiterates existing responsibilities of recipients, including Governors, in this part of this section.

Proposed paragraph (e) adds to the EO Officer's responsibilities an outreach and education requirement, which recipients are already required to undertake pursuant to § 38.40. This proposal is intended to ensure that specific individuals are charged with carrying out this mandate. Further, as the recipient's employee who is most familiar with equal opportunity and nondiscrimination requirements, the EO Officer is likely to be best suited to conduct such outreach. The required outreach and education includes activities such as community presentations to groups who may benefit from the recipient's covered programs, and outreach to advise current and potential beneficiaries of their rights and recipient obligations under this part. CRC believes that the EO Officers, who serve in the recipient's

[177] Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), 64 FR 61692 at 61702 (November 12, 1999), Section-by-Section Analysis, discussion of §§ 37.24–25.

communities, will be in the best position to identify and implement the most effective means of outreach and education for their community. In addition, the rule proposes deleting § 38.25(e), which addresses reporting lines of authority for the Equal Opportunity Officer, because it is addressed in § 38.29(a).

Finally, this rule proposes language in paragraph (f) clarifying that the existing training obligation for the EO Officer includes EO Officer staff training. EO Officers report that they are unable to attend trainings for budgetary reasons. This rule adds the reference to staff training to put recipients on notice that they must permit their EO Officers and staff to participate in such training.

Small Recipient Equal Opportunity Officer Obligations § 38.32

The NPRM proposes changing the title of § 38.27 to ''Small recipient Equal Opportunity Obligations'' and the section number to 38.32. It also replaces the word ''developing'' with ''adopting'' because small recipients may not be required to develop complaint procedures and process complaints. Governors have the discretion to prescribe the complaint processing procedures applicable to small recipients pursuant to § 38.73.

Service Provider Equal Opportunity Officer Obligations § 38.33

The NPRM changes the title of § 38.28 to ''Service provider Equal Opportunity Officer obligations,'' and renumbers it as § 38.33.

Notice and Communication

Recipients' Obligations To Disseminate Equal Opportunity Notice § 38.34

Proposed § 38.34 retains the language from current § 38.29 and makes clear in minor revisions to subparagraphs (a)(6) and (b) that recipients have an existing obligation to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that the Equal Opportunity notice is provided in appropriate languages to ensure meaningful access for LEP individuals. This proposed section contains appropriate cross-references to § 38.9, that addresses recipients' obligation to provide translations for LEP populations.

Equal Opportunity Notice/Poster § 38.35

The proposed new title for § 38.30 is ''Equal opportunity notice/poster'' and the new section number is 38.35. The title change in this section is important because the rule adds ''poster,'' an explicit requirement of this section. The rule also proposes language that ''sex'' as a prohibited basis for discrimination includes pregnancy, child birth, or related medical conditions, sex stereotyping, transgender status, and gender identity and ''national origin'' includes LEP to be consistent with current law and serves to remind beneficiaries that discrimination based on these subcategories is prohibited. The NPRM also proposes language in the poster stating that the CRC will accept complaints via U.S. Mail and email at an address provided on the CRC's Web site.[178]

Recipients' Obligations To Publish Equal Opportunity Notice § 38.36

The NPRM proposes revising the title of § 38.31 to ''Recipients' obligations to publish equal opportunity notice'' and the section number to 38.36. The proposal retains the language in paragraph (a)(1) of this section that the Equal Opportunity Notice be posted prominently in reasonable numbers and places, and adds that the notice must also be posted in available and conspicuous physical locations as well as the recipient's Web site pages. These additions reflect the current widespread use of Web site pages to convey program and employment information. The reference to available and conspicuous places is intended to ensure that the notice will be posted in places to which employees, beneficiaries and program participants have access and in places where the notice is easily visible. Similarly, the proposal retains language in paragraph (a)(3) stating that the notice must be included in employee and participant handbooks, and includes a new reference to electronic forms to account for their current widespread use. Proposed paragraph (a)(4) is updated so that the notice must be made a part of each participant's and employee's electronic and paper file, if one of each is kept.

The above-proposed changes provide that these notice obligations apply to both employees and participants because employees of recipients are also protected under this part. Previously, this section only applied the notice requirement to participants.

Similarly, proposed changes to paragraph (b) of § 38.36 require that this notice must be provided in appropriate formats for registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with visual impairments. The prior rule at § 37.31(b), due to oversight or error, only required that notice in an accessible format be provided to participants. This rule expands the categories of individuals for whom notice must be provided in alternate formats because each category of individuals listed above is protected under the WIOA nondiscrimination obligation.

Paragraph (c) of § 38.36 states that the notice must be provided to participants in appropriate languages other than English as required in this part. This provision was added because recipients have an existing obligation under § 38.35 to provide limited English proficient individuals with meaningful access to this notice, as set out in proposed § 38.9. As discussed in the preamble, the population served by WIOA Title I-financially assisted programs and activities has grown increasingly diverse, as the overall population in the U.S. has become more diverse, including a higher percentage of individuals who are not proficient in English. This requirement ensures that LEP individuals will receive the notice in a language they can understand.

Paragraph (d) of § 38.36 states that the notice required by §§ 38.34 and 38.35 must be initially published and provided within 90 days of the effective date of this part, or of the date this part first applies to the recipient, whichever comes later.

Notice Requirement for Service Providers § 38.37

Proposed § 38.37 contains the same requirements as current § 38.32. This rule proposes revising the heading to, ''Notice requirement for service providers,'' rather than the heading of current § 38.32.

Publications, Broadcasts, and Other Communications § 38.38

Proposed § 38.38 generally contains the same requirements as current § 38.34. This rule proposes revising the title to, ''Publications, broadcasts, and other communications.'' Proposed § 38.38(a) also provides that, where materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone (TTY) or equally effective telecommunication system such as a relay service used by the recipient. This proposal updates this section to reflect current technology used by individuals with hearing impairments. Proposed paragraph (c) of this section replaces ''prohibited ground'' with ''prohibited basis'' for consistency with this part.

[178] *http://www.dol.gov/crc.*

Communication of Notice in Orientations § 38.39

Proposed § 38.39 generally contains the same requirements as current § 38.36. This rule proposes a revised title, ''Communication of notice in orientations.'' The proposed rule adds language stating that orientations provided not just in person but also remotely over the internet or using other technology are subject to these notice requirements. Proposed § 38.39 also revises this section consistent with current law to ensure equal opportunity for individuals with disabilities and meaningful access for individuals who are LEP. This rule proposes language stating that the information contained in the notice must be communicated in appropriate languages to ensure language access as required in § 38.9 of this part and in accessible formats as required in § 38.15 of this part. These requirements are consistent with the recipient's obligation to provide meaningful access to LEP individuals as discussed in § 38.9 of the preamble, and the recipient's obligation to provide accessible communications to individuals with disabilities under the ADA as provided in § 38.15 of this part.

Affirmative Outreach § 38.40

Proposed § 38.40 generally contains the same requirements as current § 38.42. The rule proposes changing the title to ''Affirmative outreach'' rather than the heading of current § 38.42 which is in question format and refers to a recipient's responsibilities to provide ''universal access.'' The title change in this section is important because the Department removes the term ''universal access'' from the rule entirely. The use of ''universal access'' in the current rule has caused confusion because the provision was intended to require recipients to perform affirmative outreach in order to ensure broad access to WIA Title I financially assisted programs; however, ''universal access'' is a term of art with a different meaning in the disability context.[179] Moreover, ''affirmative outreach'' is more descriptive of the requirements contained in this section. This rule proposes some limited updates to this section to state that the required affirmative outreach steps should involve reasonable efforts to include more complete categories of the various groups protected under this part, including persons of different sexes, to replace ''both'' sexes and avoid binary terminology and be inclusive of individuals who may not identify as male or female, as well as various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities and individuals in different age groups.

Data and Information Collection and Maintenance

This rule proposes limited changes and additions to the sections covering data and information collection and maintenance to provide additional direction to recipients regarding the already existing obligations related to data and information collection, and maintenance. The Department welcomes comments on these changes.

Collection and Maintenance of Equal Opportunity Data and Other Information § 38.41

Proposed § 38.41 generally contains the same requirements as current § 38.37. This rule proposes changing the title to, ''Collection and maintenance of equal opportunity data and other information.'' Proposed paragraph (a) retains the same language as the current § 38.37(a).

Proposed paragraph (b)(2) adds ''limited English proficiency and preferred language'' to the list of categories of information that each recipient must record about each applicant, registrant, eligible applicant/registrant, participant, and terminee. The proposal does not apply this data collection obligation to applicants for employment and employees because the obligation as to LEP individuals does not apply to those categories of individuals. This change is intended to ensure that recipients collect information related to serving limited English proficient individuals. The Department believes that the term ''preferred language'' best attempts to capture this information as to LEP individuals and is also used by many states with language access laws.[180] Limited English proficiency data is already being collected by recipients that offer core, intensive and training services and is reported to the Employment and Training Administration of the Department. Thus, use of some of the same terminology is intended to minimize any burden on recipients.[181] In addition, the Department proposes to delay enforcement regarding collection of these two new data points for two years from the effective date of the final rule to allow recipients adequate time to update their data collection and maintenance systems. The Department seeks comments on the use of these terms as proposed in § 38.41.

This NPRM proposes new language in paragraph (b)(3) specifically explaining a recipient's responsibilities to keep the medical or disability-related information it collects about a particular individual on a separate form, and in separate files. The paragraph also lists the range of persons who may have access to such files. Similarly, new language in paragraph (b)(3) of this section contains information about the persons who may be informed that a particular individual is an individual with a disability, and the circumstances under which this information may be shared. These requirements have been separated to emphasize that the range of persons who may be permitted to have access to files containing medical and disability-related information about a particular individual is narrower than the range of persons who may be permitted to know generally that an individual has a disability. These changes make the regulations consistent with DOL's regulations implementing § 504 of the Rehabilitation Act, and with the EEOC's regulations implementing Title I of the ADA.[182] The change is also intended to provide recipients with information necessary to enable them to develop protocols that are consistent with these requirements.

[179] ''Universal access,'' also known as ''universal design,'' is a strategy for making products, environments, operational systems, and services welcoming and usable to the most diverse range of people possible. Disability Employment Policy Resources by Topic/Universal Design *http://www.dol.gov/odep/topics/UniversalDesign.htm* (last accessed March 19, 2015).

[180] For example, pursuant to the D.C. Language Access Act, the D.C. Office of Human Rights requires covered entities to collect data on the number of LEP individuals served in an annual report. *See* Final rulemaking at 55 DCR 6348 (June 8, 2008), as amended by Final Rulemaking published at 61 DCR 9836 (September 26, 2014). The question on the D.C. Office of Human Right Complaint Form for the purposes of capturing this information is ''What language do you prefer to communicate in?'' D.C. Government Employment Intake Questionnaire Form, Available at *http://dcforms.dc.gov/webform/employment-intake-questionnaire-form* (last accessed March 19, 2015). Hawaii passed their language access law in 2006. *See* Hawaii Rev. Stat. §§ 371–31 to 37. In California, the Dymally-Alatorre Bilingual Services Act requires local agencies to provide language access to limited English-proficient speakers. Ca. Govt. Code § 7290–7299.8. The Bilingual Services Program at the California Department of Human Resources provides oversight, including conducting language surveys on implementation. California Department of Human Resources, Bilingual Services program, available at *http://www.calhr.ca.gov/state-hr-professionals/Pages/Bilingual-Services.aspx* (last accessed (March 19, 2015).

[181] *See, e.g.,* FY 2012 WIASRD Data Book at 23, Social Policy Research Associates for Office of Performance and Technology, Employment and Training Administration, U.S. Department of Labor at (December 2, 2013).

[182] *See* 29 CFR 1630.14(b)(1)(i)–(iii).

Information To Be Provided to CRC by Grant Applicants and Recipients § 38.42

The NPRM proposes a new title for § 38.38, ''Information to be provided to CRC by grant applicants and recipients'' and the new section number is 38.42. Subsection (a) requires recipients to notify the Director when administrative enforcement actions or lawsuits are filed against them on any basis prohibited under Section 188 and this part. Proposed § 38.42(a) adds pregnancy, child birth or related medical conditions, transgender status, and gender identity in parentheses as forms of sex discrimination prohibited under this part and ''limited English proficiency'' in parentheticals as a form of national origin discrimination prohibited by this part. Pregnancy and gender identity have been listed as bases of sex discrimination on CRC's complaint form since 2014, and limited English proficiency has been listed on the complaint form as a form of national origin based discrimination since 2011. These additions are designed to make the information provision requirement consistent with the protected bases on the complaint form. In addition, the NPRM proposes removing the reference to grant applicants from § 38.42(b). Removal of this reference will sharpen the focus of § 38.42 on the information needed for compliance reviews and monitoring activities, as required under §§ 38.63 and 38.65.

Finally, the proposed rule includes the phrase ''that the Director considers'' in front of the word ''necessary'' in paragraph (c) and (e) of this section to inform recipients that the Director of CRC determines the information that is necessary for CRC to investigate complaints and conduct compliance reviews as well as to determine whether the grant applicant would be able to comply with the nondiscrimination and equal opportunity provisions of WIOA or this part. Proposed § 38.42(e) confirms the CRC's ability to engage in pre-award reviews of grant applicants but does not contemplate the delay or denial of an award. Processes that may result in the delay or denial of an award to a grant applicant are addressed in § 38.62.

Required Maintenance of Records by Recipients § 38.43

The NPRM proposes a new title for current § 38.39, ''Required maintenance of records by recipients,'' and a new section number 38.43. Grant applicants and recipients are already required to maintain records under current § 38.39. Proposed § 38.43 adds the preservation of ''electronic records'' to this existing requirement. The rule proposes that recipients that maintain electronic records, in addition to hard copies, keep the electronic records for the same three-year period. Finally, the NPRM proposes revisions to paragraph (b) of this section to require preservation of records once a discrimination complaint or compliance review is initiated.

In this regard, CRC interprets ''relevant'' or ''relevance'' broadly and expects recipients to similarly interpret relevance broadly when determining the documents that must be preserved. The Department has heard from recipients that their obligations to retain compliance review records were uncertain. The Department proposes including compliance reviews in this retention section because the same preservation of records is necessary for the duration of a compliance review as for a complaint investigation—to provide CRC with access to all records relevant to compliance and to ensure that recipients do not dispose of records to avoid a finding of noncompliance. CRC believes this may have been an oversight in the part 37 regulations. The Department welcomes comments on these proposed changes.

CRC Access to Information and Information Sources § 38.44

Proposed § 38.44 generally contains the same requirements as current § 38.40. The NPRM proposes revising the title to ''CRC access to information and information sources.'' In addition, it proposes revising paragraph (a) to require that each grant applicant and recipient must permit access by the Director ''or the Director's designee'' to premises, employees, and participants for the purpose of conducting investigations, compliance review, monitoring activities, or other similar activities outlined in this section. This change acknowledges that it is the Director's staff who ordinarily conducts these procedures on behalf of the Director.

Confidentiality Responsibilities of Grant Applicants, Recipients, and the Department § 38.45

Proposed § 38.45 generally contains the same requirements as current § 38.41. This rule proposes revising the title of this section to, ''Confidentiality responsibilities of grant applicants, recipients, and the Department.'' In addition, this section begins: ''Grant applicants, recipients, and the Department must keep confidential to the extent possible . . . consistent with a fair determination of the issues.'' This small reorganization is intended to make this easier to read and incorporate the language at the beginning of this section.

Subpart C—Governor's Responsibilities To Implement the Nondiscrimination and Equal Opportunity Requirements of WIOA

Subpart Application to State Programs § 38.50

The NPRM proposes a new title for § 38.50, ''Subpart application to State Programs.'' This NPRM also updates the term ''State Employment Security Agencies'' to ''State Workforce Agencies'' which is used in WIOA and the proposed ETA regulations implementing Title I of WIOA.[183]

Governor's Oversight and Monitoring Responsibilities for State Programs § 38.51

The NPRM proposes a new title for § 38.51, ''Governor's oversight and monitoring responsibilities for State Programs.'' Proposed § 38.51 generally retains the requirements of current § 38.51 but incorporates several subparagraphs found at current § 38.54(d)(2)(ii)(A–C) and thus does not impose altogether new responsibilities.

Proposed § 38.51(a) incorporates the Governor's oversight responsibilities set out in current § 38.51, which include ensuring compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part, and negotiating, where appropriate, with a recipient to secure voluntary compliance when noncompliance is found under § 38.94(b).

Proposed § 38.51(b) requires the Governor to monitor on an annual basis the compliance of State Programs with WIOA Section 188 and this part. Under current § 38.54(d)(2)(ii), the requirement to ''periodically'' monitor was ambiguous and led to infrequent monitoring. The Department's experience with State-conducted monitoring reveals inconsistent and infrequent monitoring—some States monitor the compliance of State Programs as infrequently as every five years. The proposed annual monitoring requirement is intended to: (1) Enable the timely identification and elimination of discriminatory policies and practices, thereby reducing the number of individuals impacted by discrimination; (2) be consistent with ETA proposed regulations requiring annual oversight of One-Stop Career Centers; [184] and (3) establish a

[183] *See* 80 FR 20690 (April 16, 2015).

[184] *Id.* at 20752.

consistent State-level practice nationwide.

Proposed § 38.51(b) incorporates the Governor's monitoring responsibilities currently required by § 38.54(d)(2). Moving the monitoring obligations from the Methods of Administration section at § 38.54(d)(2) to this section does not change the Governor's oversight responsibilities but underscores the importance of the Governor's monitoring responsibilities and highlights that monitoring is more than just a paper responsibility. By this minor reorganization, the Department intends to distinguish the required components of a Nondiscrimination Plan from the Governor's requirements for implementing the Nondiscrimination Plan. Section 38.51 is now the section that sets forth all of the Governor's monitoring and oversight responsibilities, which include implementation of the Nondiscrimination Plan. As discussed below, § 38.54 sets forth all the required components of the Nondiscrimination Plan.

Proposed § 38.51(b) brings in three requirements that were previously incorporated into the Governor's Method of Administration required by § 38.54. First, at a minimum, each monitoring review must include a statistical or other quantifiable analysis of records and data kept by the recipient under § 38.41, including analysis by race/ethnicity, sex, limited English proficiency, age, and disability status. Governors are already required under § 38.54(d)(2)(ii)(A) (Methods of Administration) to conduct this analysis during their monitoring reviews. Second, monitoring must also include an investigation of any significant differences identified in paragraph (b)(1) of this section in participation in the programs, activities, or employment provided by the recipient to determine whether these differences may be caused by discrimination prohibited by this part. This investigation must be conducted through review of the recipient's records and any other appropriate means, which may include interviewing staff, participants and beneficiaries, reviewing documents, and on-site review of the facility and other investigative methods. Again, this requirement is not new; it is set out in § 38.54(d)(2)(ii)(B). Third, the monitoring review must include an assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188 of WIOA or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the Nondiscrimination Plan. This requirement is set out in § 38.54(d)(2)(ii)(C).

Proposed § 38.51(b)(1) adds ''limited English proficiency'' to the list of categories of records and data that must be analyzed. This addition is consistent with the recipients' need to collect data to enable them to serve limited English proficient individuals in accordance with the nondiscrimination and equal opportunity provisions of WIOA and this part. CRC invites comment on the addition of ''primary language'' to the list of categories of records and data that must be analyzed, including whether there is a more effective method or term to use to determine or measure the relevant population of limited English proficient individuals and the language services to be provided.

Governor's Liability for Actions of Recipients the Governor Has Financially Assisted Under Title I of WIOA § 38.52

The NPRM proposes a new title for § 38.52, ''Governor's liability for actions of recipients the Governor has financially assisted under Title I of WIOA.'' This section changes the word ''adhered to'' to ''implemented'' in paragraph (a)(1) because it more accurately describes the responsibility of the Governor. In addition, proposed § 38.52 (a)(1) changes, in title only, the term ''Methods of Administration'' to ''Nondiscrimination Plan.'' The new title for this document is more descriptive of its purpose.

Governor's Oversight Responsibility Regarding Recipients' Recordkeeping § 38.53

Proposed § 38.53 generally retains the language of current § 38.53. The NPRM proposes a new title for § 38.53, ''Governor's oversight responsibility regarding recipients' recordkeeping.''

Governor's Obligations To Develop and Implement a Nondiscrimination Plan § 38.54

Proposed § 38.54 generally retains the language of current § 38.54 other than the sections moved to § 38.51, already discussed. The NPRM proposes a new title for § 38.54, ''Governor's obligations to develop and implement a Nondiscrimination Plan.'' Proposed § 38.54(a) requires Governors to ''establish and implement,'' rather than ''establish and adhere to'' a Nondiscrimination Plan for State programs. This section proposes to replace ''should'' with ''must'' in the second sentence in paragraph (a)(1) to require that, in states in which one agency contains both a State Workforce Agency (formerly a SESA) or unemployment insurance and WIOA Title I-financially assisted programs, the Governor must develop a combined Nondiscrimination Plan. The Governor is responsible for completion of the Nondiscrimination Plan in both instances. This change formalizes current practice in that every state submits one WIA Methods of Administration. This proposal would also eliminate unnecessary duplication in that most components of the Plan would be the same for both types of entities, and both plans would be overseen by the State Level EO Officer.

The proposed rule has one minor change to paragraph (c)(1)(v) of this section: Changing reference to an existing section of 29 CFR part 38 titled ''Universal Access'' to reflect its new title in this rule, ''Affirmative Outreach.'' The NPRM adds a new paragraph (c)(2)(iv) to include procedures for compliance in the Nondiscrimination Plan for protected categories other than disability, which is addressed in § 38.54(c)(2)(iv), and was addressed in current § 37.54(d)(2)(v). The part 38 rule did not require the Governor to include procedures to ensure compliance as to these protected categories. This proposal corrects that oversight. Proposed § 38.54(c)(2)(v) adds a provision requiring the procedures discussed in this subsection to ensure that recipients comply not just with Section 504 and WIOA Section 188 and this part, but also with Title II of the ADA, as amended, if applicable to that recipient. Title II of the ADA applies only to ''public entities,'' which include State or local governments and any of their departments, agencies, or other instrumentalities.[185]

Schedule of the Governor's Obligations Regarding the Nondiscrimination Plan § 38.55

The NPRM proposes a new title to § 38.55, ''Schedule of the Governor's obligations regarding the Nondiscrimination Plan.'' Proposed § 38.55 generally retains the existing schedule that Governors follow for their WIA Methods of Administration in current § 38.55. This section is intended to minimize the Governor's burden by allowing sufficient time to update the existing WIA Methods of Administration to comply with requirements for the WIOA Nondiscrimination Plan under this part. Therefore, proposed § 38.55 changes paragraph (a) to require Governors to develop and implement a Nondiscrimination Plan consistent with the requirements of this part either within 180 days of the date on which

[185] 42 U.S.C. 12131.

this final rule is effective or by the date determined by current § 38.55, whichever is later.

As in current § 38.55(b), proposed § 38.55(b) requires the Governor to promptly update the Nondiscrimination Plan whenever necessary and submit the changes made to the Director in writing at the time the updates are made. This requirement ensures that the Director will continue to have current versions of each Governor's Plan, rather than notification of changes without the actual revisions, as is permitted under current part 38. Under both the current part 38 rule and proposed § 38.55(a)(2), the Governor is required to submit the initial plan to the Director. Pursuant to proposed § 38.55(c) and current § 38.55(c), the Governor must review its plan every two years, determine whether changes are necessary, and, if so, make the changes and submit them to the Director.

Subpart D—Compliance Procedures

Evaluation of Compliance § 38.60

Proposed § 38.60 retains the same language of current § 38.60, with the exception of the title and a minor technical edit. The NPRM proposes to change the title of § 38.60 to ''Evaluation of compliance.'' The rule also proposes to add ''the ability to comply or,'' in the first sentence to explain that the goal of the pre-approval compliance reviews of grant applicants for, and post-approval compliance reviews of recipients of WIOA Title I financial assistance is to determine ability to comply, for applicants, or compliance with, for recipients, with the nondiscrimination and equal opportunity provisions of WIOA and this part. This language is parallel to the language proposed in § 38.25.

Authority To Issue Subpoenas § 38.61

The NPRM proposes changing the title of § 38.61 to ''Authority to issue subpoenas,'' rather than the title of § 37.61. The paragraph also cites to Section 183(c), the WIOA provision that authorizes the issuance of subpoenas, 29 U.S.C. 3243(c).

Compliance Reviews

Authority and Procedures for Pre-Approval Compliance Reviews § 38.62

The NPRM makes several changes to the existing language of current § 38.62 in proposed § 38.62. First, the NPRM revises the title of § 38.62 to ''Authority and procedures for pre-approval compliance reviews.''

Second, the NPRM adds a new provision as paragraph (b) requiring that Departmental grantmaking agencies consult with the Director to review whether the CRC has issued a Notice to Show Cause under § 38.66(b) or a Final Determination for violating the nondiscrimination and equal opportunity provisions of WIOA and this part against an applicant that has been identified as a probable awardee. The provision requires that this consultation include the grantmaker's consideration of the current compliance status of the grant applicant if such applicant was already subject to the laws enforced by CRC through existing financial assistance. The Department has selected the Notice to Show Cause and Final Determination because those documents represent steps in the enforcement process after CRC has issued findings based on its investigation, the recipient has had the opportunity to submit information to rebut the adverse findings, and CRC has concluded after review of the recipient's submission that a violation exists. This consultation and review of compliance status is necessary for effective enforcement because it ensures that Department financial assistance will not go to grant applicants that are not in compliance, and have made insufficient attempts to come into compliance, with the laws that DOL enforces.

Third, the NPRM adds a new paragraph (c) to § 38.62 providing that the grantmaking agency will consider, in consultation with the Director, the information obtained through the consultation described in subsection (b), as well as any other information provided by the Director in determining whether to award a grant or grants. Departmental grantmaking agencies must consider refraining from awarding new grants to applicants or must consider including special terms in the grant agreement for entities named by the Director as described in subsection (b). Special terms will not be lifted until a compliance review has been conducted by the Director, and the Director has approved a determination that the applicant is likely to comply with the nondiscrimination and equal opportunity requirements of WIOA and this part.

CRC has received feedback from recipients and advocacy organizations asking for clarity regarding the possible ramifications of the preaward review. This addition provides transparency about the possible consequences if an applicant or recipient is found to be unlikely to comply with the nondiscrimination and equal opportunity requirements of this part and Section 188 of WIOA.

Authority and Procedures for Conducting Post-Approval Compliance Reviews § 38.63 and Procedures for Concluding Post-Approval Compliance Reviews § 38.64

Proposed § 38.63 and § 38.64 retain the exact same language of current § 38.60 and § 38.61, with the exception of the titles. The NPRM proposes a new title for § 38.63 of ''Authority and procedures for conducting post-approval compliance reviews.'' The NPRM proposes as a new title for § 38.64, ''Procedures for concluding post-approval compliance reviews.''

Authority To Monitor the Activities of a Governor § 38.65

The NPRM retains the language in paragraphs (a) and (b) of current § 38.65. The NPRM proposes a new paragraph (c) for § 38.65 that specifies the ways in which the Director may enforce the nondiscrimination and equal opportunity provisions of WIOA and this part regarding Governors' obligations for monitoring and oversight. Specifically, if the Director determines that the Governor has not complied with this part and Section 188 of WIOA, the Director may issue a Letter of Findings. The Letter must advise the Governor of the preliminary findings, the proposed remedial or corrective action and the timeframe for that action, whether it will be necessary for the Governor to enter into a conciliation agreement, and the opportunity to conciliate. If the Governor fails to take remedial or corrective actions or to enter into a conciliation agreement, the Director may follow the procedures in §§ 38.95 and 38.96. These additional provisions are intended to respond to questions that the Department has received from stakeholders (EO Officers and other State officials) regarding the possible ramifications if the Governor refuses to participate in efforts to come into voluntary compliance or if the Governor fails to enter into a conciliation agreement.

These provisions are also intended to address a gap in the existing regulations which did not establish enforcement procedures related to the Governors' monitoring obligations under the Nondiscrimination Plan, thus leading to the Department's inability to enforce these provisions when Governors do not come into compliance voluntarily. This additional language allows the Department to hold the Governors accountable if they fail to comply with their monitoring obligations. Since 2010, CRC has found during compliance reviews that no State has complied fully with its monitoring and oversight

responsibilities. For example, States have not conducted the data analysis, set forth in existing § 38.54(d)(2)(ii)(A)(C), to determine if there is systemic discrimination. The new provisions of this section provide the Department with the enforcement tools to secure the Governors' compliance with these and similar monitoring obligations. We welcome comments on these proposed changes.

Notice To Show Cause Issued to a Recipient § 38.66

The NPRM proposes a new title for § 38.66, ''Notice to show cause issued to a recipient.'' It also proposes merging existing § 38.66 and § 38.67, the latter of which previously outlined the contents of a notice to show cause. Although the two sections were previously adjacent, by combining in one section when a notice to show cause may be issued by the Director to a recipient with the required contents of such a notice, the Department intends to make the show cause provision more comprehensive.

The NPRM retains in proposed § 38.66 most of the language in current § 38.66 and all of the language in current § 38.67. Paragraph (a), consistent with current § 38.66, provides that the Director may issue a Notice to Show Cause when a recipient's failure to comply with the requirements of this part results in the inability of the Director to make a finding. This paragraph retains the three examples from current § 38.66(a)–(c). The proposal revises the example in current § 38.66(a), now proposed 38.66(a)(1) to state, ''Submit requested information, records, and/or data within the timeframe specified in a Notification Letter issued pursuant to § 38.63,'' rather than ''within 30 days of receiving a Notification Letter.'' CRC has proposed this change because the Notification Letter contains a timeframe for response. Thus, setting out the timeframe in the regulations is redundant. This revision is also consistent with § 38.63(b)(3) which permits the Director to modify the timeframe for response in the notification letter.

The new language in § 38.66(b) states that the Director may issue a Notice to Show Cause to a recipient when the Director has reasonable cause to believe that a recipient is failing to comply with the requirements of this part, after the Director has issued a Letter of Findings and/or an Initial Determination, and after a reasonable period of time has passed within which the recipient refuses to enter into a conciliation agreement to resolve the identified violations. The Department proposes this change to expand the circumstances in which the Director may issue a Notice to Show Cause. Under the existing regulations in § 38.66(a), the Director could only issue a Notice to Show Cause when the Director had insufficient information to make a determination on a recipient's compliance because the recipient failed or refused to submit information, records and/or data in response to a Notification letter or during a compliance review or complaint investigation. This limitation meant that the Director could not use this tool effectively at other points in the process, after finding reasonable cause to believe that a violation occurred. The proposal seeks to use the Notice to Show Cause at this later stage because it has been the Department's experience that, after issuing a letter of findings, the Governor or other recipients agree in principle to enter into a conciliation agreement that resolves the identified violations, but then frequently fail to respond to correspondence from the CRC regarding finalizing and signing the agreement. With proposed § 38.66(b), the Director could issue a Notice to Show Cause prior to issuing a Final Determination, providing Governors and other recipients another opportunity to take the corrective or remedial actions required by the Director to bring the recipient into compliance before enforcement proceedings are initiated. In this way, § 38.66 provides the States with another notice and opportunity to resolve violations and avoid the issuance of a Final Determination.

Methods by Which a Recipient May Show Cause Why Enforcement Proceedings Should Not Be Instituted § 38.67

The NPRM retains all of the existing language of current § 38.68 in § 38.67 except that it proposes changing the title to ''Methods by which a recipient may show cause why enforcement proceedings should not be instituted'' and removes reference to the letter of assurance since the Department has proposed to discontinue its use of this letter. See discussion below regarding the proposed revision of § 38.96, which addresses letters of assurance.

Failing To Show Cause § 38.68

The NPRM retains almost all the language of current § 38.69 in proposed § 38.68 except that it proposes changing the title to ''Failing to show cause.'' The NPRM also proposes to change the provision to state that the Director ''may,'' not ''must,'' follow the enforcement procedures contained in §§ 38.94 and 38.95 if a recipient fails to show cause why enforcement proceedings should not be initiated. This revision is intended to more accurately reflect the Director's prosecutorial discretion in bringing matters to enforcement. Nothing in Section 188 compels the Director to refer for enforcement every violation of Section 188 or this part.

Complaint Processing Procedures

Complaint Filing § 38.69

The NPRM combines existing §§ 38.70, 38.71 and 38.72 into proposed § 38.69 titled ''Complaint filing,'' with revisions to the text. The Department proposes merging these sections to improve readability.

Proposed § 38.69(a) retains the language from current § 38.70 which explains that a complaint may be filed by any person or the person's representative, if that person believes that the complainant or class of persons has been discriminated against as prohibited by this part. Proposed subparagraph (a)(1) adds a list of the bases upon which a complaint may be filed—race, color, religion, sex (including pregnancy, child birth or related medical conditions, gender identity and transgender status), national origin (including limited English proficiency), age, disability, political affiliation or belief, citizenship status, or participation in any WIOA Title I-financially assisted program or activity. Proposed subparagraph (a)(2) adds retaliation as a basis for filing a complaint, consistent with the existing non-retaliation provision at current § 38.11 and proposed § 38.11. Proposed subparagraph (b) also includes the option of filing a complaint electronically in addition to U.S. Mail. Proposed subparagraph (c) removes reference to the Director and states that a complaint must be filed within 180 days. This language was removed because subparagraph (b) already states with whom the complaint must be filed.

Required Contents of Complaint § 38.70

The NPRM proposes merging current §§ 38.73 and 38.74 into § 38.70 titled ''Required contents of complaint'' and retains almost all of the language in these existing sections. The proposed changes in this section provide complainants the choice between filing complaints electronically or by hard copy, request that complainants provide in the complaint their email address, where available, in addition to their mailing address, and state that complaint forms are available on the Department's Web site at *http://*

www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm.

Right to Representation § 38.71

The NPRM proposes to change the title of § 38.75 to ''Right to Representation'' and renumber it as § 38.71. Otherwise, it retains the existing language of this section.

Required Elements of a Recipient's Complaint Processing Procedures § 38.72

The NPRM proposes minimal additions to the language of current § 38.76, including renumbering it as § 38.72 and changing the title to ''Required elements of a recipient's complaint processing procedures.'' The proposed language retains the requirement in current § 38.76 that recipients adopt procedures specifically to process complaints. The NPRM proposes adding to the procedures that the recipient must adopt and publish the requirement that recipients provide complainants a copy of the notice of rights contained in § 38.35, along with the already-required initial written acknowledgement of receipt of the complaint and notice of the complainant's right to representation. This requirement is designed to ensure that complainants are aware of their rights, including that they have the option of filing with the recipient or with CRC, and that they are aware of the deadlines applicable to filing a subsequent complaint with CRC once they file initially with the recipient. This notice is the same notice that the recipient is already required to post and disseminate pursuant to § 38.35, and this change ensures that the notice is included in the documents provided to the complainant at this critical juncture. The NPRM also proposes requiring inclusion of notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages of the recipient's service area; this is similar to the accessibility requirements found at § 38.34 and § 38.36.

The NPRM proposes to remove reference to ''he or she'' in this section as is consistent throughout the part and replace them with ''complainant.'' The NPRM also proposes adding a new subparagraph (c)(1), affirmatively stating that ADR may be attempted any time after a written complaint has been filed with the recipient. This language advises complainants and recipients that ADR may be initiated very early on to resolve the complaint. This requirement is intended to encourage prompt resolution of complaints at the earliest possible stage of the process.

This rule proposes changing the language in the last sentence in subparagraph (c)(3)(ii) to state, ''If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.'' This change from the language in current § 38.76(c)(3)(ii) which stated: ''If he or she determines that the agreement has been breached, the complainant may file a complaint with the CRC based upon his/her original allegation(s), and the Director will waive the time deadline for filing such a complaint.'' This language change is proposed because the proper procedure, if the agreement reached under ADR is breached, is for the recipient and the complainant to return to the original complaint processing procedures.

Responsibility for Developing and Publishing Complaint Processing Procedures for Service Providers § 38.73

The NPRM proposes to retain the language from current § 38.77, changing the title to ''Responsibility for developing and publishing complaint processing procedures for service providers'' for proposed § 38.73.

Recipient's Obligations When It Determines That It Has No Jurisdiction Over a Complaint § 38.74

The NPRM essentially retains the language of existing § 38.79 in § 38.74, but changes the title to ''Recipient's obligations when it determines that it has no jurisdiction over a complaint'' and replaces the term ''immediate'' with ''within five business days of making such determination'' as the time frame in which a recipient must notify the complainant in writing that it does not have jurisdiction. This change reduces ambiguity by providing a defined timeframe within which the recipient must notify a complainant about the recipient's lack of jurisdiction so that the complainant may timely pursue the allegations in an appropriate forum.

If the Complainant Is Dissatisfied After Receiving a Notice of Final Action § 38.75

Proposed § 38.75 retains the language of existing § 38.79, with the exception of the title and two minor revisions. The NPRM changes the title of current § 38.79 to ''If the complainant is dissatisfied after receiving a Notice of Final Action.'' In addition, the Department proposes changing the first sentence from ''If, during the 90-day period'' to ''If the recipient issues its Notice of Final Action before the end of the 90-day period.'' This change states more clearly that this section addresses the situation where the recipient issues its Notice before the 90-day period ends. The Department also proposes changing ''his or her'' to ''the complainant's'' representative consistent with the changes to this part.

If a Recipient Fails To Issue a Notice of Final Action Within 90 Days After the Complaint Was Filed § 38.76

Proposed § 38.76 retains all of the language in existing § 38.80, with the exception of the title that states ''If a recipient fails to issue a Notice of Final Action within 90 days after the complaint was filed.''

Extension of Deadline To File Complaint § 38.77

The NPRM retains current § 37.81 in its entirety in proposed § 38.77, and changes the title to ''Extension of deadline to file complaint.''

Determinations Regarding Acceptance of Complaints § 38.78

The NPRM retains all of the language in existing § 38.82, except the title and two words. The proposed title of § 38.78 is ''Determinations regarding acceptance of complaints.'' The Department proposes to delete ''No'' at the beginning of the section in response to the question in the heading, because the new heading is no longer in question format. The Department proposes changing the word ''determine'' to ''decide'' to distinguish the Director's decision whether to accept a complaint from the Director's Initial and Final Determinations.

When a Complaint Contains Insufficient Information § 38.79

The NPRM retains all of the language in existing § 38.83, except for removing and replacing gender-specific pronouns and the title of § 38.79 to ''When a complaint contains insufficient information.'' It also proposes adding a provision to subparagraph (a) stating that, if the complaint does not contain enough information ''to identify the respondent or the basis of the alleged discrimination, the timeliness of the complaint, or the apparent merit of the complaint,'' the Director must try to get the needed information from the complainant. This proposed new language specifies the circumstances under which the Director must try to get information from the complainant. In subparagraph (c) the NPRM proposes that, when the Director closes the complainant's file, the Director must send a written notice to the

complainant's last known address, ''email address (or other known method of contacting the complainant in writing.'' This change recognizes that there are more methods of written communication than mail now available.

The NPRM makes no changes to the language of existing §§ 38.84–38.88 besides revising the titles and section numbers to §§ 38.80–38.84. The new headings are, respectively, ''Lack of jurisdiction,'' ''Complaint referral,'' ''Notice that complaint will not be accepted,'' ''Notice of complaint acceptance,'' and ''Contacting CRC about a complaint.''

Alternative Dispute Resolution § 38.85

The NPRM makes some changes to existing § 38.89, including changing it to § 38.85 with the title ''Alternative dispute resolution.'' The Department proposes replacing reference to mediation with alternative dispute resolution (ADR) to encompass a broader array of procedures that may be used. ''The term ADR means any procedure, agreed to by the parties of a dispute, in which they use the services of a neutral party to assist them in reaching agreement and avoiding litigation. Types of ADR include arbitration, mediation, negotiated rulemaking, neutral fact-finding, and mini-trials. With the exception of binding arbitration, the goal of ADR is to provide a forum for the parties to work toward a voluntary, consensual agreement, as opposed to having a judge, or other authority, decide the case.'' [186] CRC also notes that current § 38.76, which sets out the required elements of a recipient's discrimination complaint processing procedures, already refers to ADR, not mediation, at § 38.76(c).

In addition, the NPRM proposes removing the references to ''the parties'' in this section, and replacing them with references to ''the complainant and the respondent.'' This change has been made for legal accuracy: the real parties in interest to a complaint alleging violations of WIOA Section 188 or this part by a recipient are the recipient/respondent alleged to have committed the violation and CRC. There is no private right of action under WIOA Section 188; the complainant stands in the position of a witness who has notified CRC of the existence of a potential violation.

Proposed paragraph (b) removes the word ''issued'' from the sentence in current § 38.89(b), ''The mediation will be conducted under guidance issued by the Director'' because the guidance from the Director on ADR may be provided informally. In addition, the NPRM revises paragraph (c) to state that ADR may take place at any time after a complaint has been filed to maximize the opportunity for resolution of complaints through the ADR process. Finally, the NPRM proposes revising paragraph (d) to state that ADR does not suspend investigation and complaint processes so that it is clear, that while ADR is taking place, CRC will continue complaint processing and investigation so that the complaint and evidence will not become stale while the complainant and recipient attempt informal resolution. CRC's continuing investigative activity will preclude recipients from using ADR as a vehicle to preclude CRC from reaching timely findings.

Complaint Determinations

Notice at Conclusion of Complaint Investigation § 38.86

The NPRM changes the title to ''Notice of conclusion of complaint investigation'' and the section number to 38.86. The NPRM adds a reference at the end of paragraph (b) to the sections of this part that describe the notification process described in §§ 38.34 and 38.36, so that the recipient, complainant and grantmaking agency are aware of the procedural steps that CRC will follow.

Director's Initial Determination That Reasonable Cause Exists To Believe That a Violation Has Taken Place § 38.87

The NPRM proposes to retain all of the existing language in § 38.91, and changes the title of § 38.87 to ''Director's Initial Determination that reasonable cause to believe that a violation has taken place.''

Director's Final Determination Finding That No Reasonable Cause Exists To Believe That a Violation Has Taken Place § 38.88

The NPRM proposes to retain all of the existing language in § 38.92, changing the title of § 38.88 to ''Director's Final Determination that no reasonable cause exists to believe that a violation has taken place.''

When the Recipient Fails or Refuses To Take Corrective Action Listed in the Initial Determination § 38.89

The NPRM proposes retaining the language from current § 38.93 for § 38.89, changing the title to ''When the recipient fails or refuses to take corrective action listed in the Initial Determination.'' Section 38.93 states that if the recipient failed or refused to take the corrective action listed in the Initial Determination, the Department must take corrective action, which included referring the matter to the Attorney General, or taking such other action as provided by law. This proposal has been made because the Department has prosecutorial discretion to pursue or not pursue further enforcement action after issuing an Initial Determination.[187]

Corrective or Remedial Action That May Be Imposed When the Director Finds a Violation § 38.90

The NPRM proposes retaining the language from current § 38.94 for § 38.90, changing the title to ''Corrective or remedial action that may be imposed when the Director finds a violation.''

Post-Violation Procedures § 38.91

The NPRM proposes retaining all of the existing language in the § 38.95, but changes the title. The Department proposes, ''Post violation procedures'' as the title for § 38.91. Because the circumstances under which a written assurance will be used has been revised, as discussed in § 38.92, this section deletes paragraphs (b)(1)(iii)(C) and paragraph (b)(3)(iii), which referred to using ''both'' a written assurance and a conciliation agreement as closing documents for the same set of violations. The Department proposes to remove the inadvertent reference to a nonexistent paragraph (d) at the end of paragraph (a).

Written Assurance § 38.92

The NPRM proposes revising current § 38.96 to explain the circumstances in which a written assurance will be used as a resolution document. The Department proposes retaining the title from current § 38.96 for § 38.92. Current Section 38.96 required that ''a written assurance must provide documentation that violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.'' That provision did not adequately explain when a written assurance rather than a conciliation agreement would be the appropriate resolution document and this confusion has caused delay in bringing recipients into compliance. The proposed rule states, ''A written assurance is the resolution document used when the Director determines that a recipient has taken all corrective actions to remedy the violations specified in the Letter of Findings or

[186] Department of Labor/Labor Relations/Alternative Dispute Resolution, available at *http://www.dol.gov/dol/topic/labor-relations/adr.htm* (accessed March 19, 2015).

[187] 29 U.S.C. 3248(b)(1).

Initial Determination identifying the violations within fifteen business days after receipt of the Letter or Determination.'' This proposed revision is intended to reduce the protracted negotiations over the form of the final resolution document that have become commonplace over recent years.

Required Elements of a Conciliation Agreement § 38.93

The NPRM proposes to retain the language in current § 38.97 for proposed § 38.93 titled ''Required elements of a conciliation agreement.'' It retains current paragraph (a) and adds a new paragraph (b) ''Address the legal and contractual obligations of the recipient.'' It re-numbers current paragraph (b) as new paragraph (c), current paragraph (c) as paragraph (d), current paragraph (d) as paragraph (e) and current paragraph (f) as new paragraph (i). The NPRM proposes a new paragraph (g) to require that a conciliation agreement provide that nothing in the agreement prohibits CRC from sending it to the complainant, making it available to the public, or posting it on the CRC or the recipient's Web site. The NPRM also proposes a new paragraph (h) to require that a conciliation agreement provide that in any proceeding involving an alleged violation of the conciliation agreement, CRC may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement. This change brings the regulations in line with current practice and with other nondiscrimination enforcement agencies in DOL. For example, OFCCP has incorporated similar language into their conciliation agreements pursuant to their regulations at 41 CFR 60–1.34(d).

The proposal is consistent with the well-settled principle under Title VII case law that a conciliation agreement entered to resolve discrimination claims is specifically enforceable independent of a finding that the employer did, in fact, engage in discriminatory practices, so long as regular contract rules are satisfied and enforcement does not conflict with the purposes of Title VII.[188] The courts have concluded that conciliation agreements would be rendered worthless as a means of securing voluntary compliance with Title VII, if a finding on the merits were required before any voluntary agreement to resolve discrimination claims could be enforced.[189] Likewise, respondents that enter into conciliation agreements to resolve findings of discrimination or other substantive violations do so voluntarily and knowingly. Respondents are under no compulsion to execute conciliation agreements; they are free to reject the terms of settlement and have the matter resolved through the contested litigation. However, if a respondent voluntarily and knowingly accepts an offer to conciliate a matter, both parties, including the Government, are entitled to rely on the representations contained in the conciliation agreement. The conciliation agreement, as a contract, binds both parties and thus inequities would result if one or the other party was allowed to ignore its agreement and return to ''square one.'' [190]

When Voluntary Compliance Cannot Be Secured § 38.94

The NPRM proposes retaining the language in current § 38.98 in proposed § 38.94 titled ''When voluntary compliance cannot be secured'' and adds ''the Governor'' in paragraphs (a) and (b)(1) to the list of other entities—grant applicants and recipients—to which these provisions apply. Although the Governor is also a recipient in certain circumstances, these provisions add the Governor as a separate entity to address violations that are not based on the Governor's status as a recipient. As set forth in Subpart C, the Governor has additional obligations to conduct oversight and monitoring of WIOA Title I-financially assisted State programs and to develop a Nondiscrimination Plan that are not based on the Governor's role as a recipient. The Governor can be found in violation of this part for failure to comply with those obligations.

Enforcement When Voluntary Compliance Cannot Be Secured § 38.95

The NPRM retains the language of current § 38.99 in proposed § 38.95 titled ''Enforcement when voluntary compliance cannot be secured.''

Contents of a Final Determination of a Violation § 38.96

The NPRM retains the language in current § 38.100 in proposed § 38.96 titled ''Contents of a final determination of a violation.''

Notification of Finding of Noncompliance § 38.97

The NPRM proposes to retain the language in current § 38.101 in new § 38.97 titled ''Notification of finding of noncompliance.''

Breaches of Conciliation Agreements

Notice of Breach of Conciliation Agreement § 38.98

The NPRM proposes merging and retaining the language in current § 38.102 and § 38.103 in new § 38.98 titled ''Notice of breach of conciliation agreement.''

Contents of Notice of Breach of Conciliation Agreement § 38.99

The NPRM proposes retaining the language in current § 38.104 in § 38.99 titled ''Contents of notice of breach of conciliation agreement.''

Notification of an Enforcement Action Based on Breach of Conciliation Agreement § 38.100

The NPRM proposes retaining the language in current § 38.105 in § 38.100 titled ''Notification of an enforcement action based on breach of conciliation agreement.''

Subpart E—Federal Procedures for Effecting Compliance

In describing the procedures the Department will follow in effecting compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part, the Department proposes a few minor changes to the process it had followed in effecting compliance with the counterpart provisions of WIA and part 37.

Enforcement Procedures § 38.110

Proposed § 38.110 generally contains the same requirements of current § 38.110. The Department proposes as the title for this section, ''Enforcement Procedures,'' rather than the current heading of § 38.110, which is in question format. The proposed rule adds language at the end of subsection (a)(3) stating that the Secretary may take such action as may be provided by law ''which may include seeking injunctive relief.'' This additional language is intended to provide transparency by advising recipients that the Secretary may seek corrective actions that go beyond make-whole relief, and provides an example of such other actions.

Hearing Procedures § 38.111

Proposed § 38.111 contains the same requirements of current § 38.111. The Department proposes as the title for this section, ''Hearing Procedures,'' rather than using the current heading of § 38.111, which is in question format. Proposed § 38.111(b)(3) specifies where a grant applicant or recipient must serve a copy of their filings under this section and substitutes ''Civil Rights and Labor-Management Division, Room N–2474''

[188] *See, e.g., EEOC* v. *Safeway Stores, Inc.,* 714 F.2d 567 (5th Cir. 1983), *cert. denied,* 467 U.S. 1204 (1984).

[189] *Eatmon* v. *Bristol Steel & Iron Works, Inc.,* 769 F.2d 1503, 1509 (11th Cir. 1985); *EEOC* v. *Henry Beck Co.,* 729 F.2d 301, 305 (4th Cir. 1984); *EEOC* v. *Safeway Stores, supra,* 714 F.2d at 574.

[190] 62 FR 44186, Aug. 19, 1997.

for ''Civil Rights Division, Room N–2464'' to capture the current title and location of the Office of the Solicitor Division to which filings must be sent. Proposed § 38.111(d)(2) deletes the word ''Uniform'' as used in current § 38.111 (d)(2), ''Uniform Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges'' to reflect the current title of that rule at 29 CFR part 18.

Initial and Final Decision Procedures § 38.112

Proposed § 38.112 generally contains the same requirements of current § 38.112. The Department proposes as the title for this section, ''Initial and final decision procedures,'' rather than the heading of current § 38.112, which is in question format. Proposed Section 38.112 is composed of one paragraph that describes Initial Decisions by an Administrative Law Judge and multiple paragraphs concerning Final Decisions and Orders by the Secretary. Proposed § 38.112 substitutes ''Administrative Review Board'' for the word ''Secretary'' where it appears in current § 38.112 paragraphs (b)(1), (b)(1)(i), (b)(1)(ii), (b)(1)(v), (b)(1)(vi), (b)(1)(vii)(A), (b)(1)(vii)(B), (b)(1)(viii), and (b)(2)(ii). The NPRM substitutes ''Administrative Review Board'' (ARB) for the Secretary so that the part 38 rule accurately reflects the ARB's role in issuing final agency decisions in cases brought to enforce WIOA Section 188. In 1996, the Secretary issued Secretary's Order 2–96 creating the ARB and delegating to the ARB the Secretary's authority to issue final agency decisions under 38 enumerated statutes, among them the Comprehensive Employment and Training Act, 29 U.S.C. 801 *et seq.,* and the Job Training Partnership Act, 20 U.S.C. 1576, predecessor statutes to WIA and WIOA. Secretary's Order 1–2002 included a delegation to the ARB for matters arising under Section 188 of the Workforce Investment Act. 67 FR 64272 (October 17, 2002), as did Secretary's Order 02–2012, 77 FR 69376 (November 16, 2012). These delegation orders also contain a catch-all provision to extend the delegation to subsequently enacted statutes or rules, including: ''Any laws or regulation subsequently enacted or promulgated that provide for final decisions by the Secretary of Labor upon appeal or review of decisions, or recommended Decisions, issued by ALJs, and any Federal law that extends or supplements unemployment compensation and Provides for final decisions by the Secretary of Labor.'' [191] Thus, even absent a new delegation order, the ARB would issue final agency decisions under Section 188 of WIOA.

The subparagraphs of proposed § 38.112(b) set forth procedures for filing exceptions to the Administrative Law Judge's initial decision and order and issuance of a Final Decision and Order by the Department. Proposed § 38.112(b)(1)(iii) deletes the sentence ''[a]ny exception not specifically urged is waived'' from this subparagraph. The Department no longer believes that this is an accurate statement of the ARB's scope of review of initial decisions. The Administrative Procedure Act provides that, on appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.[192] Where, as here, the applicable rule does not specify the standard of review, ''the Board is not bound by either the ALJ's findings of fact or conclusions of law, but reviews both de novo.'' [193]

Finally, proposed § 38.112(b)(2)(ii) adds language providing that, when a Final Determination or Notification of a Breach of Conciliation Agreement becomes the Final Decision, the ARB may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing appropriate sanctions not just for failure of the grant recipient or recipient to comply with the required corrective and/or remedial actions, but also for the Governor's failure to comply. The NPRM inserts ''the Governor'' because the Governor would have obligations under this part that are independent of his or her role as a recipient. For example, Sections 38.50–55 impose on the Governor the obligation to conduct oversight, and monitor the compliance, of WIOA title I financially assisted State programs, and to develop and maintain a Nondiscrimination Plan for State programs as defined in § 38.4. Proposed § 38.112(b)(2)(ii) retains the language in current § 38.112(b)(2)(ii) that the Secretary may refer the matter to the Attorney General for further enforcement action. The NPRM retains the reference to the Secretary's role here because this referral function has not been delegated to the ARB.

Suspension, Termination, Withholding, Denial, or Discontinuation of Financial Assistance § 38.113

Proposed § 38.113 contains the same requirements of current § 38.113. The Department proposes as the title for this section, ''Suspension, termination, withholding, denial or discontinuation of financial assistance,'' rather than the heading of current § 38.113, which is in question format. Consistent with the analysis set forth in the proposed § 38.112, the Department proposes in § 38.113(c) to substitute ''Administrative Review Board'' for ''Secretary.''

Distribution of WIOA Title I Financial Assistance to an Alternate Recipient § 38.114

Proposed § 38.114 contains the same requirements of current § 38.114. The Department proposes as the title for this section, ''Distribution of WIOA Title I financial assistance to an alternate recipient,'' rather than the heading of current § 38.114, which is in question format.

Post-Termination Proceedings § 38.115

Proposed § 38.115 contains the same requirements of current § 38.115. The Department proposes as the heading for this section, ''Post-termination proceedings,'' rather than the heading of current § 38.115, which is in question format. Consistent with the reasoning provided in proposed § 38.112, and § 38.113, the Department proposes in § 38.115 substituting ''Administrative Review Board'' for ''Secretary'' throughout this section. This change has been made in paragraphs (c)(2) and (c)(5) of this section. Consistent with the reasoning provided in proposed § 38.111, the Department proposes in § 38.115 substituting ''Civil Rights and Labor-Management Division'' for ''Civil Rights Division'' in paragraph (c)(3) of this section.

Appendix to § 38.9

Recipient Language Assistance Plan (LEP Plan): Promising Practices

The proposed rule contains an Appendix that is intended to provide further direction as to the obligations of recipients to take reasonable steps to provide meaningful language access to LEP individuals. The proposed Appendix provides a clear framework for recipients that choose to develop a written LEP plan. The Appendix states that, while written LEP plans are not required under Section 188 or this proposed part, development and implementation of such a plan has the

[191] 77 FR at 63279.

[192] 5 U.S.C. 557(b).

[193] Masek v. The Cadle Co., ARB No.97–069, ALJ No. 1995–WPC–1 (ARB Apr. 25, 2000) at 7 (citations omitted). *See also Jones* v. *U.S. Dep't of Labor,* 148 F.App'x 490, 2005 WL 2173769 (6th Cir Sept. 8, 2005) (ARB acted within its authority in drawing its own conclusions based on its independent review of the evidence); *Phillips* v. *Stanley Smith Security, Inc.,* ARB No. 98–020, ALJ No. 1996–ERA–30 (ARB Jan. 31, 2001 (ARB reviews ALJ decisions under the ERA *de novo,* but accords special weight to an ALJ's demeanor-based credibility determinations.); *Berkman* v. *U.S. Coast Guard Academy,* ARB No. 98–056, ALJ No. 1997–CAA–2 and 9 (ARB Feb. 29, 2000).

benefit of providing the recipient with a roadmap for establishing and documenting compliance with its LEP obligations.

As the proposed Appendix explains, the elements of an effective written plan are not fixed, nor will they be the same for all recipients. Rather, each recipient must tailor the plan to its specific programs and activities, and should revise the plan, as appropriate, to reflect updated government guidance, the recipients' experiences, changes in the recipient's operations, changing demographics, and stakeholder feedback. Based on its recent experiences in addressing issues related to recipient compliance with LEP obligations, the Department has set forth 14 suggested elements of a successful recipient LEP plan.

Illustrative Applications in Recipient Programs and Activities

The proposed Appendix also contains several examples that illustrate the types of reasonable steps that recipients may be required to take to provide meaningful access to LEP individuals. In the first example, an LEP individual who speaks Urdu seeks information about unemployment insurance from a State's telephone call center. Because of the nature and importance of unemployment insurance, the resources of the State, and the wide availability of low-cost commercial language services, such as telephonic oral interpretation services, the State must, at a minimum, provide the LEP individual with telephonic interpretation services to ensure meaningful access to the unemployment insurance program even if Urdu is a non-frequently encountered non-English language.

The second example illustrates that a recipient has some flexibility as to reasonable steps that it may be required to take to provide language assistance to LEP individuals. If an LEP individual who speaks Tagalog requests a recipient that provides career services to translate a brochure about an upcoming job fair, the reasonable steps that the recipient must take will vary depending on whether Tagalog is spoken by a significant number or proportion of the population eligible to be served and is a language frequently encountered in the career services program. The recipient would be required to provide a written translation of vital information in the brochure if the above factors were answered in the affirmative, but it would satisfy the obligation to take reasonable steps for the recipient to provide an oral summary of the brochure's contents if Tagalog were not as commonly spoken in that service area.

The proposed Appendix also provides direction to recipients regarding the provision of English language learning opportunities as one of the possible reasonable steps a recipient may take to provide an LEP individual meaningful access to its program or activity. The Appendix also clarifies that taking reasonable steps may be a collaborative process, although each recipient remains independently obligated to take reasonable steps. The Appendix uses the example of an LEP individual who learns through a One Stop Center of welding training offered in English that is being provided by an eligible training provider. In such a situation, the One Stop Center and eligible training provider may work together to provide meaningful access. This coordination may involve ensuring that the LEP individual receives appropriate English learning from the One Stop or from another organization that provides English language training at no cost to the individual. Depending on the circumstances, the English language training may be offered before or concurrently with enrollment in the welding class.

III. Rulemaking Analyses and Notices

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

Executive Order (E.O.) 12866 directs agencies, in deciding whether and how to regulate, to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. E.O. 13563 is supplemental to and reaffirms E.O. 12866. It emphasizes the importance of quantifying present and future benefits and costs; directs that regulations be adopted with public participation; and, where relevant and feasible, directs that regulatory approaches be considered that reduce burdens, harmonize rules across agencies, and maintain flexibility and freedom of choice for the public. Costs and benefits shall be understood to include both quantifiable measures and qualitative assessments of possible impacts that are difficult to quantify. If regulation is necessary, agencies should select regulatory approaches that maximize net benefits. The Office of Management and Budget (OMB) determines whether a regulatory action is significant and, therefore, subject to review.

Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as any action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Summary of the analysis. The Department provides the following summary of the regulatory impact analysis:

(1) The proposed rule is a ''significant regulatory action'' under Section 3(f)(4) of E.O. 12866; therefore, OMB has reviewed the proposed rule.

(2) The proposed rule would have a negligible net direct cost impact on small entities beyond the baseline of the current costs required by the Workforce Innovation and Opportunity Act (WIOA) program as it is currently implemented in regulation.

(3) The proposed rule would not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act.

In total, the Department estimates that this NPRM would have a first year cost of $28,250,547and second and future-year cost of $ 9,487,711 as detailed in Table 3 and Table 4. The proposals in the NPRM would not create significant new costs or burdens for Governors, recipients, or beneficiaries. The primary administrative burden created for recipients in the first year would be the cost of regulatory familiarization, which the Department calculates to be just over $12 million. The primary administrative burden created for Governors in the first year would be the cost of conducting monitoring of recipients for compliance with the nondiscrimination and equal opportunity provisions, which the Department calculates to be approximately $6.55 million. The other new cost burdens created for recipients in the first year would be: (1) The cost of pregnancy accommodations, which the Department calculates to be just over $100,000; (2) the cost of compliance with record keeping, translation, and interpretation obligations related to limited English proficient beneficiaries,

which the Department is currently unable to calculate, and about which the Department seeks comment; (3) the cost of updating and disseminating equal opportunity notices and posters, which the Department calculates to be approximately $4 million; (4) the cost of incorporating two new categories of demographic data collection on limited English proficiency and preferred language, which the Department calculates to be approximately $3.75 million; and (5) the cost of updating complaint processing procedures, which the Department calculates to be approximately $1.5 million.

The Department was unable to quantify estimates of several important benefits to society due to data limitations or lack of existing data or evaluation findings on particular items. However, overall many of the proposed revisions to 29 CFR part 38 contained in the NPRM will improve readability and provide additional guidance to Governors and recipients, in several instances in response to feedback from stakeholders, to their benefit. For example, additional language in §§ 38.28–38.31 regarding the obligations of Equal Opportunity Officers (EO Officers) and recipients' obligations regarding their EO Officers provides detailed direction that benefits recipients. Similarly, language in § 38.92 provides additional detail regarding the use of written assurances in the enforcement of nondiscrimination and equal opportunity requirements that resolves confusion that recipients raised about its use. In addition, by including updates to the nondiscrimination provisions in §§ 38.7–38.17, the NPRM makes it easier for Governors and recipients to meet their equal opportunity and nondiscrimination obligations under Section 188 of WIOA because the implementing regulations contain provisions consistent with requirements with which they are already required to comply under Federal laws such as Title VI and Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; Americans with Disabilities Act of 1990, as amended; and Section 504 of the Rehabilitation Act.

The Department requests comment on the costs and benefits of this NPRM with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

1. The Need for the Regulation

Signed by President Obama on July 22, 2014, the Workforce Investment and Opportunity Act (WIOA) supersedes the Workforce Investment Act of 1998 (WIA) as the Department's primary mechanism for providing financial assistance for a comprehensive system of job training and placement services for adults and eligible youth. Section 188 of WIOA contains the identical provisions of Section 188 as appeared in WIA and prohibits the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with, any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA. Section 188(e) of WIOA requires that the Department issue regulations implementing Section 188.

2. Technical Update of Section 188 versus publication of a simultaneous NPRM

The Department considered two possible alternatives:

(1) To publish a Final Rule as 29 CFR part 38 implementing Section 188 of WIOA with only technical updates to the regulations at 29 CFR part 37 which implements Section 188 of WIA; or

(2) To publish the above mentioned Final Rule followed by an NPRM. The above mentioned Final Rule would apply until issuance of a Final Rule based on the NPRM. The NPRM would update part 38 consistent with current law and address its application to current workforce development and workplace practices and issues.

The Department has considered these options in accordance with the provisions of E.O. 12866 and has chosen to publish this NPRM soon after a technically updated Final Rule implementing Section 188 of WIOA (*i.e.,* alternative 2). The Department believes that the current rule does not reflect recent developments in equal opportunity and nondiscrimination jurisprudence. Moreover, procedures and processes for enforcement of the nondiscrimination and equal opportunity provisions of Section 188 have not been revised to reflect changes in the practices of recipients since 1999, including the use of computer-based and internet-based systems to provide aid, benefits, services, and training through WIOA Title I-financially assisted programs and activities. Thus, only reissuing the existing regulations with technical updates (*i.e.,* alternative 1) would have the negative effect of continuing to impose ongoing compliance costs on recipients.

3. Analysis Considerations

The Department derives its estimates by comparing the existing program baseline, that is, the program benefits and costs estimated as a part of the regulations implementing Section 188 of WIA, found at 29 CFR part 37.

For a proper evaluation of the benefits and costs of the NPRM, the Department explains how the newly required actions by States and recipients under the proposed regulations at part 38 are linked to the expected benefits and estimated costs. The Department also considered, when appropriate, the unintended consequences of the proposed regulations introduced by the NPRM. The Department makes every effort, when feasible, to quantify and monetize the benefits and costs of the NPRM. When the Department is unable to quantify them—for example, due to data limitations—the Department describes the benefits and costs qualitatively.

In accordance with the regulatory analysis guidance contained in OMB Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (benefits and costs that accrue to citizens and residents of the United States) of the WIOA-required NPRM.

Table 1 presents the estimated annual number of recipients expected to experience an increase in level of effort (workload) due to the proposed language in this NPRM. These estimates are used extensively throughout this document to calculate the estimated costs for each provision. Note that several recipients are likely counted more than once under different categories because they receive more than one source of WIOA Title I financial assistance. For example, the Texas Workforce Commission is both a recipient of a Senior Community Service Employment Program Grant as well as an Adult WIOA Title I grantee. However, the Department decided to include them in both the ''States'' category of recipient and under a ''National Programs'' category to avoid the risk of being under-inclusive in the calculations. At the same time, there are entities that local workforce boards may include in the One-Stop delivery system, and thus, may be recipients if they become partners. These optional partners include the Supplemental Nutritional Assistance Program employment and training program, Ticket-to-Work and the Self-Sufficiency Program of the Social Security

Administration. Similarly, the beneficiary estimate may be over-inclusive because several beneficiaries are likely counted more than once under different categories because they receive aid, service, training or benefit from more than one recipient. However, the Department decided to include them in both the State Workforce Agencies category of recipient and National Programs category in an effort to be over-inclusive, rather than risking being under-inclusive in our calculations.

TABLE 1—ESTIMATED ANNUAL NUMBER OF RECIPIENTS, BENEFICIARIES, AND NON-FEDERAL FULL-TIME EMPLOYEES OF RECIPIENTS

Recipients	Estimated annual number of recipients	Estimated annual number of beneficiaries	Estimated annual number of non-federal full-time employees of recipients
States [194]	[195] 56		
Adult Program (Title I of WIOA)	([195])	.....	[196] 65,655
Dislocated Worker Program (Title I of WIOA)	([195])	.....	([196])
Youth Program (Title I of WIOA)	([195])	[197] 197,045	([196])
Wagner-Peyser Act Program (Wagner-Peyser Act, as amended by Title III of WIOA)	([195])	[198] 16,619,943	([196])
Adult Education and Literacy Program (Title II of WIOA)	([195])	[199] 2,012,163	[200] 67,293
Vocational Rehabilitation Program	([195])	[201] 573,086	[202] 68,000
Trade Adjustment Assistance Program	([195])	[203] 62,706	([196])
Unemployment Compensation Program	([195])	[204] 2,451,464	[205] 62,138
Local Veterans' Employment Representatives and Disabled Veterans' Outreach Program	([195])	[206] 450,843	[207] 2,700
Career and Technical Education (Perkins)	([195])	[208] 12,052,217	([196])
Community Service Block Grants	([195])	[209] 16,000,000	([196])
Temporary Assistance for Needy Families (TANF)	([195])	[210] 4,417,000	([196])
State and Local Workforce Investment Boards	[211] 580	.....	[212] 9,280
Job Corps Operators (*i.e.* national contractors)	[213] 18	[214] [215] 109,627	[216] [217] 3,050
Job Corps Outreach and Admissions Operators	[218] 24	([215])	([217])
Job Corps national training contractors/Career Transition Services Operators	[219] 21	([215])	([217])
Service providers, including eligible training providers and on-the-job training employers [220]	[221] 11,400	[222] 122,693	[223] 439,936
One Stop Career Centers [224]	[225] 2,481	[226] 864,936	[227] 2,481
National Programs Include:			
Senior Community Service Employment Grants	[228] 71	[229] 67,814	([196])
National Emergency Grants [230]	[231] 125	[232] 26,221	[233] 9,280
Reintegration of Ex-Offenders—Adult Grants [234]	[235] 28	[236] 6,800	[237] 555
H–1B Technical Skills Training Grants [238]	[239] 36	[240] 22,543	[241] 774
H–1B Jobs and Innovation Accelerator Challenge Grants [242]	[243] 30	[244] 11,200	[245] 183
Indian and Native American Programs	[246] 178	[247] 40,102	[248] 994
National Farmworker Jobs Program	[249] 69	[250] 35,192	[251] 60,965
YouthBuild	[252] 82	[253] 7,604	[254] 2,408
Registered Apprenticeship Program	[255] 19,259	[256] 170,500	[257] 85,317
Total	34,458	56,321,699	881,009

[194] The 56 State entities are the recipients for the twelve programs below.

[195] This number includes the 50 states as well as the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands. These 56 entities are the recipients for the following programs and are thus counted only once: Adult Program (Title I of WIOA), Dislocated Worker Program (Title I of WIOA), Youth Program (Title I of WIOA), Wagner-Peyser Act Program (Wagner-Peyser Act, as amended by Title III of WIOA), Adult Education and Literacy Program (Title II of WIOA), Vocational Rehabilitation Program, Trade Adjustment Program, Unemployment Compensation Program, Local Veterans' Employment Representatives and Disabled Veterans' Outreach Program, Career and Technical Education (Perkins), Community Service Block Grants, and Temporary Assistance for Needy Families (TANF).

[196] This number is an estimate based on the average number of employees at state-level Department of Labor equivalents. These same 65,655 employees account for the non-federal full-time employees in the following programs and are thus counted only once: Adult Program (Title I of WIOA), Dislocated Worker Program (Title I of WIOA), Wagner-Peyser Act Program (Wagner-Peyser Act, as amended by Title III of WIOA), Trade Adjustment Assistance Program, Career and Technical Education (Perkins), Community Service Block Grants, Temporary Assistance for Needy Families (TANF), and Senior Community Service Employment Grants.

[197] Employment and Training Administration, *Workforce System Results: For the Quarter ending June 03, 2014,* U.S. Department of Labor 2, *http://www.doleta.gov/performance/results/pdf/workforceSystemResultsJune2014.pdf* [hereinafter *Workforce System Results*] (last visited June 24, 2015).

[198] *National—Wagner-Peyser: Program Year 2013,* U.S. Department of Labor Employment and Training Administration 1, *http://www.doleta.gov/performance/results/pdf/WagnerPeyserPY2013.pdf* (last visited June 25, 2015).

[199] Office of Vocational and Adult Education, *Adult Education and Family Literacy Act of 1998: Annual Report to Congress Program Year 2010–2011,* U.S. Department of Education xii, *http://www2.ed.gov/about/offices/list/ovae/resource/aefla-report-to-congress-2010.pdf* (last visited June 24, 2015).

[200] *Adult Education Personnel,* National Reporting System 1, *http://www.nrsweb.org/docs/NRS_Fast_Facts_508_rev.pdf* (last visited June 24, 2015).

[201] Office of Special Education and Rehabilitative Services, *Annual Report Fiscal Year 2012,* U.S. Department of Education 21, *http://www2.ed.gov/about/reports/annual/rsa/2012/rsa-2012-annual-report.pdf* (last visited June 24, 2015).

[202] This is an estimate based on the average number of employees at state-level Department of Labor equivalents.

[203] *Workforce System Results, supra* note 188, at 2.

[204] *Id.*

[205] This is an estimate based on the average number of employees at state-level Department of Labor equivalents.

[206] Veterans' Employment & Training Service, *Annual Report to Congress: Fiscal Year 2013,* U.S. Department of Labor 9, *http://www.dol.gov/vets/media/DOL-VETS-FY2013_ANNUAL_REPORT-OMB-CLEARED_10-16-14.pdf* (last visited June 24, 2015). This number is for PY 2012. *Id.*

[207] *LVER and DVOP Fact Sheet,* U.S. Department of Veterans Affairs 1–2, *http://www.benefits.va.gov/VOW/docs/LVER_DVOP_Factsheet.pdf* (last visited June 24, 2015).

[208] *Carl D. Perkins Career and Technical Education Act of 2006: Report to Congress on State Performance Program Year 2010–2011,* U.S. Department of Education 12, *https://s3.amazonaws.com/PCRN/docs/Rpt_to_Congress/Perkins_RTC_2010-11.pdf* (last visited June 24, 2015).

[209] *Fiscal Year 2015: Justification of Estimates for Appropriations Committees,* Administration for Children & Families 171, *https://www.acf.hhs.gov/sites/default/files/olab/fy_2015_congressional_*

budget_justification.pdf (last accessed June 25, 2015).

[210] *Welfare Indicators and Risk Factors: Thirteenth Report to Congress,* U.S. Department of Health and Human Services A–8, *http://aspe.hhs.gov/hsp/14/indicators/rpt_indicators.pdf* (last visited June 24, 2015).

[211] Provided by the Employment and Training Administration (ETA), U.S. Department of Labor, from the burden analysis contained in WIOA NPRM implementing Titles I and III available at *https://www.federalregister.gov/articles/2015/04/16/2015-05530/workforce-innovation-and-opportunity-act* [hereinafter ETA NPRM] (last visited June 24, 2015).

[212] This number is an estimate based on the average number of full-time employees from fourteen boards multiplied by the number of recipients. The fourteen boards include three from North Carolina, three from West Virginia, one from Virginia, three from Washington, three from Wisconsin, and one from Illinois.

[213] *PY 08: U.S. Department of Labor Job Corps Annual Report,* U.S. Department of Labor 13, *http://www.jobcorps.gov/Libraries/pdf/py08report.sflb* [hereinafter *PY 08*] (last visited June 24, 2015).

[214] *Workforce System Results, supra* note 188 at 2.

[215] Job Corps Operators, Job Corps Outreach and Admissions Operators, and Job Corps national training contractors/Career Transition Services Operators serve the same beneficiaries, so they are only counted once.

[216] This number is an estimate based on the assumption that there twenty-five employees at each of the Job Corps centers.

[217] Job Corps Operators, Job Corps Outreach and Admissions Operators, and Job Corps national training contractors/Career Transition Services Operators utilize the same employees, so they are only counted once.

[218] *PY 08, supra* note 204, at 13.

[219] *PY 08, supra* note 204, at 13.

[220] PY 2012 estimated, see *http://www.doleta.gov/performance/results/pdf/PY2012WIATrends.pdf.*

[221] ETA NPRM, *supra* note 202.

[222] Senior Policy Research Associates, *PY 2012 WIA Trends Over Time,* U.S. Department of Labor Employment and Training Administration 26, *http://www.doleta.gov/performance/results/pdf/PY2012WIATrends.pdf* [hereinafter *WIA Trends Over Time*] (last visited June 24, 2015).

[223] This number is an estimate based on the average number of employees at five different community colleges multiplied by 56 (the 50 states, the District of Columbia, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands). One college each came from the following states: Alabama, North Carolina, Virginia, Kentucky, and Colorado.

[224] PY 2012 see *http://www.doleta.gov/performance/results/pdf/PY2012WIATrends.pdf.*

[225] ETA NPRM, *supra* note 202.

[226] *WIA Trends Over Time, supra* note 213, at 26.

[227] This is an estimate based on the assumption that there is usually one point of contact per One-Stop. *See Regional, State, and Local Contacts,* U.S. Department of Labor Employment and Training Administration, *http://wdr.doleta.gov/contacts/* (last visited June 24, 2015).

[228] *Senior Community Service Employment Program,* U.S. Department of Labor Employment and Training Administration, *http://www.doleta.gov/seniors/* (last updated Apr. 18, 2014).

[229] *Workforce System Results, supra* note 188, at 2.

[230] PY 2012 see *http://www.doleta.gov/performance/results/pdf/PY2012WIATrends.pdf.*

[231] *See Total Active National Emergency Grant Awards by State,* U.S. Department of Labor Employment and Labor Administration, *http://www.doleta.gov/neg/neg_map_data.cfm* (last updated Aug. 11, 2014).

[232] *WIA Trends Over Time, supra* note 213, at 32.

[233] This number is an estimate based on the average number of full-time employees from fourteen boards. The fourteen boards include three from North Carolina, three from West Virginia, one from Virginia, three from Washington, three from Wisconsin, and one from Illinois.

[234] PY 2011 announcement, see *http://www.doleta.gov/grants/pdf/sga_dfa_py_11_02_final_1_11_2012.pdf.*

[235] *Reentry Employment Opportunities (REO),* Department of Labor Employment and Training Administration, *http://www.doleta.gov/REO/trainingtowork_grantees.cfm* (last accessed June 24, 2015).

[236] *Notice of Availability of Funds and Solicitation for Grant Applications for Reintegration of Ex-Offenders (RExO) Adult Generation 5,* U.S. Department of Labor Employment and Training Administration 6, *http://www.doleta.gov/grants/pdf/sga_dfa_py_11_02_final_1_11_2012.pdf* (last visited June 24, 2015).

[237] This number is an estimate based on the average number of full-time employees at grantee organizations (17) multiplied by the average number of full-time employees at 11 Training to Work 2 grantees (32.64).

[238] PY 2011, *http://www.doleta.gov/business/pdf/H-1B_TST_R1-R2_Grant_Summaries_Final.pdf.*

[239] *Overview of the H–1B Technical Skills Training (TST) Grants,* U.S. Department of Labor Employment and Training Administration 1, *http://www.doleta.gov/business/pdf/H-1B_TST_R1-R2_Grant_Summaries_Final.pdf* (last visited June 24, 2015). This is the most recent data available and assumes no variation from year to year of total national programs, although the names of the individual grant programs may shift from year to year. Similar grant activities continue from year to year, even if they are not these same grants.

[240] *Id.* This number is an estimate based on the total number of each grantee's projections.

[241] This number is an estimate based on the average number of full-time employees at six grantees (21.5) multiplied by the number of recipients (36).

[242] 2011, *http://manufacturing.gov/docs/2011-jobs-accelerator-overviews.pdf.*

[243] *Overview of the H–1B Jobs and Innovation Accelerator Challenge (Jobs Accelerator) Grants,* U.S. Department of Labor Employment and Training Administration 1, *http://www.doleta.gov/business/pdf/H-1B_Jobs_Accelerator_R1-R2_Project_Summaries_FINAL.pdf* (last visited June 24, 2015).

[244] *See The 2011 Jobs and Innovation Accelerator Challenge,* manufacturing.gov 1, *http://manufacturing.gov/docs/2011-jobs-accelerator-overviews.pdf* (last visited June 24, 2015).

[245] This number is an estimate based on the average number of full-time employees at six grantees.

[246] *FY 2015 Congressional Budget Justification,* U.S. Department of Labor 74, *http://www.dol.gov/dol/budget/2015/PDF/CBJ-2015-V1-04.pdf* (last visited June 24, 2015).

[247] *See Workforce System Results, supra* note 188, at 2. This number was derived from adding the number of beneficiaries of the Indian and Native American Adult Program and the program for Indian and Native American Youth.

[248] This number is an estimate based on the assumption that American Indian and Alaskan Natives make up 1.6% of the total number of non-Federal full-time employees as with the total population.

[249] *See National Farmworker Jobs Program,* U.S. Department of Labor Employment and Training Administration, *http://www.doleta.gov/Farmworker/html/NFJP_factsheet.cfm* (last visited June 24, 2015).

[250] *Workforce System Results, supra* note 188, at 2.

[251] This number is an estimate based on the average number of full-time employees at state-level Department of Labor equivalents multiplied by the number of grantees.

[252] *FY 2016 Department of Labor Budget in Brief,* U.S. Department of Labor 14, *http://www.dol.gov/dol/budget/2016/PDF/FY2016BIB.pdf* (last visited June 24, 2015).

[253] *Workforce System Results, supra* note 188, at 2.

[254] This number is based on the average number of employees at twenty-three grantees multiplied by the number of grantees.

[255] This number was provided by the Apprenticeship Program Office at the Department of Labor.

[256] *Registered Apprenticeship National Results: Fiscal Year 2014,* U.S. Department of Labor Employment and Training Administration, *http://doleta.gov/oa/data_statistics.cfm* (last updated Feb. 23, 2015). In FY 2014, more than 170,500 individuals nationwide entered the apprenticeship system. We estimate in FY 2014, 5.9% (9,488 active female apprentices/159,773 total active apprentices in the Registered Apprenticeship Partners Information Management Data System (RAPIDS) database) of active apprentices were women.

[257] This number is an estimate based on the average number of paid employees per firm (4.43) multiplied by the number of recipients. *See Statistics about Business Size (including Small Business) from the U.S. Census Bureau,* U.S. Census Bureau, *http://www.census.gov/econ/smallbus.html* (last visited June 24, 2015).

[258] *http://www.bls.gov/oes/current/oes_nat.htm.*

[259] Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the CRC used the State and local-sector loaded wage factor (1.55) instead of the private-sector wage factor (1.42) for all employees to avoid underestimating the costs.

Table 2, below, presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the proposed rule. The Department used mean hourly wage rates from the Bureau of Labor Statistics' Occupational Employment Statistics (OES) program for private, State and local employees.[258] The Department adjusted the wage rates using a loaded wage factor to reflect total compensation, which includes health and retirement benefits. For these State and local sectors, the Department used a loaded wage factor of 1.55, which represents the ratio of total compensation to wages.[259] The Department then multiplied the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate. The Department used the hourly compensation rates presented in Table 2 extensively throughout this document to calculate the estimated labor costs for each provision. This analysis uses the wages of managers and computer programmers and the Federal minimum wage for beneficiaries. Throughout this analysis, the Department assumes Equal Opportunity Officers (EO Officers), at

both the state and local level, are managers. This assumption is based upon our experience with recipients combined with the proposed language in the NPRM in which the Department states that the EO Officer must report directly to the Governor or the chief operating officer or equivalent of the recipient.[260] Further, the Department is aware that administrative support workers may perform some of the functions where the need for computer programmers is indicated. However, since there is currently no data to indicate the proportion of computer programmer versus administrative support staff that would be used for the various functions, this analysis uses the wages for computer programmers in estimating the NPRM costs, thereby providing an upper-bound of cost for these functions. The beneficiary wage rate in Table 2 is used in this document to calculate the estimated costs to beneficiaries throughout this document. Throughout this analysis, the Department assumes that beneficiaries would be paid at least the Federal minimum wage.

The Department invites comments regarding data sources for the wages and the loaded wage factors that reflect employee benefits used in the analysis as well as other assumptions used in calculating burden and costs.

TABLE 2—CALCULATION OF HOURLY COMPENSATION RATES

Position	Mean hourly wage A	Loaded wage factor B	Hourly compensation rate C = A × B
Managers[261]	$56.35	1.55	$87.34
Computer Programmers[262]	39.75	.....	61.61
Beneficiaries[263]	7.25	.....	7.25

4. Subject-by-Subject Benefit-Cost Analysis

The Department's analysis below covers the expected impacts of the following proposed provisions of the WIOA NPRM against the baseline of practice under WIA Section 188 and implementing regulations at part 37.

The Department emphasizes that many of the NPRM provisions are also existing requirements under WIA. For example, 29 CFR 38.5 prohibits recipients from excluding an individual from participation in, denial of the benefits of, discrimination in or denial of employment in the administration of or in connection with, any WIOA Title I-financially assisted program or activity on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status or participation in any WIOA Title I-financially assisted program or activity. The NPRM retains these requirements, but revises the language to make it easier to read, and also provides separate sections in the rule defining discrimination based on national origin, sex, and citizenship status to aid recipients in meeting their obligations.[264] Accordingly, this regulatory analysis focuses on ''new'' benefits and costs that can be attributed to revisions of existing obligations and new requirements contained in this NPRM. Much of WIA's infrastructure and operations are carried forward under the WIOA and therefore are not considered ''new'' cost burdens under this proposed rulemaking.

Request for Comments

This NPRM implements the nondiscrimination and equal opportunity provisions of Section 188 of WIOA, and requests comments about the burden and costs associated with this NPRM including from: State and local governments, public interest groups, current and potential grant applicants for and recipients of WIOA Title I-federal financial assistance (particularly current and potential providers of training services), current and potential beneficiaries of such Federal financial assistance, and the public.

Discussion of Impacts

In this section, the Department presents a summary of the costs associated with the new requirements of the regulations.

The NPRM proposes revising 29 CFR part 38, issuing new regulations that set forth the requirements that recipients must meet in fulfilling their obligations under Section 188 of WIOA to ensure nondiscrimination and equal opportunity in WIOA Title I-federally assisted programs, services, aid, and activities.

There will be approximately 34,458 recipients of WIOA Title I federal financial assistance annually who will serve approximately 56,321,699 beneficiaries annually with approximately 881,009 non-Federal employees of recipients annually based on our informed estimates.[265]

Cost of Regulatory Familiarization

Agencies are required to include in the burden analysis the estimated time it takes for recipients to review and understand the instructions for compliance.[266]

Based on its experience with recipients' compliance with the laws the Civil Rights Center (CRC) enforces and the mandate of the existing and revised regulations that each recipient has an EO Officer (see 29 CFR 38.28 and 38.29), CRC believes that EO Officers at each recipient will be responsible for understanding or becoming familiar with the new requirements. Therefore, the Department estimates that it will take 4 hours for the EO Officer at each recipient to read the rule. Consequently, the estimated burden for rule familiarization for these managers is 137,832 hours (34,458 × 4 hours). The Department calculates the total estimated cost as $12,038,247 (137,832 × $87.34/hour).[267]

The following is a description of additional costs and burdens as a result of this NPRM. It follows the organization of the NPRM for ease of reference.

[260] *See* proposed §§ 38.28–38.31.

[261] BLS OES, May 2014, 11–1021 General and Operations Managers (*http://www.bls.gov/oes/current/oes111021.htm*).

[262] BLS OES, May 2014, 15–1131 Computer Programmers (*http://www.bls.gov/oes/current/oes151131.htm*).

[263] This is the current Federal minimum wage. 29 U.S.C. 206(a)(1)(C).

[264] *See* 29 CFR 38.9, 38.7, and 38.11.

[265] *See* Table 1 for a breakdown of these numbers.

[266] *See* 5 CFR 1320.3(b)(1)(i).

[267] Throughout this proposed rule, the Department assumes that EO Officers are managers.

Subpart A—General Provisions

Discrimination Prohibited Based on Pregnancy § 38.8

The rule proposes a new § 38.8 titled, ''Discrimination Prohibited Based on Pregnancy.''

The language in the NPRM requires recipients in certain situations to provide reasonable accommodations or modifications to a pregnant applicant or participant who is temporarily unable to participate in some portions of a WIOA Title I-financially assisted training program or activity because of pregnancy, childbirth, and/or related medical conditions, when such accommodations or modifications are provided, or are required to be provided, by a recipient's policy or by other relevant laws, to other applicants or participants not so affected but similar in their ability or inability to participate.

To determine the burden of this accommodation provision, the Department estimated the number of beneficiaries of WIOA Title I-financially assisted programs and activities and the number of employees of recipients of WIOA Title I-financially assisted programs who may need an accommodation during pregnancy in a year. No specific data sets detail the characteristics of beneficiaries and employees of WIOA Title I-financially assisted programs or activities relating to pregnancy. Thus, the Department relied on the data sets available from the Employment and Training Administration for beneficiaries of WIOA Title I-financially assisted training programs, including the Job Corps Program, and estimated the number of employees of recipients and the data sets available for the general population and general labor force.[268] The Department believes that the characteristics of the general labor force are similar to the WIOA Title I-financially assisted workforce.

Not every pregnant employee of a recipient in the WIOA Title I-financially assisted workforce will require an accommodation that might involve more than a *de minimis* cost. In fact, the Department believes most will not. Many will have no medical condition associated with their pregnancies that require such accommodation. Providing light duty or accommodations for pregnancy generally involves adjusting work schedules or allowing more frequent breaks, both of which the Department believes would incur little to no additional cost in most cases. However, for those who do have such conditions, the positions held by employees or training opportunities that beneficiaries may participate in that require such accommodation generally involve physical exertion or standing; such positions are likely to be found in the job categories of craft workers, operatives, laborers, and service workers. The majority of employees of recipients and beneficiaries of WIOA Title I-financial assistance will not be undertaking employment or training requiring accommodations for pregnancy related medical conditions.

Similarly, only beneficiaries who participate in the job training opportunities for occupations that require physical exertion or standing will require accommodations. For example, the number of women who are pregnant of the individuals who are beneficiaries of unemployment insurance will not need accommodations as services are obtained in large part electronically. As stated above, providing light duty or accommodation for pregnancy involves adjusting schedules or allowing more frequent breaks at little or no additional cost. However, a small percentage of the adult women who will annually receive training from eligible training providers, on-the-job training programs or Registered Apprenticeship programs and a small percentage of the female students who will receive Job Corps Center services annually will participate in training opportunities that may require physical exertion or standing for long periods of time and may need accommodations. The Department estimates that of the women who are employees of recipients or participants in training programs or in Job Corps Centers, 21 percent work in or are in training for job categories likely to require accommodations that might involve more than a *de minimis* cost.[269]

Because these data do not indicate gender demographics, the Department used data from the Bureau of Labor Statistics that indicate that 47 percent of the workforce is female.[270] Therefore, the Department estimates that 57,666 (122,693 × .47) adult women are beneficiaries of eligible training providers and on the job training employers annually.[271] In addition, the Department estimates that 10,060 (170,500 × .059) adult women were beneficiaries of Registered Apprenticeship programs annually.[272] Moreover, the Department estimates that there are 43,851 girls and women who are annual beneficiaries of the Job Corps program (109,627 × .40).[273] In addition, the Department estimated the number of individuals employed by recipients of WIOA Title I financial assistance to be 528,303 non-Federal employees of eligible training providers and on-the-job training programs, Registered Apprenticeship programs, and Job Corps Centers. (439,936 + 85,317 + 3,050). Because these data do not indicate gender demographics, the Department again used data from the Bureau of Labor Statistics that indicate that 47 percent of the workforce is female.[274] Using these assumptions there are 248,302 (528,303 × .47) adult women non-Federal employees of recipients.

Based on these data, in the following paragraphs, the Department estimates the approximate number of beneficiaries and employees in (1) eligible training provider programs and on-the-job training programs, (2) Job Corps Centers and (3) Registered Apprenticeship Programs who are pregnant in a given year. Following the analysis adopted by the Office of Federal Contract Compliance Programs (OFCCP) to calculate similar costs, the Department turned to data from the U.S. Census (Census). U.S. Census American Fact Finder does not report on pregnancy, but does report on births. Census data also shows whether the mother was in the labor force. The definition of labor force used by Census includes individuals in the civilian labor force who are employed or unemployed, and the term unemployed, as used by Census, includes those who were actively looking for work during the last four weeks and were available to accept a job. The Department determined that this number would be the best data

[268] Note that the analysis used is modeled after that used by OFCCP in its Sex Discrimination NPRM issued on January 30, 2015 at 80 FR 5246.

[269] Note that the analysis used is modeled after that used by OFCCP in their Sex Discrimination NPRM issued on January 30, 2015 at 80 FR 5246, 5248. OFCCP based this estimation on data from the Employer Information Report EEO–1. See 80 FR 5246, 5262.

[270] *Women in the Labor Force: A Databook,* BLS Reports, available at *http://www.bls.gov/cps/wlf-databook-2012.pdf* (last accessed Oct. 6, 2014).

[271] Provided by the Employment and Training Administration (ETA), U.S. Department of Labor, from the burden analysis contained in WIOA NPRM implementing Titles I and III available at *https://www.federalregister.gov/articles/2015/04/16/2015-05530/workforce-innovation-and-opportunity-act* [hereinafter ETA NPRM] (last visited June 24, 2015).

[272] 5.9 percent of active beneficiaries in the Registered Apprenticeship program in 2014 were female. Registered Apprenticeship Partners Information Management Data System (RAPIDS) managed by Department of Labor staff only.

[273] Forty percent of the students benefiting from Job Corps programs annually are girls and young women. See *http://www.jobcorps.gov/libraries/pdf/who_job_corps_serves.sflb.*

[274] *Women in the Labor Force: A Databook,* BLS Reports, available at *http://www.bls.gov/cps/wlf-databook-2012.pdf* (last accessed Oct. 6, 2014).

available to use to estimate the percentage of participants in programs and activities receiving financial assistance from Title I of WIOA as well as employees of WIOA Title I-financially assisted programs and activities. As the Department believes these are the best data available, the Department used the ratio of births among working and non-working mothers to determine the pregnancy rate of women in the workforce. Thus, the Department determined that the pregnancy rate for women in the workforce is approximately 61 percent of the rate for women in the general population, translating to a pregnancy rate of 6.7 percent of women who are beneficiaries of WIOA Title I-financially assisted programs and activities and employees of WIOA Title I-financially assisted programs and activities.[275]

Training Program Beneficiaries

As calculated above, approximately 57,666 women annually participate in eligible training provider or on-the-job training provider programs that receive WIOA Title I financial assistance. Of this number, using the pregnancy rate data above, 3,864 (57,666 × .067) women might be pregnant annually. Of this number, the Department estimates that no more than 21 percent, or 811 women (.21 × 3,864), would be participating in job training categories likely to require accommodations that might involve more than a *de minimis* cost.

Registered Apprenticeship Beneficiaries

As calculated above, approximately 10,060 women annually benefit from Registered Apprenticeship programs. Of this number, using the pregnancy rate data above, 674 (10,060 × .67) women might be pregnant annually. Of this number, the Department estimates that no more than 21 percent, or 142 women (.21 × 674), would be participating in job training categories likely to require accommodations that might involve more than a *de minimis* cost.

Job Corps Program Beneficiaries

Job Corps does not keep data on the percentage of students who are pregnant. The Job Corps program serves youth and young adults between the ages of 16 and 24.[276] Forty percent of Job Corps students or approximately 43,851 are female.[277] Applying the .067 rate of pregnancies used above to all female Job Corps students approximately 2,938 of them may become pregnant annually (43,851 × .067). The Job Corps Program has three stages through which participants move: Career Preparation Period, Career Development Period, and Career Transition Period. Not all of those students will be in the Career Development Period of their Job Corps Center experience, which is the stage when they would participate in technical training and most need accommodations. The Department estimates that at any given time, no more than a third of students are in the Career Development Period, so approximately 970 (2,938 × .33) pregnant young women would be in this part of their educational experience annually. Of this number, the Department estimates that no more than 21 percent would be participating in job training that requires physical exertion or standing for long periods of time, so at most 204 (970 × .21) Job Corps students may be participating in job training categories likely to require accommodations that might involve more than a *de minimis* cost.

Non-Federal Employees of Recipients

The Department determined that there are approximately 528,303 non-Federal employees who work for recipients of training programs, Job Corps Programs and Registered Apprenticeships. Because these data do not indicate gender demographics, CRC used data from the Bureau of Labor Statistics that indicate that 47 percent of the workforce is female.[278] Since approximately 248,302 of the employees of recipients are women, 16,636 (248,302 × .067) may be pregnant annually based on the data provided above. Since the majority of the employees of recipients have office jobs that do not require physical exertion or standing, the Department anticipates that no more than 21 percent,[279] or 3,494 women (.21 × 16,636) of these pregnant employees who are trainers at One Stop Career Centers or at Job Corps Centers, may be participating in job training categories likely to require accommodations that might involve more than a *de minimis* cost.

Therefore, a total of 4,651 women (811 + 142 + 204 + 3,494) who are beneficiaries or non-Federal employees of WIOA Title I-financially assisted programs may be participating in job training categories likely to require accommodations that might involve more than a *de minimis* cost.

Limited Need for Accommodations

Reports from NIH show that the incidence of medical conditions during pregnancy that require accommodations ranges from 0.5 percent (placenta previa) to 50 percent (back issues).[280] Thus, the Department estimates that of the approximately 4,651 (811 job training beneficiaries + 142 Registered Apprenticeship beneficiaries + 204 Job Corps beneficiaries + 3,494 non-Federal employees of recipients) women beneficiaries and employees in positions that may require physical exertion or standing according to our previous calculations, 50 percent (2,326) may require some type of an accommodation or light duty.[281]

The types of accommodations needed during pregnancy also vary. They range from time off for medical appointments and more frequent breaks to stools for sitting and assistance with heavy lifting.[282] Reports from the W.K. Kellogg Foundation on women's child bearing experiences and the National Women's Law Center on accommodating pregnant workers state that the costs associated with accommodating pregnant workers are minimal and generally involve schedule adjustments or modified work

[275] U.S. Census Bureau, *American Fact Finder,* Women 16 to 50 Years Who Had a Birth in the Past 12 Months by Marital Status and Labor Force Status, 2009 to 2011 American Community Survey 3-Year Estimates, available at *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_3YR_B13012&prodType=table* (last accessed Feb. 12, 2015). The data table reports birth rates for women in the labor force at 5.1 percent, compared to women not in the labor force at 8.4 percent. Comparing the two rates (5.1 percent to 8.4 percent), the birth rate of women in the labor force was 61 percent that of women not in the labor force. Therefore, multiplying the pregnancy rate among women of working age, 10.9 percent, by 61 percent results in a 6.7 percent pregnancy rate.

[276] Job Corps Eligibility Information available at *http://www.jobcorps.gov/AboutJobCorps/program_design.aspx.*

[277] Workforce System Results, for the Quarter ending June 30, 2013, ETA, DOL. Annual data for the four quarters ending June 2013. Includes the number of students active on the start date, number of students enrolled during the timeframe, number of graduates separated prior to the start date and in the placement service window during the timeframe, and number of former enrollees separated prior to the start date and in the placement service window during the timeframe.

[278] *Women in the Labor Force: A Databook,* BLS Reports, available at *http://www.bls.gov/cps/wlf-databook-2012.pdf* (last accessed Oct. 6, 2014) .

[279] *See* 80 FR 5262 (January 30, 2015).

[280] S. Malmqvist et. al., *Prevalence of low back and pelvic pain during pregnancy* (Abstract), J. Manipulative Physiological Therapy, National Center for Biotechnology Information (2012), *available at http://www.ncbi.nlm.nih.gov/pubmed/22632586* (last accessed Oct. 6, 2014).

[281] This is the same data used by OFCCP in Discrimination on the Basis of Sex, Proposed Rule 80 FR 46 (January 30, 2015).

[282] *Unlawful Discrimination Against Pregnant Workers and Workers with Caregiving Responsibilities: Meeting of the U.S. Equal Emp. Opportunity Comm'n* 8 (Feb. 15, 2012) (statement of Dr. Stephen Benard, Professor of Sociology, Indiana University), available at *http://www.eeoc.gov/eeoc/meetings/2-15-12/transcript.cfm* (last accessed Oct. 6, 2014).

duties.[283] One study found that when faced with a pregnancy-related need for accommodation, between 62 percent and 74 percent of pregnant women asked their employer to address their needs. The study further found that between 87 percent and 95 percent of the pregnant women who requested an adjustment to their work schedule or job duties worked for employers that attempted to address those requests. The study specifically found that 63 percent of pregnant women who needed a change in duties such as less lifting or more sitting asked their employers to address that need, and 91 percent of those women worked for employers that attempted to address their needs.[284] Based on this study, the Department believes that most employers and training providers do provide some form of accommodation to employees and participants when requested.

To determine the cost of accommodation or light duty imposed by the proposed rule, the Department considered the types of light duty or accommodations needed for employees of recipients of WIOA Title I-financial assistance and participants in WIOA Title I-financially assisted programs and activities. Generally, providing light duty or accommodation for pregnancy involves adjusting work schedules or allowing more frequent breaks. The Department believes that these accommodations would incur little to no additional cost.

Additional accommodations may involve either modifications to work environments (providing a stool for sitting rather than standing) or to job duties—for example, lifting restrictions. In making such an accommodation, recipients of WIOA Title I financial assistance have discretion regarding how they would make such modifications. For example, a recipient may provide an employee with an existing stool, or a recipient may have other employees assist when heavy lifting is required. To determine the cost of such accommodations, the Department referred to the Job Accommodation Network (JAN). JAN reports that the average cost of accommodation is $500.[285]

As stated above, 63 percent of pregnant women who needed a change in duties related to less lifting or more sitting requested such an accommodation from their employers. Thus, the Department estimates that 1,465 women (2,326 × .63) who may require accommodations would have made such a request, and 91 percent, or 1,333 of those requests (1,465 × .91) would have been addressed. In addition, the Department assumes that of the remaining 37 percent (2,326 × .37 = 861 women) who did not make such a request for a pregnancy accommodation, had they made the request, the needs of 91 percent of them (861 × .91 = 784 women) would also have been addressed. Thus, this proposed rule would require recipients of WIOA Title I financial assistance to accommodate the remaining 9 percent of pregnant women whose needs were not addressed. Therefore, the Department estimates that the cost, accounting for those pregnant women who made requests and those additional women who could make requests, would be $104,500 ((1,465 − 1,333 = 132) + (861 − 784 = 71) = 209 × $500). This is a first year cost and a recurring cost.

The Department believes that this cost estimate may be an overestimate because recipients with 15 or more employees are covered by a similar requirement found in Title VII and 36 states have requirements that apply to employers with fewer than 15 employees.[286] Although the Department seeks comments on all aspects of its calculation of burden and costs, the agency specifically seeks comments on the burden associated with providing accommodations to pregnant employees.

Discrimination Prohibited Based on National Origin, Including Limited English Proficiency § 38.9

The NPRM proposes language regarding the limited circumstances when a limited English proficient (LEP) individual may elect to use their own interpreter and how that choice must be documented by the recipient. In § 38.9(f)(2), the proposed rule states that an accompanying adult may interpret or facilitate communication when ''the information conveyed is of minimal importance to the services to be provided or when the LEP individual specifically requests that the accompanying adult provides language assistance, the accompanying adult agreed to provide assistance, and reliance on that adult for such assistance is appropriate under the circumstances.'' The NPRM goes on to state that, ''when the recipient permits the accompanying adult to provide such assistance, it must make and retain a record of the LEP individual's decision to use their own interpreter.'' There is currently no data available regarding the number of LEP individuals who are beneficiaries of recipients and the Department cannot determine how often an LEP individual will request that the accompanying adult provide language assistance, the accompanying adult agrees to provide it, and when reliance on that adult is appropriate. However, the Department estimates that all of these conditions will be met infrequently, creating a *de minimis* cost. Therefore, the Department seeks comment on any potential sources of data on the number of LEP individuals who are beneficiaries of recipients who would decide to use their own interpreter.

In addition, provisions are included in § 38.9(g) regarding a recipient's obligations to provide translation of vital information. Section 38.9(g)(1) addresses that obligation for languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, stating that ''a recipient must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site.'' Importantly, written training materials offered or used within employment-related training programs as defined under this part are excluded from these requirements. Section 38.9(g)(2) addresses the obligations of recipients for languages not spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, stating that ''a recipient must make reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid,

[283] National Women's Law Center & A Better Balance, It Shouldn't Be a Heavy Lift: Fair Treatment for Pregnant Workers 12 (2013), available at *http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf* (last accessed Dec. 30, 2014).

[284] Eugene Declerq et al., W.K. Kellogg Foundation, Listening to Mothers III: New Mothers Speak Out, 36, (2013).

[285] Beth Loy, Job Accommodation Network, *Workplace Accommodations: Low Cost, High Impact, available at http://askjan.org/media/lowcosthighimpact.html* (last updated Sept. 1, 2014) (last accessed Oct. 6, 2014).

[286] State laws covering employers with one employee: Alaska, Colorado, Hawaii, Maine, Michigan, Minnesota, Montana, New Jersey, North Dakota, Oklahoma, Oregon, South Dakota, Vermont, and Wisconsin; state laws covering employers with two employees: Wyoming; state laws covering employers with three employees: Connecticut; state laws covering employers with four employees: Delaware, Iowa, Kansas, New Mexico, New York, Ohio, Pennsylvania, and Rhode Island; state laws covering employers with five employees: California and Idaho; state laws covering employers with six employees: Indiana, Massachusetts, Missouri, New Hampshire, and Virginia; state laws covering employers with eight or more employees: Kentucky, Tennessee, and Washington; state laws covering employers with nine or more employees: Arkansas; state laws covering employers with 12 or more employees: West Virginia. In addition, the District of Columbia and Puerto Rico's laws cover employers with one employee.

benefit, service or training that the recipient provides.'' This section also allows that vital information may be conveyed orally if not translated. These requirements are contained in a DOL LEP guidance issued in 2003 [287] and regulations implementing Section 188 of WIA contained at 29 CFR 35.37, which address a recipient's language access requirements. However, their more detailed inclusion in the regulations is new. The Department is aware that, although these obligations are not new to recipients, not all recipients currently provide language access consistent with these proposed requirements; as a result, many recipients may incur cost associated with the burden to come into compliance with these provisions. The Department cannot determine with accuracy based on its enforcement experiences how many recipients are currently meeting their obligations as to LEP individuals, nor is it aware of data from which to base a calculation for these costs. Similarly, the Department is unable to determine what information each recipient will determine is vital, and thus needs to be translated, or what language(s) they would be translated into, because both factors are based on individual recipient assessments. The Department seeks comment on the current compliance status of recipients as to their LEP obligations, the availability of data related to the languages for which translations would be required, and a method by which to estimate the quantity of vital information that recipients generally will need to translate to be in compliance. Furthermore, as discussed in § 38.9, the Department has not defined ''significant number or portion of the population,'' and is considering other methods of determining when the obligations related to that determination would be triggered in this section. The Department welcomes comments on ways to calculate any new burden and costs incurred as a result of these proposed provisions.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

Recipients' Obligations To Publish Equal Opportunity Notice § 38.36

The NPRM proposes changes to the specific language provided by the Department for recipients to use in the equal opportunity notice and poster that they are required to post prominently in physical locations and on the recipient's Web site.[288] The changes state that ''sex discrimination includes pregnancy, childbirth and related medical conditions, transgender status, and gender identity; and that national origin discrimination may include limited English proficiency.'' [289] This notice and other notices throughout this NPRM are required to be provided in English as well as appropriate languages other than English. The Department will make translations of this notice available to recipients in the ten most frequently spoken languages in the U.S. other than English. The NPRM also proposes language in the poster stating that the CRC will accept complaints via U.S. Mail and email at an address provided on the CRC's Web site.[290]

The NPRM requires that the notice be placed in employee and participant handbooks, including electronic and paper form if both are available, provided to each employee and placed in each employee's file, both paper and electronic, if both are available.[291]

The Department estimates that it would take each EO Officer approximately 15 minutes to print out the notices, and another 15 minutes to ensure that new notices and posters are disseminated. Dissemination includes posting the notice in conspicuous locations in the physical space of the recipient as well as posting it on appropriate Web pages on the recipient's Web site. Consequently, the estimated first year dissemination burden is 17,229 hours (34,458 recipients × .5 hours). The Department calculated the total estimated first year and dissemination cost for the EO Officers as $1,504,781 (17,229 × $87.34/hour). The Department also calculated that each EO Officer will make thirty copies of the notice (this assumes ten copies each in no more than three of the appropriate languages) for posting in his or her establishment for a first year operational and maintenance cost of $82,699 (34,458 × $.08 × 30).

Additionally, the Department assumes it will take a computer programmer 30 minutes to place the notice on appropriate Web pages of the recipient's Web site. The Department assumes that each recipient has one Web site. The Department calculates the first year burden to update their Web sites to be an additional 17,229 hours (34,458 × .5 hours) and the first year costs for recipients to update their Web sites to be an additional $1,061,479 (17,229 × $61.61/hour). The Department also calculates it will take an EO Officer 30 minutes to disseminate to all employees of recipients a copy of the notice and place a copy in the employees' files. The Department estimates an additional first year burden for dissemination to be 17,229 hours (34,458 × .5 hours) and an additional first year cost to be $1,504,781 (17,229 × $87.34/hour).

Moreover, there is a recurring burden each time an employee is hired. The Department assumes a 1.5 percent [292] employee turnover rate per year for a total of 13,215 new employees the second and future years (881,009 (total number of recipients' employees) × .015). The Department estimates it will take an EO Officer fifteen minutes to disseminate the notice to only new recipient's employees each year, which equates to a burden of 8,615 hours (34,458 × .25 hours) and the total recurring cost to be $752,434 (8,615 hours × $87.34). The first year operation and maintenance cost for printing the two copies of the notice (one to disseminate to the employee and one to place in their file) for the first year is $140,961 (881,009 total number of recipients' employees × $.08 × 2) and the second and future years operation and maintenance cost is $2,114 (13,215 new employees × $.08 × 2) for copies made for new employees each year.

Data and Information Collection, Analysis, and Maintenance § 38.41

Proposed paragraph (a)(2) adds ''limited English proficient'' and ''preferred language'' to the list of categories of information that each recipient must collect about each applicant, registrant, and participant. The proposal does not apply these data collection obligations to applicants for employment and employees of recipients because the obligation as to LEP individuals does not apply to those categories of individuals. This change is intended to ensure that recipients collect information related to serving LEP individuals. The Department believes that these terms best capture this information as to LEP individuals and is also used by several states with language access laws.[293] The

[287] 68 FR 32290, May 29, 2003.

[288] Proposed 29 CFR 38.35; 29 CFR 38.36(a)(1).

[289] Proposed 29 CFR 38.35.

[290] *Id.*

[291] Proposed 29 CFR 38.36(b).

[292] *http://www.bls.gov/jlt/#news* State and local government preliminary ''hires'' data for February 2015.

[293] Pursuant to the DC Language Access Act, the DC Office of Human Rights requires covered entities to collect data on the number of LEP individuals served in an annual report. See Final rulemaking at 55 DCR 6348 (June 8, 2008); as amended by Final Rulemaking published at 61 DCR 9836 (September 26, 2014). The question on the DC Office of Human Rights Complaint Form for the purposes of capturing this information is ''What language do you prefer to communicate in?'' Available at *http://dcforms.dc.gov/webform/employment-intake-questionnaire-form* (last visited March 3, 2015). Hawaii passed their language access law in 2006 See Hawaii Rev. Stat. §§ 371–31 to 37. In California, the Dymally-Alatorre Bilingual Services Act

Department calculates the cost of adding this category to the list of categories of information that each recipient must collect about each applicant and participant as *de minimis* for the recipient because they are already collecting demographic data from beneficiaries in several other categories and these additions will be added to this existing process. Further, it is estimated on average it will take beneficiaries 5 seconds to provide LEP information including preferred language, where applicable, voluntarily. This equates to a cost of $567,131 (56,321,699 × 5 seconds = 281,608,495/60 = 4,693,475 minutes/60 = 78,225 hours × $7.25 = $567,131).

For those recipients that are not already collecting this information,[294] the Department estimates that there will be a first year cost to each recipient of 1.5 hours of a computer programmer's personnel time to incorporate these new categories into an online form for data collection. The Department believes that all recipients use computer-based data collection methods, and the one-time burden is $3,184,436 (34,458 recipients × 1.5 hours = 51,687 × $61.61/hour).

Required Maintenance of Records by Recipients § 38.43

The NPRM proposes language that specifies the types of records that need to be retained by a recipient when a complaint has been filed, and also requires that records be kept if a compliance review has been initiated. Records that must be kept include any type of hard-copy or electronic record related to the complaint or the compliance review.

The Department assumes that the only additional burden and associated cost would be in identifying any additional files that a recipient must retain beyond three years if they are under a compliance review. The Department further assumes this cost to be *de minimis*.

Subpart C—Governor's Responsibilities To Implement the Nondiscrimination and Equal Opportunity Requirements of WIOA.

Governor's Oversight and Monitoring Responsibilities for State Programs § 38.51

Proposed § 38.51(b) requires the Governor to monitor on an annual basis the compliance of State Programs with WIOA Section 188 and this part. Under § 37.54(d)(2)(ii), Governors are currently required to ''periodically'' monitor compliance of recipients. The proposed annual monitoring requirement is intended to: (1) Enable the timely identification and elimination of discriminatory policies and practices, thereby reducing the number of individuals impacted by discrimination; (2) be consistent with ETA proposed regulations requiring annual oversight of One-Stop Career Centers; [295] and (3) establish a consistent State-level practice nationwide. It is anticipated that this change will pose burden on some Governors who are not already interpreting the term ''periodically'' in the current regulations to require annual oversight.

The Department anticipates that this change will not impose a burden on all states because approximately half of them are currently conducting this monitoring annually, pursuant to their Methods of Administration.[296] Thus, the Department estimates the burden would be imposed on 28 of the 56 States subject to this requirement that currently do not annually monitor their recipients for compliance with Section 188 of WIA. Of the states that do not conduct annual monitoring, CRC is aware that the monitoring is conducted on average every three years. So, for those 28 states, they will need to increase their monitoring to be two thirds more frequent. Based on CRC's experience and interaction with several states with varying populations and geographic sizes, the average amount of time that it takes to conduct this annual monitoring is approximately 4,000 total hours carried out by multiple people. The additional burden on each of the 28 states that previously conduct monitoring every three years versus every year is estimated to be 2,680 hours (4,000 hours × .67) [297] per state or 75,040 for all 28 states. The Department calculates the total estimated annual cost for states as $6,553,994 (2,680 hours × 28 states × $87.34/hour) since the EO Officer and similar managers are likely to conduct the monitoring.

Governor's Obligation To Develop and Implement a Nondiscrimination Plan § 38.54

This rule changes the name ''Methods of Administration'' for the document described in § 37.54 to ''Nondiscrimination Plan,'' but retains the definition and contents of the document. Since the contents of the Plan do not change, the change of the title of the document is presumed to be incurred in the total cost of the issuance of the Plan. The Department welcomes comments on this assumption.

Subpart D—Compliance Procedures

Notice To Show Cause Issued to a Recipient § 38.66

The new language in § 38.66, paragraph (b), states that the Director may issue a Notice to Show Cause to a recipient ''after a Letter of Findings and/or an Initial Determination has been issued, and after a reasonable period of time has passed within which the recipient refuses to negotiate a conciliation agreement with the Director regarding the violation(s).'' The Department proposes this change to expand the circumstances in which the Director may issue a Notice to Show Cause. The proposal seeks to use the Notice to Show Cause at this later stage because it has been the Department's experience that, after issuing a letter of findings, the Governor or other recipients agree in principle to enter into a conciliation agreement that resolves the identified violations, but then frequently fail to respond to correspondence from the CRC regarding finalizing and signing the agreement. With proposed § 38.66(b), the Director could issue a Notice to Show Cause prior to issuing a Final Determination, providing Governors and other recipients another opportunity to take the corrective or remedial actions required by the Director to bring the recipient into compliance before enforcement proceedings are initiated. Recipients are already familiar with the Notice to Show Cause since it is currently described and contained in the implementing regulations found at 29 CFR 37.67, so these changes are slight, and the proposed language is

requires local agencies to provide language access to limited English-proficient speakers. Ca. Govt. Code § 7290–7299.8. The Bilingual Services Program at the California Department of Human Resources provides oversight, including conducting language surveys on implementation. *http://www.calhr.ca.gov/state-hr-professionals/Pages/Bilingual-Services.aspx.*

[294] Programs providing core and intensive services through the One Stop delivery system currently collect information regarding LEP status and some may be doing so voluntarily, however, we have no way of knowing how many recipients overall are currently collecting information from beneficiaries regarding LEP status, so we are including the cost to all recipients for this analysis.

[295] WIOA NPRM implementing Titles I and III available at *https://www.federalregister.gov/articles/2015/04/16/2015-05530/workforce-innovation-and-opportunity-act.*

[296] This is based on CRC's records of reporting and discussions with EO Officers for the states over the past few years.

[297] Based on information from CRC's experience working with the states and asking less than 6 EO Officers these questions.

clear in terms of the new circumstances under which the Director can issue them. The Department estimates that it will issue at most two additional Show Cause Notices per year on average as a result of this change. As a result, the CRC estimates the burden incurred to be *de minimis* and invites comment on the burden associated with this provision.

Required Elements of a Recipient's Complaint Processing Procedures § 38.72

The NPRM proposes adding to the procedures that the recipient must adopt and publish the requirement that recipients provide complainants a copy of the notice of rights contained in § 38.35, along with the already-required initial written acknowledgement of receipt of the complaint and notice of the complainant's right to representation. This requirement is designed to ensure that complainants are aware of their rights, including that they have the option of filing with the recipient or with CRC, and that they are aware of the deadlines applicable to filing a subsequent complaint with CRC once they file initially with the recipient.

The Department anticipates that this requirement, under which recipients provide complainants a copy of the notice of rights contained in § 38.35, is limited to the operational costs of making additional copies of the notice for this purpose, and the first year personnel cost of 30 minutes of the EO Officer's time, who is most likely to be responsible for implementing this requirement, to include it in the documents routinely provided to complainants. Based upon complaint log data from 2003 to 2008, CRC estimates that on average, each recipient will receive one Section 188 complaint each year. The Department assumes that the EO Officer will handle the complaint for each recipient and it will take them approximately 30 minutes to process the complaint. The total annual burden is estimated to be 17,229 hours (34,458 × .5 hours) for a total cost of $1,504,781 (17,229 hours × $87.34/hr). Additionally, the Department estimates there are first year and recurring operation and maintenance costs of $2,757 ($.08 × 34,458) to copy the equal opportunity notice for complainants.

TABLE 3—FIRST YEAR BURDEN AND COSTS

First year burden and costs	Burden hours	Costs
Rule Familiarization	137,832	$12,038,247
Discrimination prohibited based on pregnancy, § 38.8	0	104,500
Recipients Obligation to Publish Equal Opportunity Notice, § 38.36	51,687	4,071,041
Data and Information Collection, Analysis, and Maintenance, § 38.41	129,912	3,751,567
Governor's oversight and monitoring responsibilities for State programs, § 38.51	75,040	6,553,994
Required elements of a recipient's complaint processing procedures, § 38.72	17,229	1,504,781
Operation and Maintenance Costs	.....	226,417
Total	411,700	28,250,547

TABLE 4—SECOND AND FUTURE-YEAR BURDEN AND COSTS

Second and future-year burden and costs	Burden hours	Costs
Discrimination prohibited based on pregnancy, § 38.8	0	$104,500
Recipients Obligation to Publish Equal Opportunity Notice, § 38.36	8,615	752,434
Data and Information Collection, Analysis, and Maintenance, § 38.41	78,225	567,131
Governor's oversight and monitoring responsibilities for State programs, § 38.51	75,040	6,553,994
Required elements of a recipient's complaint processing procedures, § 38.72	17,229	1,504,781
Operation and Maintenance Costs	.....	4,871
Total	179,109	9,487,711

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing the information collection for public comment.

As part of continuing efforts to reduce paperwork and respondent burden, the Department conducts preclearance consultation activities to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA.[298] This activity helps to ensure that: (1) The public understands the collection instructions; (2) respondents can provide the requested data in the desired format; (3) reporting burden (time and financial resources) is minimized; (4) respondents clearly understand the collection instruments; and (5) the Department can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential burdens on the regulated community created by provisions in the proposed regulations, which require the submission of information. The information collection requirements must also be submitted to the OMB for approval.

The Department notes that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number.[299] The Department obtains approval for Nondiscrimination Compliance

[298] *See* 44 U.S.C. 3506(c)(2)(A).

[299] *See* 44 U.S.C. 3512; 5 CFR 1320.5(a) and 1320.6).

Information Reporting under Control Number 1225–0077.

The information collections in this NPRM are summarized in the section-by-section discussion of this NPRM, Section II. The Department has identified that the following proposed sections contain information collections: 29 CFR 38.14, 38.16f, 25, 38.27, 38.29, 38.34–38.36, 38.38, 38.39–38.43, 38.51, 38.52-.54, 38.55, 387.69, 38.70, 38.72, 38.73, 38.74, and 38.77. Additional information collections approved under Control Number 1225–0077 appear in part 37, encompassing similar nondiscrimination requirements under the Workforce Investment Act (WIA), of this title; they will be maintained on a temporary basis while existing WIA grants remain in effect.

Concurrent with the publication of this proposed rule, the Department is submitting an associated information collection request to the Office of Management and Budget for approval. Interested parties may obtain a copy free of charge of one or more of the information collection requests submitted to the OMB on the reginfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain*. From the *Information Collection Review* tab, select *Information Collection Review*. Then select the *Department of Labor* from the *Currently Under Review* dropdown menu, and lookup Control Number 1225–0077. A free copy of the requests may also be obtained by contacting the person named in the **ADDRESSES** section of this preamble.

As noted in the **ADDRESSES** section of this NPRM, interested parties may send comments about the information collections to the Department throughout the 60-day comment period and/or to the OMB within 30 days of publication of this document in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention the applicable OMB Control Number(s). The Departments and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collections are summarized as follows:

Agency: DOL–OASAM.

Title of Collection: Nondiscrimination Compliance Information Reporting.

OMB Control Number: 1225–0077.

Affected Public: Individuals or Households and Private Sector—businesses or other for profits and not for profit institutions.

Total Estimated Number of Respondents: 105,259.

Total Estimated Number of Responses: 56,324,784.

Total Estimated Annual Time Burden: 315,339.

Total Estimated Annual Other Costs Burden: $0.

C. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This proposed rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

D. Unfunded Mandates Reform Act of 1995

This rule will not include any increased expenditures by State, local, and tribal governments in the aggregate of $100 million or more, or increased expenditures by the private sector of $100 million or more.

E. Plain Language

The Department drafted this NPRM in plain language.

F. Assessment of Federal Regulations and Policies on Families

The undersigned hereby certifies that the NPRM would not adverse effect the will-being of families, as discussed under section 654 of the Treasure and General Government Appropriations Act, 1999. To the contrary, by better ensuring that customers, including job seekers and applicants for unemployment insurance, do not suffer illegal discrimination in accessing DOL financially-assisted programs, services, and activities, the NPRM would have a positive effect on the economic well-being of families.

G. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact. The Small Business Administration (SBA) defines a small business as one that is ''independently owned and operated and which is not dominant in its field of operation.'' The definition of small business varies from industry to industry to the extent necessary to reflect industry size differences properly. An agency must either use the SBA definition for a small entity or establish an alternative definition, in this instance, for the workforce industry. The Department has adopted the SBA definition for the purposes of this certification. The Department has notified the Chief Counsel for Advocacy, SBA, under the RFA at 5 U.S.C. 605(b), and proposes to certify that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in large measure, by the fact that small entities are already receiving financial assistance under the WIA program and will likely continue to do so under the WIOA program as articulated in this NPRM. Having made these determinations and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), CRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. In making this determination, the agency used the SBA definition of small business, found at 13 CFR 121.201

Affected Small Entities

The proposed rule can be expected to impact small one-stop center operators. One-stop operators can be a single entity (public, private, or nonprofit) or a consortium of entities. The types of entities that might be a one-stop operator include: (1) An institution of higher education; 545 (2) an employment service State agency established under the Wagner-Peyser

Act; (3) a community-based organization, nonprofit organization, or workforce intermediary; (4) a private for-profit entity; (5) a government agency; (6) a Local Board, with the approval of the local CEO and the Governor; or (7) another interested organization or entity that can carry out the duties of the one-stop operator. Examples include, but are not limited to, a local chamber of commerce or other business organization, or a labor organization.

Impact on Small Entities

The Department indicates that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. CRC has highlighted costs that are new to WIOA implementation in this NPRM. Therefore, the Department expects that the WIOA NPRM will have negligible net cost impact on small entities.

H. Small Business Regulatory Enforcement Fairness Act of 1996

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

I. Executive Order 13175 (Indian Tribal Governments)

This proposed rule does not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposed rule would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

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

This NPRM is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

K. Executive Order 12988 (Civil Justice Reform)

The NPRM was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The NPRM was: (1) reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

L. Executive Order 13211 (Energy Supply)

This NPRM is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 29 CFR Part 38

Civil rights, Discrimination in employment, Equal opportunity, Nondiscrimination, Workforce development.

Edward C. Hugler,

Deputy Assistant Secretary for Operations, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

For reasons set forth in the preamble, the Department proposes to revise 29 CFR part 38 to read as follows:

TITLE 29—LABOR

PART 38—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—General Provisions

Sec.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients.

Assurances

Equal Opportunity Officers

Notice and Communication

Data and Information Collection Maintenance

Subpart C—Governor's Responsibilities To Implement the Nondiscrimination and Equal Opportunity Requirements of WIOA

Authority: 29 U.S.C. 3101 *et seq.;* 42 U.S.C. 2000d *et seq.;* 29 U.S.C. 794; 42 U.S.C. 6101 *et seq.;* and 20 U.S.C. 1681 *et seq.*

Subpart A—General Provisions

§ 38.1 Purpose.

The purpose of this part is to implement the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), which are contained in section 188 of WIOA.[1] Section 188 prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship status or participation in a WIOA Title I-financially assisted program or activity. This part clarifies the application of the nondiscrimination and equal opportunity provisions of WIOA and provides uniform procedures for implementing them.

§ 38.2 Applicability.

(a) This part applies to:

(1) Any recipient, as defined in § 38.4;

(2) Programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of WIOA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and

(3) As provided in § 38.18, the employment practices of a recipient and/or One-Stop partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as a part of WIOA Title I or the One-Stop delivery system.

[1] 29 U.S.C. 3248.

(b) *Limitation of Application.* This part does not apply to:

(1) Programs or activities that are financially assisted by the Department exclusively under laws other than Title I of WIOA, and that are not part of the One-Stop delivery system (including programs or activities implemented under, authorized by, and/or financially assisted by the Department under the Workforce Investment Act of 1998 (WIA));

(2) Contracts of insurance or guaranty;

(3) The ultimate beneficiary to a program of Federal financial assistance; and

(4) Federal procurement contracts, with the exception of contracts to operate or provide services to Job Corps Centers.

§ 38.3 Effect on other obligations.

(a) A recipient's compliance with this part will satisfy any obligation of the recipient to comply with 29 CFR part 31, the Department's regulations implementing Title VI of the Civil Rights Act of 1964, as amended (Title VI), and with Subparts A, D and E of 29 CFR part 32, the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504).

(b) 29 CFR part 32, subparts B and C and Appendix A, the Department's regulations which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, are hereby incorporated into this part by reference. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.

(c) This part does not invalidate or limit the obligations, remedies, rights, and procedures under any Federal law, or the law of any State or political subdivision, that provides greater or equal protection for the rights of persons as compared to this part:

(1) Recipients that are also public entities or public accommodations, as defined by Titles II and III of the Americans with Disabilities Act of 1990 (ADA), should be aware of obligations imposed by those titles.

(2) Similarly, recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA should be aware of obligations imposed by that title.

(d) Compliance with this part does not affect, in any way, any additional obligations that a recipient may have to comply with applicable federal laws

and their implementing regulations, such as the following:

(1) Executive Order 11246, as amended;

(2) Executive Order 13160;

(3) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793 and 794);

(4) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212);

(5) The Equal Pay Act of 1963, as amended (29 U.S.C. 206d);

(6) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*);

(7) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101);

(8) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);

(9) Title IX of the Education Amendments of 1972, as amended (Title IX) (20 U.S.C. 1681);

(10) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*); and

(11) The anti-discrimination provision of the Immigration and Nationality Act, as amended (8 U.S.C. 1324b).

§ 38.4 Definitions.

For the purpose of this part:

(a) *Administrative Law Judge* means a person appointed as provided in 5 U.S.C. 3105 and 5 CFR 930.203, and qualified under 5 U.S.C. 557, to preside at hearings held under the nondiscrimination and equal opportunity provisions of WOIA and this part.

(b) *Aid, benefit, service, or training* means WIOA Title I-financially assisted services, financial or other aid, training, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. As used in this part, the term includes any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIOA. ''Aid, benefit, service, or training'' includes, but is not limited to:

(1) Career Services;

(2) Education or training;

(3) Health, welfare, housing, social service, rehabilitation, or other supportive services;

(4) Work opportunities; and

(5) Cash, loans, or other financial assistance to individuals.

(c) *Applicant* means an individual who is interested in being considered for WIOA-Title I financially assisted aid, benefit, service, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient. *See also* the definitions of ''application for benefits,'' ''eligible applicant/registrant,'' ''participant,'' ''participation,'' and ''recipient'' in this section.

(d) *Applicant for employment* means a person or persons who make(s) an application for employment with a recipient of Federal financial assistance under WIOA Title I.

(e) *Application for benefits* means the process by which information, including but not limited to a completed application form, is provided by applicants or eligible applicants before and as a condition of receiving WIOA Title I-financially assisted aid, benefit, service, or training from a recipient.

(f) *Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(g) *Assistant Secretary* means the Assistant Secretary for Administration and Management, United States Department of Labor.

(h) *Auxiliary aids or services* includes:

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective means of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services, devices, and actions.

(i) *Babel Notice* means a short notice included in a document or electronic medium (*e.g.,* Web site, ''app,'' email) in multiple languages informing the reader that the communication contains vital information, and explaining how to access language services to have the contents of the communication provided in other languages.

(j) *Beneficiary* means the individual or individuals intended by Congress to receive aid, benefits, services, or training from a recipient.

(k) *Citizenship* See ''Discrimination prohibited based on citizenship status.'' in § 38.11.

(l) *CRC* means the Civil Rights Center, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

(m) *Department* means the U.S. Department of Labor (DOL), including its agencies and organizational units.

(n) *Departmental grantmaking agency* means a grantmaking agency within the U.S. Department of Labor.

(o) *Director* means the Director, Civil Rights Center (CRC), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, or a designee authorized to act for the Director.

(p) *Direct threat* means a significant risk of substantial harm to the health or safety of others that cannot be eliminated or reduced by auxiliary aids and services, reasonable accommodations, or reasonable modifications in policies, practices and/or procedures. The determination whether an individual with a disability poses a direct threat must be based on an individualized assessment of the individual's present ability safely to either: (1) satisfy the essential eligibility requirements of the program or activity (in the case of aid, benefits, services, or training); or (2) perform the essential functions of the job (in the case of employment). This assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

(q) *Disability*—(1) *General.* (i) The term ''disability'' means, with respect to an individual:

(A) A physical or mental impairment that substantially limits one or more of

the major life activities of such individual;

(B) A record of such an impairment; or

(C) Being regarded as having such an impairment.

(ii) *Rules of construction.* (A) Coverage of a particular individual may be established under any one or more of the three prongs of the general definition in paragraph (1)(i) of this defintion: the ''actual disability'' prong in paragraph (1)(i)(A), the ''record of'' prong in paragraph (1)(i)(B), or the ''regarded as'' prong in paragraph (1)(i)(C).

(B) Where a covered entity's failure to provide reasonable accommodations or reasonable modifications under § 38.14(a) or (b), is not being challenged in a particular case, it is generally unnecessary to proceed under the ''actual disability'' or ''record of'' prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the ''regarded as'' prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. However, a case may proceed under the ''actual disability'' or ''record of'' prong regardless of whether the case is challenging a covered entity's failure to provide reasonable accommodations, or reasonable modifications.

(2) The definition of disability must be construed in favor of broad coverage of individuals, to the maximum extent permitted by Federal disability nondiscrimination law and this part.

(3) *Physical or mental impairment.* (i) The phrase ''physical or mental impairment'' means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic and lymphatic, skin, and endocrine; or

(B) Any mental or psychological disorder such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase ''physical or mental impairment'' includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, pregnancy-related medical conditions, specific learning disabilities (including but not limited to dyslexia), HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase ''physical or mental impairment'' does not include homosexuality or bisexuality.

(4) *Major life activities.* (i) *General.* Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

(ii) *Major bodily functions.* A major life activity also includes the operation of a major bodily function, including but not limited to, the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

(iii) In determining other examples of major life activities, the term ''major'' must not be interpreted strictly to create a demanding standard for disability. Whether an activity is a ''major life activity'' is not determined by reference to whether it is of ''central importance to daily life.''

(5) *Substantially limits*—(i) *Rules of construction.* The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity.

(A) The term ''substantially limits'' must be construed broadly in favor of expansive coverage, to the maximum extent permitted by Federal disability nondiscrimination law and this part. ''Substantially limits'' is not meant to be a demanding standard.

(B) An impairment is a disability within the meaning of this part if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.

(C) The primary object of attention in disability cases brought under WIOA Section 188 should be whether covered entities have complied with their obligations and whether discrimination has occurred, not the extent to which an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis.

(D) The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term ''substantially limits'' will require a lower degree of functional limitation than the standard for ''substantially limits'' applied prior to the ADA Amendments Act of 2008 (ADAAA).

(E) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical evidence. Nothing in this paragraph is intended, however, to prohibit or limit the use of scientific, medical, or statistical evidence in making such a comparison where appropriate.

(F)(*1*) The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures.

(*2*) *Mitigating measures* include, but are not limited to:

(*i*) Medication, medical supplies, equipment, appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;

(*ii*) Use of assistive technology;

(*iii*) Reasonable modifications of policies, practices, and procedures, or auxiliary aids or services;

(*iv*) Learned behavioral or adaptive neurological modifications; or

(*v*) Psychotherapy, behavioral therapy, or physical therapy.

(*3*) However, the ameliorative effects of ordinary eyeglasses or contact lenses will be considered in determining whether an impairment substantially limits a major life activity. Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(G) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(H) An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.

(I) The six-month ''transitory'' part of the ''transitory and minor'' exception in paragraph (7) of this definition does not apply to the ''actual disability'' or ''record of'' prongs of the definition of disability. The effects of an impairment lasting or expected to last less than six months can be substantially limiting within the meaning of this section for establishing an actual disability or a record of a disability.

(ii) *Predictable assessments.* (A) The principles set forth in paragraph (5)(i) of this definition are intended to provide for more generous coverage and application of the prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities with respect to avoiding discrimination on the basis of disability.

(B) Applying the principles set forth in paragraph (5)(i) of this definition, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraph (1)(i)(A) (the ''actual disability'' prong) or paragraph (1)(i)(B) (the ''record of'' prong). Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(C) For example, applying the principles set forth in paragraph (5)(i) of this definition, it should easily be concluded that the following types of impairments, will, at a minimum, substantially limit the major life activities indicated:

(*1*) Deafness substantially limits hearing and auditory function;

(*2*) Blindness substantially limits visual function;

(*3*) An intellectual disability substantially limits reading, learning, and problem solving;

(*4*) Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function;

(*5*) Autism substantially limits learning, social interaction, and communication;

(*6*) Cancer substantially limits normal cell growth;

(*7*) Cerebral palsy substantially limits brain function;

(*8*) Diabetes substantially limits endocrine function;

(*9*) Epilepsy, muscular dystrophy, and multiple sclerosis substantially limit neurological function;

(*10*) Human Immunodeficiency Virus (HIV) infection substantially limits immune function; and

(*11*) Major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia substantially limit brain function. The types of impairments described in this paragraph may substantially limit additional major life activities not explicitly listed above.

(iii) *Condition, manner and duration.* (A) At all times taking into account the principles in paragraph (5)(i) of this definition, in determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the conditions under which the individual performs the major life activity; the manner in which the individual performs the major life activity; or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

(B) Consideration of facts such as condition, manner or duration may include, among other things, consideration of the difficulty, effort or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; or the way an impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(C) In determining whether an individual has a disability under the ''actual disability'' or ''record of'' prongs of the definition of disability, the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning, because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population.

(6) *A record of such an impairment.* (i) *General.* An individual has a record of such an impairment if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(ii) *Broad construction.* Whether an individual has a record of an impairment that substantially limited a major life activity must be construed broadly to the maximum extent permitted by Federal disability nondiscrimination law and this part and should not demand extensive analysis. An individual will be considered to fall within this prong of the definition of ''disability'' if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a major life activity, the principles articulated in paragraph (5)(i) of this definition apply.

(iii) *Reasonable accommodation or reasonable modification.* An individual with a record of a substantially limiting impairment may be entitled to a reasonable accommodation or reasonable modification if needed and related to the past disability.

(7) *Is regarded as having such an impairment.* (i) An individual is ''regarded as having such an impairment'' if the individual is subjected to an action prohibited by WIOA Section 188 and this part because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity, except for an impairment that is both transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

(ii) An individual is ''regarded as having such an impairment'' any time a covered entity takes a prohibited action against the individual because of an actual or perceived impairment, even if the entity asserts, or may or does ultimately establish, a defense to such action.

(iii) Establishing that an individual is ''regarded as having such an impairment'' does not, by itself, establish liability. Liability is established only when it is proven that a covered entity discriminated on the basis of disability within the meaning of this part.

(r) *Eligible applicant/registrant* means an individual who has been determined eligible to participate in one or more

WIOA Title I-financially assisted programs or activities.

(s) *Employment practices* of a recipient include, but are not limited to:

(1) Recruitment or recruitment advertising;

(2) Selection, placement, layoff or termination of employees;

(3) Upgrading, promotion, demotion or transfer of employees;

(4) Training, including employment-related training;

(5) Participation in upward mobility programs;

(6) Deciding rates of pay or other forms of compensation;

(7) Use of facilities; or

(8) Deciding other terms, conditions, benefits, and/or privileges of employment.

(t) *Employment-related training* means training that allows or enables an individual to obtain skills, abilities and/or knowledge that are designed to lead to employment.

(u) *Entity* means any person, corporation, partnership, joint venture, sole proprietorship, unincorporated association, consortium, Native American tribe or tribal organization, Native Hawaiian organization, and/or entity authorized by State or local law; any State or local government; and/or any agency, instrumentality or subdivision of such a government.

(v) *Facility* means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located. The phrase ''real or personal property'' in the preceding sentence includes indoor constructs that may or may not be permanently attached to a building or structure. Such constructs include, but are not limited to, office cubicles, computer kiosks, and similar constructs.

(w) *Federal grantmaking agency* means a Federal agency that provides financial assistance under any Federal statute.

(x) *Financial assistance* means any of the following:

(1) Any grant, subgrant, loan, or advance of funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;

(2) Provision of the services of grantmaking agency personnel, or of other personnel at the grantmaking agency's expense;

(3) A grant or donation of real or personal property or any interest in or use of such property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration;

(ii) Proceeds from a subsequent sale, transfer, or lease of such property, if the grantmaking agency's share of the fair market value of the property is not returned to the grantmaking agency; and

(iii) The sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:

(A) Without consideration,

(B) At a nominal consideration, or

(C) At a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;

(4) Waiver of charges that would normally be made for the furnishing of services by the grantmaking agency; and

(5) Any other agreement, arrangement, contract or subcontract (other than a procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under the statute or policy that authorizes assistance by the grantmaking agency.

(y) *Financial assistance under Title I of WIOA* means any of the following, when authorized or extended under WIOA Title I:

(1) Any grant, subgrant, loan, or advance of federal funds, including funds extended to any entity for payment to or on behalf of participants admitted to that recipient for training, or extended directly to such participants for payment to that recipient;

(2) Provision of the services of Federal personnel, or of other personnel at Federal expense;

(3) A grant or donation of Federal real or personal property or any interest in or use of such property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration;

(ii) Proceeds from a subsequent sale, transfer, or lease of such property, if the Federal share of the fair market value of the property is not returned to the Federal Government; and

(iii) The sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:

(A) Without consideration,

(B) At a nominal consideration, or

(C) At a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;

(4) Waiver of charges that would normally be made for the furnishing of Government services; and

(5) Any other agreement, arrangement, contract or subcontract (other than a Federal procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under WIOA Title I.

(z) *Fundamental alteration* means:

(1) A change in the essential nature of a program or activity as defined in this part, including but not limited to an aid, service, benefit, or training; or

(2) A cost that a recipient can demonstrate would result in an undue burden. Factors to be considered in making the determination whether the cost of a modification would result in such a burden include:

(i) The nature and net cost of the modification needed, taking into consideration the availability of tax credits and deductions, and/or outside financial assistance, for the modification;

(ii) The overall financial resources of the facility or facilities involved in the provision of the modification, including:

(A) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and

(B) The effect the modification would have on the expenses and resources of the facility or facilities;

(iii) The overall financial resources of the recipient, including:

(A) The overall size of the recipient;

(B) The number of persons aided, benefited, served, trained, or employed by the recipient; and

(C) The number, type and location of the recipient's facilities;

(iv) The type of operation or operations of the recipient, including:

(A) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and

(B) Where the modification sought is employment-related, the composition, structure and functions of the recipient's workforce; and

(v) The impact of the modification upon the operation of the facility or facilities, including:

(A) The impact on the ability of other participants to receive aid, benefit, service, or training, or of other employees to perform their duties; and

(B) The impact on the facility's ability to carry out its mission.

(aa) *Governor* means the chief elected official of any State, or the Governor's designee.

(bb) *Grant applicant* means an entity that submits required documentation to the Governor, recipient, or Department, before and as a condition of receiving financial assistance under Title I of WIOA.

(cc) *Grantmaking agency* means an entity that provides Federal financial assistance.

(dd) *Guideline* means written informational material supplementing an agency's regulations and provided to grant applicants and recipients to provide program-specific interpretations of their responsibilities under the regulations.

(ee) *Illegal use of drugs* means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, as amended (21 U.S.C. 812). ''Illegal use of drugs'' does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(ff) *Individual with a disability* means a person who has a disability as previously defined in this section.

(1) The term ''individual with a disability'' does not include an individual on the basis of:

(i) Transvestism, transsexualism, or gender dysphoria not resulting from physical impairments;

(ii) Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders;

(iii) Compulsive gambling, kleptomania, or pyromania; or

(iv) Psychoactive substance use disorders resulting from current illegal use of drugs.

(2) The term ''individual with a disability'' does not include an individual who is currently engaging in the illegal use of drugs, when a recipient acts on the basis of such use. This limitation does not exclude as an individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use, but is not engaging in such use, except that it is not a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (2)(i) or (ii) of this definition is no longer engaging in the illegal use of drugs.

(3) With regard to employment, the term ''individual with a disability'' does not include any individual who:

(i) Is an alcoholic if:

(A) The individual's current use of alcohol prevents such individual from performing the duties of the job in question, or

(B) The individual's employment, by reason of such current alcohol abuse, would constitute a direct threat to the individual or the safety of others; or

(ii) Has a currently contagious disease or infection, if:

(A) That disease or infection prevents him or her from performing the essential functions of the job in question, or

(B) The individual's employment, because of that disease or infection, would constitute a direct threat to the health or safety of the individual or others.

(gg) *Labor market area* means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area must be identified in accordance with either criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas, or similar criteria established by a Governor.

(hh) *Limited English proficient (LEP) individual* means an individual whose primary language for communication is not English and who has a limited ability to read, speak, write, and/or understand English. LEP individuals may be competent in English for certain types of communication (*e.g.,* speaking or understanding), but still be LEP for other purposes (*e.g.,* reading or writing).

(ii) *LWIA (Local Workforce Investment Area) grant recipient* means the entity that receives WIOA Title I financial assistance for a Local Workforce Investment Area directly from the Governor and disburses those funds for workforce investment activities.

(jj) *National Programs* means:

(1) Job Corps; and

(2) Programs receiving Federal financial assistance under Title I, Subtitle D of WIOA directly from the Department. Such programs include, but are not limited to, the Migrant and Seasonal Farmworkers Programs, Native American Programs, National Dislocated Worker Grant Programs, and YouthBuild programs.

(kk) *Noncompliance* means a failure of a grant applicant or recipient to comply with any of the applicable requirements of the nondiscrimination and equal opportunity provisions of WIOA and this part.

(ll) *Nondiscrimination Plan* means the written document and supporting documentation developed under § 38.54.

(mm) *On-the-Job Training (OJT)* means training by an employer that is provided to a paid participant while the participant is engaged in productive work that:

(1) Provides knowledge or skills essential to the full and adequate performance of the job;

(2) Provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and

(3) Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

(nn) *Other power-driven mobility device* means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

(oo) *Participant* means an individual who has been determined to be eligible to participate in, and who is receiving any aid, benefit, service or training under, a program or activity financially assisted in whole or in part under Title I of WIOA. ''Participant'' includes, but is not limited to, individuals receiving any service(s) under state Employment Service programs, and claimants receiving any service(s) or benefits under state Unemployment Insurance programs.

(pp) *Participation* is considered to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized aid, benefit, service, or training provided under Title I of WIOA.

(qq) *Parties to a hearing* means the Department and the grant applicant(s), recipient(s), or Governor.

(rr) *Population eligible to be served* means the total population of adults and eligible youth who reside within the labor market area that is served by a particular recipient, and who are eligible to seek WIOA Title I-financially assisted aid, benefits, services or training from that recipient. See the definition of ''labor market area'' in this section.

(ss) *Program or activity:* See ''WIOA Title I-financially assisted program or activity'' in this section.

(tt) Programmatic accessibility means policies, practices, and procedures providing effective and meaningful opportunity for persons with disabilities to participate in or benefit from aid, benefits, services, and training.

(uu) *Prohibited basis* means any basis upon which it is illegal to discriminate under the nondiscrimination and equal opportunity provisions of WIOA or this part, *i.e.,* race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship status or participation in a WIOA Title I-financially assisted program or activity.

(vv) *Public entity* means:

(1) Any State or local government; and

(2) Any department, agency, special purpose district, workforce investment board, or other instrumentality of a State or States or local government.

(ww) *Qualified individual with a disability* means—

(1) With respect to employment, an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position;

(2) With respect to aid, benefits, services, or training, an individual who, with or without auxiliary aids and services, reasonable accommodations, and/or reasonable modifications in policies, practices and procedures, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

(xx) *Qualified interpreter* means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals who are limited English proficient. The interpreter must be able to interpret both receptively and expressively, using any necessary specialized vocabulary, either in-person, through a telephone, a video remote interpreting (VRI) service, or via internet, video, or other technological methods.

(1) *Qualified interpreter for an individual with a disability* includes, for example, a sign language interpreter, oral transliterator, and cued-language transliterator. When an interpreter is provided to a person with a disability, the qualified interpreter must be able to sign or otherwise communicate effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(2) *Qualified interpreter for an individual who is limited English proficient* means an individual who demonstrates expertise and ability to communicate information effectively, accurately, and impartially, in both English and the other language, and identifies and employs the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, or sight translation).

(yy) *Reasonable accommodation.* (1) The term ''reasonable accommodation'' means:

(i) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or

(ii) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to:

(A) The environment where work is performed or aid, benefits, services, or training are given; or

(B) The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or

(iii) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

(2) Reasonable accommodation includes, but is not limited to:

(i) Making existing facilities used by applicants, registrants, eligible applicants/registrants, participants, applicants for employment, and employees readily accessible to and usable by individuals with disabilities; and

(ii) Restructuring of a job or a service, or of the way in which aid, benefits, services, or training is/are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(4) A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who has an ''actual disability'' or ''record of'' a disability, but is not required to provide a reasonable accommodation to an individual who is only ''regarded as'' having a disability.

(zz) *Recipient* means entity to which financial assistance under Title I of WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to the Governor under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, for purposes of this part, One-Stop partners, as defined in section 121(b) of WIOA, are treated as ''recipients,'' and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the One-Stop delivery system. ''Recipient'' includes, but is not limited to:

(1) State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;

(2) State Workforce Agencies;

(3) State and local Workforce Investment Boards;

(4) LWIA grant recipients;

(5) One-Stop operators;

(6) Service providers, including eligible training providers;

(7) On-the-Job Training (OJT) employers;

(8) Job Corps contractors and center operators;

(9) Job Corps national training contractors;

(10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;

(11) Placement agencies, including Job Corps contractors that perform these functions;

(12) Other National Program recipients.

(aaa) *Registrant* means the same as ''applicant'' for purposes of this part. *See also* the definitions of ''application for benefits,'' ''eligible applicant/registrant,'' ''participant,'' ''participation,'' and ''recipient'' in this section.

(bbb) *Respondent* means a grant applicant or recipient (including a Governor) against which a complaint has been filed under the nondiscrimination and equal opportunity provisions of WIOA or this part.

(ccc) *Secretary* means the Secretary of Labor, U.S. Department of Labor, or the Secretary's designee.

(ddd) *Sectarian activities* means religious worship or ceremony, or sectarian instruction.

(eee) *Section 504* means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, which forbids discrimination against qualified individuals with disabilities in federally-financed and conducted programs and activities.

(fff) *Service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship, without more, do not constitute work or tasks for the purposes of this definition.

(ggg) *Service provider* means:

(1) Any operator of, or provider of aid, benefits, services, or training to:

(i) Any program or activity that receives WIOA Title I financial assistance from or through any State or LWIA grant recipient; or

(ii) Any participant through that participant's Individual Training Account (ITA); or

(2) Any entity that is selected and/or certified as an eligible provider of training services to participants.

(hhh) *Small recipient* means a recipient who:

(1) Serves a total of fewer than 15 beneficiaries during the entire grant year, and

(2) Employs fewer than 15 employees on any given day during the grant year.

(iii) *Solicitor* means the Solicitor of Labor, U.S. Department of Labor, or the Solicitor's designee.

(jjj) *State* means the individual states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(kkk) *State Programs* means programs financially assisted in whole or in part under Title I of WIOA in which either:

(1) The Governor and/or State receives and disburses the grant to or through LWIA grant recipients; or

(2) The Governor retains the grant funds and operates the programs, either directly or through a State agency.

(3) ''State programs'' also includes State Workforce Agencies, State Employment Service agencies, and/or State unemployment compensation agencies.

(lll) *State Workforce Agency* (SWA) means the State agency that, under the State Administrator, contains both State agencies with responsibility for administering programs authorized under the Wagner-Peyser Act, and unemployment insurance programs authorized under Title III of the Social Security Act.

(mmm) *Supportive services* means services, such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in WIOA Title I-financially assisted programs and activities, as consistent with the provisions of WIOA Title I.

(nnn) *Terminee* means a participant whose participation in the program or employee whose employment with the program ends voluntarily or involuntarily, during the applicable program year.

(ooo) *Title VI* means Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.,* as amended, which forbids recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin.

(ppp) *Transferee* means a person or entity to whom or to which real or personal property, or an interest in such property, is transferred.

(qqq) *Ultimate beneficiary* See the definition of ''beneficiary'' in this section.

(rrr) *Undue burden or undue hardship* has different meanings, depending upon whether it is used with regard to reasonable accommodation of individuals with disabilities, or with regard to religious accommodation.

(1) *Reasonable accommodation of individuals with disabilities.* (i) In general, ''undue hardship'' means significant difficulty or expense incurred by a recipient, when considered in light of the factors set forth in paragraph (1)(ii) of this definition.

(ii) Factors to be considered in determining whether an accommodation would impose an undue hardship on a recipient include:

(A) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation;

(B) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, including:

(*1*) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities, and

(*2*) The effect the accommodation would have on the expenses and resources of the facility or facilities;

(C) The overall financial resources of the recipient, including:

(*1*) The overall size of the recipient,

(*2*) The number of persons aided, benefited, served, trained, or employed by the recipient, and

(*3*) The number, type and location of the recipient's facilities;

(D) The type of operation or operations of the recipient, including:

(*1*) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient, and

(*2*) Where the individual is seeking an employment-related accommodation, the composition, structure and functions of the recipient's workforce; and

(E) The impact of the accommodation upon the operation of the facility or facilities, including:

(*1*) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and

(*2*) The impact on the facility's ability to carry out its mission.

(2) *Religious accommodation.* For purposes of religious accommodation only, ''undue hardship'' means anything more than a *de minimis* cost or operational burden that a particular accommodation would impose upon a recipient.

(sss) *Video remote interpreting (VRI) service* means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images, as provided in § 38.15.

(ttt) *Vital information* means information, whether written, oral or electronic, that is necessary for an individual to understand how to obtain any aid, benefit, service and/or training; necessary for an individual to obtain any aid, benefit, service, and/or training; or required by law. Examples of documents containing vital information include, but are not limited to applications, consent, and complaint forms; notices of rights and responsibilities; notices advising LEP individuals of their rights under this part, including the availability of free language assistance; rulebooks; written tests that do not assess English language competency, but rather assess competency for a particular license, job, or skill for which English proficiency is not required; and letters or notices that require a response from the beneficiary or applicant, participant, or employee.

(uuu) *Wheelchair* means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor and/or outdoor locomotion.

(vvv) *WIOA* means the Workforce Innovation and Opportunity Act.

(www) *WIOA Title I financial assistance.* See the definition of ''Financial assistance under WIOA'' in this section.

(xxx) *WIOA Title I-financially assisted program or activity* means:

(1) A program or activity, operated by a recipient and financially assisted, in whole or in part, under Title I of WIOA that provides either:

(i) Any aid, benefit, service, or training to individuals; or

(ii) Facilities for furnishing any aid, benefits, services, or training to individuals;

(2) Aid, benefit, service, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIOA Title I; or

(3) Aid, benefit, service, or training provided with the aid of any non-WIOA Title I financial assistance, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIOA Title I financial assistance. See the definition of ''aid, benefit, service, or training'' in this section.

§ 38.5 General prohibitions on discrimination.

No individual in the United States may, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, applicants, and participants only, citizenship or participation in any WIOA Title I-financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I-financially assisted program or activity.

§ 38.6 Specific discriminatory actions prohibited on bases other than disability.

(a) For the purposes of this section, prohibited bases for discrimination are race, color, religion, sex, national origin, age, political affiliation or belief, and for beneficiaries, applicants, and participants only, citizenship or participation in any WIOA Title I-financially assisted program or activity.

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, on a prohibited basis:

(1) Deny an individual any aid, benefit, service, or training provided under a WIOA Title I-financially assisted program or activity;

(2) Provide to an individual any aid, benefit, service, or training that is different, or is provided in a different manner, from that provided to others under a WIOA Title I-financially assisted program or activity;

(3) Subject an individual to segregation or separate treatment in any matter related to receipt of any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity;

(5) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefit, service, or training provided under a WIOA Title I-financially assisted program or activity;

(6) Deny or limit an individual with respect to any opportunity to participate in a WIOA Title I-financially assisted program or activity, or afford the individual an opportunity to do so that is different from the opportunity afforded others under a WIOA Title I-financially assisted program or activity;

(7) Deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the WIOA Title I-financially assisted program or activity; or

(8) Otherwise limit an individual enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIOA Title I-financially assisted aid, benefit, service, or training.

(c) A recipient must not, directly or through contractual, licensing, or other arrangements:

(1) Aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a basis prohibited by WIOA Section 188 or this part in providing any aid, benefit, service, or training, to registrants, applicants or participants in a WIOA Title I-financially assisted program or activity; or

(2) Refuse to accommodate an individual's religious practices or beliefs, unless to do so would result in undue hardship, as defined in § 38.4(rrr)(2).

(d)(1) In making any of the determinations listed in paragraph (d)(2) of this section, either directly or through contractual, licensing, or other arrangements, a recipient must not use standards, procedures, criteria, or administrative methods that have any of the following purposes or effects:

(i) Subjecting individuals to discrimination on a prohibited basis; or

(ii) Defeating or substantially impairing, on a prohibited basis, accomplishment of the objectives of either:

(A) The WIOA Title I-financially assisted program or activity; or

(B) The nondiscrimination and equal opportunity provisions of WIOA or this part.

(2) The determinations to which this paragraph applies include, but are not limited to:

(i) The types of aid, benefit, service, training, or facilities that will be provided under any WIOA Title I-financially assisted program or activity;

(ii) The class of individuals to whom such aid, benefit, service, training, or facilities will be provided; or

(iii) The situations in which such aid, benefit, service, training, or facilities will be provided.

(3) Paragraph (d) of this section applies to the administration of WIOA Title I-financially assisted programs or activities providing aid, benefit, service, training, or facilities in any manner, including, but not limited to:

(i) Outreach and recruitment;

(ii) Registration;

(iii) Counseling and guidance;

(iv) Testing;

(v) Selection, placement, appointment, and referral;

(vi) Training; and

(vii) Promotion and retention.

(4) A recipient must not take any of the prohibited actions listed in paragraph (d) of this section either directly or through contractual, licensing, or other arrangements.

(e) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On a prohibited basis:

(i) Excluding individuals from a WIOA Title I-financially assisted program or activity;

(ii) Denying them the benefits of such a program or activity; or

(iii) Subjecting them to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the objectives of either:

(i) The WIOA Title I-financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIOA or this part.

(f)(1) 29 CFR part 2, subpart D governs the circumstances under which DOL support, including under WIOA Title I-financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect. See also 20 CFR 667.266 and 667.275. 29 CFR part 2, subpart D also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty for Department of Labor social service providers and beneficiaries.

(2) Except under the circumstances described in paragraph (f)(3) of this section, a recipient must not employ participants to carry out the construction, operation, or maintenance of any part of any facility that is used, or to be used, for religious instruction or as a place for religious worship.

(3) A recipient may employ participants to carry out the maintenance of a facility that is not primarily or inherently devoted to religious instruction or religious worship if the organization operating the facility is part of a program or activity providing services to participants.

(g) The exclusion of an individual from programs or activities limited by Federal statute or Executive Order to a certain class or classes of individuals of which the individual in question is not a member is not prohibited by this part.

§ 38.7 Discrimination prohibited based on sex.

(a) In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, discriminate on the basis of sex. An individual may not be excluded from participation in, denied the benefits of, or subjected to discrimination under any WIOA Title I-financially assisted program or activity based on sex. The term sex includes, but is not limited to, pregnancy, childbirth, and related medical conditions, transgender status, and gender identity.

(b) Recipients may not make any distinction based on sex in providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity. Such unlawful sex-based discriminatory practices include, but are not limited to, the following:

(1) Making a distinction between married and unmarried persons that is not applied equally to both sexes;

(2) Denying individuals of one sex who have children access to any aid, benefit, service, or training that is available to individuals of another sex who have children;

(3) Adversely treating unmarried individuals of one sex, but not unmarried individuals of an other sex, who become parents;

(4) Distinguishing on the basis of sex in formal or informal job training and/or educational programs, other opportunities such as networking, mentoring, individual development plans, or on the job training opportunities;

(5) Posting job announcements for jobs that recruit or advertise for individuals for certain jobs on the basis of sex, including through the use of gender-specific terms for jobs (such as ''waitress'');

(6) Treating an individual adversely because the individual identifies with a gender different from that individual's sex assigned at birth, or the individual has undergone, is undergoing, or is planning to undergo, any processes or procedures designed to facilitate the individual's transition to a sex other than the individual's sex assigned at birth;

(7) Denying individuals who are pregnant, who become pregnant, or who plan to become pregnant, opportunities for or access to aid, benefit, service, or training on the basis of pregnancy;

(8) Making any facilities associated with WIOA Title I-financially assisted program or activities available only to members of one sex, except that if the recipient provides restrooms or changing facilities, the recipient must provide separate or single-user restrooms or changing facilities;

(9) Denying individuals access to the bathrooms used by the gender with which they identify.

(c) A recipient's policies or practices that have an adverse impact on the basis of sex, and are not program-related and consistent with program necessity, constitute sex discrimination in violation of WIOA and this part.

(d) Discrimination on the basis of sex stereotypes, such as stereotypes about how persons of a particular sex are expected to look, speak, or act, is a form of unlawful sex discrimination. Examples of sex stereotyping include, but are not limited to:

(1) Denying an individual access to, or otherwise subjecting the individual to adverse treatment in accessing aid, benefit, service, or training, under a WIOA Title I-financially assisted program or activity because of that individual's failure to comply with gender norms and expectations for dress, appearance and/or behavior, including wearing jewelry, make-up, high-heeled shoes, suits or neckties.

(2) Harassment or adverse treatment of a male applicant, participant, or

beneficiary of a WIOA Title I-financially assisted program or activity because he is considered effeminate or insufficiently masculine.

(3) Adverse treatment of an applicant, participant, or beneficiary of a WIOA Title I-financially assisted program or activity because of the individual's actual or perceived gender identity.

(4) Adverse treatment of an applicant, participant, or beneficiary of a WIOA Title I-financially assisted program or activity based on sex stereotypes about caregiver responsibilities. For example, adverse treatment of a female participant because of a sex assumption that she has (or will have) family caretaking responsibilities, and that those responsibilities will interfere with her ability to access aid, benefit, service or training, is discrimination based on sex.

(5) Adverse treatment of a male applicant, participant, or beneficiary of a WIOA Title I- financially assisted program or activity because he has taken, or is planning to take, care of his newborn or recently adopted or fostered child, based on the sex-stereotyped belief that women, and not men, should care for children.

(6) Denying a woman access to, or otherwise subjecting her to adverse treatment in accessing, aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, based on the sex-stereotyped belief that women with children should not work long hours, regardless of whether the recipient is acting out of hostility or belief that it is acting in her or her children's best interest.

(7) Denying an individual access to, or otherwise subjecting the individual to adverse treatment in accessing aid, benefit, service, or training, under a WIOA Title I-financially assisted program or activity, based on sex stereotyping including the belief that a victim of domestic violence would disrupt the program or activity and/or may be unable to access any aid, benefit, service, or training.

(8) Adverse treatment of a woman applicant, participant, or beneficiary of a WIOA Title I-financially assisted program or activity because she does not dress or talk in a feminine manner.

(9) Denying an individual access to, or otherwise subjecting the individual to adverse treatment in accessing aid, benefit, service, or training, under a WIOA Title I-financially assisted program or activity, because the individual does not conform to a sex stereotype about individuals of a particular sex working in a specific job, sector, or industry.

§ 38.8 Discrimination prohibited based on pregnancy.

Discrimination on the basis of pregnancy, childbirth, or related medical conditions, including childbearing capacity, is a form of sex discrimination and a violation of the nondiscrimination provisions of WIOA and this part. Recipients may not treat persons of childbearing capacity, or those affected by pregnancy, childbirth, or related medical conditions, adversely in accessing aid, benefit, service, or training, under a WIOA Title I-financially assisted program or activity. Related medical conditions include, but are not limited to: Lactation; disorders directly related to pregnancy, such as preeclampsia (pregnancy-induced high blood pressure), placenta previa, and gestational diabetes; symptoms such as back pain; complications requiring bed rest; and the after-effects of a delivery. A pregnancy-related medical condition may also be a disability. *See* § 38.4(q)(3)(ii). Examples of unlawful pregnancy discrimination may include:

(a) Refusing to provide any aid, benefit, service, or training, under a WIOA Title I-financially assisted program or activity to a pregnant individual or an individual of childbearing capacity, or otherwise subjecting such individuals to adverse treatment on the basis of pregnancy or childbearing capacity;

(b) Limiting an individual's access to any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity based on her pregnancy, or requiring a doctor's note in order for a pregnant woman to begin or continue participation while pregnant when doctors' notes are not required for participants who are similarly situated;

(c) Denying an individual access to any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity or requiring the individual to terminate participation in any WIOA Title I-financially assisted program or activity when the individual becomes pregnant or has a child;

(d) Denying reasonable accommodations or modifications of policies, practices, or procedures to a pregnant applicant or participant who is temporarily unable to participate in some portions of a WIOA Title I-financially assisted program or activity because of pregnancy, childbirth, and/or related medical conditions, when such accommodations or modifications are provided, or are required to be provided, by a recipient's policy or by other relevant laws, to other applicants or participants not so affected but similar in their ability or inability to participate.

§ 38.9 Discrimination prohibited based on national origin, including limited English proficiency.

(a) In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin. An individual must not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any WIOA Title I-financially assisted program or activity based on national origin. National origin discrimination includes treating individual beneficiaries, participants, or applicants for aid, benefit, service or training under any WIOA Title I-financially assisted program or activity adversely because they (or their families or ancestors) are from a particular country or part of the world, because of ethnicity or accent (including physical, linguistic, and cultural characteristics closely associated with a national origin group), or because the recipient perceives the individual to be of a certain national origin, even if they are not.

(b) A recipient must take reasonable steps to ensure meaningful access to each limited English proficient (LEP) individual served or encountered so that LEP individuals are effectively informed about and/or able to participate in the program or activity.

(1) Reasonable steps generally may include, but are not limited to, an assessment of an LEP individual to determine language assistance needs; providing oral interpretation or written translation of both hard-copy and electronic materials, in the appropriate non-English languages, to LEP individuals; and outreach to LEP communities to improve service delivery in needed languages.

(2) Reasonable steps to provide meaningful access to training programs may include, but are not limited to, providing:

(i) Written training materials in appropriate non-English languages by written translation or by oral interpretation or summarization; and

(ii) Oral training content in appropriate non-English languages through in-person interpretation or telephone interpretation.

(c) A recipient should ensure that every program delivery avenue (*e.g.,* electronic, in person, telephonic) conveys in the appropriate languages how an individual may effectively learn about, participate in, and/or access any

aid, benefit, service, or training that the recipient provides. As a recipient develops new methods for delivery of information or assistance, it is required to take reasonable steps to ensure that LEP individuals remain able to learn about, participate in, and/or access any aid, benefit, service, or training that the recipient provides.

(d) Any language assistance services, whether oral interpretation or written translation, must be provided in a timely manner and free of charge. Language assistance will be considered timely when it is provided at a place and time that ensures equal access and avoids the delay or denial of any aid, benefit, service, or training at issue.

(e) A recipient must provide adequate notice to LEP individuals of the existence of interpretation and translation services and that they are available free of charge.

(f)(1) A recipient shall not require an LEP individual to provide their own interpreter.

(2) A recipient also shall not rely on an LEP individual's minor child or adult family or friend(s) to interpret or facilitate communication, except:

(i) An LEP individual's minor child or adult family or friend(s) may interpret or facilitate communication in emergency situations while awaiting a qualified interpreter; or

(ii) The accompanying adult (but not minor child) may interpret or facilitate communication when the information conveyed is of minimal importance to the services to be provided or when the LEP individual specifically requests that the accompanying adult provide language assistance, the accompanying adult agrees to provide assistance, and reliance on that adult for such assistance is appropriate under the circumstances. When the recipient permits the accompanying adult to provide such assistance, it must make and retain a record of the LEP individual's decision to use their own interpreter.

(3) Where precise, complete, and accurate interpretations or translation of information and/or testimony are critical for adjudicatory or legal reasons, or where the competency of the interpreter requested by the LEP individual is not established, a recipient may decide to provide its own, independent interpreter, even if an LEP individual wants to use their own interpreter as well.

(g) With regard to vital information:

(1) For languages spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must translate vital information in written materials into these languages and make the translations readily available in hard copy, upon request, or electronically such as on a Web site. Written training materials offered or used within employment-related training programs as defined under § 38.4(t) are excluded from these translation requirements. However, recipients must take reasonable steps to ensure meaningful access as stated in § 38.9(b).

(2) For languages not spoken by a significant number or portion of the population eligible to be served, or likely to be encountered, a recipient must make reasonable steps to meet the particularized language needs of LEP individuals who seek to learn about, participate in, and/or access the aid, benefit, service or training that the recipient provides. Vital information may be conveyed orally if not translated.

(3) Recipients must include a ''Babel notice,'' indicating that language assistance is available, in all communications of vital information, such as hard-copy letters or decisions or those communications posted on Web sites.

(h) To the extent otherwise required by this part, once a recipient becomes aware of the non-English preferred language of an LEP beneficiary, participant, or applicant for aid, benefit, service or training, the recipient must convey vital information in that language.

(i) Recipients are required to take reasonable steps to provide language assistance and should develop a written language access plan to ensure that LEP individuals have meaningful access. The Appendix to this section provides guidance to recipients on developing a language access plan.

Appendix to § 38.9—Guidance to Recipients

Recipient Language Assistance Plan (LEP Plan): Promising Practices

The guidelines in this appendix are consistent with and, in large part, derived from existing federal guidance to federal financial assistance recipients to take reasonable steps to ensure access by limited English proficient (LEP) individuals.

Recipients that develop, implement, and periodically revise a written language assistance plan are more likely to fulfill their obligation of taking reasonable steps to ensure access to programs and activities by LEP individuals. The guidelines set forth below provide a clear framework for developing a written plan that will ensure meaningful access to LEP individuals. Developing and implementing a written plan has many benefits, including providing the recipient with a roadmap for establishing and documenting compliance with nondiscrimination obligations and ensuring that LEP beneficiaries receive the necessary assistance to participate in the recipient's programs and activities.

The elements of a successful LEP plan are not fixed. Written LEP plans must be tailored to the recipient's specific programs and activities. And, over time, plans will need to be revised to reflect new recommendations and government guidance; changes in the recipient's operations, as well as the recipient's experiences and lessons learned; changing demographics; and stakeholder and beneficiary feedback. Nonetheless, a recipient that develops an LEP plan incorporating the elements identified below will benefit greatly in accomplishing its mission and providing an equal opportunity for LEP individuals to participate in its programs and activities.

A written LEP plan should identify and describe:

1. The process the recipient will use to determine the language needs of individuals who may or may seek to participate in the recipient's program and activities (self- or needs-assessment)
2. The results of the assessment, *e.g.,* identifying the LEP populations to be served by the recipient
3. Timelines for implementing the written LEP plan
4. All language services to be provided to LEP individuals
5. The manner in which LEP individuals will be advised of available services
6. Steps individuals should take to request language assistance
7. The manner in which staff will provide language assistance services
8. What steps must be taken to implement the LEP plan, *e.g.,* creating or modifying policy documents, employee manuals, employee training material, posters, Web sites, outreach material, contracts, and electronic and information technologies, applications, or adaptations
9. The manner in which staff will be trained
10. Steps the recipient will take to ensure quality control, including monitoring implementation, establishing a complaint process, timely addressing complaints, and obtaining feedback from stakeholders and employees
11. The manner in which the recipient will document the provision of language services
12. The schedule for revising the LEP plan
13. The individual(s) assigned to oversee implementation of the plan (*e.g.,* LEP Coordinator or Program Manager)
14. Allocation of resources to implement the plan

Illustrative Applications in Recipient Programs and Activities

Unemployment Insurance Program Example

1. Unemployment insurance programs are recipients covered under this proposed rule, and States must take reasonable steps to provide meaningful access to LEP individuals served or encountered in its unemployment insurance programs and activities. For example, given the nature and importance of unemployment insurance, if

an LEP individual who speaks Urdu seeks information about unemployment insurance from a state's telephone call center that assists unemployment insurance enrollees and applicants, the State may consider the proportion of Urdu-speaking LEP individuals served or encountered by the State's unemployment insurance program; the frequency with which Urdu-speaking LEP individuals come in contact with the State's unemployment insurance program; and the resources available to the State and costs in determining how it will provide this LEP individual with language assistance. Urdu is a language that is rarely, if ever, encountered by this State's UI program. Because low-cost commercial language services, such as telephonic oral interpretation services, are widely available, the State should, at a minimum, provide the Urdu-speaking LEP individual telephonic interpretation services to ensure meaningful access to unemployment insurance because, even if Urdu is a non-frequently encountered, non-English language, low-cost commercial language services, such as telephonic oral interpretation services, are widely available.

Population Significance as it Pertains to Vital Information

2. Recipients have some flexibility on the means to provide language assistance services to LEP individuals, as long as they take reasonable steps to provide meaningful access to their program or activity. For instance, if a recipient provides career services to an LEP individual who speaks Tagalog and the individual requests a translated brochure on an upcoming job fair, the recipient should consider the importance of the information in the brochure, and may consider: The proportion of Tagalog-speaking LEP individuals served or encountered; the frequency with which Tagalog-speaking LEP individuals come in contact with the recipient; and the resources available to the recipient. In this instance, the recipient would be required to provide a written translation of the brochure for the LEP individual if Tagalog were a language spoken by a significant number or proportion of the LEP persons in the eligible service population and a language frequently encountered in the career services program. But if Tagalog is not spoken by a significant number or proportion of the population eligible to be served, and was not frequently encountered by the career services program, it would be reasonable for the recipient to provide an oral summary of the brochure's contents in Tagalog.

Training Provider Example Incorporating English Language Learning

3. Providing English language learning opportunities may be one step that a recipient takes in order to take reasonable steps to provide an LEP individual meaningful access to its programs or activities. For example, John, a Korean-speaking LEP individual, learns through the One Stop Center about available welding positions at ABC Welding, Co. He also learns through the One Stop Center about upcoming welder training courses offered at XYZ Technical Institute, an eligible training provider. John decides to enroll in one of the XYZ welding courses. XYZ, which conducts its training courses in English, must take reasonable steps to provide John meaningful access to the welder training course.

Recipients may work together to provide meaningful access, but remain independently obligated to take reasonable steps to provide meaningful access to programs and activities. In this regard, XYZ is not required to administer an English language learning class itself. Instead, XYZ may coordinate with the One Stop Center to ensure that John receives appropriate English language learning either directly from the One Stop or from another organization that provides such English language training. The English language class would not be offered to John instead of the training program, but John could attend the English language class at the same time as or prior to the training program. Whether John takes the English class before or concurrently with the welding course will depend on many factors including an objective, individualized analysis of John's English proficiency relative to the welding course. Regardless of how the English language learning is delivered, it must be provided at no cost to John.

In evaluating whether reasonable steps include oral interpretation, written translation, English language learning, another language service, or some combination of these services, XYZ may work with the One-Stop Center to provide meaningful access to John.

§ 38.10 Harassment prohibited.

Harassment of an individual based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, applicants and participants only, citizenship status or participation in any WIOA Title I-financially assisted program or activity is a violation of the nondiscrimination provisions of WIOA and this part.

(a) Unwelcome sexual advances, requests for sexual favors, or offensive remarks about a person's race, color, religion, sex, national origin, age, disability, political affiliation or belief, or citizenship or participation, and other unwelcome verbal or physical conduct based on one or more of these protected categories constitutes unlawful harassment on that basi(e)s when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of accessing the aid, benefit, service, or training of, or employment in the administration of or in connection with, any WIOA Title I-financially assisted program or activity;

(2) Submission to or rejection of such conduct by an individual is used as the basis for limiting that individual's access to any aid, benefit, service, training or employment from, or employment in the administration of or in connection with, any WIOA Title I-financially assisted program or activity; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's participation in a WIOA Title I-financially assisted program or activity creating an intimidating, hostile or offensive program environment.

(b) Harassment because of sex includes harassment based on gender identity and failure to comport with sex stereotypes; harassment based on pregnancy, childbirth, or related medical conditions; and sex-based harassment that is not sexual in nature but that is because of sex or where one sex is targeted for the harassment.

§ 38.11 Discrimination prohibited based on citizenship status.

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, discriminate on the basis of citizenship status. Individuals protected under this section include citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Secretary of Homeland Security or the Secretary's designee to work in the United States. Citizenship discrimination occurs when a recipient maintains and enforces policies and procedures that have the purpose or effect of discriminating against individual beneficiaries, applicants, and participants, on the basis of their status as citizens or nationals of the United States lawfully admitted permanent resident aliens, refugees, asylees, and parolees, or other immigrants authorized by the Secretary of Homeland Security or the Secretary's designee to work in the United States.

§ 38.12 Discrimination prohibited based on disability.

(a) In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training;

(2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;

(3) Provide a qualified individual with a disability with any aid, benefit, service or training that is not as effective

in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service or training that are as effective as those provided to others;

(5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(6) Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, service or training to registrants, applicants, or participants.

(c) A recipient must not deny a qualified individual with a disability the opportunity to participate in WIOA Title I-financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.

(d) A recipient must administer WIOA Title I-financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) A recipient must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:

(1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIOA Title I-financially assisted program or activity with respect to individuals with disabilities; or

(3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.

(f) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On the basis of disability:

(i) Excluding qualified individuals from a WIOA Title I-financially assisted program or activity;

(ii) Denying qualified individuals the benefits of such a program or activity; or

(iii) Subjecting qualified individuals to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the disability-related objectives of either:

(i) The WIOA Title I-financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIOA or this part.

(g) A recipient, in the selection of contractors, must not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(h) A recipient must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient are not, themselves, covered by this part.

(i) A recipient must not impose or apply eligibility criteria that screen out or tend to screen out individuals with disabilities or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of aid, benefit, service, training, program, or activity being offered.

(j) Nothing in this part prohibits a recipient from providing aid, benefit, service, training, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part.

(k) A recipient must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I or this part.

(l) A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(m) The exclusion of an individual without a disability from the benefits of a program limited by federal law to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities, is not prohibited by this part.

(n) This part does not require a recipient to provide any of the following to individuals with disabilities:

(1) Personal devices, such as wheelchairs;

(2) Individually prescribed devices, such as prescription eyeglasses or hearing aids;

(3) Readers for personal use or study; or

(4) Services of a personal nature, including assistance in eating, toileting, or dressing.

(o)(1) Nothing in this part requires an individual with a disability to accept an accommodation, aid, benefit, service, training, or opportunity provided under WIOA Title I or this part that such individual chooses not to accept.

(2) Nothing in this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(p) *Claims of no disability.* Nothing in this part provides the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted auxiliary aids or services, reasonable modifications, or reasonable accommodations that were denied to an individual without a disability.

§ 38.13 Accessibility requirements.

(a) *Physical accessibility.* No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. Recipients that are subject to Title II of the ADA must also ensure that new facilities or alterations of facilities that began construction after January 26, 1992, comply with the applicable federal accessible design standards, such as the ADA Standards for Accessible Design (1991 or 2010) or the Uniform Federal Accessibility Standards. In addition, recipients that receive federal financial

assistance must meet their accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA, that is not enforced by CRC. As indicated in § 38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with Title III ADA Standards.

(b) *Programmatic accessibility.* All WIOA Title I-financially assisted programs and activities must be programmatically accessible, which includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

§ 38.14 Reasonable accommodations and reasonable modifications for individuals with disabilities.

(a) With regard to aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of ''reasonable accommodation'' and ''undue hardship'' in § 38.4(rrr)(1).

(1) In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

(2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of ''undue hardship'' in § 38.4(rrr)(1). The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

(3) If a requested accommodation would result in undue hardship, the recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefit, service, training, or employment provided by the recipient.

(b) With regard to aid, benefit, service, training, and employment, a recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. See the definition of ''fundamental alteration'' in § 38.4(z).

(1) In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.

(2) The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of ''fundamental alteration'' in § 38.4(z). The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification.

(3) If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

§ 38.15 Communications with individuals with disabilities.

(a) *General.* (1)(i) A recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others.

(ii) For purposes of this section, ''companion'' means a family member, friend, or associate of an individual seeking access to an aid, benefit, service, training, program, or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate.

(2)(i) A recipient must furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including beneficiaries, registrants, applicants, eligible applicants/registrants, participants, members of the public, and companions, an equal opportunity to participate in, and enjoy the benefits of, a WIOA Title I-financially assisted service, program, or activity of a recipient.

(ii) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a recipient must give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

(3)(i) A recipient must not require an individual with a disability to bring another individual to interpret for him or her.

(ii) A recipient must not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—

(A) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or

(B) Where the individual with a disability specifically requests that an accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

(iii) A recipient must not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

(4) *Video remote interpreting (VRI) services.* A recipient that chooses to provide qualified interpreters via VRI services must ensure that it provides—

(i) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;

(ii) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;

(iii) A clear, audible transmission of voices; and

(iv) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

(5) When developing, procuring, maintaining, or using electronic and information technology, a recipient must utilize electronic and information technologies, applications, or adaptations which:

(i) Incorporate accessibility features for individuals with disabilities,

(ii) Comply with applicable accessibility guidelines and standards, including any web accessibility standards under Title II of the Americans with Disabilities Act (ADA), and

(iii) Provide individuals with disabilities access to, and use of, information, resources, programs, and activities that are fully accessible, or ensure that the opportunities and benefits provided by the electronic and information technologies are provided to individuals with disabilities in an equally effective and equally integrated manner.

(b) *Telecommunications.* (1) Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and/or members of the public, text telephones (TTYs) or equally effective telecommunications systems must be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.

(2) When a recipient uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems.

(3) A recipient must respond to telephone calls from a telecommunications relay service established under title IV of the Americans with Disabilities Act in the same manner that it responds to other telephone calls.

(c) *Information and signage.* (1) A recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

(2)(i) A recipient must provide signage at the public entrances to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The signage provided must meet the most current Standards for Accessible Design under the Americans with Disabilities Act, as prescribed by the U.S. Department of Justice. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information.

(ii) The international symbol for accessibility must be used at each primary entrance of an accessible facility.

(d) *Fundamental alteration.* This section does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a WIOA Title I-financially assisted service, program, or activity.

(1) In those circumstances where a recipient believes that the proposed action would fundamentally alter the WIOA Title I-financially assisted program, activity, or service, the recipient has the burden of proving that compliance with this section would result in such an alteration.

(2) The decision that compliance would result in such an alteration must be made by the recipient after considering all resources available for use in the funding and operation of the WIOA Title I-financially assisted program, activity, or service, and must be accompanied by a written statement of the recipient's reasons for reaching that conclusion.

(3) If an action required to comply with this section would result in the fundamental alteration described in paragraph (d)(1) of this section, the recipient must take any other action that would not result in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient.

§ 38.16 Service animals.

(a) *General.* Generally, a recipient shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(b) *Exceptions.* A recipient may ask an individual with a disability to remove a service animal from the premises if—

(1) The animal is out of control and the animal's handler does not take effective action to control it; or

(2) The animal is not housebroken.

(c) *If an animal is properly excluded.* If a recipient properly excludes a service animal under paragraph (b) of this section, the recipient must give the individual with a disability the opportunity to participate in the WIOA Title I-financially assisted service, program, or activity without having the service animal on the premises.

(d) *Animal under handler's control.* A service animal must be under the control of its handler. A service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.,* voice control, signals, or other effective means).

(e) *Care or supervision.* A recipient is not responsible for the care or supervision of a service animal.

(f) *Inquiries.* A recipient must not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A recipient may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A recipient must not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a recipient may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (*e.g.,* the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(g) *Access to areas of a recipient's facilities.* (1) *In general.* Individuals with disabilities must be permitted to be accompanied by their service animals in all areas of a recipient's facilities where members of the public, participants in services, programs or activities, beneficiaries, registrants, applicants, eligible applicants/registrants, applicants for employment and employees, or invitees, as relevant, are allowed to go.

(2) *Use of service animals in food preparation areas.* An employee, applicant or beneficiary with a disability who needs to use a service animal in a food preparation area must be allowed to do so unless the employer recipient, after an individualized assessment, can demonstrate, that the presence of the service animal presents a direct threat to health or safety that cannot be eliminated or reduced by a reasonable accommodation to the employee, applicant or beneficiary.

(h) *Surcharges.* A recipient must not ask or require an individual with a disability to pay a surcharge because of his or her service animal, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a recipient normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

§ 38.17 Mobility aids and devices.

(a) *Use of wheelchairs and manually-powered mobility aids.* A recipient must permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.

(b)(1) *Use of other power-driven mobility devices.* A recipient must make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the recipient can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the recipient has adopted.

(2) *Assessment factors.* In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a recipient must consider—

(i) The type, size, weight, dimensions, and speed of the device;

(ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(iii) The facility's design and operational characteristics (*e.g.,* whether its WIOA Title I-financially assisted service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and

(v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws.

§ 38.18 Employment practices covered.

(a) It is an unlawful employment practice to discriminate on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status and gender identity), national origin, age, disability, or political affiliation or belief in the administration of, or in connection with:

(1) Any WIOA Title I-financially assisted program or activity; and

(2) Any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIOA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system.

(b) *Employee selection procedures.* In implementing this section, a recipient must comply with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3, where applicable.

(c) *Standards for employment-related investigations and reviews.* In any investigation or compliance review, the Director must consider Equal Employment Opportunity Commission (EEOC) regulations, guidance and appropriate case law in determining whether a recipient has engaged in an unlawful employment practice.

(d) As provided in § 38.3(b), 29 CFR part 32, subparts B and C and Appendix A, which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, have been incorporated into this part by reference. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.

(e)(1) Recipients that are also employers, employment agencies, or other entities subject to or covered by Titles I and II of the ADA should be aware of obligations imposed by those titles. *See* 29 CFR part 1630 and 28 CFR part 35.

(2) Recipients that are also employers, employment agencies, or other entities subject to or covered by Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793) must meet their obligations imposed by that provision.

(f) Similarly, recipients that are also employers covered by the anti-discrimination provision of the Immigration and Nationality Act should be aware of the obligations imposed by that provision. *See* 8 U.S.C. 1324b, as amended.

(g) This section does not preempt consistent State and local requirements.

§ 38.19 Intimidation and retaliation prohibited.

(a) A recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has:

(1) Filed a complaint alleging a violation of Section 188 of WIOA or this part;

(2) Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIOA or this part;

(3) Furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to any of the following:

(i) Administration of the nondiscrimination and equal opportunity provisions of WIOA or this part;

(ii) Exercise of authority under those provisions; or

(iii) Exercise of privilege secured by those provisions; or

(4) Otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIOA or this part.

(b) The sanctions and penalties contained in Section 188(b) of WIOA or this part may be imposed against any recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

§ 38.20 Administration of this part.

The Civil Rights Center (CRC), in the Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions of WIOA and this part, and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.

§ 38.21 Interpretations of this part.

The Director will make any rulings under, or interpretations of, the nondiscrimination and equal opportunity provisions of WIOA or this part.

§ 38.22 Delegation of administration and interpretation of this part.

(a) The Secretary may from time to time assign to officials of other departments or agencies of the Federal Government (with the consent of such department or agency) responsibilities in connection with the effectuation of the nondiscrimination and equal opportunity provisions of WIOA and this part (other than responsibility for final decisions under § 38.112), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of the nondiscrimination and equal opportunity provisions of WIOA or this part to similar programs and similar situations.

(b) Any action taken, determination made, or requirement imposed by an official of another department or agency acting under an assignment of responsibility under this section has the same effect as if the action had been taken by the Director.

§ 38.23 Coordination with other agencies.

(a) Whenever a compliance review or complaint investigation under this part reveals possible violation of one or more of the laws listed in paragraph (b) of this section, or of any other Federal civil rights law, that is not also a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part, the Director must attempt to notify the appropriate agency and provide it with all relevant documents and information.

(b) This section applies to the following:

(1) Executive Order 11246, as amended;

(2) Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793);

(3) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212);

(4) The Equal Pay Act of 1963, as amended (29 U.S.C. 206d);

(5) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*);

(6) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);

(7) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*);

(8) The anti-discrimination provision of the Immigration and Nationality Act, as amended (8 U.S.C. 1324b); and

(9) Any other Federal civil rights law.

§ 38.24 Effect on other laws and policies.

(a) *Effect of State or local law or other requirements.* The obligation to comply with the nondiscrimination and equal opportunity provisions of WIOA or this part are not excused or reduced by any State or local law or other requirement that, on a prohibited basis, prohibits or limits an individual's eligibility to receive aid, benefit, service, or training; to participate in any WIOA Title I-financially assisted program or activity; to be employed by any recipient; or to practice any occupation or profession.

(b) *Effect of private organization rules.* The obligation to comply with the nondiscrimination and equal opportunity provisions of WIOA Title I-financially assisted program or activity and this part is not excused or reduced by any rule or regulation of any private organization, club, league or association that, on a prohibited basis, prohibits or limits an individual's eligibility to participate in any WIOA financially assisted program or activity to which this part applies.

(c) *Effect of possible future exclusion from employment opportunities.* A recipient must not exclude any individual from, or restrict any individual's participation in, any program or activity based on the recipient's belief or concern that the individual will encounter limited future employment opportunities because of the individual's race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship status, or participation in a WIOA Title I-financially assisted program or activity.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

Assurances

§ 38.25 A grant applicant's obligation to provide a written assurance.

(a)(1) Each application for financial assistance, under Title I of WIOA, as defined in § 38.4, must include the following assurance:

As a condition to the award of financial assistance from the Department of Labor under Title I of WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:

Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status and gender identity), national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR part 38 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

(2) The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of WIOA is made available, whether it is explicitly incorporated in such document and whether there is a written agreement between the Department and the recipient, between the Department and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated by reference in such grants, cooperative agreements, contracts, or other arrangements.

(b) *Continuing State programs.* Each Strategic Four-Year State Plan submitted by a State to carry out a continuing WIOA financially assisted program or activity must provide the text of the assurance in paragraph (a)(1) of this section, as a condition to the approval of the Four-Year Plan and the extension of any WIOA Title I assistance under the Plan. The State also must certify that it has developed and maintains a Nondiscrimination Plan under § 38.54.

§ 38.26 Duration and scope of the assurance.

(a) Where the WIOA Title I financial assistance is intended to provide, or is in the form of, either personal property, real property, structures on real property, or interest in any such property or structures, the assurance will obligate the recipient, or (in the case of a subsequent transfer) the transferee, for the longer of:

(1) The period during which the property is used either:

(i) For a purpose for which WIOA Title I financial assistance is extended; or

(ii) For another purpose involving the provision of similar services or benefits; or

(2) The period during which either:

(i) The recipient retains ownership or possession of the property; or

(ii) The transferee retains ownership or possession of the property without compensating the Departmental grantmaking agency for the fair market value of that ownership or possession.

(b) In all other cases, the assurance will obligate the recipient for the period during which WIOA Title I financial assistance is extended.

§ 38.27 Covenants.

(a) Where WIOA Title I financial assistance is provided in the form of a transfer of real property, structures, or improvements on real property or structures, or interests in real property or structures, the instrument effecting or recording the transfer must contain a covenant assuring nondiscrimination and equal opportunity for the period described in § 38.25(a)(1).

(b) Where no Federal transfer of real property or interest therein from the Federal Government is involved, but real property or an interest therein is acquired or improved under a program of WIOA Title I financial assistance, the recipient must include the covenant described in paragraph (a) of this section in the instrument effecting or recording any subsequent transfer of such property.

(c) When the property is obtained from the Federal Government, the covenant described in paragraph (a) of this section also may include a condition coupled with a right of reverter to the Department in the event of a breach of the covenant.

Equal Opportunity Officers

§ 38.28 Designation of Equal Opportunity Officer.

(a) Every Governor must designate an individual as a State Level Equal Opportunity Officer (EO Officer), who reports directly to the Governor and is responsible for statewide coordination of compliance with the equal opportunity and nondiscrimination requirements in WIOA and this part, including but not limited to §§ 38.51, 38.53, 38.54 and 38.55. The State Level EO Officer must have staff and resources sufficient to carry out these requirements.

(b) Every recipient except small recipients and service providers, as defined in § 38.4(fff) and § 38.4(eee), must designate an EO Officer and staff and resources sufficient to carry out the requirements of this section and § 38.31 of this part. The responsibilities of small recipients and service providers are described in §§ 38.32 and 38.33.

§ 38.29 Recipient obligations regarding its Equal Opportunity Officer.

The recipient has the following obligations related to its EO Officer:

(a) Ensuring that the EO Officer is a senior level employee reporting directly to the Chief Executive Officer, Chief Operating Officer, or equivalent official;

(b) Designating an individual who can fulfill the responsibilities of an EO Officer as described in § 38.31;

(c) Making the EO Officer's name, position title, address, and telephone number (voice and TDD/TTY) public;

(d) Ensuring that the EO Officer's identity and contact information appears on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs;

(e) Assigning sufficient authority, staff, and resources to the EO Officer, and support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part; and

(f) Ensuring that the EO Officer and the EO Officer's staff are afforded the opportunity to receive (at the recipient's expense) the training necessary and appropriate to maintain competency.

§ 38.30 Requisite skill and authority of Equal Opportunity Officer.

The EO Officer must be a senior level employee of the recipient who has the knowledge, skills and abilities necessary to fulfill the responsibilities competently as described in this subpart. Depending upon the size of the recipient, the size of the recipient's WIOA Title I-financially assisted programs or activities, and the number of applicants, registrants, and participants served by the recipient, the EO Officer may, or may not, be assigned other duties. However, he or she must not have other responsibilities or activities that create a conflict or the appearance of a conflict with the responsibilities of an EO Officer.

§ 38.31 Equal Opportunity Officer responsibilities.

An Equal Opportunity Officer is responsible for coordinating a recipient's obligations under this part. Those responsibilities include, but are not limited to:

(a) Serving as a recipient's liaison with CRC;

(b) Monitoring and investigating the recipient's activities, and the activities of the entities that receive WIOA Title I-financial assistance from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIOA Title I and this part, which includes monitoring the collection of data required in this part to ensure compliance with the nondiscrimination and equal opportunity requirements of WIOA and this part;

(c) Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;

(d) Developing and publishing the recipient's procedures for processing discrimination complaints under §§ 38.72 through 38.73, including tracking the discrimination complaints filed against the recipient, developing procedures for investigating and resolving discrimination complaints filed against the recipient, making sure that those procedures are followed, and making available to the public, in appropriate languages and formats, the procedures for filing a complaint;

(e) Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with § 38.40 and how an individual may file a complaint consistent with § 38.69.

(f) Undergoing training (at the recipient's expense) to maintain competency of the EO Officer and staff, as required by the Director; and

(g) If applicable, overseeing the development and implementation of the recipient's Nondiscrimination Plan under § 38.54.

§ 38.32 Small recipient Equal Opportunity Officer obligations.

Although small recipients, as defined in § 38.4(hhh), do not need to designate EO Officers who have the full range of responsibilities listed above, they must designate an individual who will be responsible for adopting and publishing complaint procedures, and processing complaints, as explained in §§ 38.72 through 38.75.

§ 38.33 Service provider Equal Opportunity Officer obligations.

Service providers, as defined in § 38.4(ggg), are not required to designate an EO Officer. The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part rests with the Governor or LWIA grant recipient, as specified in the State's Nondiscrimination Plan.

Notice and Communication

§ 38.34 Recipients' obligations to disseminate equal opportunity notice.

(a) A recipient must provide initial and continuing notice as defined in § 38.36 that it does not discriminate on any prohibited basis. This notice must be provided to:

(1) Registrants, applicants, and eligible applicants/registrants;

(2) Participants;

(3) Applicants for employment and employees;

(4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;

(5) Subrecipients that receive WIOA Title I financial assistance from the recipient; and

(6) Members of the public, including those with impaired vision or hearing and those with limited English proficiency.

(b) As provided in § 38.15, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that this notice is provided in appropriate languages to ensure meaningful access for LEP individuals as described in § 38.9.

§ 38.35 Equal opportunity notice/poster.

The notice must contain the following specific wording:

Equal Opportunity Is the Law

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief; and against any beneficiary of programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the beneficiary's citizenship status or his or her participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity;

providing opportunities in, or treating any person with regard to, such a program or activity; or

making employment decisions in the administration of, or in connection with, such a program or activity.

What To Do If You Believe You Have Experienced Discrimination

If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

the Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4123, Washington, DC 20210 or electronically as directed on the CRC Web site at *www.dol.gov/crc*.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

§ 38.36 Recipients' obligations to publish equal opportunity notice.

(a) At a minimum, the Equal Opportunity Notice required by §§ 38.34 and 38.35 must be:

(1) Posted prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's Web site pages;

(2) Disseminated in internal memoranda and other written or electronic communications with staff;

(3) Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available; and

(4) Provided to each participant and employee; the notice must be made part of each employee's and participant's file. It must be a part of both paper and electronic files, if both are maintained.

(b) The notice must be provided in appropriate formats to registrants, applicants, eligible applicants/registrants, applicants for employment and employees and participants with visual impairments. Where notice has been given in an alternate format to registrants, applicants, eligible applicants/registrants, participants, applicants for employment and employees with a visual impairment, a record that such notice has been given must be made a part of the employee's or participant's file.

(c) The notice must be provided to participants in appropriate languages other than English as required in § 38.9.

(d) The notice required by §§ 38.34 and 38.35 must be initially published and provided within 90 days of the effective date of this part, or of the date this part first applies to the recipient, whichever comes later.

§ 38.37 Notice requirement for service providers.

The Governor or the LWIA grant recipient, as determined by the Governor and as provided in that State's Nondiscrimination Plan, will be responsible for meeting the notice requirement provided in §§ 38.34 and 38.35 with respect to a State's service providers.

§ 38.38 Publications, broadcasts, and other communications.

(a) Recipients must indicate that the WIOA Title I-financially assisted program or activity in question is an ''equal opportunity employer/program,'' and that ''auxiliary aids and services are available upon request to individuals with disabilities,'' in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIOA or the requirements for participation by recipients and participants. Where such materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone (TTY) or equally effective telecommunications system, such as a relay service, used by the recipient, as required by § 38.15(b).

(b) Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I-financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I-financially assisted program or activity is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities.

(c) A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited basis specified in § 38.5, except as such treatment is otherwise permitted under Federal law or this part.

§ 38.39 Communication of notice in orientations.

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title I-financially assisted program or activity, in person or over the Internet or using other technology, a recipient must include a discussion of rights and responsibilities under the nondiscrimination and equal opportunity provisions of WIOA and this part, including the right to file a complaint of discrimination with the recipient or the Director. This information must be communicated in appropriate languages as required in § 38.9 and in formats accessible for individuals with disabilities as required in this part and specified in § 38.15.

§ 38.40 Affirmative outreach.

Recipients must take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups. Such efforts may include, but are not limited to:

(a) Advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;

(b) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and

(c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

Data and Information Collection Maintenance

§ 38.41 Collection and maintenance of equal opportunity data and other information.

(a) The Director will not require submission of data that can be obtained from existing reporting requirements or sources, including those of other agencies, if the source is known and available to the Director.

(b)(1) Each recipient must collect such data and maintain such records, in accordance with procedures prescribed by the Director, as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIOA or this part. The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIOA and this part.

(2) Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, participant, terminee, applicant for employment, and employee. For applicants, registrants, participants, and terminees, each recipient must also record the limited English proficiency and preferred language of an individual. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIOA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIOA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

(3) Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

(i) *Knowledge of disability status or medical condition and access to information in related files.* Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:

(A) Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity.

(B) First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency.

(C) Government officials engaged in enforcing this part, any other laws administered by the Department, or any other Federal laws. See also § 38.44.

(ii) *Knowledge of disability status or medical condition only.* Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.

(c) Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with the recipient that allege discrimination on the basis(es) of race, color, religion, sex (including pregnancy, childbirth or related medical conditions, transgender status and gender identity), national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity. The log must include: The name and address of the complainant; the basis of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

(d) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

(e) A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor or LWIA grant recipient, as provided in the State's Nondiscrimination Plan.

§ 38.42 Information to be provided to CRC by grant applicants and recipients.

In addition to the information which must be collected, maintained, and, upon request, submitted to CRC under § 38.41:

(a) Each grant applicant and recipient must promptly notify the Director when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth or related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIOA Title I-financially assisted program or activity. This notification must include:

(1) The names of the parties to the action or lawsuit;

(2) The forum in which each case was filed; and

(3) The relevant case numbers.

(b) Each recipient (as part of a compliance review conducted under § 38.63, or monitoring activity carried out under § 38.65) must provide the following information:

(1) The name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and

(2) Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include:

(i) The names of the parties;

(ii) The forum in which each case was filed; and

(iii) The relevant case numbers.

(c) At the discretion of the Director, grant applicants and recipients may be required to provide, in a timely manner, any information and data that the Director considers necessary to investigate complaints and conduct compliance reviews on bases prohibited under the nondiscrimination and equal opportunity provisions of WIOA and this part.

(d) At the discretion of the Director, recipients may be required to provide, in a timely manner, the particularized information and/or to submit the periodic reports that the Director considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part.

(e) At the discretion of the Director, grant applicants may be required to submit, in a timely manner, the particularized information that the Director considers necessary to determine whether or not the grant applicant, if financially assisted, would be able to comply with the nondiscrimination and equal opportunity provisions of WIOA or this part.

(f) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

§ 38.43 Required maintenance of records by recipients.

(a) Each recipient must maintain the following records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three years from the close of the applicable program year:

(1) The records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and

(2) Such other records as are required under this part or by the Director.

(b) Where a discrimination complaint has been filed or compliance review initiated, every recipient that possesses or maintains any type of hard-copy or electronic record related to the complaint (including records that have any relevance to the underlying allegations in the complaint, as well as records regarding actions taken on the complaint) or to the subject of the compliance review must preserve all records, regardless whether hard-copy or electronic, that may be relevant to a complaint investigation or compliance review, and maintain those records for a period of not less than three years from the date of final action related to resolution of the complaint or compliance review.

§ 38.44 CRC access to information and information sources.

(a) Each grant applicant and recipient must permit access by the Director or the Director's designee during normal business hours to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, or monitoring activities associated with a State's development and implementation of a Nondiscrimination Plan, and for inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA or this part.

(b) Asserted considerations of privacy or confidentiality are not a basis for withholding information from CRC and will not bar CRC from evaluating or seeking to enforce compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part.

(c) Whenever any information that the Director asks a grant applicant or recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the grant applicant or recipient must certify to CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification must list the name and address of the agency, institution, or person that has possession of the information and the specific efforts the grant applicant or recipient made to obtain it.

§ 38.45 Confidentiality responsibilities of grant applicants, recipients, and the Department.

Grant applicants, recipients and the Department must keep confidential to the extent possible, consistent with a fair determination of the issues, the identity of any individual who furnishes information relating to, or assists in, an investigation or a compliance review, including the identity of any individual who files a complaint. An individual whose identity is disclosed must be protected from retaliation (*See* § 38.19).

Subpart C—Governor's Responsibilities To Implement the Nondiscrimination and Equal Opportunity Requirements of WIOA

§ 38.50 Subpart application to State Programs.

This subpart applies to State Programs as defined in § 38.4. However, the provisions of § 38.52(b) do not apply to State Workforce Agencies (SWA), because the Governor's liability for any noncompliance on the part of a SWA cannot be waived.

§ 38.51 Governor's oversight and monitoring responsibilities for State Programs.

The Governor is responsible for oversight and monitoring of all WIOA Title I-financially assisted State Programs. This responsibility includes:

(a) Ensuring compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part, and negotiating, where appropriate, with a recipient to secure voluntary compliance when

noncompliance is found under § 38.91(b).

(b) Annually monitoring the compliance of recipients with WIOA section 188 and this part, including a determination as to whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way. At a minimum, each annual monitoring review required by this paragraph must include:

(1) A statistical or other quantifiable analysis of records and data kept by the recipient under § 38.41, including analyses by race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status;

(2) An investigation of any significant differences identified in paragraph (b)(i) of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means; and

(3) An assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188 of WIOA or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the Nondiscrimination Plan.

§ 38.52 Governor's liability for actions of recipients the Governor has financially assisted under Title I of WIOA.

(a) The Governor and the recipient are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIOA and this part by the recipient, unless the Governor has:

(1) Established and implemented a Nondiscrimination Plan, under § 38.54, designed to give a reasonable guarantee of the recipient's compliance with such provisions;

(2) Entered into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;

(3) Acted with due diligence to monitor the recipient's compliance with these provisions; and

(4) Taken prompt and appropriate corrective action to effect compliance.

(b) If the Director determines that the Governor has demonstrated substantial compliance with the requirements of paragraph (a) of this section, the Director may recommend to the Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient.

§ 38.53 Governor's oversight responsibilities regarding recipients' recordkeeping.

The Governor must ensure that recipients collect and maintain records in a manner consistent with the provisions of § 38.41 and any procedures prescribed by the Director under § 38.41(a). The Governor must further ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

§ 38.54 Governor's obligations to develop and implement a Nondiscrimination Plan.

(a)(1) Each Governor must establish and implement a Nondiscrimination Plan for State programs as defined in § 38.4(ll). In those States in which one agency contains both SWA or unemployment insurance and WIOA Title I-financially assisted programs, the Governor must develop a combined Nondiscrimination Plan.

(2) Each Nondiscrimination Plan must be designed to give a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIOA and this part.

(b) The Nondiscrimination Plan must be:

(1) In writing, addressing each requirement of § 38.54(c) with narrative and documentation;

(2) Reviewed and updated as required in § 38.55; and

(3) Signed by the Governor.

(c) At a minimum, each Nondiscrimination Plan must:

(1) Describe how the State programs and recipients have satisfied the requirements of the following regulations:

(i) §§ 38.25 through 38.27 (Assurances);

(ii) §§ 38.28 through 38.33 (Equal Opportunity Officers);

(iii) §§ 38.34 through 38.39 (Notice and Communication);

(iv) §§ 38.41 through 38.45 (Data and Information Collection and Maintenance);

(v) § 38.40 (Affirmative Outreach);

(vi) § 38.53 (Governor's Oversight Responsibility Regarding Recipients' Recordkeeping);

(vii) §§ 38.72 through 38.75 (Complaint Processing Procedures); and

(viii) § 38.51, § 38.53 (Governor's Oversight and Monitoring Responsibilities for State Programs).

(2) Include the following additional elements:

(i) A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under Section 122 of WIOA, is likely to conduct its WIOA Title I-financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in this part;

(ii) A review of recipient policy issuances to ensure they are nondiscriminatory;

(iii) A system for reviewing recipients' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity;

(iv) Procedures for ensuring that recipients comply with the nondiscrimination and equal opportunity requirements of §§ 38.5 regarding race, color, religion, sex (including pregnancy, childbirth and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, political affiliation or belief, citizenship, or participation in any WIOA Title I financially-assisted program or activity;

(v) Procedures for ensuring that recipients comply with the requirements of applicable Federal disability nondiscrimination law, including Section 504; Title II of the Americans with Disabilities Act of 1990, as amended, if applicable; WIOA Section 188, and this part with regard to individuals with disabilities;

(vi) A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIOA or this part are aware of and can effectively carry out these responsibilities;

(vii) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and

(viii) Supporting documentation to show that the commitments made in the Nondiscrimination Plan have been and/or are being carried out. This supporting documentation includes, but is not limited to:

(A) Policy and procedural issuances concerning required elements of the Nondiscrimination Plan;

(B) Copies of monitoring instruments and instructions;

(C) Evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by this part;

(D) Information reflecting the extent to which Equal Opportunity training, including training called for by §§ 38.29(f) and 38.31(f), is planned and/or has been carried out;

(E) Reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions; and

(F) Copies of any notices made under §§ 38.34 through 38.40.

§ 38.55 Schedule of the Governor's obligations regarding the Nondiscrimination Plan.

(a) Within 180 days of either the date on which this final rule is effective, or the date on which the Governor is required to review and update their Methods of Administration as determined by the schedule in § 37.55 of this chapter, whichever is later, a Governor must:

(1) Develop and implement a Nondiscrimination Plan consistent with the requirements of this part, and

(2) Submit a copy of the Nondiscrimination Plan to the Director.

(b) The Governor must promptly update the Nondiscrimination Plan whenever necessary, and submit the changes made to the Director in writing at the time that any such updates are made.

(c) Every two years from the date on which the initial Nondiscrimination Plan is submitted to the Director under paragraph (a)(2) of this section, the Governor must review the Nondiscrimination Plan and the manner in which it has been implemented, and determine whether any changes are necessary in order for the State to comply fully and effectively with the nondiscrimination and equal opportunity provisions of WIOA and this part.

(1) If any such changes are necessary, the Governor must make the appropriate changes and submit them, in writing, to the Director.

(2) If the Governor determines that no such changes are necessary, s/he must certify, in writing, to the Director that the Nondiscrimination Plan previously submitted continues in effect.

(3) Submit a copy of all reports of any monitoring reviews conducted by the Governor pursuant to § 38.51(b) since the last Nondiscrimination Plan update.

Subpart D—Compliance Procedures

§ 38.60 Evaluation of compliance.

From time to time, the Director may conduct pre-approval compliance reviews of grant applicants for, and post-approval compliance reviews of recipients of, WIOA Title I-financial assistance to determine the ability to comply or compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part. Reviews may focus on one or more specific programs or activities, or one or more issues within a program or activity. The Director may also investigate and resolve complaints alleging violations of the nondiscrimination and equal opportunity provisions of WIOA and this part.

§ 38.61 Authority to issue subpoenas.

Section 183(c) of WIOA authorizes the issuance of subpoenas. The subpoena may require the appearance of witnesses, and the production of documents, from any place in the United States, at any designated time and place. A subpoena may direct the individual named on the subpoena to take the following actions:

(a) To appear:

(1) Before a designated CRC representative,

(2) At a designated time and place;

(b) To give testimony; and/or

(c) To produce documentary evidence.

Compliance Reviews

§ 38.62 Authority and procedures for pre-approval compliance reviews.

(a) As appropriate and necessary to ensure compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part, the Director may review any application, or class of applications, for Federal financial assistance under Title I of WIOA, before and as a condition of their approval. The basis for such review may be the assurance specified in § 38.25, information and reports submitted by the grant applicant under this part or guidance published by the Director, and any relevant records on file with the Department.

(b) When awarding financial assistance under Title I of WIOA, departmental grantmaking agencies must consult with the Director to review whether the CRC has issued a Notice to Show Cause under § 38.66(b) or a Final Determination against an applicant that has been identified as a probable awardee.

(c) The grantmaking agency will consider, in consultation with the Director, the above information, along with any other information provided by the Director in determining whether to award a grant or grants. Departmental grantmaking agencies must consider refraining from awarding new grants to applicants or must consider including special terms in the grant agreement for entities named by the Director as described in subsection (b). Special terms will not be lifted until a compliance review has been conducted by the Director, and the Director has approved a determination that the applicant is likely to comply with the nondiscrimination and equal opportunity requirements of WIOA and this part.

(d) Where the Director determines that the grant applicant for Federal financial assistance under Title I of WIOA, if financially assisted, is not likely to comply with the nondiscrimination and equal opportunity requirements of WIOA or this part, the Director must:

(1) Notify, in a timely manner, the Departmental grantmaking agency and the Assistant Attorney General of the findings of the pre-approval compliance review; and (2) Issue a Letter of Findings. The Letter of Findings must advise the grant applicant, in writing, of:

(i) The preliminary findings of the review;

(ii) The proposed remedial or corrective action under § 38.90 and the time within which the remedial or corrective action should be completed;

(iii) Whether it will be necessary for the grant applicant to enter into a written Conciliation Agreement as described in §§ 38.91 and 38.93; and

(iv) The opportunity to engage in voluntary compliance negotiations.

(2) [Reserved]

(e) If a grant applicant has agreed to certain remedial or corrective actions in order to receive WIOA Title I financial assistance, the Department must ensure that the remedial or corrective actions have been taken, or that a Conciliation Agreement has been entered into, before approving the award of further assistance under WIOA Title I. If a grant applicant refuses or fails to take remedial or corrective actions or to enter into a Conciliation Agreement, as applicable, the Director must follow the procedures outlined in §§ 38.95 through 38.97.

§ 38.63 Authority and procedures for conducting post-approval compliance reviews.

(a) The Director may initiate a post-approval compliance review of any recipient to determine compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part. The initiation of a post-approval review may be based on, but need not be limited to, the results of routine program monitoring by other

Departmental or Federal agencies, or the nature or frequency of complaints.

(b) A post-approval review must be initiated by a Notification Letter, advising the recipient of:

(1) The practices to be reviewed;

(2) The programs to be reviewed;

(3) The information, records, and/or data to be submitted by the recipient within 30 days of the receipt of the Notification Letter, unless this time frame is modified by the Director; and

(4) The opportunity, at any time before receipt of the Final Determination described in §§ 38.95 and 38.96, to make a documentary or other written submission that explains, validates or otherwise addresses the practices under review.

(c) The Director may conduct post-approval reviews using such techniques as desk audits and on-site reviews.

§ 38.64 Procedures for concluding post-approval compliance reviews.

(a) Where, as the result of a post-approval review, the Director has made a finding of noncompliance, he or she must issue a Letter of Findings. This Letter must advise the recipient, in writing, of:

(1) The preliminary findings of the review;

(2) Where appropriate, the proposed remedial or corrective action to be taken, and the time by which such action should be completed, as provided in § 38.90;

(3) Whether it will be necessary for the recipient to enter into a written assurance or Conciliation Agreement, as provided in §§ 38.95 and 38.96; and

(4) The opportunity to engage in voluntary compliance negotiations.

(b) Where no violation is found, the recipient must be so informed in writing.

§ 38.65 Authority to monitor the activities of a Governor.

(a) The Director may periodically review the adequacy of the Nondiscrimination Plan established by a Governor, as well as the adequacy of the Governor's performance under the Nondiscrimination Plan, to determine compliance with the requirements of §§ 38.50 through 38.55. The Director may review the Nondiscrimination Plan during a compliance review under §§ 38.62 and 38.63, or at another time.

(b) Nothing in this subpart limits or precludes the Director from monitoring directly any WIOA Title I recipient or from investigating any matter necessary to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part.

(c) Where the Director determines that the Governor has not complied with the oversight and monitoring responsibilities set forth in the nondiscrimination and equal opportunity requirements of WIOA or this part, the Director may:

(1) Issue a Letter of Findings. The Letter of Findings must advise the Governor, in writing, of:

(i) The preliminary findings of the review:

(ii) The proposed remedial or corrective action under § 38. 90 and the time within which the remedial or corrective action should be completed;

(iii) Whether it will be necessary for the Governor to enter into a conciliation agreement as described in §§ 38.95 and 38.96; and

(iv) The opportunity to engage in voluntary compliance negotiations.

(2) If a Governor refuses or fails to take remedial or corrective actions or to enter into a conciliation agreement, the Director may follow the procedures outlined in §§ 38.89, 38.90, and 38.91.

§ 38.66 Notice to show cause issued to a recipient.

(a) The Director may issue a Notice to Show Cause to a recipient failing to comply with the requirements of this part, where such failure results in the inability of the Director to make a finding. Such a failure includes, but is not limited to, the recipient's failure or refusal to:

(1) Submit requested information, records, and/or data within the timeframe specified in a Notification Letter issued pursuant to § 38.64;

(2) Submit, in a timely manner, information, records, and/or data requested during a compliance review, complaint investigation, or other action to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIOA or this part; or

(3) Provide CRC access in a timely manner to a recipient's premises, records, or employees during a compliance review or complaint investigation, as required in § 38.42(c).

(b) The Director may issue a Notice to Show Cause to a recipient after a Letter of Findings and/or an Initial Determination has been issued, and after a reasonable period of time has passed within which the recipient refuses to negotiate a conciliation agreement with the Director regarding the violation(s).

(c) A Notice to Show Cause must contain:

(1) A description of the violation and a citation to the pertinent nondiscrimination or equal opportunity provision(s) of WIOA and this part;

(2) The corrective action necessary to achieve compliance or, as may be appropriate, the concepts and principles of acceptable corrective or remedial action and the results anticipated; and

(3) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence.

(d) A Notice to Show Cause must give the recipient 30 days from receipt of the Notice to show cause why enforcement proceedings under the nondiscrimination and equal opportunity provisions of WIOA or this part should not be instituted.

§ 38.67 Methods by which a recipient may show cause why enforcement proceedings should not be instituted.

A recipient may show cause why enforcement proceedings should not be instituted by, among other means:

(a) Correcting the violation(s) that brought about the Notice to Show Cause and entering into a Conciliation Agreement, under §§ 38.91 through 38.93;

(b) Demonstrating that CRC does not have jurisdiction; or

(c) Demonstrating that the violation alleged by CRC did not occur.

§ 38.68 Failing to show cause.

If the recipient fails to show cause why enforcement proceedings should not be initiated, the Director may follow the enforcement procedures outlined in § 38.95.

Complaint Processing Procedures

§ 38.69 Complaint filing.

(a) Any person or his/her representative who believes that any of the following circumstances exist may file a written complaint:

(1) A person, or any specific class of individuals, has been or is being discriminated against on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, citizenship status, or participation in any WIOA Title I-financially-assisted program or activity as prohibited by WIOA or this part.

(2) Either the person, or any specific class of individuals, has been or is being retaliated against as described in § 38.19.

(b) A person or the person's representative may file a complaint with either the recipient or the Director. Complaints filed with the Director should be sent to the address listed in

the notice or filed electronically as described in the notice in § 38.35.

(c) Generally, a complaint must be filed within 180 days of the alleged discrimination or retaliation. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.

§ 38.70 Required contents of complaint.

Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

(a) The complainant's name, mailing address, and, if available, email address (or another means of contacting the complainant);

(b) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);

(c) A description of the complainant's allegations. This description must include enough detail to allow the Director or the recipient, as applicable, to decide whether:

(1) CRC or the recipient, as applicable, has jurisdiction over the complaint;

(2) The complaint was filed in time; and

(3) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA or this part.

(d) The written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.

(e) A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the recipient's EO Officer or from CRC. The forms are available electronically on CRC's Web site, and in hard copy via postal mail upon request. The latter requests may be sent to CRC at the address listed in the notice contained in § 38.35.

§ 38.71 Right to representation.

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.

§ 38.72 Required elements of a recipient's complaint processing procedures.

(a) The procedures that a recipient adopts and publishes for processing complaints permitted under this part and WIOA Section 188 must state that the recipient will issue a written Notice of Final Action on complaints within 90 days of the date on which the complaint is filed.

(b) At a minimum, the procedures must include the following elements:

(1) Initial, written notice to the complainant that contains the following information:

(i) An acknowledgment that the recipient has received the complaint, and

(ii) Notice that the complainant has the right to be represented in the complaint process;

(iii) Notice of rights contained in § 38.35; and

(iv) Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in § 38.4(h), § 38.4(i) and § 38.34 and § 38.36.

(2) A written statement of the issue(s), provided to the complainant, that includes the following information:

(i) A list of the issues raised in the complaint, and

(ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;

(3) A period for fact-finding or investigation of the circumstances underlying the complaint;

(4) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in paragraph (c) of this section.

(5) A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:

(i) For each issue raised in the complaint, a statement of either:

(A) The recipient's decision on the issue and an explanation of the reasons underlying the decision, or

(B) A description of the way the parties resolved the issue; and

(ii) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if the complainant is dissatisfied with the recipient's final action on the complaint.

(c) The procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:

(1) ADR may be attempted any time after a written complaint has been filed with the recipient;

(2) The choice whether to use ADR or the customary process rests with the complainant;

(3) A party to any agreement reached under ADR may notify the Director in the event the agreement is breached. In such circumstances, the following rules will apply:

(i) The non-breaching party may notify with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach;

(ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.

(4) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in §§ 38.69 through 38.71.

§ 38.73 Responsibility for developing and publishing complaint processing procedures for service providers.

The Governor or the LWIA grant recipient, as provided in the State's Nondiscrimination Plan, must develop and publish, on behalf of its service providers, the complaint processing procedures required in § 38.73. The service providers must then follow those procedures.

§ 38.74 Recipient's obligations when it determines that it has no jurisdiction over a complaint.

If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing within five business days of making such determination. This Notice of Lack of Jurisdiction must include:

(a) A statement of the reasons for that determination, and

(b) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

§ 38.75 If the complainant is dissatisfied after receiving a Notice of Final Action.

If the recipient issues its Notice of Final Action before the 90-day period ends, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or the complainant's representative may file a complaint with the Director within 30 days after the date on which the complainant receives the Notice.

§ 38.76 If a recipient fails to issue a Notice of Final Action within 90 days after the complaint was filed.

If, by the end of 90 days from the date on which the complainant filed the complaint, the recipient has failed to issue a Notice of Final Action, the complainant or the complainant's representative may file a complaint with the Director within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the Director within 120 days of the date on which the complaint was filed with the recipient.

§ 38.77 Extension of deadline to file complaint.

(a) The Director may extend the 30-day time limit for filing a complaint:

(1) If a recipient does not include in its Notice of Final Action the required notice about the complainant's right to file with the Director, as described in § 38.72(b)(5); or

(2) For other good cause shown.

(b) The complainant has the burden of proving to the Director that the time limit should be extended.

§ 38.78 Determinations regarding acceptance of complaints.

The Director must decide whether CRC will accept a particular complaint for resolution. For example, a complaint need not be accepted if:

(a) It has not been timely filed;

(b) CRC has no jurisdiction over the complaint; or

(c) CRC has previously decided the matter.

§ 38.79 When a complaint contains insufficient information.

(a) If a complaint does not contain enough information to identify the respondent or the basis of the alleged discrimination, the timeliness of the complaint, or the apparent merit of the complaint, the Director must try to get the needed information from the complainant.

(b) The Director may close the complainant's file, without prejudice, if:

(1) The Director makes reasonable efforts to try to find the complainant, but is unable to reach him or her; or

(2) The complainant does not provide the needed information to CRC within the time specified in the request for more information.

(c) If the Director closes the complainant's file, the Director must send written notice to the complainant's last known address, email address (or another known method of contacting the complainant in writing).

§ 38.80 Lack of jurisdiction.

If CRC does not have jurisdiction over a complaint, the Director must:

(a) Notify the complainant in writing and explain why the complaint falls outside the coverage of the nondiscrimination and equal opportunity provisions of WIOA or this part; and

(b) Where possible, transfer the complaint to an appropriate Federal, State or local authority.

§ 38.81 Complaint referral.

The Director refers complaints to other agencies in the following circumstances:

(a) Where the complaint alleges discrimination based on age, and the complaint falls within the jurisdiction of the Age Discrimination Act of 1975, as amended, then the Director must refer the complaint, in accordance with the provisions of 45 CFR 90.43(c)(3).

(b) Where the only allegation in the complaint is a charge of individual employment discrimination that is covered both by WIOA or this part and by one or more of the laws listed below, then the complaint is a ''joint complaint,'' and the Director may refer it to the EEOC for investigation and conciliation under the procedures described in 29 CFR part 1640 or 1691, as appropriate. The relevant laws are:

(1) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e to 2000e–17);

(2) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d));

(3) The Age Discrimination in Employment Act of 1976, as amended (29 U.S.C. 621, *et seq.*); and

(4) Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*).

(c) Where the complaint alleges discrimination by an entity that operates a program or activity financially assisted by a Federal grantmaking agency other than the Department, but that participates as a partner in a One-Stop delivery system, the following procedures apply:

(1) Where the complaint alleges discrimination on a basis that is prohibited both by Section 188 of WIOA and by a civil rights law enforced by the Federal grantmaking agency, then CRC and the grantmaking agency have dual jurisdiction over the complaint, and the Director will refer the complaint to the grantmaking agency for processing. In such circumstances, the grantmaking agency's regulations will govern the processing of the complaint.

(2) Where the complaint alleges discrimination on a basis that is prohibited by Section 188 of WIOA, but not by any civil rights laws enforced by the Federal grantmaking agency, then CRC has sole jurisdiction over the complaint, and will retain the complaint and process it pursuant to this part. Such bases generally include religion, political affiliation or belief, citizenship, and/or participation in a WIOA Title I-financially assisted program or activity.

(d) Where the Director makes a referral under this section, he or she must notify the complainant and the respondent about the referral.

§ 38.82 Notice that complaint will not be accepted.

If a complaint will not be accepted, the Director must notify the complainant, in writing, about that fact, and provide the complainant the Director's reasons for making that determination.

§ 38.83 Notice of complaint acceptance.

If the Director accepts the complaint for resolution, he or she must notify in writing the complainant, the respondent, and the grantmaking agency. The notice must:

(a) State that the complaint will be accepted,

(b) Identify the issues over which CRC has accepted jurisdiction; and

(c) Explain the reasons why any issues were rejected.

§ 38.84 Contacting CRC about a complaint.

Both the complainant and the respondent, or their representative, may contact CRC for information about the complaint. The Director will determine what information, if any, about the complaint will be released.

§ 38.85 Alternative dispute resolution.

The Director may offer the option of alternative dispute resolution (ADR) of the complaint filed with CRC. In such circumstances, the following rules apply:

(a) ADR is voluntary; consent must be given by the complainant and respondent before the ADR process will proceed.

(b) The ADR will be conducted under the guidance of the Director.

(c) ADR may take place at any time after a complaint has been filed under § 38.69, as deemed appropriate by the Director.

(d) CRC will not suspend its investigation and complaint processes during ADR.

Complaint Determinations

§ 38.86 Notice at conclusion of complaint investigation.

At the conclusion of the investigation of the complaint, the Director must take the following actions:

(a) Determine whether there is reasonable cause to believe that the

respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or this part; and

(b) Notify the complainant, the respondent, and the grantmaking agency, in writing, of that determination as provided in §§ 38.87 and 38.88.

§ 38.87 Director's Initial Determination that reasonable cause exists to believe that a violation has taken place.

If the Director finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or this part the Director must issue an Initial Determination. The Initial Determination must include:

(a) The specific findings of the investigation;

(b) The corrective or remedial action that the Department proposes to the respondent, under § 38.90;

(c) The time by which the respondent must complete the corrective or remedial action;

(d) Whether it will be necessary for the respondent to enter into a written agreement under §§ 38.91 through 38.93; and

(e) The opportunity to engage in voluntary compliance negotiations.

§ 38.88 Director's Final Determination that no reasonable cause exists to believe that a violation has taken place.

If the Director determines that there is no reasonable cause to believe that a violation has taken place, the Director must issue a Final Determination under § 38.96. The Final Determination represents the Department's final agency action on the complaint.

§ 38.89 When the recipient fails or refuses to take the corrective action listed in the Initial Determination.

Under such circumstances, following a complaint investigation or compliance review, the Department may take the actions described in § 38.95.

§ 38.90 Corrective or remedial action that may be imposed when the Director finds a violation.

(a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued under §§ 38.62 or 38.63, 38.66 and 38.67, or 38.87, respectively, must include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance.

(b) Such steps must include:

(1) Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIOA or this part;

(2) Make whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before the filing of the complaint or the initiation of a compliance review), or other monetary relief; hire or reinstatement; retroactive seniority; promotion; benefits or other services discriminatorily denied; and

(3) Such other remedial or affirmative relief as the Director deems necessary, including but not limited to outreach, recruitment and training designed to ensure equal opportunity.

(c) Monetary relief may not be paid from Federal funds.

§ 38.91 Post violation procedures.

(a) *Violations at the State Level.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part has occurred at the State level, the Director must notify the Governor of that State through the issuance of a Letter of Findings, Notice to Show Cause, or Initial Determination, as appropriate, under §§ 38.62 or 38.63, 38.66 and 38.67, or 38.87, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part through, among other means, the execution of a written assurance or Conciliation Agreement.

(b) *Violations below State level.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part has occurred below the State level, the Director must so notify the Governor and the violating recipient(s) through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under §§ 38.62 or 38.63, 38.66 and 38.67, or 38.87, respectively.

(1) Such issuance may:

(i) Direct the Governor to initiate negotiations immediately with the violating recipient(s) to secure compliance by voluntary means;

(ii) Direct the Governor to complete such negotiations within 30 days of the Governor's receipt of the Notice to Show Cause or within 45 days of the Governor's receipt of the Letter of Findings or Initial Determination, as applicable. The Director reserves the right to enter into negotiations with the recipient at any time during the period. For good cause shown, the Director may approve an extension of time to secure voluntary compliance. The total time allotted to secure voluntary compliance must not exceed 60 days.

(iii) Include a determination as to whether compliance must be achieved by:

(A) Immediate correction of the violation(s) and written assurance that such violations have been corrected, under § 38.92; or

(B) Entering into a written Conciliation Agreement under § 38.93.

(2) If the Governor determines, at any time during the period described in paragraph (b)(1)(ii) of this section, that a recipient's compliance cannot be achieved by voluntary means, the Governor must so notify the Director.

(3) If the Governor is able to secure voluntary compliance under paragraph (b)(1) of this section, he or she must submit to the Director for approval, as applicable:

(i) Written assurance that the required action has been taken, as described in § 38.92; or

(ii) A copy of the Conciliation Agreement, as described in § 38.93.

(4) The Director may disapprove any written assurance or Conciliation Agreement submitted for approval under paragraph (b)(3) of this section that fails to satisfy each of the applicable requirements provided in §§ 38.92 and 38.93.

(c) *Violations in National Programs.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIOA or this part has occurred in a National Program, the Director must notify the Federal grantmaking agency and the recipient by issuing a Letter of Findings, Notice to Show Cause, or Initial Determination, as appropriate, under §§ 38.62 or 38.63, 38.66 and 38.67, or 38.87, respectively. The Director may secure compliance with the nondiscrimination and equal opportunities provisions of WIOA through, among other means, the execution of a written assurance or conciliation agreement under §§ 38.92 or 38.93.

§ 38.92 Written assurance.

A written assurance is the resolution document that may be used when the Director determines that a recipient has, within fifteen business days after receipt of the Letter of Findings or Initial Determination identifying the violations, taken all corrective actions to remedy the violations specified in those documents.

§ 38.93 Required elements of a conciliation agreement.

A conciliation agreement must:

(a) Be in writing;

(b) Address the legal and contractual obligations of the recipient;

(c) Address each cited violation;
(d) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
(e) Provide for periodic reporting on the status of the corrective and remedial action;
(f) State that the violation(s) will not recur;
(g) State that nothing in the agreement will prohibit CRC from sending the agreement to the complainant, making it available to the public, or posting it on the CRC or recipient's Web site;
(h) State that, in any proceeding involving an alleged violation of the conciliation agreement, CRC may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement; and
(i) Provide for enforcement for a breach of the agreement.

§ 38.94 When voluntary compliance cannot be secured.

The Director will conclude that compliance cannot be secured by voluntary means under the following circumstances:
(a) The Governor, grant applicant or recipient fails to or refuses to correct the violation(s) within the time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or
(b) The Director has not approved an extension of time for agreement on voluntary compliance under § 38.91(b)(1)(ii) and he or she either:
(1) Has not be notified under § 38.91(b)(3), that the Governor, grant applicant or recipient has agreed to voluntary compliance;
(2) Has disapproved a written assurance or Conciliation Agreement, under § 38.91(b)(4); or
(3) Has received notice from the Governor, under § 38.91(b)(2), that the grant applicant or recipient will not comply voluntarily.

§ 38.95 Enforcement when voluntary compliance cannot be secured.

If the Director concludes that compliance cannot be secured by voluntary means, the Director must either:
(a) Issue a Final Determination;
(b) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or
(c) Take such other action as may be provided by law.

§ 38.96 Contents of a Final Determination of a violation.

A Final Determination must contain the following information:
(a) A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
(b) A statement of those matters upon which the grant applicant or recipient and CRC continue to disagree;
(c) A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;
(d) A statement of the grant applicant's or recipient's liability, and, if appropriate, the extent of that liability;
(e) A description of the corrective or remedial actions that the grant applicant or recipient must take to come into compliance;
(f) A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
(1) After the grant applicant or recipient is given the opportunity for a hearing, its WIOA Title I financial assistance may be terminated, discontinued, or withheld in whole or in part, or its application for such financial assistance may be denied, as appropriate;
(2) The Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the grant applicant or recipient; or
(3) the Secretary may take any other action against the grant applicant or recipient that is provided by law;
(g) A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in §§ 38.112 through 37.115; and
(h) A determination of the Governor's liability, if any, under § 38.52.

§ 38.97 Notification of finding of noncompliance.

Where a compliance review or complaint investigation results in a finding of noncompliance, the Director must notify:
(a) The grant applicant or recipient;
(b) The grantmaking agency; and
(c) The Assistant Attorney General.

Breaches of Conciliation Agreements

§ 38.98 Notice of breach of conciliation agreement.

(a) When it becomes known to the Director that a Conciliation Agreement has been breached, the Director may issue a Notification of Breach of Conciliation Agreement.
(b) The Director must send a Notification of Breach of Conciliation Agreement to the Governor, the grantmaking agency, and/or other party(ies) to the Conciliation Agreement, as applicable.

§ 38.99 Contents of notice of breach of conciliation agreement.

A Notification of Breach of Conciliation Agreement must:
(a) Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;
(b) Identify the specific provisions of the Conciliation Agreement violated;
(c) Determine liability for the violation and the extent of the liability;
(d) Indicate that failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department of Justice with a request from the Department to file suit;
(e) Advise the violating party of the right to request a hearing, and reference the applicable procedures in § 38.111; and
(f) Include a determination as to the Governor's liability, if any, in accordance with the provisions of § 38.52.

§ 38.100 Notification of an enforcement action based on breach of conciliation agreement.

In such circumstances, the Director must notify:
(a) The grantmaking agency; and
(b) The Governor, recipient or grant applicant, as applicable.

Subpart E—Federal Procedures for Effecting Compliance

§ 38.110 Enforcement procedures.

(a) Sanctions; judicial enforcement. If compliance has not been achieved after issuance of a Final Determination under §§ 38.95 and 38.96, or a Notification of Breach of Conciliation Agreement under §§ 38.98 through 38.100, the Secretary may:
(1) After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA Title I financial assistance, in whole or in part;
(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or
(3) Take such action as may be provided by law, which may include seeking injunctive relief.
(b) Deferral of new grants. When proceedings under § 38.111 have been initiated against a particular recipient, the Department may defer action on that recipient's applications for new WIOA Title I financial assistance until a Final Decision under § 38.112 has been rendered. Deferral is not appropriate

when WIOA Title I financial assistance is due and payable under a previously approved application.

(1) New WIOA Title I financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.

(2) New WIOA Title I financial assistance does not include assistance approved before the beginning of proceedings under § 38.111, or increases in funding as a result of changed computations of formula awards.

§ 38.111 Hearing procedures.

(a) *Notice of opportunity for hearing.* As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director must include, and serve on the grant applicant or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.

(b) *Complaint; request for hearing; answer.* (1) In the case of noncompliance that cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement is considered the Department's formal complaint.

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges, 800 K Street NW., Suite 400, Washington, DC 20001.

(i) The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

(ii) A request for hearing must be set forth in a separate paragraph of the answer.

(iii) The answer must specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statement will have the effect of a denial. Findings of fact not denied are considered admitted. The answer must separately state and identify matters alleged as affirmative defenses, and must also set forth the matters of fact and law relied on by the grant applicant or recipient.

(3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights and Labor-Management Division, Room N–2474, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

(4)(i) The failure of a grant applicant or recipient to request a hearing under this paragraph (b), or to appear at a hearing for which a date has been set, waives the right to a hearing; and

(ii) Whenever a hearing is waived, all allegations of fact contained in the Final Determination or Notification of Breach of Conciliation Agreement are considered admitted, and the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary as of the day following the last date by which the grant applicant or recipient was required to request a hearing or was to appear at a hearing.

(c) *Time and place of hearing.* Hearings will be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to all parties and, as appropriate, the complainant. In selecting a place for the hearing, due regard must be given to the convenience of the parties, their counsel, and witnesses, if any.

(d) *Judicial process; evidence.* (1) The Administrative Law Judge may use judicial process to secure the attendance of witnesses and the production of documents authorized by Section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

(2) *Evidence.* In any hearing or administrative review conducted under this part, evidentiary matters will be governed by the standards and principles set forth in the Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges, 29 CFR part 18.

§ 38.112 Initial and final decision procedures.

(a) *Initial decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties by certified mail, return receipt requested.

(b) *Exceptions; Final Decision.* (1) Final decision after a hearing. The initial decision and order becomes the Final Decision and Order of the Department unless exceptions are filed by a party or, in the absence of exceptions, the Administrative Review Board serves notice that it will review the decision.

(i) A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Administrative Review Board and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof.

(ii) Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Administrative Review Board within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken.

(iv) Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies must be received by the Administrative Review Board no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Administrative Review Board may, within 30 days of the expiration of the time for filing exceptions, on its own motion serve notice on the parties that it will review the decision.

(vii) *Final Decision and Order.* (A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order unless the Administrative Review Board, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order unless the Administrative Review Board has served notice on the parties that it will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) Any case reviewed by the Administrative Review Board under this paragraph must be decided within 180 days of the notification of such review. If the Administrative Review Board fails to issue a Final Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order.

(2) Final Decision where a hearing is waived.

(i) If, after issuance of a Final Determination under § 38.95 or Notification of Breach of Conciliation Agreement under § 38.98, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in § 38.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision, the Administrative Review Board may, within 45 days, issue an order terminating or denying the grant or continuation of assistance; or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective and/or remedial actions, or the Secretary may refer the matter to the Attorney General for further enforcement action.

(3) *Final agency action.* A Final Decision and Order issued under § 38.112(b) constitutes final agency action.

§ 38.113 Suspension, termination, withholding, denial, or discontinuation of financial assistance.

Any action to suspend, terminate, deny or discontinue WIOA Title I financial assistance must be limited to the particular political entity, or part thereof, or other recipient (or grant applicant) as to which the finding has been made, and must be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found. No order suspending, terminating, denying or discontinuing WIOA Title I financial assistance will become effective until:

(a) The Director has issued a Final Determination under § 38.95 or Notification of Breach of Conciliation Agreement under § 38.98;

(b) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or under the nondiscrimination and equal opportunity provisions of WIOA or this part;

(c) A Final Decision has been issued by the Administrative Review Board, the Administrative Law Judge's decision and order has become the Final Agency Decision, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Agency Decision, under § 38.112(b); and

(d) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

§ 38.114 Distribution of WIOA Title I financial assistance to an alternate recipient.

When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

(a) The ability to comply with these regulations; and

(b) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of WIOA.

§ 38.115 Post-termination proceedings.

(a) A grant applicant or recipient adversely affected by a Final Decision and Order issued under § 38.112(b) will be restored, where appropriate, to full eligibility to receive WIOA Title I financial assistance if the grant applicant or recipient satisfies the terms and conditions of the Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of WIOA and this part.

(b) A grant applicant or recipient adversely affected by a Final Decision and Order issued under § 38.112(b) may at any time petition the Director to restore its eligibility to receive WIOA Title I financial assistance. A copy of the petition must be served on the parties to the original proceeding that led to the Final Decision and Order. The petition must be supported by information showing the actions taken by the grant applicant or recipient to bring itself into compliance. The grant applicant or recipient has the burden of demonstrating that it has satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, sanctions imposed by the Final Decision and Order under §§ 38.112(b)(1) and (2) must remain in effect.

(c) The Director must issue a written decision on the petition for restoration.

(1) If the Director determines that the grant applicant or recipient has not brought itself into compliance, he or she must issue a decision denying the petition.

(2) Within 30 days of its receipt of the Director's decision, the recipient or grant applicant may file a petition for review of the decision by the Administrative Review Board, setting forth the grounds for its objection to the Director's decision.

(3) The petition must be served on the Director and on the Office of the Solicitor, Civil Rights and Labor-Management Division.

(4) The Director may file a response to the petition within 14 days.

(5) The Administrative Review Board must issue the final agency decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

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