AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 81 Wednesday,

No. 22 February 3, 2016

Pages 5573–5880

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 81 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 81, No. 22

Wednesday, February 3, 2016

Agency for Toxic Substances and Disease Registry
NOTICES
Draft Toxicological Profile:
Glutaraldehyde, 5756

Agricultural Marketing Service
RULES
Kiwifruit Grown in California; Increased Assessment Rate, 5573–5575

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See National Institute of Food and Agriculture

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal Welfare:
Marine Mammals, 5629–5657

Army Department
NOTICES
Privacy Act; Systems of Records, 5715–5716

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare Program; Medicare Shared Savings Program:
Accountable Care Organizations—Revised Benchmark Rebasing Methodology, Facilitating Transition to Performance-Based Risk, and Administrative Finality of Financial Calculations, 5824–5872

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 5703–5704

Coast Guard
PROPOSED RULES
Drawbridge Operations:
Broad Creek, Laurel, DE, 5679–5681
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5773–5777

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Army Department
NOTICES
NATO Standardization Agreement 4703 Light Unmanned Aircraft Systems Airworthiness Requirements:
Invitation to Unmanned Aircraft Industry for Review and Comment Period; Edition 1, 5717
Privacy Act; Systems of Records, 5716–5717

Delaware River Basin Commission
RULES
Amendments to the Rules of Practice and Procedure to Allow Each Signatory Party and the Commission to Administer a Single Process for the Review and Adjudication of Projects, 5585–5589

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2016–17 Baccalaureate and Beyond Longitudinal Study Field Test Data Collection, 5717–5718
Applications for Awards:
State Personnel Development Grants Program, 5718–5726

Employment and Training Administration
NOTICES
Worker Adjustment Assistance Eligibility, 5785–5789
Worker and Alternative Trade Adjustment Assistance; Investigations, 5789–5791

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Western Area Power Administration
PROPOSED RULES
Establishment of Working Group to Negotiate Proposed Rulemaking for Energy Conservation Standards:
Appliance Standards and Rulemaking Federal Advisory Committee; Working Group for Circulator Pumps, 5658–5661
NOTICES
Response to Recommendation 2015–1 of the Defense Nuclear Facilities Safety Board, Emergency Preparedness and Response at the Pantex Plant, 5726–5727

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Appliance Standards and Rulemaking Federal Advisory Committee, 5727

Environmental Protection Agency
RULES
Pesticide Tolerances:
Cyazofamid, 5600–5605
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Registration and Pesticide Report for Pesticide-Producing and Device-Producing Establishments, 5749–5750
Recordkeeping for Institutional Dual Use Research of Concern Policy Compliance, 5748–5749
Charter Renewals:
Farm, Ranch, and Rural Communities Advisory Committee, 5749

Federal Aviation Administration
RULES
Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments, 5577–5585
PROPOSED RULES
Proposed Establishment of Class E Airspace:
Moriarty, NM, 5676–5677

Federal Communications Commission
RULES
Implementation of Section 224 of the Act, a National Broadband Plan for Our Future, 5605–5618

Federal Energy Regulatory Commission
NOTICES
Applications for Transfers of Licenses:
Advantage Investment Group, LLC, Spencer Mountain Hydropower, LLC, 5739–5740
Combined Filings, 5728–5734, 5737–5738
Complaints:
Electric Power Supply Association, et al. v. AEP Generation Resources, Inc.; Ohio Power Co., 5730
Electric Power Supply Association, et al. v. FirstEnergy Solutions Corp., et al., 5729
Environmental Assessments; Availability, etc.:
Columbia Gas Transmission, LLC; Line WB2VA Integrity Project, 5728
Texas Gas Transmission, LLC; Northern Supply Access Project, 5739
Environmental Issues Related to New Route Modifications under Consideration:
Transcontinental Gas Pipe Line Company, LLC; Dalton Expansion Project, 5735–5737
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
3 Phases Renewables, Inc., 5730
Meetings:
PJM Interconnection, LLC; Technical Conference, 5735
Whitewater Creek Hydroelectric Project, 5738–5739
Records Governing Off-the-Record Communications, 5734–5735
Revised Restricted Service Lists for Programmatic Agreements:
South Carolina Electric and Gas Co.; South Carolina Parr Hydroelectric Project, 5731–5732

Federal Highway Administration
NOTICES
Final Federal Agency Actions:
California Proposed Highway, 5813
Limitation on Claims for Judicial Review, 5813–5814

Federal Railroad Administration
NOTICES
Application for Approval of Discontinuance or Modification of a Railroad Signal System, 5815–5816
Applications for Approval of Discontinuance or Modification of a Railroad Signal System, 5814–5815
Petitions for Waiver of Compliance, 5814

Federal Reserve System
PROPOSED RULES
Regulatory Capital:
Federal Reserve Board's Framework for Implementing the U.S. Basel III Countercyclical Capital Buffer, 5661–5666

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5750–5751
Proposed Consent Agreements:
General Motors, LLC, 5752–5754
Jim Koons Management Co., 5751–5752
Lithia Motors, Inc., 5754–5756

Federal Transit Administration
NOTICES
Uniform System of Accounts and Changes to the National Transit Database Reporting Requirements; Updates, 5816–5819

Fish and Wildlife Service
NOTICES
Endangered and Threatened Wildlife and Plants Permit Applications, 5778–5779

Food and Drug Administration
RULES
Center for Food Safety and Applied Nutrition Library Address; Technical Amendments, 5589–5596
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Biosimilar User Fee Cover Sheet, 5763–5764
Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application, 5764
Guidance on Meetings with Industry and Investigators on the Research and Development of Tobacco Products, 5758–5760
Postmarketing Adverse Drug Experience Reporting, 5764
Guidance:
Applying Human Factors and Usability Engineering to Medical Devices, 5762–5763
Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices, 5760–5762
Human Factors Studies and Related Clinical Study Considerations in Combination Product Design and Development, 5764–5766
List of Highest Priority Devices for Human Factors Review, 5756–5758

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 5784

Foreign-Trade Zones Board
NOTICES
Applications for Subzone Status:
Foreign Trade Zone 279, Thoma-Sea Marine Constructors, LLC, Houma and Lockport, LA, 5707
Proposed Production Activities:
Foreign-Trade Zone 196, Fort Worth, TX, General Electric Transportation, 5704–5707

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5779–5780

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Medicare & Medicaid Services

See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Presidential Advisory Council on HIV/AIDS; Correction, 5766–5767
Presidential Commission for the Study of Bioethical Issues, 5766

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
PROPOSED RULES
Strengthening Oversight of Over-Income Tenancy in Public Housing, 5677–5679
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Indian Community Capital Initiative; Withdrawal, 5777–5778
Final Fair Market Rents:
Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2016, 5778

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Advance Notification of Sunset Reviews, 5708
Certain Lined Paper Products from India, 5707–5708
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China, 5711–5712
Frozen Fish Fillets from the Socialist Republic of Vietnam, 5709–5710
Honey from the People's Republic of China, 5710–5711
Opportunity to Request Administrative Review, 5712–5715

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Computing or Graphics Systems, Components Thereof, and Vehicles Containing Same, 5782–5784
Polyethylene Terephthalate Resin from Canada, China, India, and Oman, 5784

Justice Department
See Foreign Claims Settlement Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Office of Justice Programs' Community Partnership Grants Management System, 5784–5785

Labor Department
See Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Institutional Analysis of American Job Centers Study; Correction, 5791–5792
National Guard Youth ChalleNGe Job ChalleNGe Evaluation; Correction, 5791
Placement Verification and Follow Up of Job Corps Participants; Correction, 5791

Land Management Bureau
NOTICES
Meetings:
BLM Alaska Resource Advisory Council, 5781
Resource Advisory Council to the Boise District, Bureau of Land Management, U. S. Department of the Interior, 5780–5781

National Endowment for the Arts
NOTICES
Meetings:
Arts Advisory Panel, 5792

National Foundation on the Arts and the Humanities
See National Endowment for the Arts

National Institute of Food and Agriculture
RULES
Hispanic-Serving Agricultural Colleges and Universities, 5575–5577
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5703

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 5767–5772
National Center for Advancing Translational Sciences, 5771
National Heart, Lung, and Blood Institute, 5770–5771, 5773
National Institute of Diabetes and Digestive Kidney Diseases, 5772–5773
National Institute of Environmental Health Sciences, 5770
National Institute of Mental Health, 5769–5770
National Institute of Nursing Research, 5767

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska; Temporary Closure, 5628
Pollock in Statistical Area 610 in the Gulf of Alaska; Temporary Closure, 5627
Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 5627–5628
Pacific Island Pelagic Fisheries:
Exemption for Large U.S. Longline Vessels to Fish in Portions of the American Samoa Large Vessel Prohibited Area, 5619–5626
PROPOSED RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Bycatch Management in the Bering Sea Pollock Fishery, 5681–5702

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5715

National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Special Park Use Applications, 5781–5782

National Science Foundation
NOTICES
Meetings:
Advisory Committee for Environmental Research and Education, 5792

Nuclear Regulatory Commission
NOTICES
License Renewals:
Exelon Generation Company, LLC, Braidwood Station, Units 1 and 2, 5792–5793

Postal Regulatory Commission
RULES
Product Lists; Update, 5596–5600

Presidential Documents
PROCLAMATIONS
Special Observances:
American Heart Month (Proc. 9391), 5873–5876
National African American History Month (Proc. 9392), 5877–5878
National Teen Dating Violence Awareness and Prevention Month (Proc. 9393), 5879–5880

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5809
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc., 5795–5796
Chicago Board Options Exchange, Inc., 5800–5802
International Securities Exchange, LLC, 5806–5807
NASDAQ OMX PHLX, LLC, 5796–5798, 5811
New York Stock Exchange, LLC, 5807–5809
NYSE Arca, Inc., 5798–5800, 5809–5810
NYSE MKT, LLC, 5793–5795, 5802–5806

Small Business Administration
PROPOSED RULES
Small Business Investment Company Program—Impact SBICs, 5666–5676

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5812
Meetings:
Advisory Committee on International Economic Policy, 5812
Memberships:
Defense Trade Advisory Group, 5811–5812

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Census of Ferry Operators, 5819–5820

Treasury Department
See United States Mint
NOTICES
Meetings:
Advisory Committee on Risk-Sharing Mechanisms, 5820–5821

United States Mint
NOTICES
Meetings:
Citizens Coinage Advisory Committee, 5821

Western Area Power Administration
NOTICES
Desert Southwest Customer Service Region Network Integration Transmission Service and Ancillary Services–Rate, 5741–5744
Records of Decision:
Windy Gap Firming Project, 5740–5741
Rocky Mountain Region Transmission, Ancillary Services, and Sale of Surplus Products, 5744–5748

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 5824–5872

Part III
Presidential Documents, 5873–5880

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

9391 5875
9392 5877
9393 5879

7 CFR

920 5573
3434 5575

9 CFR

Proposed Rules:

1 5629
3 5629

10 CFR

Proposed Rules:

430 5658

12 CFR

Proposed Rules:

217 5661

13 CFR

Proposed Rules:

107 5666

14 CFR

97 (4 documents) ... 5577, 5579, 5581, 5584

Proposed Rules:

71 5676

18 CFR

401 5585

21 CFR

73 5589
101 5589
118 5589
165 5589
172 5589
173 5589
177 5589
178 5589
184 5589
189 5589
589 5589
700 5589

24 CFR

Proposed Rules:

960 5677

33 CFR

Proposed Rules:

117 5679

39 CFR

3020 5596

40 CFR

180 5600

42 CFR

Proposed Rules:

425 5824

47 CFR

1 5605

50 CFR

665 5619
679 (3 documents) 5627, 5628

Proposed Rules:

679 5681

Rules and Regulations

Federal Register
Vol. 81, No. 22
Wednesday, February 3, 2016

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AMS–FV–15–0056; FV15–920–1 FR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Kiwifruit Administrative Committee (Committee) for an increase of the assessment rate established for the 2015–16 and subsequent fiscal periods from $0.025 to $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit handled under the marketing order (order). The Committee locally administers the order, and is comprised of growers of kiwifruit operating within the area of production. Assessments upon kiwifruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective February 4, 2016.

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov,* or *Martin.Engeler@ams.usda.gov.* Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable kiwifruit beginning on August 1, 2015, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate for the 2015–16 and subsequent fiscal periods from $0.025 to $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2013–14 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 17 and September 16, 2015, and unanimously recommended 2015–16 fiscal year expenditures of $132,725 and an assessment rate of $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit handled to fund Committee expenses. In comparison, last year's budgeted expenditures were $120,925. The assessment rate of $0.040 is $0.015 more than the rate currently in effect. The Committee's recommended 2015–16 expenditures are $11,800 higher than last year's budgeted expenditures. The primary reason for the increase is to provide funding for research. When applied to the Committee's crop estimate for the 2015–16 fiscal year of 2,297,000 9-kilo volume-fill containers or equivalent, the current assessment rate of $0.025 would not generate sufficient assessment income to anticipated expenses. The assessment rate of $0.040 per 9-kilo volume-fill container or its equivalent should generate assessment income of $91,880. Anticipated assessment income combined with financial reserve and interest income, should provide sufficient funds for the Committee to meet its budgeted expenses while maintaining its financial reserve within the limit authorized under the order. (§ 920.42)

The major expenditures recommended by the Committee for the 2015–16 fiscal period include $80,000 for management expenses; $14,000 for

two financial audits, $14,330 for research; $7,500 for International Kiwifruit Organization (IKO) travel; $2,500 for a membership fee to Buy California; and $2,500 for a membership fee to the IKO. Major budgeted expenses for the 2014–15 fiscal period were $80,000 for management expenses; $7,500 for a financial audit, $5,000 for handler audits; $2,500 for a membership fee to Buy California; $2,500 for IKO membership; and $12,500 for IKO travel.

The assessment rate recommended by the Committee was derived by considering the amount of revenue needed to meet anticipated expenses divided by expected shipments of California kiwifruit. As previously mentioned, kiwifruit shipments for the 2015–16 fiscal period are estimated at 2,297,000 9-kilo volume-fill containers, which should provide $91,880 in assessment income. Anticipated assessment income derived from handler assessments, along with interest income and $40,756 from the Committee's authorized financial reserve, should provide sufficient funds for the Committee to meet its budgeted expenses. It is anticipated that $29,119 would remain in the financial reserve at the end of July 2016, which would be within the maximum amount permitted by the order of approximately one fiscal year's expenses (§ 920.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2015–16 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 178 kiwifruit growers in the production area and approximately 28 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

The National Agricultural Statistical Service (NASS) reported total California kiwifruit production for the 2014 season at 27,400 tons, with an average price of $1,190 per ton. Based on the average price and shipment information provided by NASS and the Committee, it could be concluded that the majority of kiwifruit handlers would be considered small businesses under the SBA definition. Based on kiwifruit production and price information, as well as the total number of California kiwifruit growers, average annual grower revenue is less than $750,000. Thus, the majority of California kiwifruit growers may also be classified as small entities.

This rule increases the assessment rate collected from handlers for the 2015–16 and subsequent fiscal periods from $0.025 to $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2015–16 expenditures of $132,725 and an assessment rate of $0.040 per 9-kilo volume-fill container. The assessment rate of $0.040 is $0.015 higher than the 2014–15 rate. The quantity of assessable kiwifruit for the 2015–16 fiscal period is estimated at 2,297,000 9-kilo volume-fill containers. Thus, the $0.040 rate should provide $91,880 in assessment income. Anticipated assessment income derived from handler assessments, along with financial reserve funds and interest income, should provide sufficient revenue for the Committee to meet its budgeted expenses, while maintaining its financial reserve within the maximum amount permitted by the order of approximately one fiscal year's expenses (§ 920.42).

The major expenditures recommended by the Committee for the 2015–16 fiscal period include: $80,000 for management expenses; $14,000 for two financial audits; $14,330 for research; $7,500 for IKO travel; $2,500 for a membership fee to Buy California; and $2,500 for IKO membership. Major budgeted expenses for the 2014–15 fiscal period were: $80,000 for management expenses; $7,500 for a financial audit; $5,000 for handler audits; $2,500 for a membership fee to Buy California; $2,500 for IKO membership; and $12,500 for IKO travel.

Prior to arriving at this budget and assessment rate, the Committee considered alternative expenditure levels, to include maintaining the current assessment rate, but ultimately determined that the current assessment rate would generate insufficient revenue to meet its expenses.

According to data from NASS, the seasonal average producer price was $11.09 per 9-kilo volume-fill container in 2013 and $11.78 per 9-kilo volume-fill container in 2014. A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for 2015–16 could range between $11.09 and $11.78 per 9-kilo volume-fill container of assessable kiwifruit. Therefore, estimated assessment revenue for the 2015–16 fiscal year as a percentage of total producer revenue could be between 0.34 percent and 0.36 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. The July 17 and September 16, 2015, meetings were public meetings. All entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. No changes in those requirements are

necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, 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.

A proposed rule concerning this action was published in the **Federal Register** on November 5, 2015 (80 FR 68473). Copies of the proposed rule were also mailed or sent via facsimile to all California kiwifruit handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending November 20, 2015, was provided for interested persons to respond to the proposal. One comment in support of the rule was received, with the commenter requesting more information on the type of research the committee was conducting. The research the Committee recommended involves two field trials during the first year of a research proposal to study the beneficial effects of Nimitz nematicide on the Root-knot nematode. This type of production research is authorized under § 920.47 of the marketing order and will benefit growers. Accordingly, no changes will be made to the rule as proposed, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2015–16 fiscal year began on August 1, 2015. Handlers began shipping kiwifruit in September and the marketing order requires that the rate of assessment apply to all assessable kiwifruit handled during the fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule, and one supportive comment was received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2015, an assessment rate of $0.040 per 9-kilo volume-fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: January 29, 2016.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2016–02067 Filed 2–2–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3434

RIN 0524–AA39

Hispanic-Serving Agricultural Colleges and Universities (HSACU)

AGENCY: National Institute of Food and Agriculture (NIFA), USDA.

ACTION: Final rule.

SUMMARY: This rule updates the list of institutions that are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2015, and ending September 30, 2016.

DATES: This rule is effective February 3, 2016 and applicable October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Lisa DePaolo; Policy Analyst; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2272; 1400 Independence Avenue SW.; Washington, DC 20250–2272; Voice: 202–401–5061; Fax: 202–401–7752; Email: *ldepaolo@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

HSACU Institutions for Fiscal Year 2016

This rule makes changes to the existing list of institutions in Appendix B of 7 CFR part 3434. The list of institutions is amended to reflect the institutions that are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2015, and ending September 30, 2016.

Certification Process

As stated in 7 CFR 3434.4, an institution must meet the following criteria to receive HSACU certification: (1) Be a Hispanic-Serving Institution (HSI), (2) offer agriculture-related degrees, (3) not appear on the Excluded Parties List System (EPLS), (4) be accredited, and (5) award at least 15% of agriculture-related degrees to Hispanic students over the two most recent academic years.

NIFA obtained the latest report from the U.S. Department of Education's National Center for Education Statistics that lists all HSIs and the degrees conferred by these institutions (completion data) during the 2013–14 academic year. NIFA used this report to identify HSIs that conferred a degree in an instructional program that appears in Appendix A of 7 CFR part 3434 and to confirm that over the 2012–13 and 2013–14 academic years at least 15% of the degrees in agriculture-related fields were awarded to Hispanic students. NIFA further confirmed that these institutions were nationally accredited and were not listed in the System for Award Management (*https://www.sam.gov*) with exclusions.

The updated list of HSACUs is based on (1) completions data from 2012–13 and 2013–14, and (2) enrollment data from Fall 2014. NIFA identified 101 institutions that met the eligibility criteria to receive HSACU certification

for FY 2016 (October 1, 2015 to September 30, 2016).

Declaration of Intent To Apply for NLGCA Designation

As set forth in Section 7101 of the Agricultural Act of 2014 (Pub. L. 113–79), which amends 7 U.S.C. 3103, an institution that is eligible to be designated as an HSACU may notify the Secretary of its intent not to be considered an HSACU. To opt out of designation as an HSACU, an authorized official at the institution must submit a declaration of intent not to be considered an HSACU to NIFA by email at *NLGCA.status@nifa.usda.gov.* In accordance with Section 7101, a declaration by an institution not to be considered an HSACU shall remain in effect until September 30, 2018. Institutions that opt out of HSACU designation will have the option to apply for designation as a Non-Land Grant College of Agriculture (NLGCA) institution. To be eligible for NLGCA designation, institutions must be public colleges or universities offering baccalaureate or higher degrees in the study of food and agricultural sciences, as defined in 7 U.S.C. 3103. An online form to request NLGCA designation is available at *http://nifa.usda.gov/webform/request-non-land-grant-college-agriculture-designation.*

In FY 2014 and FY 2015, six institutions opted out of their HSACU designation and received NLGCA designation, hence they are excluded from the FY 2016 HSACU list.

Appeal Process

As set forth in 7 CFR 3434.8, NIFA will permit HSIs that are not granted HSACU certification to submit an appeal within 30 days of the publication of this notice.

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Order 12866. This action is not a rule as defined by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.,* or the Congressional Review Act, 5 U.S.C. 801 *et seq.,* and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 3434

Administrative practice and procedure; Agricultural research, education, extension; Hispanic-Serving Institutions; Federal assistance.

Title 7, part 3434, of the Code of Federal Regulations is amended accordingly as set forth below:

PART 3434—HISPANIC-SERVING AGRICULTURAL COLLEGES AND UNIVERSITIES CERTIFICATION PROCESS

■ 1. The authority citation for Part 3434 continues to read as follows:

Authority: 7 U.S.C. 3103.

■ 2. Revise part 3434 Appendix B to read as follows:

Appendix B to Part 3434—List of HSACU Institutions, 2015–2016

The institutions listed in this appendix are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2015, and ending September 30, 2016. Institutions are listed alphabetically under the state of the school's location, with the campus indicated where applicable.

Arizona (3)

Arizona Western College
Cochise College
Phoenix College

California (39)

Allan Hancock College
Antelope Valley College
Antioch University—Los Angeles
Bakersfield College
California Baptist University
California Lutheran University
California State University—Dominquez Hills
California State University—East Bay
California State University—Long Beach
California State University—San Bernardino
College of San Mateo
College of the Desert
College of the Sequoias
El Camino Community College District
Fullerton College
Golden West College
Hartnell College
Imperial Valley College
Long Beach City College
Los Angeles City College
Los Angeles Pierce College
Mendocino College
Merced College
MiraCosta College
Modesto Junior College
Monterey Peninsula College
Mt. San Antonio College
Mt. San Jacinto Community College District
National University
Pacific Union College
Porterville College
Reedley College
Saddleback College
Saint Mary's College of California
San Diego City College
San Diego Mesa College
San Diego State University
San Francisco State University
San Jose State University
Santa Ana College
University of California-Riverside
University of La Verne
West Hills College Coalinga
Whittier College

Colorado (1)

Trinidad State Junior College

Florida (5)

Broward College
Florida International University
Miami Dade College
Nova Southeastern University
Valencia College

Nevada (2)

College of Southern Nevada
Truckee Meadows Community College

New Jersey (2)

Saint Peter's University
William Paterson University of New Jersey

New Mexico (9)

Central New Mexico Community College
Eastern New Mexico University—Main Campus
Eastern New Mexico University—Ruidoso Campus
Mesalands Community College
New Mexico Highlands University
New Mexico Institute of Mining and Technology
Northern New Mexico College
University of New Mexico—Main Campus
Western New Mexico University

New York (2)

CUNY Bronx Community College
CUNY LaGuardia Community College

Puerto Rico (15)

Bayamon Central University
Instituto Tecnologico de Puerto Rico—Manati
Inter American University of Puerto Rico—Aguadilla
Inter American University of Puerto Rico—Bayamon
Inter American University of Puerto Rico—Metro
Inter American University of Puerto Rico—Ponce
Inter American University of Puerto Rico—San German
Pontifical Catholic University of Puerto Rico—Ponce
Universidad Del Turabo
Universidad Metropolitana
University of Puerto Rico—Arecibo
University of Puerto Rico—Humacao
University of Puerto Rico—Medical Sciences Campus
University of Puerto Rico—Rio Piedras Campus
University of Puerto Rico—Utuado

Texas (22)

Houston Community College
Lee College
Palo Alto College

Richland College
San Antonio College
Saint Edward's University
St. Mary's University
Southwest Texas Junior College
Texas A&M International University
Texas A&M University—Corpus Christi
Texas A&M University—Kingsville
Texas State Technical College—Harlingen
Texas State University
University of Houston
University of Houston—Clear Lake
University of St. Thomas
University of Texas at Arlington
University of Texas at Brownsville
University of Texas at El Paso
University of Texas at San Antonio
University of Texas Rio Grande Valley
University of the Incarnate Word

Washington (3)

Columbia Basin College
Wenatchee Valley College
Yakima Valley Community College

Done in Washington, DC, this 21st day of January, 2016.

Sonny Ramaswamy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2016–01893 Filed 2–2–16; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31055; Amdt. No. 3677]

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 February 3, 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 February 3, 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 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 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 CFR sections 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 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 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 31, 2015.

John S. 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 4 FEBRUARY 2016

Gulkana, AK, Gulkana, VOR/DME RWY 33, Orig, CANCELED
Kotzebue, AK, Ralph Wien Memorial, VOR/DME RWY 9, Orig-B
Kotzebue, AK, Ralph Wien Memorial, VOR/DME Y RWY 27, Orig, CANCELED
Yakutat, AK, Yakutat, VOR/DME RWY 11, Amdt 3A, CANCELED
Harrison, AR, Boone County, VOR–A, Amdt 13, CANCELED
Rogers, AR, Rogers Executive—Carter Field, NDB RWY 20, Amdt 1A, CANCELED
Sheridan, AR, Sheridan Muni, RNAV (GPS) RWY 1, Orig
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 6, Amdt 17C, SUSPENDED
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 6R, Amdt 1B, SUSPENDED
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 6R, Orig-B, SUSPENDED
Sacramento, CA, McClellan Airfield, VOR/DME RWY 16, Orig-C, CANCELED
San Jose, CA, Norman Y Mineta San Jose Intl, VOR RWY 12R, Amdt 5, CANCELED
San Jose, CA, Norman Y Mineta San Jose Intl, VOR/DME RWY 30L, Amdt 3, CANCELED
San Jose, CA, Norman Y Mineta San Jose Intl, VOR/DME RWY 30R, Amdt 1, CANCELED
New Haven, CT, Tweed-New Haven, VOR–A, Amdt 3, CANCELED
Umatilla, FL, Umatilla Muni, RNAV (GPS) RWY 19, Orig-B
Pohnpei Island, FM, Pohnpei Intl, RNAV (RNP) Y RWY 9, Orig
Pohnpei Island, FM, Pohnpei Intl, RNAV (RNP) Z RWY 9, Orig
Jefferson, GA, Jackson County, RNAV (GPS) RWY 17, Amdt 3
Jefferson, GA, Jackson County, RNAV (GPS) RWY 35, Amdt 3
Jefferson, GA, Jackson County, Takeoff Minimums and Obstacle DP, Amdt 3
Macon, GA, Macon Downtown, VOR/DME–B, Amdt 3, CANCELED
Nashville, GA, Berrien CO, GPS RWY 10, Orig-B, CANCELED
Nashville, GA, Berrien CO, RNAV (GPS) RWY 10, Orig
Nashville, GA, Berrien CO, RNAV (GPS) RWY 28, Orig
Tifton, GA, Henry Tift Myers, VOR RWY 33, Amdt 11C, CANCELED
Waycross, GA Waycross-Ware County, ILS Y OR LOC Y RWY 19, Orig
Waycross, GA Waycross-Ware County, ILS Z OR LOC Z RWY 19, Amdt 3
Waycross, GA Waycross-Ware County, RNAV (GPS) RWY 1, Amdt 2
Waycross, GA Waycross-Ware County, RNAV (GPS) RWY 19, Amdt 2
Waycross, GA Waycross-Ware County, Takeoff Minimums and Obstacle DP, Amdt 2
Sibley, IA, Sibley Muni, NDB OR GPS RWY 17, Amdt 1C, CANCELED
Waterloo, IA, Waterloo Rgnl, VOR/DME RWY 30, Amdt 15, CANCELED
Twin Falls, ID, Joslin Field—Magic Valley Rgnl, NDB RWY 26, Amdt 7, CANCELED
Olney-Noble, IL, Olney-Noble, NDB RWY 3, Amdt 14
Olney-Noble, IL, Olney-Noble, RNAV (GPS) RWY 3, Orig-B
Olney-Noble, IL, Olney-Noble, RNAV (GPS) RWY 11, Amdt 1B
Rochelle, IL, Rochelle Muni Airport-Koritz Field, Takeoff Minimums and Obstacle DP, Amdt 4
Indianapolis, IN, Eagle Creek Airpark, NDB RWY 21, Amdt 4, CANCELED
Nappanee, IN, Nappanee Muni, VOR/DME OR GPS–A, Amdt 3B, CANCELED
Terra Haute, IN, Sky King, VOR–B, Orig-B, CANCELED
Goodland, KS, Renner Fld/Goodland Muni/, VOR/DME RWY 30, Amdt 8B, CANCELED
Richmond, KY, Madison, RNAV (GPS) RWY 18, Amdt 1C
Richmond, KY, Madison, RNAV (GPS) RWY 36, Amdt 2A
Abbeville, LA, Abbeville Chris Crusta Memorial, VOR/DME–A, Amdt 2B, CANCELED
New Roads, LA, False River Rgnl, VOR/DME–A, Amdt 4A, CANCELED
Fitchburg, MA, Fitchburg Muni, RNAV (GPS) RWY 20, Orig-C
Lawrence, MA, Lawrence Muni, NDB RWY 5, Amdt 6, CANCELED
Bangor, ME, Bangor Intl, VOR/DME RWY 15, Amdt 4A, CANCELED
Bangor, ME, Bangor Intl, VOR/DME RWY 33, Amdt 7, CANCELED
Hancock, MI, Houghton County Memorial, VOR RWY 31, Amdt 14A, CANCELED
Ironwood, MI, Gogebic-Iron County, VOR/DME RWY 27, Amdt 9, CANCELED
Marquette, MI, Sawyer Intl, NDB RWY 1, Orig-B, CANCELED
Marquette, MI, Sawyer Intl, VOR RWY 1, Orig, CANCELED
Pellston, MI, Pellston Rgnl Airport of Emmet County, VOR/DME RWY 5, Amdt 12A, CANCELED
Sault Ste Marie, MI, Chippewa County Intl, VOR–A, Amdt 7, CANCELED
Marshall, MN, Southwest Minnesota Rgnl Marshall/Ryan Fld, VOR/DME RWY 30, Amdt 2B, CANCELED
Minneapolis, MN, Anoka County-Blaine Arpt (Janes Field), VOR/DME RWY 27, Amdt 5, CANCELED
Owatonna, MN, Owatonna Degner Rgnl, VOR/DME RWY 30, Amdt 4, CANCELED
Thief River Falls, MN, Thief River Falls Rgnl, VOR/DME RWY 31, Amdt 3C, CANCELED
Kirksville, MO, Kirksville Rgnl, VOR/DME–B, Amdt 7, CANCELED
Sikeston, MO, Sikeston Memorial Muni, VOR/DME RWY 2, Amdt 3A, CANCELED
Greensboro, NC, Piedmont Triad Intl, VOR RWY 5R, Amdt 13B, CANCELED
Beatrice, NE., Beatrice Muni, VOR RWY 14, Amdt 18B, CANCELED
Manchester, NH, Manchester, VOR/DME RWY 17, Orig-E, CANCELED
Trenton, NJ, Trenton Mercer, RNAV (GPS) RWY 16, Orig-B
Trenton, NJ, Trenton Mercer, RNAV (GPS) RWY 34, Orig-B
Silver City, NM, Grant County, VOR/DME–B, Amdt 3B, CANCELED
Ely, NV, Ely Arpt/Yelland Fld/, VOR–A, Amdt 7A, CANCELED
Binghamton, NY, Greater Binghamton/Edwin A Link Field, VOR/DME RWY 28, Amdt 11A, CANCELED
Plattsburgh, NY, Plattsburgh Intl, ILS OR LOC RWY 35, Amdt 1
Plattsburgh, NY, Plattsburgh Intl, RNAV (GPS) RWY 35, Amdt 2
Plattsburgh, NY, Plattsburgh Intl, VOR/DME RWY 35, Orig-B, CANCELED
Poughkeepsie, NY, Dutchess County, VOR/DME RWY 6, Amdt 7B, CANCELED
Batavia, OH, Clermont County, NDB RWY 22, Amdt 1C, CANCELED
Dayton, OH, James M Cox Dayton Intl, NDB RWY 6R, Amdt 9, CANCELED
Bartlesville, OK, Bartlesville Muni, LOC RWY 17, Amdt 3B
Bartlesville, OK, Bartlesville Muni, RNAV (GPS) RWY 17, Amdt 1

Bartlesville, OK, Bartlesville Muni, RNAV (GPS) RWY 35, Amdt 1
Chickasha, OK, Chickasha Muni, RNAV (GPS) RWY 18, Amdt 1A
Chickasha, OK, Chickasha Muni, RNAV (GPS) RWY 36, Amdt 1A
Claremore, OK, Claremore Regional, VOR/DME–A, Amdt 2A, CANCELED
Durant, OK, Durant Rgnl—Eaker Field, VOR/DME RWY 17, Orig, CANCELED
Eagle Butte, SD, Cheyenne Eagle Butte, Takeoff Minimums and Obstacle DP, Orig-A
Watertown, SD, Watertown Rgnl, VOR/DME OR TACAN RWY 35, Amdt 11B, CANCELED
Castroville, TX, Castroville Muni, RNAV (GPS) RWY 16, Amdt 1A
Corsicana, TX, C David Campbell Field-Corsicana Muni, VOR/DME–B, Amdt 1B, CANCELED
Dallas-Fort Worth, TX, Dallas/Fort Worth Intl, VOR RWY 31L, Orig-C, CANCELED
Del Rio, TX, Del Rio Intl, NDB RWY 13, Amdt 1, CANCELED
Granbury, TX, Granbury Rgnl, VOR/DME–A, Orig-C, CANCELED
Houston, TX, William P Hobby, VOR/DME RWY 4, Amdt 18A, CANCELED
Houston, TX, William P Hobby, VOR/DME RWY 30L, Amdt 18A, CANCELED
Houston, TX, William P Hobby, VOR/DME–E, Orig, CANCELED
Longview, TX, East Texas Rgnl, NDB RWY 13, Amdt 15, CANCELED
Sulphur Springs, TX, Sulphur Springs Muni, VOR–A, Amdt 4, CANCELED
Wichita Falls, TX, Wichita Valley, VOR/DME–C, Amdt 2, CANCELED
Salt Lake City, UT, Salt Lake City Intl, VOR/DME RWY 34R, Amdt 9A, CANCELED
Salt Lake City, UT, Salt Lake City Intl, VOR/DME OR TACAN RWY 16L, Amdt 2, CANCELED
Salt Lake City, UT, Salt Lake City Intl, VOR/DME OR TACAN RWY 17, Amdt 2A, CANCELED
Newport News, VA, Newport News/Williamsburg Intl, NDB RWY 20, Amdt 5A, CANCELED
Norfolk, VA, Norfolk Intl, VOR RWY 23, Amdt 8D, CANCELED
Norfolk, VA, Norfolk Intl, VOR/DME RWY 5, Amdt 4D, CANCELED
Rutland, VT, Rutland—Southern Vermont Rgnl, VOR/DME RWY 19, Amdt 1, CANCELED
Bremerton, WA, Bremerton National, RNAV (GPS) RWY 2, Amdt 2
Burlington/Mount Vernon, WA, Skagit Rgnl, NDB RWY 11, Amdt 5A
Burlington/Mount Vernon, WA, Skagit Rgnl, RNAV (GPS) RWY 11, Amdt 2A
Burlington/Mount Vernon, WA, Skagit Rgnl, RNAV (GPS) RWY 29, Amdt 2
Burlington/Mount Vernon, WA, Skagit Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2A
Hoquiam, WA, Bowerman, VOR/DME RWY 24, Amdt 6B, CANCELED
Walla Walla, WA, Walla Walla Rgnl, NDB RWY 20, Amdt 6A, CANCELED
Green Bay, WI, Austin Straubel Intl, VOR/DME OR TACAN RWY 36, Amdt 10, CANCELED
La Crosse, WI, La Crosse Rgnl, NDB RWY 18, Amdt 19B, CANCELED
Madison, WI, Dane County Rgnl-Truax Field, ILS OR LOC RWY 21, Orig-C
Madison, WI, Dane County Rgnl-Truax Field, ILS OR LOC/DME RWY 18, ILS RWY 18 (SA CAT I), ILS RWY 18 (SA CAT II), Amdt 2
Madison, WI, Dane County Rgnl-Truax Field, ILS OR LOC/DME RWY 36, ILS RWY 36 (SA CAT I), ILS RWY 36 (CAT II), ILS RWY 36 (CAT III), Amdt 2
Madison, WI, Dane County Rgnl-Truax Field, RADAR–1, Amdt 18
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 3, Orig-C
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 14, Amdt 2E
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 18, Amdt 2E
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 21, Amdt 2C
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 32, Amdt 2E
Madison, WI, Dane County Rgnl-Truax Field, RNAV (GPS) RWY 36, Amdt 2D
Madison, WI, Dane County Rgnl-Truax Field, Takeoff Minimums and Obstacle DP, Amdt 8A
Mosinee, WI, Central Wisconsin, VOR OR GPS–A, Amdt 8A, CANCELED

[FR Doc. 2016–01857 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31053; Amdt. No. 3675]

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 February 3, 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 February 3, 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 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 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 CFR sections 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 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 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 18, 2015.

John S. 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 4 FEBRUARY 2016

Fort Yukon, AK, Fort Yukon, VOR/DME OR TACAN–A, Amdt 1, CANCELED
Decatur, AL, Pryor Field Rgnl, ILS Y OR LOC Y RWY 18, Orig
Decatur, AL, Pryor Field Rgnl, ILS Z OR LOC Z RWY 18, Amdt 1
Decatur, AL, Pryor Field Rgnl, RNAV (GPS) RWY 18, Amdt 2
Decatur, AL, Pryor Field Rgnl, RNAV (GPS) RWY 36, Amdt 2
Bentonville, AR, Bentonville Muni/Louise M Thaden Field, VOR/DME–B, AMDT 6, CANCELED
Rogers, AR, Rogers Executive-Carter Field, VOR/DME RWY 20, Amdt 10B, CANCELED
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 6L, Amdt 12D
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 7L, Amdt 7D
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 7R, Amdt 6E
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 25R, Amdt 17D
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) RWY 25R, Amdt 2C
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 6L, Amdt 1C
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 7L, Amdt 2E
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 7R, Amdt 2C
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 24R, Amdt 1B
Los Angeles, CA, Los Angeles Intl, RNAV (GPS) Y RWY 25L, Amdt 3C
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 6L, Orig-C
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 7L, Orig-D
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 7R, Orig-C
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 24R, Orig-C
Los Angeles, CA, Los Angeles Intl, RNAV (RNP) Z RWY 25L, Amdt 1C
Los Angeles, CA, Los Angeles Intl, Takeoff Minimums and Obstacle DP, Amdt 12A
San Bernardino, CA, San Bernardino Intl, NDB RWY 6, Amdt 1A, CANCELED
Georgetown, DE, Delaware Coastal, RNAV (GPS) RWY 4, Amdt 3
Deland, FL, Deland Muni-Sidney H Taylor Field, RADAR–1, Amdt 3, CANCELED
Jacksonville, FL, Jacksonville Executive at Craig, VOR/DME RWY 32, Amdt 3A, CANCELED
Marianna, FL, Marianna Muni, RNAV (GPS) RWY 18, Amdt 1
St Augustine, FL, Northeast Florida Rgnl, VOR RWY 31, Orig-A, CANCELED
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, Takeoff Minimums and Obstacle DP, Amdt 7
Augusta, GA, Daniel Field, NDB/DME–C, Amdt 4A, CANCELED
Cordele, GA, Crisp County-Cordele, NDB RWY 10, Amdt 5, CANCELED
Pine Mountain, GA, Harris County, NDB RWY 9, Amdt 9A, CANCELED
Thomson, GA, Thomson-McDuffie County, NDB RWY 10, Amdt 1A, CANCELED
Sioux City, IA, Sioux Gateway/Col Bud Day Field, NDB RWY 13, Amdt 15G, CANCELED
Sioux City, IA, Sioux Gateway/Col Bud Day Field, NDB RWY 31, Amdt 23E, CANCELED
Salmon, ID, Lemhi County, Takeoff Minimums and Obstacle DP, Amdt 3
Quincy, IL, Quincy Rgnl-Baldwin Field, VOR/DME RWY 22, Amdt 8, CANCELED
Bloomington, IN, Monroe County, VOR/DME RWY 24, Amdt 12A, CANCELED
Bloomington, IN, Monroe County, VOR/DME RWY 35, Amdt 15B, CANCELED

New Castle, IN, New Castle-Henry Co Muni, NDB RWY 27, Amdt 6, CANCELED
Augusta, KS, Augusta Muni, RNAV (GPS) RWY 36, Amdt 1
Augusta, KS, Augusta Muni, VOR/DME–A, Amdt 2
Ottawa, KS, Ottawa Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Glasgow, KY, Glasgow Muni, RNAV (GPS) RWY 26, Amdt 2A
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, ILS OR LOC/DME RWY 22R, ILS RWY 22R (SA CAT I), ILS RWY 22R (SA CAT II), Amdt 12A
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR/DME RWY 22R, Amdt 9A
Houma, LA, Houma-Terrebonne, VOR RWY 12, Amdt 5D, CANCELED
Patterson, LA, Harry P Williams Memorial, VOR/DME–A, Amdt 10B, CANCELED
Shreveport, LA, Shreveport Downtown, LOC RWY 14, Amdt 5
Shreveport, LA, Shreveport Downtown, RNAV (GPS) RWY 14, Amdt 1
Shreveport, LA, Shreveport Downtown, Takeoff Minimums and Obstacle DP, Amdt 3B
Shreveport, LA, Shreveport Downtown, VOR RWY 14, Amdt 15A, CANCELED
Shreveport, LA, Shreveport Rgnl, ILS OR LOC RWY 14, ILS RWY 14 (CAT II), Amdt 26
Shreveport, LA, Shreveport Rgnl, ILS OR LOC RWY 32, Amdt 6
Shreveport, LA, Shreveport Rgnl, LOC RWY 6, Amdt 3
Shreveport, LA, Shreveport Rgnl, RNAV (GPS) RWY 6, Amdt 3
Shreveport, LA, Shreveport Rgnl, RNAV (GPS) RWY 14, Amdt 2
Shreveport, LA, Shreveport Rgnl, RNAV (GPS) RWY 24, Amdt 2
Shreveport, LA, Shreveport Rgnl, RNAV (GPS) RWY 32, Amdt 2
Fitchburg, MA, Fitchburg Muni, NDB RWY 20, Amdt 6B, CANCELED
Fitchburg MA, Fitchburg Muni, RNAV (GPS) RWY 14, Orig-C
Fitchburg MA, Fitchburg Muni, RNAV (GPS) RWY 32, Orig-D
Marshfield, MA, Marshfield Muni—George Harlow Field, NDB RWY 6, Amdt 5, CANCELED
Stow, MA, Minute Man Air Field, NDB–A, Amdt 8, CANCELED
Baltimore, MD, Baltimore/Washington Intl Thurgood Marshall, RNAV (GPS) RWY 15L, Amdt 4
Alpena, MI, Alpena County Rgnl, NDB RWY 1, Amdt 7A, CANCELED
Howell, MI, Livingston County Spencer J Hardy, NDB RWY 13, Amdt 3A, CANCELED
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, NDB RWY 35, Amdt 19B, CANCELED
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, VOR RWY 5, Orig-C, CANCELED
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, VOR RWY 17, Amdt 18B, CANCELED
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, VOR RWY 23, Amdt 17B, CANCELED
Menominee, MI, Menominee-Marinette Twin County, NDB RWY 3, Amdt 3, CANCELED
Austin, MN, Austin Muni, VOR RWY 35, Amdt 2A, CANCELED
Austin, MN, Austin Muni, VOR/DME–A, Amdt 3, CANCELED
Bemidji, MN, Bemidji Rgnl, VOR/DME RWY 31, Amdt 1, CANCELED
Fairmont, MN, Fairmont Muni, VOR/DME RWY 31, Amdt 1B, CANCELED
Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, NDB RWY 31, Amdt 2, CANCELED
Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, VOR RWY 35, Amdt 10, CANCELED
Park Rapids, MN, Park Rapids Muni-Konshok Field, NDB RWY 31, Amdt 2A, CANCELED
St Cloud, MN, St Cloud Rgnl, VOR/DME RWY13, Orig-A, CANCELED
Winona, MN, Winona Muni-Max Conrad Fld, ILS Y OR LOC/DME Y RWY 30, Orig
Winona, MN, Winona Muni-Max Conrad Fld, ILS Z OR LOC/DME Z RWY 30, Orig
Winona, MN, Winona Muni-Max Conrad Fld, LOC RWY 30, Orig, CANCELED
Winona, MN, Winona Muni-Max Conrad Fld, NDB RWY 30, Orig, CANCELED
Winona, MN, Winona Muni-Max Conrad Fld, RNAV (GPS) RWY 30, Amdt 2
Winona, MN, Winona Muni-Max Conrad Fld, Takeoff Minimums and Obstacle DP, Amdt 5
Winona, MN, Winona Muni-Max Conrad Fld, VOR RWY 30, Amdt 16A, CANCELED
Winona, MN, Winona Muni-Max Conrad Fld, VOR–A, Amdt 13, CANCELED
Worthington, MN, Worthington Muni, NDB RWY 29, Amdt 1A, CANCELED
Drew, MS, Ruleville-Drew, RNAV (GPS) RWY 18, Orig
Drew, MS, Ruleville-Drew, RNAV (GPS) RWY 36, Orig
Drew, MS, Ruleville-Drew, VOR–A, Amdt 5
Louisville, MS, Louisville Winston County, RNAV (GPS) RWY 17, Amdt 2
Louisville, MS, Louisville Winston County, RNAV (GPS) RWY 35, Amdt 2
West Point, MS, McCharen Field, VOR–A, Amdt 4A, CANCELED
Greenville, NC, Pitt-Greenville, ILS Y OR LOC Y RWY 20, Orig
Greenville, NC, Pitt-Greenville, ILS Z OR LOC Z RWY 20, Amdt 5
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 2, Amdt 1
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 20, Amdt 3
Greenville, NC, Pitt-Greenville, Takeoff Minimums and Obstacle DP, Amdt 5
Fargo, ND, Hector Intl, VOR/DME OR TACAN RWY18, Amdt 1C, CANCELED
Williston, ND, Sloulin Fld Intl, NDB RWY 29, Amdt 3, CANCELED
Cambridge, NE., Cambridge Muni, NDB RWY 32, Amdt 4A, CANCELED
Chadron, NE., Chadron Muni, ILS OR LOC RWY 3, Amdt 2C
Chadron, NE., Chadron Muni, NDB RWY21, Amdt 12C
Chadron, NE., Chadron Muni, RNAV (GPS) RWY 3, Amdt 1B
Chadron, NE., Chadron Muni, RNAV (GPS) RWY 12, Orig-B
Chadron, NE., Chadron Muni, RNAV (GPS) RWY 21, Amdt 2B
Chadron, NE., Chadron Muni, RNAV (GPS) RWY 30, Orig-B
Chadron, NE., Chadron Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Omaha, NE., Eppley Airfield, VOR/DME RWY 32L, Amdt 12, CANCELED
Atlantic City, NJ, Atlantic City Intl, RADAR–1, Amdt 16
Hammonton, NJ, Hammonton Muni, VOR–A, Amdt 7A, CANCELED
Millville, NJ, Millville Muni, NDB RWY 14, Amdt 6A, CANCELED
Pittstown, NJ, Alexandria, RNAV (GPS)-A, Orig-A
Alamogordo, NM, Alamogordo-White Sands Rgnl, VOR/DME RWY 3, Orig-B, CANCELED
Battle Mountain, NV, Battle Mountain, VOR–A, Amdt 5, CANCELED
New York, NY, John F Kennedy Intl, RNAV (GPS) Y RWY 4L, Amdt 2A
New York, NY, John F Kennedy Intl, RNAV (RNP) Z RWY 4L, Amdt 1A
Springfield, OH, Springfield-Beckley Muni, VOR RWY 24, Amdt 11, CANCELED
Easton, PA, Braden Airpark, GPS RWY 36, Orig, CANCELED
Easton, PA, Braden Airpark, RNAV (GPS)-A, Orig
Easton, PA, Braden Airpark, VOR/DME OR GPS–D, Orig-C, CANCELED
Dyersburg, TN, Dyersburg Rgnl, RNAV (GPS) RWY 4, Amdt 2B
Dyersburg, TN, Dyersburg Rgnl, RNAV (GPS) RWY 22, Amdt 1B
Bellingham, WA, Bellingham Intl, RNAV (GPS) Y RWY 34, Amdt 2
Eastsound, WA, Orcas Island, RNAV (GPS) RWY 16, Amdt 1
Eastsound, WA, Orcas Island, RNAV (GPS)-A, Amdt 1
Eastsound, WA, Orcas Island, Takeoff Minimums and Obstacle DP, Amdt 4
Point Pleasant, WV, Mason County, Takeoff Minimums and Obstacle DP, Amdt 4A

RESCINDED: On December 7, 2015 (80 FR 75926), the FAA published an Amendment in Docket No. 31046, Amdt No. 3669, to Part 97 of the Federal Aviation Regulations under section 97.33. The following entry for Richmond, KY, effective December 10, 2015 is hereby rescinded in its entirety:

Richmond, KY, Central Kentucky Rgnl, RNAV (GPS) RWY 18, Amdt 1B
Richmond, KY, Central Kentucky Rgnl, RNAV (GPS) RWY 36, Amdt 2

[FR Doc. 2016–01864 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31054; Amdt. No. 3676]

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 February 3, 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 February 3, 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 CFR sections, 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 18, 2015.

John S. 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:

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 No.	FDC date	Subject
4–Feb–16	TX	Sherman	Sherman Muni	5/0016	12/07/15	VOR/DME–A, Orig-C
4–Feb–16	IN	Greencastle	Putnam County Rgnl	5/0056	12/07/15	Takeoff Minimums and (Obstacle) DP, Orig
4–Feb–16	NE	Hartington	Hartington Muni/Bud Becker Fld.	5/0057	12/02/15	Takeoff Minimums and (Obstacle) DP, Orig
4–Feb–16	OH	Kent	Kent State Univ	5/0685	12/07/15	NDB RWY 1, Amdt 13A
4–Feb–16	WI	Marshfield	Marshfield Muni	5/0702	12/07/15	SDF RWY 34, Amdt 6B
4–Feb–16	WI	Marshfield	Marshfield Muni	5/0703	12/07/15	RNAV (GPS) RWY 5, Orig-A
4–Feb–16	WI	Marshfield	Marshfield Muni	5/0706	12/07/15	RNAV (GPS) RWY 34, Orig
4–Feb–16	WI	Marshfield	Marshfield Muni	5/0712	12/07/15	NDB RWY 5, Amdt 14A
4–Feb–16	WI	Marshfield	Marshfield Muni	5/0717	12/07/15	RNAV (GPS) RWY 23, Orig-A
4–Feb–16	WI	Marshfield	Marshfield Muni	5/0718	12/07/15	RNAV (GPS) RWY 16, Orig-C
4–Feb–16	WI	Marshfield	Marshfield Muni	5/0721	12/07/15	NDB RWY 16, Amdt 10A
4–Feb–16	NC	Statesville	Statesville Rgnl	5/0906	12/07/15	RNAV (GPS) RWY 28, Amdt 3
4–Feb–16	GA	Montezuma	Dr C P Savage Sr.	5/0907	12/07/15	RNAV (GPS) RWY 36, Orig-A
4–Feb–16	GA	Montezuma	Dr C P Savage Sr.	5/0911	12/07/15	RNAV (GPS) RWY 18, Orig-A
4–Feb–16	TN	Smyrna	Smyrna	5/1268	12/07/15	RNAV (GPS) RWY 19, Orig-A
4–Feb–16	IL	Chicago/West Chicago	Dupage	5/1623	12/07/15	ILS OR LOC RWY 10, Amdt 8B
4–Feb–16	IL	Chicago/West Chicago	Dupage	5/1624	12/07/15	RNAV (GPS) RWY 20L, Orig-B
4–Feb–16	IL	Chicago/West Chicago	Dupage	5/1625	12/07/15	RNAV (GPS) RWY 20R, Amdt 1C
4–Feb–16	IL	Chicago/West Chicago	Dupage	5/1627	12/07/15	RNAV (GPS) RWY 10, Orig-C
4–Feb–16	FL	St Augustine	Northeast Florida Rgnl	5/1647	12/07/15	VOR RWY 13, Orig-C
4–Feb–16	GA	Butler	Butler Muni	5/1709	12/01/15	RNAV (GPS) RWY 36, Amdt 1B
4–Feb–16	NY	Buffalo	Buffalo Niagara Intl	5/1739	12/08/15	ILS OR LOC/DME RWY 32, Amdt 1A
4–Feb–16	IL	Chicago/West Chicago	Dupage	5/2153	12/07/15	VOR RWY 2L, Amdt 1B
4–Feb–16	IL	Chicago/West Chicago	Dupage	5/2154	12/07/15	ILS OR LOC RWY 2L, Amdt 2C
4–Feb–16	IL	Chicago/West Chicago	Dupage	5/2157	12/07/15	RNAV (GPS) RWY 2R, Orig-B
4–Feb–16	IL	Chicago/West Chicago	Dupage	5/2175	12/07/15	RNAV (GPS) RWY 2L, Orig-C
4–Feb–16	TN	Dyersburg	Dyersburg Rgnl	5/2799	12/11/15	VOR–A, Amdt 18
4–Feb–16	KS	Newton	Newton-City-County	5/2866	12/02/15	RNAV (GPS) RWY 35, Orig
4–Feb–16	KS	Newton	Newton-City-County	5/2867	12/02/15	RNAV (GPS) RWY 17, Orig
4–Feb–16	GA	Cochran	Cochran	5/4119	12/11/15	RNAV (GPS) RWY 29, Amdt 1
4–Feb–16	GA	Cochran	Cochran	5/4123	12/11/15	VOR/DME RWY 5, Amdt 6
4–Feb–16	MS	Batesville	Panola County	5/4149	12/11/15	RNAV (GPS) RWY 1, Amdt 1
4–Feb–16	WA	Everett	Snohomish County (Paine Fld).	5/4281	12/07/15	ILS OR LOC/DME Z RWY 16R, ILS Z RWY 16R (SA CAT II), Orig-A
4–Feb–16	WV	Petersburg	Grant County	5/4432	12/11/15	LDA/DME–B, Amdt 3A
4–Feb–16	WV	Petersburg	Grant County	5/4434	12/11/15	VOR/DME–A, Amdt 2A
4–Feb–16	WV	Petersburg	Grant County	5/4436	12/11/15	RNAV (GPS) Z RWY 31, Orig
4–Feb–16	CA	Lompoc	Lompoc	5/5766	12/01/15	Takeoff Minimums and (Obstacle) DP, Amdt 2
4–Feb–16	TX	Austin	Austin-Bergstrom Intl	5/5822	12/02/15	RNAV (RNP) Z RWY 17L, Orig
4–Feb–16	TX	Austin	Austin-Bergstrom Intl	5/5823	12/02/15	RNAV (RNP) Z RWY 17R, Orig
4–Feb–16	AK	Point Lay	Point Lay LRRS	5/5848	12/01/15	RNAV (GPS) RWY 23, Amdt 1
4–Feb–16	AK	Point Lay	Point Lay LRRS	5/5895	12/01/15	RNAV (GPS) RWY 5, Amdt 1
4–Feb–16	AK	Point Lay	Point Lay LRRS	5/5896	12/01/15	NDB RWY 5, Amdt 1
4–Feb–16	CA	Van Nuys	Van Nuys	5/6699	12/01/15	ILS RWY 16R, Amdt 5H
4–Feb–16	ID	Blackfoot	McCarley Fld	5/7026	12/07/15	RNAV (GPS)-A, Orig
4–Feb–16	ID	Blackfoot	McCarley Fld	5/7027	12/07/15	RNAV (GPS)-B, Orig
4–Feb–16	ID	Blackfoot	McCarley Fld	5/7028	12/07/15	VOR/DME–C, Orig
4–Feb–16	WA	Spokane	Felts Field	5/7030	12/07/15	VOR RWY 4L, Amdt 5A
4–Feb–16	WA	Spokane	Felts Field	5/7032	12/07/15	ILS OR LOC/DME RWY 22R, Amdt 1B
4–Feb–16	NY	New York	John F Kennedy Intl	5/7063	12/07/15	ILS OR LOC RWY 4L, Amdt 11
4–Feb–16	KY	Louisville	Louisville Intl-Standiford Field.	5/7088	12/01/15	ILS OR LOC RWY 17L, Amdt 4D
4–Feb–16	KY	Louisville	Louisville Intl-Standiford Field.	5/7089	12/01/15	ILS OR LOC RWY 35L, ILS RWY 35L (SA CAT I), ILS RWY 35L (CAT II And CAT III), Amdt 3D
4–Feb–16	PA	Ebensburg	Ebensburg	5/7284	12/07/15	VOR–A, Amdt 7A
4–Feb–16	AL	Birmingham	Birmingham-Shuttlesworth Intl.	5/7328	12/07/15	RNAV (GPS) RWY 36, Amdt 1A
4–Feb–16	KY	Louisville	Louisville Intl-Standiford Field.	5/8104	12/01/15	ILS OR LOC RWY 17R, Amdt 3E
4–Feb–16	CA	Santa Ynez	Santa Ynez	5/8137	12/01/15	GPS RWY 8, Orig-A

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
4–Feb–16	TX	Brenham	Brenham Muni	5/8264	12/02/15	RNAV (GPS) RWY 16, Amdt 2A

[FR Doc. 2016–01856 Filed 2–2–16; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31056; Amdt. No. 3678]

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 February 3, 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 February 3, 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 CFR sections, 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 31, 2015.

John S. 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, 97.29, 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 No.	FDC date	Subject
4–Feb–16	ID	Blackfoot	McCarley Fld	5/7026	12/7/15	This NOTAM, published in TL 16–03, is hereby rescinded in its entirety.
4–Feb–16	TN	Oneida	Scott Muni	5/0865	12/18/15	RNAV (GPS) RWY 5, Amdt 1A.
4–Feb–16	TN	Oneida	Scott Muni	5/0866	12/18/15	RNAV (GPS) RWY 23, Amdt 1A.
4–Feb–16	TN	Oneida	Scott Muni	5/0867	12/18/15	VOR/DME–A, Amdt 5B.
4–Feb–16	ID	Blackfoot	McCarley Fld	5/0898	12/23/15	RNAV (GPS)–A, Orig.
4–Feb–16	KY	Mount Sterling	Mount Sterling-Montgomery County.	5/2877	12/18/15	RNAV (GPS) RWY 21, Orig-A.
4–Feb–16	KY	Springfield	Lebanon Springfield-George Hoerter Field.	5/4582	12/18/15	VOR/DME RWY 11, Amdt 4B.
4–Feb–16	GA	Atlanta	Cobb County-MC Collum Field.	5/5998	12/18/15	Takeoff Minimums and (Obstacle) DP, Amdt 2.
4–Feb–16	GA	Atlanta	Cobb County-MC Collum Field.	5/5999	12/18/15	ILS OR LOC RWY 27, Amdt 4C.
4–Feb–16	GA	Atlanta	Cobb County-MC Collum Field.	5/6001	12/18/15	RNAV (GPS) RWY 27, Amdt 4A.
4–Feb–16	GA	Atlanta	Cobb County-MC Collum Field.	5/6003	12/18/15	VOR/DME RWY 9, Amdt 2.
4–Feb–16	NY	New York	Laguardia	5/6013	12/18/15	ILS OR LOC RWY 4, Amdt 36C.
4–Feb–16	GA	Atlanta	Cobb County-MC Collum Field.	5/6855	12/18/15	RNAV (GPS) RWY 9, Amdt 3.
4–Feb–16	AL	Brewton	Brewton Muni	5/7450	12/18/15	RNAV (GPS) RWY 6, Orig.
4–Feb–16	AL	Brewton	Brewton Muni	5/7451	12/18/15	RNAV (GPS) RWY 24, Orig.
4–Feb–16	WV	Moundsville	Marshall County	5/8483	12/18/15	VOR/DME–A, Amdt 2A.
4–Feb–16	NJ	Trenton	Trenton Mercer	5/9988	12/22/15	ILS OR LOC RWY 6, Amdt 10A.
4–Feb–16	NJ	Trenton	Trenton Mercer	5/9989	12/22/15	VOR OR GPS–A, Amdt 11.
4–Feb–16	NJ	Trenton	Trenton Mercer	5/9990	12/22/15	RNAV (GPS) Z RWY 6, Orig-A.
4–Feb–16	NJ	Trenton	Trenton Mercer	5/9997	12/22/15	RNAV (GPS) Z RWY 24, Amdt 1A.

[FR Doc. 2016–01858 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–13–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Amendments to the Rules of Practice and Procedure To Allow Each Signatory Party and the Commission To Administer a Single Process for the Review and Adjudication of Projects

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: The Delaware River Basin Commission is amending its regulations to provide for the One Process/One Permit Program. The Program is intended to promote interagency cooperation and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public regarding regulatory requirements applicable to projects.

DATES: This final rule will be effective March 4, 2016.

FOR FURTHER INFORMATION CONTACT: Technical information: David Kovach,

609–477–7264. Legal information: Pamela Bush, 609–477–7203.

SUPPLEMENTARY INFORMATION:

Background

The Delaware River Basin Commission (''DRBC'' or ''Commission'') is a federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York and Pennsylvania—and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government.

Specifically, this final rule amends subchapter A—Administrative Manual, part 401—Rules of Practice and Procedure, subpart C—Project Review Under Section 3.8 of the Compact by the addition of a new section 401.42, providing for DRBC and each of the parties to the *Delaware River Basin Compact* (United States Pub. L. 87–328, Approved September 27, 1961, 75 U.S. Statutes at Large 688; 53 Delaware Laws, Chapter 71, Approved May 26, 1961; New Jersey Laws of 1961, Chapter 13, Approved May 1, 1961; New York Laws of 1961, Chapter 148, Approved March 17, 1961; and Pennsylvania Acts of 1961, Act No. 268, Approved July 7, 1961 (''the Compact''))—Delaware, New Jersey, New York, Pennsylvania and the federal government (''Signatory Parties'')—to coordinate and collaborate in the administration of a single process for the review and adjudication of certain projects, including, where appropriate, issuance of a single permit or other approval instrument.

Currently, the sponsors of many water resource-related projects in the Delaware River Basin are required to apply to both the DRBC and a state agency, among others, for approvals. New section 401.42 provides for the DRBC and the administrative agencies of the Signatory Parties to identify regulatory programs that by mutual agreement will be managed through a single process that may result in one decision or approval. The program, known as One Process/One Permit (hereinafter, ''the Program or ''One Permit'') is intended to promote interagency cooperation and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public regarding regulatory requirements applicable to projects. Importantly, the rule expressly preserves the authorities of the DRBC and each of its Signatory Parties and effects no change to federal, state or DRBC substantive standards and requirements.

In accordance with this final rule, administrative agreements between DRBC and Signatory Party agencies to implement the Program may be approved by the Commission after each such agreement undergoes a duly noticed public hearing. In accordance with Resolution No. 2015–4 of the Commission, which was adopted on March 11, 2015 following a public hearing on March 10, 2015, an administrative agreement between the DRBC and the New Jersey Department of Environmental Protection (NJDEP) was executed, in part to demonstrate how the Program would operate in New Jersey. With adoption of the final rule, DRBC and NJDEP will fully implement their March 2015 agreement.

Notably, each Signatory Party may choose whether and when to initiate an agreement or agreements with DRBC under the Program. No draft agreements with Signatory Party agencies other than the NJDEP to implement the Program have yet been published for comment.

Procedural Background

The Commission introduced One Permit to the basin community during meetings with regulated entities, environmental organizations and other stakeholders on February 12 and March 3, 2015 and through publication on the DRBC Web site of a press release and a set of FAQs on February 27, 2015. During the Commission's quarterly public meeting on March 10–11, 2015, the Commission approved Resolution No. 2015–4, in part authorizing and directing the Executive Director to initiate rulemaking to amend DRBC's *Rules of Practice and Procedure* to provide specific authorization for and define the scope of the Program. Notice of the proposed amendments was published on the Commission's Web site on May 17, 2015.

Notice of the proposed amendments also appeared in the **Federal Register** at 80 FR 28567, May 19, 2015; in the *Delaware Register of Regulations,* 18 DE Reg. 1002, June 1, 2015; *New Jersey Register,* 47 N.J.R. 1256, June 1, 2015; *New York State Register,* May 27, 2015 (page 4); and *Pennsylvania Bulletin,* 45 Pa. B. 2611, May 30, 2015. The Commission held a public hearing on the proposal on June 9, 2015 and accepted written comments on the rule through July 1, 2015.

Rule Highlights

Notable aspects of the final rule include the following:

- Section 401.42(b) provides that applications for approvals required by the Compact and Commission regulations, but not within the scope of the Program, must continue to be submitted to the Commission.
- To ensure continued public access to information on the status of all projects under review pursuant to the *Delaware River Basin Compact,* including those administered under One Permit, § 401.42(d)(2) establishes that participating Signatory Party agencies will notify DRBC at least once monthly of applications received under the Program; and § 401.42(d)(5) establishes that the list that the Commission will maintain of projects being administered under One Permit will be posted on the Commission's Web site.
- Section 401.42(h) provides that DRBC's current Project Review Fee Schedule as set forth in Resolution No. 2009–2 will be the operative fee schedule for projects reviewed under the Program.
- Section 401.42(i) provides mechanisms for the efficient disposition of Commission dockets during the transition to One Permit. Section 401.42(i)(1) provides that for projects covered by the Program, the most recent docket will be deemed administratively continued when a renewal application is timely submitted to the Signatory Party Agency. Section 401.42(i)(2) provides that unless the Executive Director or the Commission otherwise directs, upon the Signatory Party Agency's final action on an application for a project subject to the Program, (a) any existing or administratively continued docket will terminate as to all of its provisions and conditions within the scope of the Signatory Party Agency approval; and (b) such docket will continue in effect as to any provisions and conditions outside the scope of the Signatory Party Agency approval, including for example, addition of a project to the Comprehensive Plan.
- The rule authorizes Signatory Party agencies, in accordance with an applicable administrative agreement, to issue in their approvals for projects to be administered under the Program the finding and determination required by section 3.8 of the *Compact* that a project subject to section 3.8 review does not substantially impair or conflict with the Commission's Comprehensive Plan (''the finding''). Section 401.42(d)(4) makes clear that where in accordance with an applicable administrative agreement implementing One Permit the finding continues to be made by the Commission, the Signatory Party agency may include the Commission's finding in the agency's approval, together with

any conditions identified by the Commission as necessary to support it, thereby achieving a unified permit.

• The final rule also makes clear (1) that participation in the program by Signatory Party agencies is voluntary; and (2) that the scope of a Signatory Party Agency's participation is defined by an administrative agreement between DRBC and the agency that has been duly adopted in accordance with § 401.42(d).

Additional Materials

Additional materials can be found on the Commission's Web site at *www.drbc.net.* These include DRBC Resolution No. 2015–9 approving the final rule, at *http://www.nj.gov/drbc/library/documents/Res2015-09_OPOPwith-final-rule-text.pdf;* and the Commission's detailed comment and response document, which identifies commenters, summarizes comments received on the proposal, and sets forth the Commission's responses, at *http://www.nj.gov/drbc/library/documents/OPOP/comment-and-response_OPOP.pdf.* The version of the *Rules of Practice and Procedure* that is currently posted on DRBC's Web site at *http://www.nj.gov/drbc/library/documents/admin_manual.pdf* uses DRBC's original numbering system, which is different from that of the CFR. In the original system, the One Permit Program rules are set forth at new section 2.3.11. A list of the CFR units and corresponding DRBC units follows. A complete stand-alone version of the *Rules of Practice and Procedure* using the CFR system will be available on the DRBC Web site shortly.

CFR Unit	DRBC Unit	Title or Caption
Title 18 Conservation of Power and Water Resources.		
Chapter III—Delaware River Basin Commission.		
Subchapter A—Administrative Manual	Administrative Manual [Part II]	
Part 401—Rules of Practice and Procedure	Rules of Practice and Procedure	
Subpart C—Project Review Under Section 3.8 of the Compact.	Article 3—Project Review Under Section 3.8 of the Compact.	
401.42	2.3.11	One Permit Program.
401.42(a)	2.3.11 A	Purpose.
401.42(b)	2.3.11 B	Scope.
401.42(c)	2.3.11 C	Regulatory programs.
401.42(d)	2.3.11 D	Procedure.
401.42(e)	2.3.11 E	Comprehensive Plan projects.
401.42(f)	2.3.11 F	Retention of Commission review and enforcement authorities.
401.42(g)	2.3.11 G	Exhaustion of Signatory Party administrative remedies prerequisite to appeal.
401.42(h)	2.3.11 H	Fees.
401.42(i)	2.3.11 I	Effect of One Permit Program on Commission dockets.
401.42(j)	2.3.11 J	Modification of Rules of Practice and Procedure to conform to this section.
401.42(k)	2.3.11 K	No interference with Supreme Court decree.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Project review, Water pollution control, Water resources.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends part 401 of title 18 of the Code of Federal Regulations as follows:

PART 401—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 401 continues to read as follows:

Authority: Delaware River Basin Compact (75 Stat. 688), unless otherwise noted.

Subpart C—Project Review Under Section 3.8 of the Compact

■ 2. Add § 401.42 to read as follows:

§ 401.42 One Permit Program.

(a) *Purpose.* The purpose of the One Permit Program set forth in this section is to provide the opportunity for the environmental agency and/or other administrative agency of a Signatory Party (''Signatory Party Agency'') and the Commission to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The One Permit Program allows the Signatory Party Agency and Commission to incorporate requirements and determinations of both entities in a single permit or other approval instrument, pursuant to a duly adopted Administrative Agreement under paragraph (d) of this section.

(b) *Scope.* This section applies to all projects that:

(1) Are reviewable under the Compact;

(2) Meet the thresholds for review set forth in § 401.35 of these *Rules of Practice and Procedure;*

(3) Are subject to review by a Signatory Party Agency under its own statutory authorities; and

(4) Are within regulatory programs that have been identified in a duly adopted Administrative Agreement between the Commission and a Signatory Party Agency under this section. For any project that requires an approval under the Compact that is outside the scope of the Signatory Party Agency's approval issued in accordance with an Administrative Agreement under this section, the project sponsor shall apply to the Commission in accordance with procedures established by the Commission.

(c) *Regulatory programs.* Regulatory programs eligible for administration under the One Permit Program may include but are not limited to those concerning: Basin discharges, Basin water withdrawals, and Basin flood plain requirements.

(d) *Procedure.* The categories of projects covered and the procedures for processing applications under the One Permit Program shall be set forth in one or more Administrative Agreements between the Commission and the Signatory Party Agency that have been adopted by the Commission following a duly noticed public hearing and are in form and substance acceptable to the Commission and the Signatory Party Agency, consistent with the following:

(1) Except as provided in paragraphs (b) and (e) of this section or in an Administrative Agreement that has been duly executed by the Commission and the Signatory Party Agency under this section, an application for initial approval, renewal or revision of any project subject to the One Permit Program shall be filed only with the Signatory Party Agency.

(2) To enable the Commission to compile and make available to the public a current list of pending applications for projects within the Basin subject to Commission jurisdiction, the Signatory Party Agency shall notify the Commission at least monthly of applications the Signatory Party has received during the preceding month that may be eligible for review under the One Permit Program.

(3) For those categories of projects identified in the Administrative Agreement as requiring Commission input, the Commission staff shall provide the Signatory Party Agency with such input, including where specified by the Administrative Agreement, a recommendation as to any conditions of approval that may be necessary or appropriate to include in the project review determination under Section 3.8 of the Compact as to those regulatory programs identified in an Administrative Agreement in accordance with paragraph (b) of this section.

(4) Unless the Signatory Party Agency disapproves the project or the Administrative Agreement provides for separate Commission action under Section 3.8 of the Compact, the Signatory Party Agency shall make the project review determination under Section 3.8 of the Compact, as specified in the Administrative Agreement, as to the regulatory program covered by the Signatory Party Agency's approval and include the determination and any associated conditions of approval within the permit or other approval instrument that it issues to the project sponsor. If in accordance with the applicable Administrative Agreement the determination under Section 3.8 of the Compact is made by the Commission, the Signatory Party Agency may include the determination together with any associated conditions of approval in its permit or other approval instrument covering the project.

(5) The Commission will maintain on its Web site a list of all projects being administered pursuant to the Program.

(e) *Comprehensive Plan projects.* Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this section may be issued through the One Permit Program. An application for renewal or modification of a project in the Comprehensive Plan that does not change the project so substantially as to render it a new and different project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

(f) *Retention of Commission review and enforcement authorities.* Notwithstanding any other provision of this section, any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact. Nothing in this section shall limit the authority of the Commission to exercise its review authority under the Compact and applicable Commission regulations. Similarly, although Administrative Agreements executed pursuant to this section may include collaborative and cooperative compliance and enforcement procedures, nothing in this section shall limit the authority of the Commission to exercise its enforcement authority under the Compact and applicable regulations.

(g) *Exhaustion of Signatory Party administrative remedies prerequisite to appeal.* Before commencing an action in a court of appropriate jurisdiction challenging any final action taken by a Signatory Party Agency under this section, the appellant must first exhaust its administrative remedies under the law of the Signatory Party whose agency issued the decision at issue.

(h) *Fees.* The Commission shall establish and maintain a schedule of fees for any or all of the services it renders pursuant to this section. The applicable fee(s) for Commission services rendered pursuant to this section shall be those set forth in DRBC Resolution No. 2009-2 (available at *http://www.nj.gov/drbc/library/documents/Res2009-2.pdf*) for the review and renewal of project approvals. Project sponsors shall pay such fees, if any, directly to the Commission in accordance with the current schedule and applicable rules.

(i) *Effect of One Permit Program on Commission dockets.*

(1) Unless the Executive Director or Commission otherwise directs, if a docket holder submits, or has submitted, a timely application to a Signatory Party Agency for a project subject to review under an Administrative Agreement duly adopted under paragraph (d) of this section, the most recent docket for the project shall, upon expiration, be deemed administratively continued until final action is taken in accordance with paragraph (i)(2) of this section.

(2) Unless the Executive Director or Commission otherwise directs, upon a Signatory Party Agency's final action on an application for a project subject to the One Permit Program:

(i) Any existing or administratively continued docket for such project shall terminate as to all of its provisions and conditions that pertain to regulatory programs administered by the Signatory Party Agency under the Administrative Agreement (''the Covered Programs''); and

(ii) The docket shall continue in effect as to any provisions and conditions not pertaining only to Covered Programs, including, as applicable, the incorporation of the project in the Commission's Comprehensive Plan.

(j) *Modification of rules of practice and procedure to conform to this section.* Any project subject to review under an Administrative Agreement duly adopted under paragraph (d) of this section, shall be governed by this section and not §§ 401.4, 401.5, 401.6, 401.8, 401.34(a), (c) and (e), 401.37, 401.38 and 18 CFR part 401, subpart F, where they are inconsistent with the procedures provided in this section.

(k) *No interference with Supreme Court decree.* In accordance with Sections 3.3(a) and 3.5 of the Compact, nothing in this section shall grant the authority to any Signatory Party Agency to impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for administration thereof provided in the United States Supreme Court decree in *New Jersey* v. *New York,* 347 U.S. 995 (1954) (''Decree''). Any such action shall be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members of the Commission following a declaration of a state of emergency in accordance with Section 3.3(a) of the Compact.

Dated: January 15, 2016.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2016–02048 Filed 2–2–16; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 73, 101, 118, 165, 172, 173, 177, 178, 184, 189, 589, and 700

[Docket No. FDA–2015–N–0011]

Center for Food Safety and Applied Nutrition Library Address; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending certain regulations to update the location of references cited in our food regulations. We are taking this action to reflect the transfer of those references from our facility in College Park, MD, to our library at our main campus in Silver Spring, MD. We also are updating certain regulations to reflect the current names for specific FDA offices.

DATES: This rule is effective February 3, 2016.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Center for Food Safety and Applied Nutrition (HFS–024), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–2112.

SUPPLEMENTARY INFORMATION: Various regulations pertaining to human food have incorporated materials by reference. In general, the regulations have identified a library at the Center for Food Safety and Applied Nutrition (CFSAN), which was (at the time the regulations were published) located in Washington, DC, or in College Park, MD. We recently consolidated our library holdings at our main campus in Silver Spring, MD. Consequently, we are making technical amendments to our regulations at parts 73, 101, 118, 165, 172, 173, 177, 178, 184, 189, 589, and 700 (21 CFR parts 73, 101, 118, 165, 172, 173, 177, 178, 184, 189, 589, and 700) to state that the materials can be found at the FDA Library in Silver Spring, MD. We also are updating certain regulations to reflect the current names for specific FDA offices. The amendments are as follows:

- We are revising §§ 73.165, 73.585, 165.110, and 173.300 to update the library address from ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising §§ 101.4, 101.81(c)(2)(ii)(A) introductory text and (B)(1) and (2), 101.83, 165.110, 172.155, 172.785, 172.833, 173.25, 173.45, 173.340, 173.357, 173.370, 177.1350, 177.1360, 177.1390, 177.1520, 177.2600, 178.3297, 184.1063, 184.1148, 184.1150, 184.1250, 184.1387, 184.1420, 184.1444, 184.1866, 189.5, 589.2001, and 700.27 to update the library address from ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising § 101.80 to update the library address from ''Center for Food Safety and Applied Nutrition's Library, Harvey W. Wiley Federal Building, 5100 Paint Branch Pkwy., College Park, MD'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising § 101.81(c)(2)(ii)(A)(5) to update the library address from ''Center for Food Safety and Applied Nutrition Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising §§ 118.8 and 165.110 to update the library address from ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2163'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising § 165.110 to update the library address from ''Center for Food Safety and Applied Nutrition's Library, 200 C St. NW., Washington DC'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising §§ 165.110, 172.723, 172.736, 172.804, 172.809, 172.864, 172.886, 173.375, 177.1345, 177.1585, 177.1637, 178.1010, 184.1007, 184.1257, 184.1259, 184.1282, 184.1293, 184.1472, 184.1530, 184.1699, 184.1979, 184.1979a, 184.1979b, and 184.1979c to update the library address from ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising §§ 172.167 and 173.356 to update the library address from ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2163'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising § 172.736 to update the library address from ''in the library at the Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740'' to ''at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising § 172.829 to update the library address from ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., rm. 1C–100, College Park, MD 20740'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising § 173.325 to update the library address from ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740 20204–0001'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising § 184.1311 to update the library address from ''Center for Food Safety and Applied Nutrition's library, 5100 Paint Branch Pkwy., College Park, MD 20740'' to ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.
- We are revising § 101.83(c)(2)(ii)(A)(*2*) and (c)(2)(ii)(B)(*2*), to remove the words ''Office of Nutritional Products, Labeling, and Dietary Supplements, Division of Nutrition Science and Policy,'' and in their place add ''Office

of Nutrition, Labeling and Dietary Supplements, Nutrition Programs Staff''.

• We are revising § 118.8 to replace ''The FDA'' with ''FDA''.

• We are revising § 173.300 to add the words ''Office of Food Additive Safety''.

• We are revising § 173.340 to remove the words ''Division of Petition Control'' and ''(HFS–215)'' and in their place adding ''Office of Food Additive Safety (HFS–200)''.

• We are revising § 173.357 to remove the words ''Division of Petition Control'' and ''(HFS–215)'' and in their place adding ''Office of Food Additive Safety (HFS–200)''.

• We are updating §§ 177.1520 and 177.1585 to remove the words ''Office of Premarket Approval'' and in their place adding the ''Office of Food Additive Safety''.

Publication of this document constitutes final action of these changes under the Administrative Procedure Act (5 U.S.C. 553). These amendments are merely updating the address of CFSAN references and the names of CFSAN offices. FDA, therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

List of Subjects

21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 118

Egg and egg products, Incorporation by reference, Recordkeeping requirements, Safety.

21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

21 CFR Part 173

Food additives.

21 CFR Part 177

Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

21 CFR Part 184

Food additives.

21 CFR Part 189

Food additives, Food packaging.

21 CFR Part 589

Animal feeds, Animal foods, Food additives.

21 CFR Part 700

Cosmetics, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 73, 101, 118, 165, 172, 173, 177, 178, 184, 189, 589, and 700 are amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for 21 CFR part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

§ 73.165 [Amended]

■ 2. Amend § 73.165 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 73.585 [Amended]

■ 3. Amend § 73.585 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 101—FOOD LABELING

■ 4. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

§ 101.4 [Amended]

■ 5. Amend § 101.4 in paragraphs (h) introductory text and (h)(2) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 101.80 [Amended]

■ 6. Amend § 101.80 in paragraph (c)(2)(iii)(C) by removing ''Center for Food Safety and Applied Nutrition's Library, Harvey W. Wiley Federal Building, 5100 Paint Branch Pkwy., College Park, MD'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 101.81 [Amended]

■ 7. Amend § 101.81 as follows:

■ a. In paragraphs (c)(2)(ii)(A) introductory text and (c)(2)(ii)(B)(*1*) and (*2*) remove ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

■ b. In paragraph (c)(2)(ii)(A)(*5*) remove ''Center for Food Safety and Applied Nutrition Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 101.83 [Amended]

■ 8. Amend § 101.83 in paragraphs (c)(2)(ii)(A)(*2*) and (c)(2)(ii)(B)(*2*) as follows:

■ a. Remove ''Office of Nutritional Products, Labeling, and Dietary Supplements, Division of Nutrition Science and Policy'' and add in its place ''Office of Nutrition, Labeling and Dietary Supplements, Nutrition Programs Staff''.

■ b. Remove ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 118—PRODUCTION, STORAGE, AND TRANSPORTATION OF SHELL EGGS

■ 9. The authority citation for 21 CFR part 118 continues to read as follows:

Authority: 21 U.S.C. 321, 331–334, 342, 371, 381, 393; 42 U.S.C. 243, 264, 271.

§ 118.8 [Amended]

■ 10. Amend § 118.8 in paragraphs (a) and (b) as follows:

■ a. Remove ''The FDA'' wherever it appears and add in its place ''FDA''.

■ b. Remove ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD,

301–436–2163'' wherever it appears and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 165—BEVERAGES

■ 11. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

§ 165.110 [Amended]

■ 12. Amend § 165.110 as follows:

■ a. In paragraphs (a)(2)(iv) and (vii), (b)(4)(iii)(E)(*7*)(*iv*), and (b)(4)(iii)(I), remove ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

■ b. In paragraphs (b)(2)(ii) and (b)(3) introductory text, remove ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2163'' wherever it appears and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

■ c. In paragraph (b)(4)(i)(C) introductory text, remove ''Center for Food Safety and Applied Nutrition's Library, 200 C St. NW., Washington DC'' and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039.''

■ d. In paragraphs (b)(4)(iii)(E) introductory text, (b)(4)(iii)(E)(*1*)(*ii*) and (*iv*), (b)(4)(iii)(E)(*11*)(*i*), (b)(4)(iii)(E)(*14*)(*i*), and (b)(4)(iii)(F)(*20*), remove ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

■ e. In paragraph (b)(5)(ii) introductory text, remove ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD'' and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 13. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

§ 172.155 [Amended]

■ 14. Amend § 172.155 in paragraph (c) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.167 [Amended]

■ 15. Amend § 172.167 in paragraph (d)(2) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2163'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.723 [Amended]

■ 16. Amend § 172.723 in paragraph (b)(3) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.736 [Amended]

■ 17. Amend § 172.736 as follows:

■ a. In paragraph (b)(1), remove ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

■ b. In paragraph (b)(3), remove ''in the library at the Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740'' and add in its place ''at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.785 [Amended]

■ 18. Amend § 172.785 in paragraph (b)(1) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.804 [Amended]

■ 19. Amend § 172.804 in paragraph (c)(2) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.809 [Amended]

■ 20. Amend § 172.809 in paragraph (b) introductory text by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.829 [Amended]

■ 21. Amend § 172.829 in paragraph (b) introductory text by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., Rm. 1C–100, College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.833 [Amended]

■ 22. Amend § 172.833 in paragraphs (b)(2) and (4) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.864 [Amended]

■ 23. Amend § 172.864 in paragraph (a)(3) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 172.886 [Amended]

■ 24. Amend § 172.886 in paragraph (c)(2)(iii) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

■ 25. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

§ 173.25 [Amended]

■ 26. Amend § 173.25 in paragraph (b)(2)(ii)(B) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 173.45 [Amended]

■ 27. Amend § 173.45 in paragraph (a) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 173.300 [Amended]

■ 28. Amend § 173.300 in paragraph (a)(2) as follows:

■ a. Remove ''Center for Food Safety and Applied Nutrition (HFS–200)'' and add in its place ''Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition''.

■ b. Remove ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD'' and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 173.325 [Amended]

■ 29. Amend § 173.325 in paragraph (h) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740 20204–0001'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

■ 30. Amend § 173.340 in the table in paragraph (a)(4) by revising the entry ''*n*-Butoxypoly(oxyethylene)-poly(oxypropylene)glycol'' to read as follows:

§ 173.340 Defoaming agents.

* * * * *

(a) * * *

(4) * * *

Substances	Limitations
n-Butoxypoly(oxyethylene)-poly(oxypropylene)glycol	Viscosity range, 4,850–5,350 Saybolt Universal Seconds (SUS) at 37.8 °C (100 °F). The viscosity range is determined by the method ''Viscosity Determination of *n*-butoxypoly(oxyethylene)-poly(oxypropylene) glycol'' dated April 26, 1995, developed by Union Carbide Corp., P.O. Box 670, Bound Brook, NJ 08805, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material incorporated by reference are available from the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, and may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * * * *

* * * * *

§ 173.356 [Amended]

■ 31. Amend § 173.356 in paragraph (a) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2163'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

■ 32. Amend § 173.357 in the table in paragraph (a)(2) by revising the entry ''Polyethylenimine reaction product with 1,2-dichloroethane (CAS Reg. No. 68130–97–2)'' to read as follows:

§ 173.357 Materials used as fixing agents in the immobilization of enzyme preparations.

* * * * *

(a) * * *

(2) * * *

Substances	Limitations
* * * *	* * *
Polyethylenimine reaction product with 1,2-dichloroethane (CAS Reg. No. 68130–97–2) is the reaction product of homopolymerization of ethylenimine in aqueous hydrochloric acid at 100 °C and of cross-linking with 1,2-dichloroethane. The finished polymer has an average molecular weight of 50,000 to 70,000 as determined by gel permeation chromatography. The analytical method is entitled ''Methodology for Molecular Weight Detection of Polyethylenimine,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740, and may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.	May be used as a fixing material in the immobilization of glucoamylase enzyme preparations from *Aspergillus niger* for use in the manufacture of beer. May be used as a fixing material in the immobilization of: 1. Glucose isomerase enzyme preparations for use in the manufacture of high fructose corn syrup, in accordance with § 184.1372 of this chapter. 2. Glucoamylase enzyme preparations from *Aspergillus niger* for use in the manufacture of beer. Residual ethylenimine in the finished polyethylenimine polymer will be less than 1 part per million as determined by gas chromatography-mass spectrometry. The residual ethylenimine is determined by an analytical method entitled ''Methodology for Ethylenimine Detection in Polyethylenimine,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Residual 1,2-dichloroethane in the finished polyethylenimine polymer will be less than 1 part per million as determined by gas chromatography. The residual 1,2-dichloroethane is determined by an analytical method entitled, ''Methodology for Ethylenedichloride Detection in Polyethylenimine,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740, or may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

* * * * *

§ 173.370 [Amended]

■ 33. Amend § 173.370 in paragraph (c) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 173.375 [Amended]

■ 34. Amend § 173.375 in paragraph (a) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

■ 35. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.1345 [Amended]

■ 36. Amend § 177.1345 in paragraph (b)(1) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 177.1350 [Amended]

■ 37. Amend § 177.1350 in paragraph (b)(2) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 177.1360 [Amended]

■ 38. Amend § 177.1360 in paragraph (d) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 177.1390 [Amended]

■ 39. Amend § 177.1390 in paragraph (c)(3)(i)(a)(*1*) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

■ 40. Amend § 177.1520 in the table in paragraph (b) by revising the entry ''Methyl methacrylate/butyl acrylate-grafted polypropylene copolymer containing methyl methacrylate/butyl acrylate-grafted polypropylene (CAS Reg. No. 121510–09–6)'' to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substance	Limitations
* * * *	* * *
Methyl methacrylate/butyl acrylate-grafted polypropylene copolymer containing methyl methacrylate/butyl acrylate-grafted polypropylene (CAS Reg. No. 121510–09–6), methyl methacrylate/butyl acrylate copolymer (CAS Reg. No. 25852–37–3), methyl methacrylate homopolymer (CAS Reg. No. 9011–14–7), and polypropylene (CAS Reg. No. 9003–07–0), resulting from the reaction of a mixture of methyl methacrylate and butyl acrylate with polypropylene. The finished product contains no more than 55 percent by weight of polymer units derived from methyl methacrylate and butyl acrylate as determined by a method entitled, ''Determination of the Total Acrylic in PP–MMA/BA Polymers,'' which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.	For use only at levels not to exceed 6 percent by weight of olefin polymers complying with paragraph (c) of this section, items 1.1, 3.1a, 3.2a, and 3.2b, where the copolymers complying with items 3.1a, 3.2a, and 3.2b contain not less than 85 weight-percent of polymer units derived from propylene.
* * * *	* * *

* * * * *

§ 177.1585 [Amended]

■ 41. Amend § 177.1585 in paragraph (c)(1)(i) as follows:

■ a. Remove ''Office of Premarket Approval'' and add in its place ''Office of Food Additive Safety''.

■ b. Remove ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and add in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 177.1637 [Amended]

■ 42. Amend § 177.1637 in paragraph (b)(2) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 177.2600 [Amended]

■ 43. Amend § 177.2600 in paragraph (c)(4)(i) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

■ 44. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 178.1010 [Amended]

■ 45. Amend § 178.1010 in paragraph (c)(40) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 178.3297 [Amended]

■ 46. Amend § 178.3297 in the table in paragraph (e) by revising the entry ''High-purity furnace black (CAS Reg. No. 1333–86–4)'' to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * * *	* * *
High-purity furnace black (CAS Reg. No. 1333–86–4) containing total polynuclear aromatic hydrocarbons not to exceed 0.5 parts per million, and benzo[a]pyrene not to exceed 5.0 parts per billion, as determined by a method entitled ''Determination of PAH Content of Carbon Black,'' dated July 8, 1994, as developed by the Cabot Corp., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1200, or may be examined at the Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.	For use at levels not to exceed 2.5 percent by weight of the polymer.
* * * *	* * *

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 47. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

§ 184.1007 [Amended]

■ 48. Amend § 184.1007 in paragraph (b)(1) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1063 [Amended]

■ 49. Amend § 184.1063 in paragraphs (b) introductory text and (b)(8) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1148 [Amended]

■ 50. Amend § 184.1148 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1150 [Amended]

■ 51. Amend § 184.1150 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1250 [Amended]

■ 52. Amend § 184.1250 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1257 [Amended]

■ 53. Amend § 184.1257 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1259 [Amended]

■ 54. Amend § 184.1259 in paragraph (b)(3) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1282 [Amended]

■ 55. Amend § 184.1282 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1293 [Amended]

■ 56. Amend § 184.1293 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039.''

§ 184.1311 [Amended]

■ 57. Amend § 184.1311 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039.''

§ 184.1387 [Amended]

■ 58. Amend § 184.1387 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1420 [Amended]

■ 59. Amend § 184.1420 in paragraph (b) by removing ''Center for Food Safety

and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1444 [Amended]

■ 60. Amend § 184.1444 in paragraph (b)(3) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1472 [Amended]

■ 61. Amend § 184.1472 in paragraph (a)(2)(iii) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1530 [Amended]

■ 62. Amend § 184.1530 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1699 [Amended]

■ 63. Amend § 184.1699 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1866 [Amended]

■ 64. Amend § 184.1866 in paragraph (b) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1979 [Amended]

■ 65. Amend § 184.1979 in paragraphs (b)(1) and (2) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1979a [Amended]

■ 66. Amend § 184.1979a in paragraphs (b)(1) introductory text and (b)(2) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1979b [Amended]

■ 67. Amend § 184.1979b in paragraphs (b)(1) introductory text and (b)(2) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

§ 184.1979c [Amended]

■ 68. Amend § 184.1979c in paragraphs (b)(1) introductory text and (b)(2) by removing ''Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740'' wherever it appears and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

■ 69. The authority citation for 21 CFR part 189 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371, 381.

§ 189.5 [Amended]

■ 70. Amend § 189.5 in paragraph (a)(6) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

■ 71. The authority citation for 21 CFR part 589 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371.

§ 589.2001 [Amended]

■ 72. Amend § 589.2001 in paragraph (b)(1)(vi)(B) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

PART 700—GENERAL

■ 73. The authority citation for 21 CFR part 700 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374.

§ 700.27 [Amended]

■ 74. Amend § 700.27 in paragraph (a)(6) by removing ''Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740'' and adding in its place ''Food and Drug Administration's Main Library, 10903 New Hampshire Ave., Bldg. 2, Third Floor, Silver Spring, MD 20993, 301–796–2039''.

Dated: January 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01787 Filed 2–2–16; 8:45 am]

BILLING CODE 4164–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–21 and CP2010–36]

Update to Product Lists

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the product lists. This action reflects a publication policy adopted by Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which is republished in its entirety, includes these updates.

DATES: *Effective Date:* February 3, 2016.

Applicability Dates: August 4, 2015, Competitive International Merchandise Return Service Agreements with Foreign

Postal Operators (MC2015–68 and CP2015–99); September 29, 2015, Priority Mail Contract 144 (MC2015–84 and CP2015–140); September 29, 2015, Parcel Select Contract 10 (MC2015–85 and CP2015–141); September 29, 2015, Priority Mail Contract 143 (MC2015–83 and CP2015–139); September 29, 2015, Priority Mail Contract 142 (MC2015–82 and CP2015–138); October 16, 2015, Priority Mail Express Contract 28 (MC2016–2 and CP2016–2); October 16, 2015, Priority Mail Contract 145 (MC2016–1 and CP2016–1); October 16, 2015, Priority Mail Contract 146 (MC2016–3 and CP2016–3); October 16, 2015, Priority Mail Contract 147 (MC2016–4 and CP2016–4); October 23, 2015, Global Expedited Package Services Contracts—Non-Published Rates 8 (MC2016–5 and CP2016–5); October 23, 2015, Priority Mail Contract 148 (MC2016–6 and CP2016–6); November 2, 2015, Priority Mail Contract 149 (MC2016–8 and CP2016–10); November 2, 2015, Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 (MC2016–9 and CP2016–11); November 3, 2015, Priority Mail Contract 150 (MC2016–11 and CP2016–12); November 5, 2015, Priority Mail Contract 151 (MC2016–12 and CP2016–14); November 5, 2015, Priority Mail Contract 152 (MC2016–13 and CP2016–15); November 17, 2015, Priority Mail Express & Priority Mail Contract 21 (MC2016–14 and CP2016–17); December 2, 2015, Priority Mail Contract 153 (MC2016–17 and CP2016–23); December 2, 2015, Priority Mail Express Contract 29 (MC2016–16 and CP2016–22); December 4, 2015, Priority Mail Express, Priority Mail & First-Class Package Service Contract 6 (MC2016–21 and CP2016–27); December 4, 2015, Priority Mail Contract 154 (MC2016–18 and CP2016–24); December 4, 2015, Priority Mail Contract 155 (MC2016–19 and CP2016–25); December 7, 2015, Priority Mail Express & Priority Mail Contract 22 (MC2016–20 and CP2016–26); December 15, 2015, Priority Mail Express & Priority Mail Contract 23 (MC2016–26 and CP2016–32); December 15, 2015, Priority Mail Contract 156 (MC2016–22 and CP2016–28); December 15, 2015, Priority Mail Contract 158 (MC2016–24 and CP2016–30); December 15, 2015, Priority Mail Contract 157 (MC2016–23 and CP2016–29); December 15, 2005, Priority Mail Contract 159 (MC2016–25 and CP2016–31); December 17, 2015, Parcel Select Contract 11 (MC2016–28 and CP2016–34); December 17, 2015, Priority Mail Express & Priority Mail Contract 24 (MC2016–27 and CP2016–33); December 17, 2015, Priority Mail Contract 160 (MC2016–29 and CP2016–35); December 21, 2015, Priority Mail Contract 161 (MC2016–30 and CP2016–36); December 21, 2015, Priority Mail Express Contract 30 (MC2016–32 and CP2016–38); December 21, 2015, Priority Mail Contract 162 (MC2016–31 and CP2016–37); December 22, 2015, First-Class Package Service Contract 38 (MC2016–33 and CP2016–39); December 22, 2015, Priority Mail & First-Class Package Service Contract 8 (MC2016–34 and CP2016–40); December 22, 2015, Priority Mail Contract 163 (MC2016–35 and CP2016–41); December 22, 2015, Priority Mail Contract 164 (MC2016–36 and CP2016–42); December 24, 2015, First-Class Package Service Contract 39 (MC2016–38 and CP2016–47); December 24, 2015, Parcel Select Contract 12 (MC2016–37 and CP2016–46); December 30, 2015, Priority Mail & First-Class Package Service Contract 9 (MC2016–44 and CP2016–59); December 30, 2015, Priority Mail Express & Priority Mail Contract 25 (MC2016–45 and CP2016–60); December 30, 2015, Global Expedited Package Services Contracts—Non-Published Rates 9 (MC2016–46 and CP2016–61); November 13, 2015, Competitive Products Price Changes Rates of General Applicability (CP2016–9).

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6800.

SUPPLEMENTARY INFORMATION: This document identifies updates to the product lists, which appear as 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. Publication of the updated product lists in the **Federal Register** is addressed in the Postal Accountability and Enhancement Act (PAEA) of 2006.

Authorization. The Commission process for periodic publication of updates was established in Docket Nos. MC2010–21 and CP2010–36, Order No. 445, April 22, 2010, at 8.

Changes. The product lists are being updated by publishing a replacement in its entirety of 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. The following products are being added, removed, revised, or moved within the product lists:

1. Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (MC2015–68 and CP2015–99) (Order No. 2639), added August 4, 2015.
2. Priority Mail Contract 144 (MC2015–84 and CP2015–140) (Order No. 2734), added September 29, 2015.
3. Parcel Select Contract 10 (MC2015–85 and CP2015–141) (Order No. 2735), added September 29, 2015.
4. Priority Mail Contract 143 (MC2015–83 and CP2015–139) (Order No. 2737), added September 29, 2015.
5. Priority Mail Contract 142 (MC2015–82 and CP2015–138) (Order No. 2738), added September 29, 2015.
6. Priority Mail Express Contract 28 (MC2016–2 and CP2016–2) (Order No. 2761), added October 16, 2015.
7. Priority Mail Contract 145 (MC2016–1 and CP2016–1) (Order No. 2762), added October 16, 2015.
8. Priority Mail Contract 146 (MC2016–3 and CP2016–3) (Order No. 2763), added October 16, 2015.
9. Priority Mail Contract 147 (MC2016–4 and CP2016–4) (Order No. 2764), added October 16, 2015.
10. Global Expedited Package Services Contracts—Non-Published Rates 8 (MC2016–5 and CP2016–5) (Order No. 2774), added October 23, 2015.
11. Priority Mail Contract 148 (MC2016–6 and CP2016–6) (Order No. 2777), added October 23, 2015.
12. Priority Mail Contract 149 (MC2016–8 and CP2016–10) (Order No. 2794), added November 2, 2015.
13. Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 (MC2016–9 and CP2016–11) (Order No. 2796), added November 2, 2015.
14. Priority Mail Contract 150 (MC2016–11 and CP2016–12) (Order No. 2799), added November 3, 2015.
15. Priority Mail Contract 151 (MC2016–12 and CP2016–14) (Order No. 2802), added November 5, 2015.
16. Priority Mail Contract 152 (MC2016–13 and CP2016–15) (Order No. 2803), added November 5, 2015.
17. Priority Mail Express & Priority Mail Contract 21 (MC2016–14 and CP2016–17) (Order No. 2822), added November 17, 2015.
18. Priority Mail Contract 153 (MC2016–17 and CP2016–23) (Order No. 2846), added December 2, 2015.
19. Priority Mail Express Contract 29 (MC2016–16 and CP2016–22) (Order No. 2847), added December 2, 2015.
20. Priority Mail Express, Priority Mail & First-Class Package Service Contract 6 (MC2016–21 and CP2016–27) (Order No. 2848), added December 4, 2015.
21. Priority Mail Contract 154 (MC2016–18 and CP2016–24) (Order No. 2849), added December 4, 2015.
22. Priority Mail Contract 155 (MC2016–19 and CP2016–25) (Order No. 2851), added December 4, 2015.
23. Priority Mail Express & Priority Mail Contract 22 (MC2016–20 and CP2016–26) (Order No. 2852), added December 7, 2015.
24. Priority Mail Express & Priority Mail Contract 23 (MC2016–26 and CP2016–32) (Order No. 2873), added December 15, 2015.
25. Priority Mail Contract 156 (MC2016–22 and CP2016–28) (Order No. 2875), added December 15, 2015.
26. Priority Mail Contract 158 (MC2016–24 and CP2016–30) (Order No. 2876), added December 15, 2015.
27. Priority Mail Contract 157 (MC2016–23 and CP2016–29) (Order No. 2878), added December 15, 2015.

28. Priority Mail Contract 159 (MC2016–25 and CP2016–31) (Order No. 2879), added December 15, 2015.
29. Parcel Select Contract 11 (MC2016–28 and CP2016–34) (Order No. 2883), added December 17, 2015.
30. Priority Mail Express & Priority Mail Contract 24 (MC2016–27 and CP2016–33) (Order No. 2890), added December 17, 2015.
31. Priority Mail Contract 160 (MC2016–29 and CP2016–35) (Order No. 2891), added December 17, 2015.
32. Priority Mail Contract 161 (MC2016–30 and CP2016–36) (Order No. 2902), added December 21, 2015.
33. Priority Mail Express Contract 30 (MC2016–32 and CP2016–38) (Order No. 2906), added December 21, 2015.
34. Priority Mail Contract 162 (MC2016–31 and CP2016–37) (Order No. 2907), added December 21, 2015.
35. First-Class Package Service Contract 38 (MC2016–33 and CP2016–39) (Order No. 2910), added December 22, 2015.
36. Priority Mail & First-Class Package Service Contract 8 (MC2016–34 and CP2016–40) (Order No. 2911), added December 22, 2015.
37. Priority Mail Contract 163 (MC2016–35 and CP2016–41) (Order No. 2912), added December 22, 2015.
38. Priority Mail Contract 164 (MC2016–36 and CP2016–42) (Order No. 2913), added December 22, 2015.
39. First-Class Package Service Contract 39 (MC2016–38 and CP2016–47) (Order No. 2926), added December 24, 2015.
40. Parcel Select Contract 12 (MC2016–37 and CP2016–46) (Order No. 2927), added December 24, 2015.
41. Priority Mail & First-Class Package Service Contract 9 (MC2016–44 and CP2016–59) (Order No. 2965), added December 30, 2015.
42. Priority Mail Express & Priority Mail Contract 25 (MC2016–45 and CP2016–60) (Order No. 2966), added December 30, 2015.
43. Global Expedited Package Services Contracts—Non-Published Rates 9 (MC2016–46 and CP2016–61) (Order No. 2967), added December 30, 2015.
44. Competitive Products Price Changes Rates of General Applicability (CP2016–9) (Order No. 2814), changed Standard Post to Retail Ground, November 13, 2015.

The following negotiated service agreements have expired and are being deleted from the Mail Classification Schedule:

1. Priority Mail Contract 40 (MC2012–38 and CP2012–46) (Order No. 1444).
2. Priority Mail Contract 42 (MC2012–47 and CP2012–57) (Order No. 1475).
3. Priority Mail Contract 43 (MC2012–48 and CP2012–58) (Order No. 1476).
4. Priority Mail Contract 45 (MC2013–4 and CP2013–4) (Order No. 1518).
5. Priority Mail Contract 46 (MC2013–6 and CP2013–6) (Order No. 1524).
6. Priority Mail Contract 47 (MC2013–7 and CP2013–7) (Order No. 1525).
7. Priority Mail Express & Priority Mail Contract 9 (MC2012–29 and CP2012–38) (Order No. 1397).
8. Parcel Select Contract 3 (MC2012–32 and CP2012–40) (Order No. 1414).
9. Parcel Select Contract 4 (MC2012–33 and CP2012–41) (Order No. 1415).
10. Parcel Select Contract 6 (MC2013–13 and CP2013–13) (Order No. 1538).
11. First-Class Package Service Contract 16 (MC2012–49 and CP2012–61) (Order No. 1494).
12. First-Class Package Service Contract 17 (MC2012–50 and CP2012–62) (Order No. 1495).
13. First-Class Package Service Contract 18 (MC2012–51 and CP2012–63) (Order No. 1496).
14. First-Class Package Service Contract 19 (MC2012–52 and CP2012–64) (Order No. 1497).
15. First-Class Package Service Contract 20 (MC2012–53 and CP2012–65) (Order No. 1498).
16. First-Class Package Service Contract 21 (MC2013–8 and CP2013–8) (Order No. 1526).
17. First-Class Package Service Contract 22 (MC2013–9 and CP2013–9) (Order No. 1527).
18. First-Class Package Service Contract 23 (MC2013–10 and CP2013–10) (Order No. 1528).
19. First-Class Package Service Contract 24 (MC2013–11 and CP2013–11) (Order No. 1529).
20. First-Class Package Service Contract 25 (MC2013–12 and CP2013–12) (Order No. 1537).
21. First-Class Package Service Contract 26 (MC2013–15 and CP2013–14) (Order No. 1547).
22. First-Class Package Service Contract 27 (MC2013–17 and CP2013–16) (Order No. 1558).
23. First-Class Package Service Contract 28 (MC2013–18 and CP2013–17) (Order No. 1559).
24. First-Class Package Service Contract 29 (MC2013–19 and CP2013–18) (Order No. 1560).
25. First-Class Package Service Contract 30 (MC2013–20 and CP2013–19) (Order No. 1561).
26. First-Class Package Service Contract 31 (MC2013–21 and CP2013–29) (Order No. 1603).
27. First-Class Package Service Contract 32 (MC2013–22 and CP2013–30) (Order No. 1604).
28. First-Class Package Service Contract 33 (MC2013–23 and CP2013–31) (Order No. 1606).
29. First-Class Package Service Contract 34 (MC2013–24 and CP2013–32) (Order No. 1605).
30. Priority Mail Express, Priority Mail & First-Class Package Service Contract 1 (MC2012–46 and CP2012–55) (Order No. 1474).
31. Priority Mail & First-Class Package Service Contract 1 (MC2013–5 and CP2013–5) (Order No. 1519).
32. Global Direct Contracts 1 (MC2010–17 and CP2010–18) (Order No. 386).
33. Valassis NSA (MC2012–14 and R2012–8) (Order No. 1448).
34. Market Test of Experimental Product—Metro Post (MT2013–1) (Order No. 2243).

Updated product lists. The referenced changes to the product lists are incorporated into 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Part A—Market Dominant Products

1000 Market Dominant Product List
First-Class Mail*
- Single-Piece Letters/Postcards
- Presorted Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Letter Post

Standard Mail (Commercial and Nonprofit)*
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Parcels
- Every Door Direct Mail—Retail

Periodicals*
- In-County Periodicals
- Outside County Periodicals

Package Services*
- Alaska Bypass Service
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services*
- Ancillary Services
- International Ancillary Services
- Address Management Services
- Caller Service
- Credit Card Authentication
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service
- Customized Postage
- Stamp Fulfillment Services

Negotiated Service Agreements*
- Domestic*
- PHI Acquisitions, Inc. Negotiated Service Agreement
- International*
- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

- Inbound Market Dominant Exprés Service Agreement 1
- Nonpostal Services*
- Alliances with the Private Sector to Defray Cost of Key Postal Functions
- Philatelic Sales

Market Tests*

Part B—Competitive Products

2000 Competitive Product List

Domestic Products*
- Priority Mail Express
- Priority Mail
- Parcel Select
- Parcel Return Service
- First-Class Package Service
- Retail Ground

International Products*
- Outbound International Expedited Services
- Inbound Parcel Post (at UPU rates)
- Outbound Priority Mail International
- International Priority Airmail (IPA)
- International Surface Air List (ISAL)
- International Direct Sacks—M-Bags
- Outbound Single-Piece First-Class Package International Service

Negotiated Service Agreements*

Domestic*
- Priority Mail Express Contract 8
- Priority Mail Express Contract 11
- Priority Mail Express Contract 13
- Priority Mail Express Contract 14
- Priority Mail Express Contract 15
- Priority Mail Express Contract 16
- Priority Mail Express Contract 17
- Priority Mail Express Contract 18
- Priority Mail Express Contract 19
- Priority Mail Express Contract 20
- Priority Mail Express Contract 21
- Priority Mail Express Contract 22
- Priority Mail Express Contract 23
- Priority Mail Express Contract 24
- Priority Mail Express Contract 25
- Priority Mail Express Contract 26
- Priority Mail Express Contract 27
- Priority Mail Express Contract 28
- Priority Mail Express Contract 29
- Priority Mail Express Contract 30
- Parcel Return Service Contract 5
- Parcel Return Service Contract 6
- Parcel Return Service Contract 7
- Parcel Return Service Contract 8
- Parcel Return Service Contract 9
- Parcel Return Service Contract 10
- Priority Mail Contract 24
- Priority Mail Contract 29
- Priority Mail Contract 33
- Priority Mail Contract 44
- Priority Mail Contract 48
- Priority Mail Contract 50
- Priority Mail Contract 51
- Priority Mail Contract 52
- Priority Mail Contract 53
- Priority Mail Contract 54
- Priority Mail Contract 55
- Priority Mail Contract 56
- Priority Mail Contract 57
- Priority Mail Contract 58
- Priority Mail Contract 59
- Priority Mail Contract 60
- Priority Mail Contract 61
- Priority Mail Contract 62
- Priority Mail Contract 63
- Priority Mail Contract 64
- Priority Mail Contract 65
- Priority Mail Contract 66
- Priority Mail Contract 67
- Priority Mail Contract 70
- Priority Mail Contract 71
- Priority Mail Contract 72
- Priority Mail Contract 73
- Priority Mail Contract 74
- Priority Mail Contract 75
- Priority Mail Contract 76
- Priority Mail Contract 77
- Priority Mail Contract 78
- Priority Mail Contract 79
- Priority Mail Contract 80
- Priority Mail Contract 81
- Priority Mail Contract 82
- Priority Mail Contract 83
- Priority Mail Contract 84
- Priority Mail Contract 85
- Priority Mail Contract 86
- Priority Mail Contract 87
- Priority Mail Contract 88
- Priority Mail Contract 89
- Priority Mail Contract 90
- Priority Mail Contract 91
- Priority Mail Contract 92
- Priority Mail Contract 93
- Priority Mail Contract 94
- Priority Mail Contract 95
- Priority Mail Contract 96
- Priority Mail Contract 97
- Priority Mail Contract 98
- Priority Mail Contract 99
- Priority Mail Contract 100
- Priority Mail Contract 101
- Priority Mail Contract 102
- Priority Mail Contract 103
- Priority Mail Contract 104
- Priority Mail Contract 105
- Priority Mail Contract 106
- Priority Mail Contract 107
- Priority Mail Contract 108
- Priority Mail Contract 109
- Priority Mail Contract 110
- Priority Mail Contract 111
- Priority Mail Contract 112
- Priority Mail Contract 113
- Priority Mail Contract 114
- Priority Mail Contract 115
- Priority Mail Contract 116
- Priority Mail Contract 117
- Priority Mail Contract 118
- Priority Mail Contract 119
- Priority Mail Contract 120
- Priority Mail Contract 121
- Priority Mail Contract 122
- Priority Mail Contract 123
- Priority Mail Contract 124
- Priority Mail Contract 125
- Priority Mail Contract 126
- Priority Mail Contract 127
- Priority Mail Contract 128
- Priority Mail Contract 129
- Priority Mail Contract 130
- Priority Mail Contract 131
- Priority Mail Contract 132
- Priority Mail Contract 133
- Priority Mail Contract 134
- Priority Mail Contract 135
- Priority Mail Contract 136
- Priority Mail Contract 137
- Priority Mail Contract 138
- Priority Mail Contract 139
- Priority Mail Contract 140
- Priority Mail Contract 141
- Priority Mail Contract 142
- Priority Mail Contract 143
- Priority Mail Contract 144
- Priority Mail Contract 145
- Priority Mail Contract 146
- Priority Mail Contract 147
- Priority Mail Contract 148
- Priority Mail Contract 149
- Priority Mail Contract 150
- Priority Mail Contract 151
- Priority Mail Contract 152
- Priority Mail Contract 153
- Priority Mail Contract 154
- Priority Mail Contract 155
- Priority Mail Contract 156
- Priority Mail Contract 157
- Priority Mail Contract 158
- Priority Mail Contract 159
- Priority Mail Contract 160
- Priority Mail Contract 161
- Priority Mail Contract 162
- Priority Mail Contract 163
- Priority Mail Contract 164
- Priority Mail Express & Priority Mail Contract 10
- Priority Mail Express & Priority Mail Contract 11
- Priority Mail Express & Priority Mail Contract 12
- Priority Mail Express & Priority Mail Contract 13
- Priority Mail Express & Priority Mail Contract 14
- Priority Mail Express & Priority Mail Contract 16
- Priority Mail Express & Priority Mail Contract 17
- Priority Mail Express & Priority Mail Contract 18
- Priority Mail Express & Priority Mail Contract 19
- Priority Mail Express & Priority Mail Contract 20
- Priority Mail Express & Priority Mail Contract 21
- Priority Mail Express & Priority Mail Contract 22
- Priority Mail Express & Priority Mail Contract 23
- Priority Mail Express & Priority Mail Contract 24
- Priority Mail Express & Priority Mail Contract 25
- Parcel Select & Parcel Return Service Contract 3
- Parcel Select & Parcel Return Service Contract 5
- Parcel Select Contract 2
- Parcel Select Contract 5
- Parcel Select Contract 7
- Parcel Select Contract 8
- Parcel Select Contract 9
- Parcel Select Contract 10
- Parcel Select Contract 11
- Parcel Select Contract 12
- Priority Mail—Non-Published Rates
- Priority Mail—Non-Published Rates 1
- First-Class Package Service Contract 35
- First-Class Package Service Contract 36
- First-Class Package Service Contract 37
- First-Class Package Service Contract 38
- First-Class Package Service Contract 39
- Priority Mail Express, Priority Mail & First-Class Package Service Contract 2
- Priority Mail Express, Priority Mail & First-Class Package Service Contract 3
- Priority Mail Express, Priority Mail & First-Class Package Service Contract 4
- Priority Mail Express, Priority Mail & First-Class Package Service Contract 5

- Priority Mail Express, Priority Mail & First-Class Package Service Contract 6
- Priority Mail & First-Class Package Service Contract 2
- Priority Mail & First-Class Package Service Contract 3
- Priority Mail & First-Class Package Service Contract 4
- Priority Mail & First-Class Package Service Contract 5
- Priority Mail & First-Class Package Service Contract 6
- Priority Mail & First-Class Package Service Contract 7
- Priority Mail & First-Class Package Service Contract 8
- Priority Mail & First-Class Package Service Contract 9

Outbound International*
- Global Expedited Package Services (GEPS) Contracts GEPS 3
- Global Bulk Economy (GBE) Contracts
- Global Plus Contracts
- Global Plus 1C
- Global Plus 2C
- Global Reseller Expedited Package Contracts
- Global Reseller Expedited Package Services 1
- Global Reseller Expedited Package Services 2
- Global Reseller Expedited Package Services 3
- Global Reseller Expedited Package Services 4
- Global Expedited Package Services (GEPS)—Non-Published Rates
- Global Expedited Package Services (GEPS)—Non-Published Rates 2
- Global Expedited Package Services (GEPS)—Non-Published Rates 3
- Global Expedited Package Services (GEPS)—Non-Published Rates 4
- Global Expedited Package Services (GEPS)—Non-Published Rates 5
- Global Expedited Package Services (GEPS)—Non-Published Rates 6
- Global Expedited Package Services (GEPS)—Non-Published Rates 7
- Global Expedited Package Services (GEPS)—Non-Published Rates 8
- Global Expedited Package Services (GEPS)—Non-Published Rates 9
- Priority Mail International Regional Rate Boxes—Non-Published Rates
- Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd.
- Priority Mail International Regional Rate Boxes Contracts
- Priority Mail International Regional Rate Boxes Contracts 1
- Competitive International Merchandise Return Service Agreements with Foreign Postal Operators

Inbound International*
- International Business Reply Service (IBRS) Competitive Contracts
- International Business Reply Service Competitive Contract 1
- International Business Reply Service Competitive Contract 3
- Inbound Direct Entry Contracts with Customers
- Inbound Direct Entry Contracts with Foreign Postal Administrations
- Inbound Direct Entry Contracts with Foreign Postal Administrations
- Inbound Direct Entry Contracts with Foreign Postal Administrations 1
- Inbound EMS
- Inbound EMS 2
- Inbound Air Parcel Post (at non-UPU rates)
- Royal Mail Group Inbound Air Parcel Post Agreement
- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Special Services*
- Address Enhancement Services
- Greeting Cards, Gift Cards, and Stationery
- International Ancillary Services
- International Money Transfer Service—Outbound
- International Money Transfer Service—Inbound
- Premium Forwarding Service
- Shipping and Mailing Supplies
- Post Office Box Service
- Competitive Ancillary Services

Nonpostal Services*
- Advertising
- Licensing of Intellectual Property other than Officially Licensed Retail Products (OLRP)
- Mail Service Promotion
- Officially Licensed Retail Products (OLRP)
- Passport Photo Service
- Photocopying Service
- Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property
- Training Facilities and Related Services
- USPS Electronic Postmark (EPM) Program

Market Tests*
- International Merchandise Return Service (IMRS)—Non-Published Rates
- Customized Delivery

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–01947 Filed 2–2–16; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0263; FRL–9940–46]

Cyazofamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyazofamid in or on the herb subgroup 19A and the bulb vegetable group 3–07. Interregional Research Project Number 4 (IR–4) requested the herb subgroup 19A tolerances, and ISK Biosciences requested the bulb vegetable group 3–07 tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 3, 2016. Objections and requests for hearings must be received on or before April 4, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0263, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0263 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 4, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0263, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 20, 2015 (80 FR 28925) (FRL–9927–39), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of two pesticide petitions: One by ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio 44077 (PP 5F8352) that requested to establish tolerances in 40 CFR 180.601 for residues of the fungicide cyazofamid and its metabolite (4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile) in or on bulb vegetables (crop group 3–07) at 2.0 parts per million (ppm); and one by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540 (PP 5E8350) that requested to establish tolerances in 40 CFR 180.601 for residues of the fungicide cyazofamid in or on the herb subgroup 19A at 90 ppm and also to remove the existing tolerances for residues of cyazofamid and its metabolite in or on basil, dried leaves at 90 ppm and basil, fresh leaves at 30 ppm upon approval of the herb subgroup 19A tolerances. That document referenced summaries of the two petitions prepared by ISK Biosciences, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notices of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

The target organ for cyazofamid in rats is the kidney, with an increased incidence of basophilic tubules, increased urinary volume, pH, and protein noted in male rats after subchronic exposure. Female rats were less sensitive, with only a marginal increase in urinary volume, and pH. These findings were noted in a 90-day oral toxicity study, and similar findings were noted in the 28-day oral toxicity range-finding study in rats. In the two-generation reproductive study in rats, there was an increased incidence of inflammation and nephropathy in the high-dose male rats as compared to the controls. Basophilic tubules are indicative of a regenerative process, but they can be more difficult to identify in older animals (*i.e.,* tubular basophilia can be obscured by nephropathy or included as part of the nephropathy constellation). No kidney effects were observed in the chronic oral toxicity study in rats; however, this study did not test up to doses as high as those eliciting kidney effects in the subchronic and two-generation reproduction toxicity studies. The only relevant finding in the dog was an incidence of parathyroid cysts in males at the limit dose in the chronic study.

The pre- and post-natal toxicology database for cyazofamid includes rat and rabbit developmental toxicity studies and a two-generation reproduction toxicity study in rats. The prenatal developmental study in rats showed evidence of increased quantitative susceptibility following *in utero* exposure as a marginally increased incidence of bent ribs was noted in fetuses at the limit dose, whereas no maternal toxicity was noted.

No adverse effects were seen in a route-specific dermal toxicity study. Skin lesions were observed in males following oral exposure in the mouse carcinogenicity study, and are thought to be caused by an allergic reaction to systemic exposure because they did not occur following exposure via the dermal route. Cyazofamid is classified as ''not likely to be carcinogenic to humans'' based on the lack of evidence for carcinogenicity in mice and rats and a lack of mutagenic potential.

Specific information on the studies received and the nature of the adverse effects caused by cyazofamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled, ''Cyazofamid. Human Health Risk Assessment for Proposed New Uses on Use on Crop Subgroup 19A, Peppers and Tomatoes Grown in Greenhouses, and on Bulb Vegetables Crop Group 03–07'' on pp. 32 in docket ID number EPA–HQ–OPP–2015–0263.

B. Toxicological Points of Departure/Levels of Concern

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

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

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

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All Populations)	No appropriate toxicological effect attributable to a single dose was observed. Therefore, a dose and endpoint were not identified for this risk assessment.		
Chronic dietary (All populations)	NOAEL= 94.8 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.948 mg/kg/day. cPAD = 0.948 mg/kg/day.	18-Month Mouse Oral Carcinogenicity. LOAEL = 985 mg/kg/day based on increased skin lesions.
Incidental oral short-term (1 to 30 days).	NOAEL= 171 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Co-critical 90-Day and chronic oral toxicity studies in rats. LOAEL= 295 mg/kg based on increased incidence of basophilic tubules in the kidneys, increased urinary volume, pH, & protein.
Inhalation short-term (1 to 30 days).	Oral study NOAEL= 171 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Co-critical 90-Day and chronic oral toxicity studies in rats. LOAEL= 295 mg/kg based on increased incidence of basophilic tubules in the kidneys, increased urinary volume, pH, & protein.
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be Carcinogenic to Humans'' based on the absence of treatment-related tumors in two adequate rodent carcinogenicity studies.		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cyazofamid, EPA considered exposure under the petitioned-for tolerances as well as all existing cyazofamid tolerances in 40 CFR 180.601. EPA assessed dietary exposures from cyazofamid in food as follows:

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

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT) for all commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that cyazofamid does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for cyazofamid. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* Available environmental fate studies suggest cyazofamid is not very

mobile and quickly degrades into a number of degradation products under different environmental conditions. The highest estimated chronic drinking water concentrations resulted from modeling which assumed application of 100% molar conversion of the parent into the terminal degradate CTCA. EPA used these estimates of CTCA (4-chloro-5-*p*-tolylimidazole-2-carboxylic acid) in its dietary exposure assessments, a conservative approach that likely overestimates the exposure contribution from drinking water.

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

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of the degradate CTCA for chronic exposures are estimated to be 133.5 parts per billion (ppb) for surface water and 211 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 211 ppb was used to assess the contribution to drinking water.

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

Cyazofamid is currently registered for use on turf at golf courses, sod farms, seed farms, college and professional sports fields, residential and commercial lawns, and on ornamental plants in landscapes and those grown in commercial greenhouses and nurseries. EPA assessed residential exposure using the following scenarios:

- Adult handlers. The worst-case scenario was determined to be short-term inhalation exposures from mixing, loading, and applying cyazofamid to turf; and
- Children. The worst-case scenario was determined to be short-term post-application incidental oral exposure from hand-to-mouth activities on turf.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

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

EPA has not found cyazofamid to share a common mechanism of toxicity with any other substances, and cyazofamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyazofamid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The developmental rabbit and two-generation reproduction toxicity study in rats did not show any evidence of increased susceptibility developmental or offspring, respectively. However, there was increased quantitative susceptibility in the rat developmental study; concentrations up to the limit dose did not cause maternal systemic toxicity, but there was an increased incidence of bent ribs. Concern is low based on the following: (1) The increase was marginal, (2) bent ribs are considered a variation rather than a malformation, (3) the effect was only seen at the limit dose, (4) there is a clear NOAEL for the effect, and (5) the selected endpoints address any concerns for this effect.

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

i. The toxicity database for cyazofamid is complete.

ii. There is no indication that cyazofamid is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. As noted in Section D.2., there was increased quantitative susceptibility in the rat developmental study, however, concern is low due to the reasons cited.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyazofamid and its degradates in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by cyazofamid.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was

selected. Therefore, cyazofamid is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyazofamid from food and water will utilize 2% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of cyazofamid is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyazofamid is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to cyazofamid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 14,000 for adults and 6,100 for children 1–2 years old. Because EPA's level of concern for cyazofamid is a MOE of 100 or below, these MOEs are not of concern.

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

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

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, cyazofamid is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An enforcement method for non-fatty commodities is available, FDA's Multi-residue Protocol D (without cleanup). The method completely recovers (≤80% recovery) cyazofamid and its metabolite (4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile). In addition, the high-performance liquid chromatography method with ultraviolent light detection (HPLC/UV) method is acceptable for use as a single analyte enforcement method provided a confirmatory method such as the liquid chromatography method with tandem mass-spectrometric detection (LC/MS/MS) method is used.

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

B. International Residue Limits

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

There are no Codex MRLs established for cyazofamid in/on the commodities included in this action.

V. Conclusion

Therefore, tolerances are established for residues of cyazofamid (4-chloro-2-cyano-*N,N*-dimethyl-5-(4-methylphenyl)-1*H*-imidazole-1-sulfonamide) and is metabolite (4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile) in or on the herb subgroup 19A at 90 ppm; and bulb vegetables, group 3–07 at 2.0 ppm. In addition, the existing tolerances for residues of cyazofamid and its metabolite (4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile) in or on basil, dried leaves and basil, fresh leaves are removed as unnecessary.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined

that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 21, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.601, in the table in paragraph (a):

■ a. Remove the entries for ''Basil, dried leaves'' and ''Basil, fresh leaves''.

■ b. Add alphabetically entries for ''Bulb vegetables, group 3–07'' and ''Herb subgroup 19A''.

The additions read as follows:

§ 180.601 Cyazofamid; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Bulb vegetables, group 3–07 ...	2.0
* * * * *	
Herb subgroup 19A	90
* * * * *	

* * * * *

[FR Doc. 2016–01993 Filed 2–2–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GN Docket No. 09–51, WC Docket No. 07–25; FCC 15–151]

Pole Attachment Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *document,* the Commission builds on its prior efforts to harmonize pole attachment rates that cable and telecom service providers pay utility pole owners. The Communications Act of 1934, as amended (Act), contains two formulas for calculating pole attachment rates, a formula adopted in 1978 applicable to cable television systems solely providing cable service, and a formula adopted in 1996 applicable to telecommunications carriers providing telecommunications service.

DATES: Effective April 1, 2016.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–245, GN Docket No. 09–51 and FCC 15–151, by any of the following methods:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Jonathan Reel, Wireline Competition Bureau, Competition Policy Division, (202) 418–0637, or send an email to *jonathan.reel@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in GN Docket No. 09–51, WC Docket No. 07–245, and FCC 15–151, adopted November 17, 2015 and released November 24, 2015. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It is available on the Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. In this *Order on Reconsideration* (Order), the Commission builds on its prior efforts to harmonize pole attachment rates that cable and telecom service providers pay utility pole owners. The Communications Act of 1934, as amended (Act), contains two formulas for calculating pole attachment rates, a formula adopted in 1978 applicable to cable television systems solely providing cable service, and a formula adopted in 1996 applicable to telecommunications carriers providing telecommunications service. Following the implementation of the 1996 Act through 2011, rates calculated using the telecom rate formula have typically been higher than rates calculated using the cable formula in similar circumstances. In 2011, the Commission revised the formulas as described in greater detail below to improve efficiency, reduce potentially excessive costs of network deployment and accelerate broadband buildout, and eliminate the wide disparity between the telecom and cable rate formulas. The 2011 revisions sought to bring the telecom and cable rates into parity. In the intervening time, the Commission has seen that its revisions did not fully achieve that objective. Today, the Commission takes the next logical step in achieving the goals set forth in 2011.

2. As detailed below, the Commission takes these actions in response to a Petition for Reconsideration or Clarification in this proceeding. The rule revisions that the Commission adopts amend the Commission's rules by defining ''cost,'' for the purpose of calculating the rates that telecommunications carriers pay for pole attachments, as a percentage of fully allocated costs that will depend on whether the average number of attaching entities in a service area is 2, 3, 4, or 5. The rates that attachers pay to attach to poles are currently determined, among other things, by whether the attacher is a ''cable television system solely . . . provid[ing] cable service'' or a ''telecommunications

carrier providing telecommunications services.'' The Commission, in its 2011 *Report and Order and Order on Reconsideration* in this proceeding (*2011 Pole Attachment Order*) 80 FR 27626–01, May 14, 2015, sought to bring parity to pole attachment rates calculated using the telecom or cable rate formula so that all attachments rates would be at or near the cable rate formula level. The *2011 Pole Attachment Order* adopted cost allocators in the telecom rate formula that closely approximate the treatment of cost in the cable rate formula. However, these allocators applied only in situations where poles have 5 attaching entities (0.66 percent of cost) or 3 attaching entities (0.44 percent of cost). On June 8, 2011, the National Cable and Telecommunications Association (NCTA), COMPTEL, and tw telecom inc. (Petitioners) filed a petition for reconsideration or clarification of the rules adopted in the *2011 Pole Attachment Order,* asking the Commission either to clarify that 66 percent and 44 percent are ''illustrations'' of the new rule, or to revise the rules to ''provide corresponding cost adjustments to other entity counts.''

3. In response to NCTA's petition, and to the record developed in this proceeding, Commission now introduces new cost allocators for poles with 2 attaching entities (0.31 percent of costs) and 4 attaching entities (0.56 percent of cost). When the average number of attaching entities is a fraction, the percentage cost allocator will be located between the whole numbers at the point where it most closely approximates the cost used in the cable rate formula. This flexible series of cost allocators should more fully realize the intent of the Commission in its *2011 Pole Attachment Order* to bring parity to pole attachment rates at the cable rate formula level. The Commission also adopts this definition of cost to prevent pole owners from charging cable operators that also provide telecommunications service (including broadband Internet access service) pole attachment rental rates that can be approximately 70 percent higher than the cable rate under its existing rules.

4. The Commission additionally acts to support incentives for deployment of broadband facilities, particularly in rural areas, and to harmonize regulatory treatment between states where the Commission regulates the rates, terms, and conditions for pole attachments and states where such matters are regulated by the state. Subjecting cable operators to higher pole attachment rates merely because they also provide telecommunications services, such as broadband Internet access, could deter investment in states subject to Commission pole regulation, which would undermine the Commission's broadband deployment policy. By keeping pole attachment rates unified and low, the Commission furthers its overarching goal to accelerate deployment of broadband by removing barriers to infrastructure investment and promoting competition.

II. Background

5. On April 7, 2011, in its *2011 Pole Attachment Order,* the Commission comprehensively revised its rules governing the attachment of cable and telecommunications facilities to utility poles. The *2011 Pole Attachment Order* contains a comprehensive background section outlining pole attachment policy developments through 2011. Commission does not repeat that material herein. Instead, Commission incorporates that history by reference here, and preserves a brief background section outlining and describing the provisions, orders, and cases germane to this *Order on Reconsideration.*

6. In 1978, Congress added section 224 to the Act. As established in 1978, section 224 directed the Commission to ensure that the rates, terms, and conditions of attaching cable television systems' facilities to utility-owned poles were just and reasonable. Section 224 also identified the maximum rate for pole attachments as a percentage of fully-allocated costs. In 1987, the U.S. Supreme Court found that the cable rate formula adopted by the Commission provides pole owners with adequate compensation, and thus does not result in an unconstitutional taking.

7. The 1996 Act expanded the definition of pole attachments to include attachments by providers of telecommunications service, and granted both cable operators and telecommunications carriers an affirmative right of access to utility poles. The 1996 Act also included a separate provision for calculating a cost-based rate paid by telecommunications carriers—the telecom rate formula—which incorporates ''the cost of providing space on a pole.'' As implemented by the Commission, the telecom rate formula generally resulted in significantly higher pole rental rates than rates derived from the cable rate formula. The Commission concluded that cable systems that provided Internet access in addition to video services should continue to pay the cable rate; that conclusion was reversed on appeal but later upheld by the Supreme Court.

8. In the intervening years, the Commission considered a variety of possible reforms to its pole attachment regulations in light of their importance to the deployment of communications networks. The Commission issued a Notice of Proposed Rulemaking in 2007, to respond to petitions for rulemaking regarding pole access and incumbent LEC pole attachment issues, and to seek comment on pole rate issues. In 2010, in response to a directive in the American Recovery and Reinvestment Act of 2009, the Commission released the National Broadband Plan (NBP), identifying access to rights-of-way—including access to poles—as having a significant impact on the deployment of broadband networks. Accordingly, the NBP included several recommendations regarding pole attachment access, enforcement, and pricing policies to further advance broadband deployment. Following on the recommendations in the NBP, in its 2010 *Further Notice* the Commission sought comment on a variety of measures to speed access to poles and make pole rental rates as low and close to uniform as possible consistent with section 224 of the Act.

9. In the *2011 Pole Attachment Order,* the Commission sought, in pertinent part, to significantly reform its telecom rate regulations by reinterpreting the ambiguous term ''cost'' in the telecom rate formula in section 224(e) of the Act to yield telecom attachment rates ''lowered to more effectively achieve Congress' goals under the 1996 Act to promote competition and 'advanced telecommunications capability' by both wired and wireless providers by 'remov[ing] barriers to infrastructure investment.' '' In particular, the Commission sought to ''balance the goals of promoting broadband [deployment] . . . with the historical role that pole rental rates have played in supporting the investment in pole infrastructure.''

10. In order to promote broadband while ensuring that attaching entities continue to support the poles on which they depend, the *2011 Pole Attachment Order* adopted alternative methods for measuring cost, and provided that the method producing the higher rate is the one the parties use. Utilities thus receive the benefit of any difference between the methods. In this way, the Commission recognizes that telecommunications attachers have historically contributed to the capital costs of the pole network, and that the new telecom rate should not ''unduly burden [utility] ratepayers.'' Balancing the Commission decided under the first

of two acceptable methodologies to ''allow the pole owner to charge a monthly pole rental rate that reflects some contribution to capital costs'' while also reducing the telecom rate. The Commission settled on an approach that defines costs ''in terms of a percentage of the fully-allocated costs'' of the pole—specifically, 66 percent of fully-allocated costs in urban areas and 44 percent in non-urban areas. This measure of cost produces a rate that the Commission expected, based on the premise that the Commission's presumptive number of attachers would not be rebutted, ''[would], in general, approximate the cable rate'' and thereby promote network investment and broadband deployment.

11. The Commission also established a second, alternative measure of cost that utilities may use. This alternative approach is based on the principle of ''cost causation,'' under which the ''customer—the cost causer—pays a rate that covers'' the costs for which it is ''causally responsible.'' Under this approach, a pole owner may recover its administrative and maintenance costs through the telecom rate, but not capital costs other than those associated with make-ready expenses. The Commission also noted that capital costs caused by a telecommunications attacher have long been recovered through make-ready charges, which ''the utility itself sets'' without regard to ''any mandatory rate formula set by the Commission.'' Other capital costs (*i.e.,* rate of return, taxes, and depreciation) are properly excluded under a cost-causation approach because the pole owner would have incurred those costs ''regardless of the demand for attachments.'' Although the ''percentage of fully-allocated costs'' measure of cost discussed above will produce a higher telecom rate ''in most cases,'' if the cost causation-based approach yields a higher rate, utilities are allowed to charge up to that rate.

12. On February 26, 2013, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) rejected utilities' challenge to the Commission's action to bring the traditionally higher telecom rate more in line with the cable rate, concluding that ''[b]ecause the Commission's methodology is consistent with the unspecified cost terms contained in section 224(e), and the Commission's justifications are reasonable, the revision [to the telecom rate formula] warrants judicial deference.'' In particular, the court observed that section 224(e) is ''less specific'' than section 224(d) in prescribing how the statutory rate formula should be implemented. The court agreed with the Commission that ''the term 'cost' in section 224(e)(2) and (3) is necessarily ambiguous, and could thus 'yield a range of rates from the existing fully-allocated cost approach at the high end to a rate closer to incremental cost at the low end.''' The D.C. Circuit thus affirmed the Commission's interpretation and implementation of section 224(e).

13. On June 8, 2011, Petitioners filed the NCTA Petition, seeking reconsideration or clarification of the newly adopted cost allocation rule. The NCTA Petition points out that, when paired with the Commission's presumptive numbers of attachers (5 in urbanized and 3 in non-urbanized areas), the 66 percent and 44 percent cost allocators almost exactly reproduce the 7.4 percent of costs used as an input in the cable rate formula. The Petitioners report, however, that pole owners in fact often rebut the Commission's presumptions with much lower average numbers. For example, if the owner rebuts the urban presumption (5 attaching entities) with an actual count average of 2.6 attaching entities, the telecom rate can be as much as 70 percent higher than the cable rate. To ''achieve the Commission's goal of providing pole attachment rates that are close to uniform as possible, and to ensure that all attachers contribute similar costs to pole owners,'' the Petitioners ask the Commission to address this gap between the intended effect of the cost allocators and their function as applied by ceasing to distinguish between urbanized and non-urbanized areas.

14. Specifically, the Petitioners ask the Commission either to clarify that 66 percent and 44 percent are mere illustrations of the new rule, or to revise the rule to ''provide corresponding cost adjustments to other entity counts.'' The NCTA Petition presents a model rule with additional cost allocators for 4 and 2 attachments, each of which aligns costs with the Commission's cable rate formula as effectively as the current rule does for the Commission's presumptive averages of 5 urbanized and 3 non-urbanized attachments. In service areas where the number of attaching entities is not a whole number, petitioners' proposed cost allocator would be interpolated from the allocators of the nearest whole numbers of attaching entities. On June 20, 2011, the Commission sought comment on the NCTA Petition.

15. On February 26, 2015, the Commission adopted the *Open Internet Order,* which, among other things, concluded that ''retail broadband Internet access service is best understood today as an offering of a 'telecommunications service.' '' The *Open Internet Order* made clear that it did ''not itself require any party to increase the pole attachment rates it charges to attachers providing broadband Internet access service.'' A possible interpretation of the *Order,* however, could be that cable systems that also provide broadband Internet access service and previously were subject to the cable rate formula are now subject to the telecom rate formula. In the *Open Internet Order,* the Commission noted that Petitioners had already expressed concern that revisions to the telecom formula only fulfilled the Commission's expressed intent in the limited circumstances when there are either 5 or 3 attaching entities on a pole. The Commission stated in the *Open Internet Order* that, ''[t]o the extent that there is a potential for an increase in pole attachment rates for cable operators that also provide broadband Internet access service, we are highly concerned about its effect on the positive investment incentives that arise from new providers' access to pole infrastructure.'' In short, the Commission made plain that it took seriously parties' concerns that reclassification could have unintended consequences for pole attachment rates, and that this Petition might present an effective vehicle for giving the issue a closer look. In light of this development, parties were asked to refresh the record with regard to the NCTA Petition.

III. Discussion

16. The Commission adopts the Petitioners' proposal to broaden the use of cost allocators in the telecom rate formula. Specifically, the Commission adds cost allocators for poles with 2 and 4 attaching entities to augment the current cost allocators that target poles with 3 and 5 attaching entities. The Commission also provides that, for fractional attaching-entity averages, cost allocators are to be interpolated from the whole-number cost allocators. The Commission takes this step to further its goal of promoting consistent, cross-industry attachment rates that encourage deployment and adoption of broadband Internet access services by fulfilling the Commission's intent, expressed clearly in 2011 and upheld in court in 2013, to bring cable and telecom rates for pole attachments into parity at the cable-rate level.

A. The Petitioner's Proposal Solves the Problem of Rate Disparity

17. The Petitioners maintain, and the Commission agrees, that the cost allocators adopted in the *2011 Pole Attachment Order* perform as intended,

but only if the actual average numbers of attaching entities coincide with the Commission's presumptive average numbers of attaching entities. As NCTA recognizes, the cost allocators in the *2011 Pole Attachment Order* reflect and embody these presumptive averages. When 0.66 percent and .044 percent of fully-allocated costs are applied in tandem with the Commission's presumptions of 5 and 3 attaching entities in urban and non-urban areas, respectively, the results approximate cable rate formula outcomes, as intended.

18. There is widespread agreement that the real average number of attaching entities is regularly far lower than the Commission's presumptions, and that this disparity causes rates calculated with the telecom rate formula to be around 70 percent higher than rates calculated with the cable rate formula. NCTA also reports that, in reality, pole owners routinely rebut the Commission's presumptions with averages such as 2.6 attaching entities. No commenter disputes NCTA's claim or alleges that the number ''2.6'' is an outlier. Verizon reports several similarly frequent rebuttals to attacher numbers below three. Averages of 2.6 attaching entities rebut both the urban and non-urbanized presumptions, which casts doubt not only on the credibility of the presumptions, but on the validity of the underlying urbanized/non-urbanized distinction as well. Rebuttals that consistently show lower average numbers based on tracking actual attachments may reflect the fact that, under its rules, service territories count as ''urban'' if any part of them is urban. This approach dilutes the density of these nominally urban areas, and undercuts the Commission's original assumption that such areas would likely have a higher average of attaching entities.

19. Recognizing that the rate reforms of 2011 have failed to align the results of the two pole attachment rate formulas as fully as intended, the Commission adopts the Petitioners' proposal as a template for corrective measures. By introducing new cost allocators of 0.31 percent and 0.56 percent for poles with 2 and 4 attaching entities respectively, with interpolated allocators between the closest whole numbers for fractional averages, the Commission brings parity to pole attachment rates at the cable rate formula level. The Petitioners' proposed solution does not require us to revisit the presumptions themselves; these continue to perform as intended with the 66% and 44% cost allocators that the Commission adopted in 2011. The Commission therefore retains the presumptions for the same reasons the Commission adopted them in 2011: to ''expedite the process'' and to help utilities ''avert the expense'' of applying demographic categories. Broadening the effect of the cost allocation system as the NCTA Petition proposes will greatly reduce the effect of, and the need for, the rebuttals. This approach to defining ''cost'' for purposes of the telecom rate formula achieves results that are consistently close to the cable rate. The new system also satisfies the fundamental purposes for using presumptions: To reduce reporting and recordkeeping requirements, to minimize administrative burdens, and to provide a level of predictability and efficiency in calculating the appropriate rate.

B. The Reasons To Revise the Cost Allocation System

20. The Commission adopts this multiple cost-allocator approach for the same reasons that motivated the initial (but ultimately incomplete) reforms in 2011: To advance the deployment and adoption of broadband Internet access, which remains a fundamental policy goal that guides its implementation of the telecom rate formula. The Commission recognizes that pole rental rates are but one of many considerations underlying marketplace deployment decisions. That said, the Commission promotes broadband deployment on numerous fronts, and has sought public comment and advice on other measures to advance this overarching policy. When discussing pole attachments policy, the Commission refers consistently to incentives for investment. By the same token, it remains the Commission's policy to minimize disincentives to investment, including artificially high pole attachment rates. Lower pole rental rates serve to encourage broadband investment, and Commission continues to use its section 224 authority as one of the tools it brings to bear to on its broadband goals. The Commission also continues to support and subsidize deployment of broadband Internet access in high-cost areas. In contrast, increased pole attachment rates would ultimately be recovered from consumers, and could lead some consumers to cut back or even discontinue their service. Thus, the Commission views pole attachment rate reform as part of the Commission's fundamental mission to advance the availability and adoption of broadband in America.

21. The Commission also intends this action to avoid the unintended consequence of higher pole attachment rates for cable providers that also offer broadband Internet access service, in those cases where the utility rebuts the Commission's attaching party presumptions. Comcast, for example, asserts that ''[a]bsent grant of the NCTA/COMPTEL Petition, a costly and time consuming process will ensue whereby utilities will seek to rebut the Commission's attaching entity presumptions, and cable operator attachers will then seek to refute the utilities' attachment studies.'' And NCTA observes that, because most cable operators may become subject to the telecom rate, and large numbers of associated attachments are implicated, utilities would have increased incentives to rebut the Commission's presumed number of attachers in areas where they had not done so previously. As a result, this could lead to pole rate increases for both cable operators and pre-existing telecommunications carriers in those areas. In the *Open Internet Order,* the Commission acknowledged that reclassification could lead to attempted increases in pole attachment rates, and stated its intention to avoid such an increase. Aligning rates produced by the two rate formulas forestalls this potential increase.

22. The Commission also is concerned that unless it closes what one commenter refers to as the ''telecom formula loophole,'' the resulting rate disparity would, more broadly, frustrate the Commission's policy goals by artificially and incrementally deterring investment in states subject to Commission pole regulation in favor of investment in areas with more favorable state-regulated pole attachment regimes. As the Commission previously has observed, ''[c]ommenters report that many [states that have elected to exercise jurisdiction over pole attachments in lieu of the Commission] apply a uniform rate for all attachments used to provide cable and telecommunications services, and have done so by establishing a rate identical or similar to the Commission's cable rate formula.'' Thus, if the Commission's telecom rate frequently yielded rates materially above the cable rate, telecommunications service providers that operate in multiple states or are deciding where to enter the marketplace, would have an artificial disincentive to invest in states governed by the Commission's 2011 telecom rate rule relative to states that established a uniform rate identical or similar to the Commission's cable rate formula. Although the Commission's action in this *Order* will not guarantee complete

state-to-state uniformity, seeking to address artificial marketplace distortions in the manner that it does here, rather than via a higher telecom rate, accords with the Commission's broadband mandate and its overall policy balancing in this context.

23. Moreover, the record developed here demonstrates that pole owners routinely rebut the Commission presumptions with averages close to 2.6 attachers. This means that the Commission's standard examples of telecom rates, which presuppose fully-allocated costs and use the Commission's presumptions, have seriously underestimated the pre-reform disparity between cable- and telecom-rate outcomes. In this proceeding, the Commission has compared estimated telecom costs of 11.2 percent in urban areas and 16.9 percent in non-urban areas with fixed cable costs of 7.4 percent. Applying the 2.6 cost allocator that the record supports shows that the telecom rate formula cost estimate would have been 19.1 percent for both urban and rural areas. The discrepancy between the presumed numbers of attachers (5 in urban areas and 3 in rural areas) and actual numbers of attachers used in pole owner rebuttals and reported in the record (often at or close to 2.6) illustrates the substantial problem attachers face when applying the rate reform of the Commission's *2011 Pole Attachment Order.*

24. Along with the forgoing policy considerations, the Commission continues to seek to balance the ''legitimate concerns of pole owners and other parties'' by preserving incentives to invest in poles and avoiding the imposition of an undue burden on utility ratepayers. In 2011, the Commission ultimately concluded that the level of recovery provided by the cable rate best balanced its broadband deployment mandates and the concerns of pole owners and utility ratepayers. Consistent with that analysis, the Commission explains above that the cable rate frequently is lower than the telecom rate as it previously had been implemented by the Commission, and reducing the telecom rate to cable rate level would further numerous policy goals. The Commission further observed that the cable rate had not produced a ''shortage of pole capacity,'' and, therefore, approximating that rate in the telecom formula likely would not diminish pole owners' ''incentives to invest in poles.'' The Commission also found ''persuasive the views of consumer advocates . . . recommend[ing] that the cable rate 'should be used for all pole attachments.' ''

25. The Commission thus remains persuaded that utility cost recovery at the level of the cable rate best balances the relevant policy considerations. Consequently, the Commission rejects arguments that the rule revision, which will more consistently and accurately ensure that the Commission's policy goals are achieved, will somehow upset the Commission's intended balance, unfairly burden utility ratepayers, or undermine the sharing of infrastructure costs. Likewise, while some commenters observe that other aspects of the *2011 Pole Attachment Order* put downward pressure on the revenues electric utilities receive from incumbent LEC attachers, the Commission already accounted for that likelihood in its weighing of policies and conclusion that it was appropriate to permit capital cost recovery at the same level as under the cable rate.

26. Utilities dismiss this policy balancing on several grounds, none of which persuade the Commission. The Utilities Telecom Council (UTC) argues that pole attachment rental is insignificant compared to other operating costs of large cable companies. Electric Utilities state that capital expenditure, and not pole attachment rental, drives deployment, and that pole attachment rental accounts for less than 2 percent of the cost of deploying fiber optic cable. UTC argues that there has been only a slow rate of broadband deployment since the telecom rate was adjusted in 2011, which proves the futility of lowering pole attachment rates, and that any cost savings from lower pole attachment rates have not been passed on to consumers, but rather, as a result of industry consolidation, have been pocketed by providers instead.

27. The Commission is skeptical that sums alleged to ''unfairly and negatively impact utilities and their ratepayers'' are ''insignificant'' in the context of broadband deployment. While the record does not include quantifiable information regarding the exact effect on deployment of pole attachment rates, insofar as keeping attachment rates reasonable for cable companies prevents them from shelving even a small number of projects, the Commission would not consider that result ''insignificant.'' There remains room for improvement in the rate of broadband expansion, and the Commission cannot afford to dismiss the importance of even potentially small increments. Commenters state that cable companies continue to deploy facilities, and Commission intend to avert any destabilization of those plans that might arise from a large and sudden pole attachment rate increase. The Commission is particularly mindful of the potential for harm to rural areas, which are the least served areas in the nation, and where the most additional pole attachments are needed to reach additional customers.

28. Utilities further argue that granting the NCTA Petition would unfairly reduce their revenue from pole attachments. They argue that the *2011 Pole Attachments Order* has already reduced their recovery from the telecommunications rate, and expect that their revenue from broadband-only Internet service providers will also decline. The Commission finds these arguments unpersuasive. Telecommunications carriers account for only a little more that 10 percent of attaching entities. Leveling their rate down to the cable rate disrupts settled expectations far less than leveling up the rental rate for the much greater number of cable attachments. Although it is true that the new system will tend to lower rates negotiated under the telecom rate formula, they will settle at the level the Commission aimed for in 2011, when its stated goal was to ''minimize the difference in rental rates paid for attachments that are used to provide voice, data, and video services.''

29. Utilities argue that increasing demand for pole space should lead to increased prices, and that any downward rate adjustment runs counter to economic principles. The Commission attaches no significance to this assertion. The express reason for the statutory imposition of cost-based, regulated rates is to bypass the economic principle that '' 'public utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents . . . in the form of unreasonably high pole attachment rates.' '' By enacting cost-based rate formulas, Congress has already accounted for the economics of scarcity that so favor pole owners. Attachment rates agreed to by broadband-only providers before reclassification may indeed be called into question, but that is because these entities are now within the ambit of Section 224, and not because the Commission revises the method of cost allocation used in the telecom rate formula.

30. Utilities claim that ''downward pressure'' on rates ''weakens the predictability and timeliness of the access process'' but this argument makes little sense. Attachers pay (and owners recover) the entire cost of access through make-ready fees paid before the attacher's facilities are mounted on

poles. Because access costs have already been recovered through make-ready fees, pole attachment rental rates are concerned solely with the pole owner's recovery of operating costs; they should have nothing to do with the ''predictability and timeliness'' of access. In any case, a ''downward pressure'' on rates to a parity with the cable rate formula level is precisely the outcome that the *2011 Pole Attachment Order* sought to achieve and that the Commission intends this new cost allocation system to implement.

C. The Commission Has Authority To Adopt the Revised Telecom Rate Rule

31. The modified telecom rate rule adopted in this *Order* is consistent with section 224(e) of the Act. The fundamental purpose of section 224(e) is to ''ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments'' by telecommunications carriers used to provide telecommunications services. As described above, in regulating cost-based telecom attachment rates under section 224(e), Congress granted the Commission substantial discretion to implement section 224(e) based on the agency's policy expertise by leaving the definition of the relevant costs ambiguous. Employing that policy expertise, the Commission builds upon the underpinnings of the statutory interpretation relied upon by the Commission in 2011 in the telecom rate rule adopted here.

32. The *2011 Pole Attachment Order* began by identifying a range of reasonable rates that could result from different definitions of ''cost'' for purposes of section 224(e). Within that range of permissible outcomes, the telecom rate rule ultimately adopted in 2011 involved the comparison of the rate yielded by two calculations, with utilities permitted to charge the higher of the two. Section 1.1409(e)(2)(i) specifies the first calculation, which the Commission anticipated would approximate the cable rate. Section 1.1409(e)(2)(ii) specifies the second calculation, based on a cost-causation approach.

33. As a threshold matter, this Order leaves unaltered the section 1.1409(e)(2)(ii) 'cost-causation'-based calculation. That calculation still will be performed whenever the Commission's telecom rate rule is used, and even utility commenters concede that it does ''not do away with apportioning the costs among all attaching entities'' in accordance with section 224(e). The definition of cost for purposes of that provision excludes capital costs and was designed to yield a rate that approached the incremental cost of attachment.

34. The question of whether, and to what extent, to allow utilities to go beyond the recovery permitted by the section 1.1409(e)(2)(ii) telecom rate calculation and recover some capital costs ultimately depends on a further policy evaluation. As the Commission explained in 2011, and as the Commission reiterates above, its implementation of section 224 is guided in significant part by its mandate to encourage the deployment of broadband. That policy, if overriding other considerations, might counsel in favor of relying solely on the rate yielded by the 'cost-causation' calculation in section 1.1409(e)(2)(ii), rather than permitting higher rates as just and reasonable under section 224(e). But the Commission also sought—and continues to seek—to balance the ''legitimate concerns of pole owners and other parties'' by preserving incentives to invest in poles and avoiding the imposition of an undue burden on utility ratepayers.

35. As described above, in 2011 the Commission adopted rules that it anticipated would result in a telecom rate that generally approximated the cable rate. In practice, however, the rule the Commission adopted has only poorly reflected the balancing of policy interests that the Commission anticipated attaining in 2011 because the facts on the ground differed significantly from the Commission presumptions upon which the 2011 rule was predicated. As a result, telecom rates calculated based on the Commission's rules frequently were higher than the levels the Commission generally sought to achieve as just and reasonable under section 224(e)—*i.e.,* materially in excess of the cable rate. The reclassification of broadband Internet access service as a telecommunications service brings this shortcoming into greater focus. Adopting the changes to section 1.1409(e)(2)(i) proposed by Petitioners will bring the balance that the Commission anticipated achieving in 2011, which the Commission is likewise persuaded is the appropriate outcome today.

36. Thus, the Commission adopts the Petitioners' proposal and modifies section 1.1409(e)(2)(i) of the rules by redefining the ambiguous term ''cost'' as a percentage of fully allocated costs that depends on whether the average number of attaching entities in an area is 2, 3, 4, or 5. The specific percentage of fully allocated costs that Commission adopts in each of those instances will yield a rate under section 1.1409(e)(2)(i) that more closely and consistently approximates the cable rate.

37. Although this definition of cost is based on an integer average number of attachers in an area, consistent with the Commission's efforts to ensure that it implements section 224(e) in a ''readily administrable'' manner, the proposal the Commission adopts incorporates a mechanism to allow parties, should they so choose, to continue to rely on non-integer average numbers of attachers in a service area by interpolating from the specified cost allocators in section 1.1409(e)(2)(i) of the rules in a manner that does not undermine the definition of cost adopted above. In pertinent part, section 224(e)(2) is focused on allocating the ''cost''—however defined—of providing space on a pole other than useable space. Although a given pole only will have an integer number of attaching entities, for administrability the Commission has long permitted pole attachment rates to be calculated based on surveys or averages of the number of attaching entities in the relevant service area, which has the potential to yield an average number of attachers that is not an integer number. The use of a non-integer number of attaching entities in conjunction with the new definition of cost adopted for areas with 2, 3, 4, or 5 average attaching entities in revised section 1.1409(e)(2)(i) of the rules would result in similar, even if not always as extensive, deviations from the cable rate as the Commission found to result under the version of the rule adopted in 2011. The Commission concludes that such deviation is at odds with the balancing of policy interests it seeks to achieve through its revisions to section 1.1409(e)(2)(i) and also anticipates that it would increase the likelihood of disputes. The Commission thus adopts the interpolation mechanism in Petitioners' proposal, which will leave parties free to continue using non-integer average number of attachers should they choose to do so, without undermining its ability to ensure just and reasonable rates under section 224(e) in an administrable manner.

38. Insofar as the reclassification of broadband Internet access service results in most Commission-regulated attachments becoming subject to the telecom rate, that counsels in favor of its redefinition of cost, contrary to the claims of some commenters. The Commission recognizes that the *2011 Pole Attachment Order* cited the marketplace distortions resulting from disparate telecom and cable rates as part of the policy rationale for the telecom rate change adopted there. As identified there, these distortions led to

competitive disparities arising from telecommunications carriers paying higher pole attachment rates than their cable operator competitors. The distortions also created disincentives for cable operators to begin offering advanced services that could newly subject them to the telecom rate. Some commenters argue that reclassification of broadband Internet access service, insofar as it results in most cable operators now being subject to the telecom rate, resolves concerns about marketplace distortions and leaves the Commission with little or no policy basis for revisiting the definition of ''cost'' to better ensure that the telecom rate is as low and close to uniform with the cable rate as possible. The Commission rejects such claims for the reasons already explained above. In particular, the current telecom rate could lead to a windfall for utilities by increasing rates for many attachments without any offsetting benefits to cable attachers. This not only would harm cable operators and their customers, but more broadly would undermine the Commission's broadband policies by creating artificial marketplace distortions and disincentives for investment. Indeed, the Commission made this point clear in the *Open Internet Order* when it stated, ''[t]o the extent that there is a potential for an increase in pole attachment rates for cable operators that also provide broadband Internet access service, the Commission is highly concerned about its effect on the positive investment incentives that [otherwise] arise from new providers' access to pole infrastructure.''

39. The Commission also disagrees with the suggestions of some commenters that only certain types of policy considerations can form the basis for its interpretation and implementation of the ambiguous term ''cost'' in section 224(e). As the D.C. Circuit recognized in *AEP,* the Commission reasonably can rely on policy rationales in giving meaning to the term ''cost.'' The Commission explains above the specific policy rationales for the approach the Commission adopts here, and finds no basis to conclude that those considerations cannot form a sufficient justification for the interpretation of the term cost in its implementation of section 224(e). For example, certain commenters assert that there is no ''economic reason'' for the adopted approach to defining cost, but do not explain what they mean by an ''economic reason,'' or why the policy considerations discussed above, including the economic effects of alternative approaches to defining cost, would not fall within that scope. Some commenters also criticize the Petitioners' proposal for failing to provide a more favorable outcome for attachers in rural areas, but fail to explain why that is a necessary basis for interpreting the term ''cost.'' To the extent that those comments are premised on certain policy arguments relied upon by the Commission in 2011 as part of its explanation of the specific definitions of cost adopted there, the Commission finds them unpersuasive. The Commission finds for the reasons explained above that the version of section 1.1409(e)(2)(i) adopted in 2011 only poorly advanced the Commission's more fundamental policy objectives, and to better advance those fundamental policy objectives, and for the other policy reasons relied on in this *Order,* the Commission departs from its prior approach that relied on historical rules tied to urban/rural distinctions. Moreover, the Commission is not revisiting how cost is defined under section 1.1409(e)(2)(i) to more consistently and accurately yield a rate the same or very similar to the cable rate as an end unto itself, but because that reflects the Commission's intended policy balancing, and the Commission rejects suggestions that that is not a valid justification. More broadly, because the Commissions explain in detail the legal and policy basis for its adoption of Petitioners' proposed revision to section 1.1409(e)(2)(i) of the rules, it rejects general claims that adopting that proposal would be arbitrary and capricious.

40. Nor does modification of the telecom rate rule render section 224(e)(2) of the Act a nullity, as some allege. For one, the Commission's telecom rate rule requires a comparison of the output of two calculations, and as explained above, even utilities appear to concede that the cost-causation-based calculation in section 1.1409(e)(2)(ii) gives meaning to section 224(e)(2). Moreover, under revised section 1.1409(e)(2)(i) the apportionment specified in section 224(e)(2) is given meaning because it is only by applying that apportionment to the definition of ''cost'' adopted above that the resulting rate will closely approximate the cable rate, and thus be just and reasonable under the analysis above.

41. The Commission also rejects claims that its approach to interpreting ''cost'' otherwise is at odds with Congressional intent and the text and structure of section 224. The *2011 Pole Attachment Order* explained why the statute does not require the telecom rate necessarily to be higher than, or otherwise different from, the cable rate and the Commission finds nothing in the record here to undercut that analysis. The Commission acknowledges some commenters' arguments that section 224(e)(2) could be read to suggest that Congress envisioned the telecom rate varying with the number of attachers, in contrast to its revised approach to defining cost in section 1.1409(e)(2)(i) of the rules, under which the resulting rate will be the same or very similar regardless of the number of attaching entities. At the same time, although section 224(e)(2) provides for costs to be apportioned in a manner that depends on the number of attachers, it left undefined what costs should be so apportioned. This is in contrast to section 224(d)(1), which specifies both a cost-based rate methodology and the defined scope of costs to be used for purposes of the cable rate. In particular, although, as some commenters observe, Congress did not simply mandate the cable rate for all attachments, neither did it specify a definition of cost that would require an outcome under section 224(e)(2) that would, in practice, always vary with the number of attaching entities. Congress thus permitted the Commission to implement section 224(e) in a manner that yielded rates that vary with the number of attachers—an outcome that would depart from the cable rate, notwithstanding the requirement in section 224(e)(1) that the rate be not only just and reasonable but also ''nondiscriminatory.'' But while permitting such an outcome, the Commission also concludes that Congress did not require such an outcome as mandatory given its use of the ambiguous term ''cost.''

42. In implementing section 224(e), the Commission considers the broader purposes of section 224, as also informed by other statutory goals and mandates. As in the *2011 Pole Attachment Order,* the Commission finds that its interpretation and implementation of section 224(e) here advances those objectives. The Commission has concluded that ''[t]he purpose of Section 224 of the Communications Act is to ensure that the deployment of communications networks and the development of competition are not impeded by private ownership and control of the scarce infrastructure and rights-of-way that many communications providers must use in order to reach customers.'' This also is borne out by the text of section 224, which emphasizes that the Commission's fundamental role is to

ensure just and reasonable rates, terms, and conditions of access. Other statutory provisions likewise counsel in favor of such an understanding of section 224, as discussed in greater detail in the *2011 Pole Attachment Order* and above. For the reasons explained in the preceding discussion, the Commission concludes that the revised telecom rate rule it adopts is necessary to ensure just and reasonable rates for pole access as a backstop for when private negotiations fail. Because the Commission can achieve that outcome by how it defines ''cost'' under section 224(e), while still formally giving meaning to all the language of that provision, the Commission concludes that its adopted approach reasonably implements that provision as understood in the context of section 224 as a whole.

43. The Commission also is not persuaded by arguments that section 224(e)(2) limits the costs to be borne by pole owners. As described above, the Commission's fundamental responsibility under section 224(e) is to ensure that regulated rates ''for pole attachments used by telecommunications carriers to provide telecommunications services'' are just, reasonable, and nondiscriminatory. Read in that context, the Commission interprets section 224(e)(2) only to govern the apportionment of the ''cost''—however defined—of unusable space in the rates pole owners charge to telecom attachers. It is true that the methodology used to calculate the apportionment of ''cost'' to a telecom attacher under section 224(e)(2) involves a calculation of what ''all attaching entities'' would bear assuming hypothetically that they all bore an equal apportionment of such cost. But it does not actually govern the cost to be borne by entities other than telecom attachers—whether the pole owner or other attachers.

D. The Revisions to the Telecom Rate Rule Are Procedurally Proper

44. Adopting this change to section 1.1409(e)(2)(i) of the rules is procedurally proper. Following the Commission's 2010 *Further Notice* seeking comment on ''establish[ing] rental rates for pole attachments that are as low and close to uniform as possible, consistent with section 224 of the Act,'' the *2011 Pole Attachment Order* revised the telecom rate rule in a manner that the Commission anticipated would reflect its balancing of policy concerns. The timely filed Petition for Reconsideration identified flaws in the Commission's factual assumptions underlying section 1.1409(e)(2)(i) of the rules as adopted in the *2011 Pole Attachment Order* that would cause that rule, in practice, to only poorly reflect the Commission's intended balancing of policy objectives. The Petitioners thus proposed that the Commission, on reconsideration, revise that rule in a manner that ''increases the certainty that pole rates will be as close as possible to the cable rate, meets the Commission's intended purposes, and makes the calculation more readily administrable by eliminating the need to distinguish urbanized and non-urbanized areas.'' Given that clear nexus to the *2011 Pole Attachment Order,* the Commission finds the request in the Petition for Reconsideration to be squarely within the scope of the order from which reconsideration is sought, and the Commission rejects arguments to the contrary. Furthermore, for the reasons discussed in the preceding section, the Commission finds merit in the Petitioners' arguments, and thus concludes that it is in the public interest not only to consider their Petition but also to grant their requested reconsideration.

45. The Commission also rejects claims that additional notice and comment is needed before it can proceed under the theory that the action in this Order effectively would modify sections 1.1417(c) and (d) of the rules. Section 1.1417(c) specifies the Commission's rebuttable presumptions of 5 attaching entities in urbanized areas and 3 attaching entities in non-urbanized areas. Section 1.1417(d) describes how a utility can instead establish its own presumptive average number of attaching entities, subject to rebuttal. As a threshold matter, the Commission is not persuaded by commenters' claims that the Petitioners' proposed revision to section 1.1409(e)(2)(i) would render those rules ''moot.'' Under the utilities' own theory, the Commission-specified presumptions in section 1.1417(c) would have increased, rather than diminished, significance when performing the section 1.1409(e)(2)(i) calculation because it would obviate the need for utilities to expend the effort to develop their own presumptive average numbers of attachers if they believe that variation in the number of attachers would not matter. Further, although the result of the calculation in section 1.1409(e)(2)(i) frequently will be higher than that yielded by the cost-causation-based calculation in section 1.1409(e)(2)(ii), its rules provide for both to be performed, with the possibility that there will be cases where the section 1.1409(e)(2)(ii) calculation is controlling. The outcome under section 1.1409(e)(2)(ii) unquestionably does vary with the number of attaching entities, and thus the utilities' ability to develop their own presumptive number of attaching entities under section 1.1417(d) remains important where the cost-causation-based calculation would be, or could be, controlling.

46. Although the Commission is not persuaded that any implications of its change to section 1.1409(e)(2)(i) of the rules for sections 1.1417(c) and (d) constitute substantive rule changes, even assuming *arguendo* that they were viewed in that manner, the Commission finds there was adequate notice and opportunity to comment. As noted above, the Commission's 2010 *Further Notice* sought comment on ''establish[ing] rental rates for pole attachments that are as low and close to uniform as possible, consistent with section 224 of the Act,'' seeking comment on particular alternative approaches and variations that might be adopted consistent with the Commission's statutory responsibilities. For example, the *Further Notice* included requests for comment on a proposal to revise the telecom rate rule so that it was the higher of a rate equal to the cable rate or a cost-causation-based rate, including regarding the administrability of such an approach and how it would relate to other Commission policies. Flowing from that *Further Notice,* the *2011 Pole Attachment Order* adopted revisions to the telecom rate rule, and the Petition for Reconsideration requested reconsideration of the resulting rule in various respects, all within the scope of the underlying *Order.* The Commission sought comment on the Petition for Reconsideration at the time it was filed, and provided a further opportunity to comment on the requested rule changes subsequent to the *Open Internet Order.* The Commission concludes that any implications for the continuing significance of section 1.1417(c) and (d) resulting from its adoption of the Petitioners' proposal should have been understood to be within the scope of issues subject to comment—indeed, commenters themselves appear to suggest that the implications for section 1.1417(c) and (d) are a necessary and unavoidable consequence of the adoption of that proposal. As a result, the Commission concluded that even assuming *arguendo* that notice and comment were required regarding the effects of a change in section 1.1409(e)(2)(i) on the presumption rules in section 1.1417(c) and (d), that was satisfied here.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

47. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission includes in Appendix B a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this *Order on Reconsideration.*

C. Congressional Review Act

49. The Commission will send a copy of the *Order on Reconsideration,* including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1).

D. Final Regulatory Flexibility Analysis

50. As required by the Regulatory Flexibility Act of 1980, as amended (RFA).

51. An Initial Regulatory Flexibility Analysis (IRFA) was included in the *Order and Further Notice* in WC Docket No. 07–245 and GN Docket No. 09–51. The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

E. Need for, and Objectives of, the Proposed Rules

52. In this *Order on Reconsideration,* the Commission further implements its policy of bringing parity to pole attachment rates at or near the 47 CFR 1.1409(e)(1) cable rate formula level, including rates that are calculated using the 47 CFR 1.1409(d)(2) telecom rate formula. The *2011 Pole Attachment Order* adopted cost allocators in the telecom rate formula that were intended to closely approximate the treatment of cost in the cable rate formula. However, these allocators perform successfully only where poles have 5 attaching entities (0.66 percent of cost) or 3 attaching entities (0.44 percent of cost). To build on that limited success, the Commission now adds cost allocators for poles with 2 attaching entities (0.31 percent of costs) and 4 attaching entities (0.56 percent of cost). When the average number of attaching entities is a fraction, the applicable cost allocator will be interpolated from the two closest whole numbers. In this way, this *Order on Reconsideration* spares cable operators that also provide a telecommunications service (*e.g.,* broadband Internet access service) from having to pay attachment rates that would be approximately 70 percent higher than the rate they pay under the existing rules. Pole attachment rate parity at the cable rate level also harmonizes regulatory treatment between Commission-regulated states and states that set their own pole attachment rates, which prevents any deterrence to investment in Commission-regulated states. By keeping pole attachment rates unified and low, the Commission furthers its overarching goal to accelerate deployment of broadband by removing barriers to infrastructure investment.

F. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA and Summary of the Assessment of the Agency of Such Issues

53. No comments relating to any of the IRFAs have been filed since the *2011 Pole Attachment Order.* In making the determinations reflected in the *Order on Reconsideration,* the Commission has considered the impact of its actions on small entities.

G. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

54. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

55. *Small Businesses.* As of 2011, there are a total of approximately 28.2 million small businesses, according to the SBA.

56. *Small Organizations.* As of 2007, there are approximately 1.6 million small organizations. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

57. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 89,327 entities were ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

58. The Commission has included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although it emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

59. *Incumbent Local Exchange Carriers (''ILECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its proposed action.

60. Competitive Local Exchange Carriers (''CLECs''), Competitive Access Providers (''CAPs''), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard

specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are ''Other Local Service Providers.'' Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by its proposed action.

61. *Interexchange Carriers (''IXCs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by its proposed action.

62. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except satellite). For that category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1368 firms had employment of fewer than 1000 employees. The Census data about firms employing more than 1000 employees does not identify the number of firms that employed 1500 employees or less. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by rules proposed in the Notice.

63. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

64. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Trends in telephone Service data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

65. *Broadband Personal Communications Service.* The broadband personal communications services (''PCS'') spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

66. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

67. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder

with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

68. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

69. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

70. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

71. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

72. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

73. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with

attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

74. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

75. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

76. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have fewer than 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

77. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

78. *Open Video Systems.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of cable firms can be considered small. In addition, the Commission notes that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some

of the OVS operators may qualify as small entities.

79. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

80. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

81. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of ISP firms are small entities.

82. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' This category includes Electric Power Distribution, Hydroelectric Power Generation, Fossil Fuel Power Generation, Nuclear Electric Power Generation, and Other Electric Power Generation. The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

83. *Natural Gas Distribution.* This economic census category comprises: ''(1) establishments primarily engaged in operating gas distribution systems (*e.g.,* mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers.'' The SBA has developed a small business size standard for this industry, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2002, there were 468 firms in this category that operated for the entire year. Of this total, 424 firms had employment of fewer than 500 employees, and 18 firms had employment of 500 to 999 employees. Thus, the majority of firms in this category can be considered small.

84. *Water Supply and Irrigation Systems.* This economic census category ''comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems.'' The SBA has developed a small business size standard for this industry, which is: all such firms having $6.5 million or less in Annual receipts. According to Census Bureau data for 2002, there were 3,830 firms in this category that operated for the entire year. Of this total, 3,757 firms had annual sales of less than $5 million, and 37 firms had sales of $5 million or more but less than $10 million. Thus, the majority of firms in this category can be considered small.

H. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

85. The new rule concerns a cost allocation method that parties use in a formula when negotiating just and reasonable pole attachment rental rates. Application of the cost allocation rule is expanded but not altered from the cost

allocation rule that parties currently use. The Commission expects the cost of complying with the revised cost allocation rule to be minimal, and compliance costs do not significantly differ from requirements in place before the adoption of this *Order on Reconsideration.*

I. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

86. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. Cost allocation methodologies used in pole attachment rate formulas are by nature the same for all entities that use them, regardless of size. No party suggested that the Commission develop alternative approaches to cost allocation based on entity size.

J. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

87. None.

V. Ordering Clauses

88. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 4(j), 201(b), 224, 251(b)(4), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201(b), 224, 251(b)(4), 303(r), this *Order on Reconsideration* IS ADOPTED.

89. *It is further ordered,* pursuant to sections 1, 4(i), 4(j), 201(b), 224, and 303(r), of the Communications Act, as amended, as amended, 47 U.S.C. 151, 154(i), 154(j), 201(b), 224, 303(r), that the *Petition for Reconsideration* or Clarification filed by the National Cable and Telecommunications Association, COMPTEL, and tw telecom inc., is GRANTED to the extent indicated herein, and otherwise is DISMISSED.

90. *It is further ordered* that Part 1 of the Commission's rules IS AMENDED as set forth in Appendix A.

91. *it is further ordered* that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), this *Order on Reconsideration shall be effective* 30 days after publication of a summary in the **Federal Register**.

92. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order* on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 Subpart J as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

Subpart J—Pole Attachment Complaint Procedures

■ 2. Section 1.1409 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(e) * * *

(2) * * *

(i) The following formula applies to the extent that it yields a rate higher than that yielded by the applicable formula in paragraph 1.1409(e)(2)(ii) of this section:

Rate = Space Factor × Cost

Where Cost

in Service Areas where the number of Attaching Entities is 5 = 0.66 × (Net Cost of a Bare Pole x Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 4 = 0.56 × (Net Cost of a Bare Pole x Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 3 = 0.44 × (Net Cost of a Bare Pole x Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is 2 = 0.31 × (Net Cost of a Bare Pole x Carrying Charge Rate)

in Service Areas where the number of Attaching Entities is not a whole number = N × (Net Cost of a Bare Pole × Carrying Charge Rate), where N is interpolated from the cost allocator associated with the nearest whole numbers above and below the number of Attaching Entities.

$$\text{Where Space Factor} = \left[\frac{\left(\begin{matrix} \text{Space} \\ \text{Occupied} \end{matrix} \right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right]$$

* * * * *

[FR Doc. 2016–01182 Filed 2–2–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 150625552–6043–02]

RIN 0648–BF22

Pacific Island Pelagic Fisheries; Exemption for Large U.S. Longline Vessels To Fish in Portions of the American Samoa Large Vessel Prohibited Area

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

ACTION: Final rule.

SUMMARY: In this final rule, NMFS allows large federally permitted U.S. longline vessels to fish in certain areas of the Large Vessel Prohibited Area (LVPA). NMFS will continue to prohibit fishing in the LVPA by large purse seine vessels. The fishing requirements for the Rose Atoll Marine National Monument remain unchanged. The intent of the rule is to improve the viability of the American Samoa longline fishery and achieve optimum yield from the fishery while preventing overfishing, in accordance with National Standard 1.

DATES: Effective January 29, 2016.

ADDRESSES: The Western Pacific Fishery Management Council (Council) prepared a regulatory amendment that provides background information on this final rule. The regulatory amendment, identified as NOAA–NMFS–2015–0080, includes an environmental assessment and regulatory impact review, and is available from *www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808–725–5176.

SUPPLEMENTARY INFORMATION: The American Samoa large vessel prohibited area (LVPA) extends seaward approximately 30–50 nm around the various islands of American Samoa (see 50 CFR 665.806(b)). Federal regulations restrict vessels 50 ft and longer from fishing for pelagic management unit species within the LVPA. The Council and NMFS established the LVPA in 2002 to prevent the potential for gear conflicts and catch competition between large and small fishing vessels. You may read more about the LVPA in the 2001 proposed rule (66 FR 39475, July 31, 2001) and 2002 final rule (67 FR 4369, January 30, 2002).

Since 2002, the American Samoa pelagic fisheries have changed such that the conditions that led the Council and NMFS to establish the LVPA are no longer present. The LVPA may be unnecessarily reducing the efficiency of the larger American Samoa longline vessels by displacing the fleet from a part of their historical fishing grounds.

To address the current fishery conditions, the Council recommended that NMFS allow federally permitted U.S. longline vessels 50 ft and longer to fish in portions of the LVPA. Specifically, this action allows large U.S. vessels that hold a Federal American Samoa longline limited entry permit to fish within the LVPA seaward of 12 nm around Swains Island, Tutuila, and the Manua Islands. NMFS will continue to prohibit fishing in the LVPA by large purse seine vessels. The fishing requirements for the Rose Atoll Marine National Monument also remain unchanged.

This action allows fishing in an additional 16,817 nm^2 of Federal waters, allowing large longline vessels to distribute fishing effort over a larger area. This may reduce catch competition among the larger vessels and promote economic efficiency by reducing transit costs. This action is intended to improve the efficiency and economic viability of the American Samoa longline fleet, while ensuring that fishing by the longline and small vessel fleets remains sustainable on an ongoing basis. NMFS will continue to prohibit fishing by large longline vessels within the U.S. Exclusive Economic Zone (EEZ) from 3–12 nm around the islands, thus maintaining non-competitive fishing opportunities for the small-vessel longline fleet. You may find additional background information on this action in the preamble to the proposed rule published on August 25, 2015 (80 FR 51527).

The Council and NMFS will annually review the effects of this final rule on catch rates, small vessel participation, and sustainable fisheries development initiatives. Any future changes would be subject to additional environmental review and opportunity for public review and comment.

Comments and Responses

On August 25, 2015, NMFS published the proposed rule and draft environmental assessment (EA) for public comment (80 FR 51527). The comment period ended September 24, 2015. NMFS received comments from over 270 individuals, commercial and recreational fishermen, businesses, Territorial government offices (including the Governor of American Samoa and the American Samoa Department of Marine and Wildlife Resources), Federal agencies, and non-governmental organizations. NMFS responds to these comments below.

Comments on the Proposed Rule

Comment 1: One commenter requested that NMFS extend the public comment period until after the Western Pacific Fishery Management Council's October 20–22, 2015, meeting in American Samoa.

Response: Under Section 304(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to make regulations proposed through the Council process available for public review and comment for a period of 15 to 60 days. NMFS is satisfied that the public comment period of 30 days for this action provided the public with adequate notice and opportunity to be heard. In addition to this public comment period, NMFS and the Council also provided several other opportunities for public input prior to publication of the proposed rule through the Council process. Specifically, the Council provided public input opportunities at its 159th Council meeting held in Guam in March 2014, and at a public hearing in American Samoa in May 2014 (79 FR 22100, April 21, 2014). The Council also provided an opportunity for public input at its 160th Council meeting held in Honolulu in June 2014. At that meeting, the Council deferred action on the issue to hold additional public meetings, in January 2015, with representatives of the American Samoa government, Swains Island, Tutuila, Manua Islands, and American Samoa fishermen. At its 162nd Council meeting held in Honolulu in March 2015, the Council considered prior public input, provided another opportunity for public input, and made its final recommendation to NMFS as described in the proposed rule and implemented by this final rule. Thus, NMFS is satisfied that three full Council meetings, the January 15, 2015, public meetings, and the 30-day public comment period on the proposed rule provided the public with adequate notice and opportunity to be heard, and that granting an extension to the public comment period until after the Council's October 2015 meeting would yield no new comment or information not previously received.

Comment 2: Several commenters said that the American Samoa longline

fishery provides food, jobs and supports local businesses and is important to the American Samoan economy.

Response: NMFS agrees that the American Samoa longline fishery is important to the American Samoa economy. According to information presented in the EA, the fishery contributed between $7.2 million and $13.7 million to the American Samoa economy between 2003 and 2013. The primary source of the fishery's economic contributions to the territory was from sales of fish to the two canneries in Pago Pago. Although estimates are not currently available, the fishing activity also supports the American Samoa economy by providing wages for captains, crew members and income for the vessel owners. Moreover, the preparations for each trip include the purchase of supplies, including fuel, food for crew, and other items, which are bought locally. Additionally, each vessel requires a variety of local services including but not limited to, electrical engineering, hydraulics, engine maintenance, and vessel repair, all of which contribute to the local economy.

Comment 3: Several commenters said that the large longline vessels are all vessels of the United States and should have the same right to fish in American Samoa waters as the small alia vessels.

Response: NMFS agrees that all federally permitted American Samoa longline vessels are vessels of the United States. Furthermore, NMFS believes that all fishing sectors should be treated equally, unless there is a legitimate conservation and management need to treat them differently. Here, NMFS is approving an action that exempts large longline vessels from an area that is currently restricted to them, but open to other fishing vessels, because the conditions that originally led to the restriction for the large longline vessels no longer exists. Specifically, NMFS and the Council established the LPVA in 2002 to separate small longline vessels from large longline and purse seine vessels, and reduce the potential for gear conflict and catch competition between small and large vessels. At that time, the American Samoa longline fishery consisted of about 40 small alia (small fishing catamarans less than 50 ft long) and 25 large conventional mono-hull longline vessels. However, since 2006, fewer than three alia have been operating on a regular basis; and of these, only one was active in 2013 and 2014.

As described in the EA, fewer than 50 other small commercial and recreational vessels fish for yellowfin and skipjack tunas and billfishes in nearshore waters and on offshore banks around American Samoa. Therefore, even accounting for the potential for competition with pelagic troll and recreational vessels, the conditions that led to the establishment of the LVPA in 2002 no longer support the full extent (30–50 nm) of the original prohibited area for longlining.

While the LVPA may benefit a few small alia vessels and these other fishing sectors, the LVPA may be further reducing the fishing efficiency of large longline vessels in combination with reduced catch per unit of effort (CPUE), lower sale price of fish, and increasing operational costs.

This action would allow large longline vessels in American Samoa to fish within the LVPA to as close as 12 nm of shore around Tutuila, Aunuu, the Manua Islands, and Swains. Waters from the shoreline to 12 nm around these islands, and within the Rose Atoll Marine National Monument, will remain closed to large longline vessels. This would continue to afford all other vessels and fishing sectors adequate spatial separation from the large vessel longline fleet and minimize the potential for catch competition and potential for gear interactions. This exemption applies only to large longline vessels of the United States that hold an American Samoa limited entry longline permit under 50 CFR 665.801.

Comment 4: Several commenters said they work and earn wages on longline vessels to support their families.

Response: Comment noted. See response to Comment 2.

Comment 5: Several commenters said the LVPA closure areas have been under-utilized by the alia longline fleet for more than 10 years.

Response: See response to Comment 3.

Comment 6: Several commenters noted that because fuel prices are now at an all-time low, reducing the cost of trips, including fuel cost is no longer a justification for this action.

Response: NMFS is approving an action to exempt large longline vessels from a portion of the existing LVPA because the conditions that led to the establishment of the closure are no longer present or necessary to prevent gear conflict and catch competition. Additionally, this action could improve efficiency in fishing activities by large longline vessels. While fuel price may currently be lower than in the past, it is subject to fluctuation due to multiple global and economic factors. Further, the success of longline fishing depends on being able to follow the fish, especially if they are abundant within the LVPA or pass into the LVPA. Because cost of fuel continues to be the principal expense for longline fishing, this action could improve trip profits by lowering fuel costs as large longline vessels could fish closer to port than currently allowed.

Comment 7: Several commenters noted that fuel prices fluctuate and allowing the large longline vessels to fish closer to home would result in a small cost savings in fuel.

Response: See response to Comment 6.

Comment 8: Several commenters said that the action would improve safety at sea for small fishing vessels because large vessels would now be in the vicinity to assist small vessels that get into trouble.

Response: Comment noted.

Comment 9: Several commenters said that there are higher catches and better catch rates of pelagic fish by recreational sectors in American Samoa compared to neighboring countries that do not have a LVPA and, therefore, opposed the action.

Response: Within the national waters of neighboring South Pacific countries, NMFS has no available information on the catch rates of pelagic species other than by longline and purse seine vessels. The available information for these fisheries indicates that catch rates for albacore have declined across most of the South Pacific, and the poor economic conditions faced by the American Samoa fleet were also experienced by most of the other longline fishing nations in the South Pacific. Through this action, NMFS expects that longline vessels will have the opportunity to improve catch rates that have been steadily declining, and to achieve optimum yield, while still maintaining a reduced area closure to protect the needs of other fishery participants, including recreational fishers.

Comment 10: Several commenters said that under the action, longline vessels would destroy coral reef ecosystem resources and breeding grounds for other fish species.

Response: While the commenter did not specify how longline vessels would destroy such marine resources, NMFS assumes that the commenter was referring to the potential for entanglement on coral reefs. NMFS notes that longline fishing in American Samoa does not occur over coral reefs, but rather much farther offshore and at depths (100–400 m) well below the photic zone where most coral reefs occur. Waters from the shoreline to 12 nm from shore will remain closed to large longline vessels, and there is little, if any, coral reef habitat beyond 12 nm.

In addition, longliners actively avoid shallow coral reef habitat, including fish breeding grounds, in order to prevent gear loss through entanglement with the bottom substrate. The American Samoa longline fishery does not target nor incidentally catch coral reef fish species.

Comment 11: Several commenters said that longline fishing has dramatically reduced fish populations around American Samoa and that this action would result in overfishing and deplete fish stocks.

Response: NMFS disagrees. While the commenters did not identify the fish populations that have been reduced or would become subject to overfishing because of the action, the American Samoa longline fishery primarily targets albacore. The most recent stock assessment summarized in the EA indicates that this population is not subject to overfishing and is not overfished. Additionally, stock assessments for most species incidentally harvested in the fishery, including yellowfin, skipjack, and billfish indicate that these species are also not subject to overfishing or overfished. Bigeye tuna is incidentally harvested, and is subject to overfishing. Nevertheless, because tunas, billfish, and other species caught by the American Samoa longline fishery are comprised of larger highly migratory populations, NMFS does not expect this action to contribute to overfishing or localized depletion of these stocks. See also response to Comment 12.

Comment 12: Several commenters said that there are no data to support claims that the action would result in overfishing or have a detrimental effect on alia longline vessels or recreational sport fishing vessels.

Response: NMFS does not expect this action to result in overfishing of any pelagic species nor have a detrimental effect on alia longliners or sport fishing vessels. Skipjack and yellowfin together comprise about 95 percent of the troll catch, the primary fishing method of sport fishing vessels. Furthermore, catch rates of these two species show no signs of decline over a 30-yr period, which encompasses the period of expansion of the American Samoa longline fleet. South Pacific albacore, the primary target of both alia and large longline vessels, is not subject to overfishing and is not overfished. Similarly, skipjack and yellowfin are not subject to overfishing nor overfished, and NMFS does not expect this action to result in a change in the status of these species. Bigeye tuna in the western and central Pacific Ocean, which is incidentally harvested in the American Samoa fishery, is currently subject to overfishing, but is not overfished, and is managed under conservation and management measures adopted by the Western and Central Pacific Fisheries Commission, and implemented by NMFS. The American Samoa longline fishery annually landed fewer than 200 mt of bigeye tuna since 2005 with 85 mt landed in 2013.

Comment 13: Several commenters said that the action would result in a higher risk for oil spills and marine debris, but did not explain why.

Response: Based on available information presented in the EA, NMFS does not expect a change in the level of risk for oil spills or marine debris through this action. Allowing large longline vessels to fish within a portion of the LVPA will not lead to an increase in the number of vessels participating in the fishery or change vessel operations in a manner that would lead to greater discharge of oil or fuel into ocean waters. Further, the action does not present any greater danger of longline vessels grounding, or habitat damage compared to the status quo because there are no areas in the EEZ seaward of 12 nm shallow enough for a vessel to run aground.

Comment 14: One commenter felt that the action would endanger the survival of newly born humpback whale calves through entanglement and drowning.

Response: NMFS disagrees. Humpback whale calving and mother and calf pairs occur in shallow coastal waters within 12 nm, which would remain closed to large longline vessels. Beyond 12 nm, the movement of longline vessels will not change the amount of fishing effort or vessel operations and would not elevate the risk of entanglement. There have been no recorded or observed interactions with humpback whales in the American Samoa longline fishery.

Comment 15: Several commenters expressed the concern that public submissions on the action provided incorrect and/or misleading information regarding the regulatory protections for sea turtles and marine mammals in the action area, as well as impacts to these species by the American Samoa longline fishery. The commenters noted that NMFS has implemented regulations to protect marine resources, and they supported the action.

Response: Comment noted.

Comment 16: One commenter said that the action could affect the composition and character of the marine environment around American Samoa, including marine populations protected by the National Marine Sanctuary of America Samoa.

Response: While the commenter did not specify how the action would affect the composition and character of the marine environment, longline fishing by large longline vessels has been occurring since the mid-1990s within the area where the LVPA now exists. NMFS has no observed or reported information indicating that longline fishing from large longline vessels has resulted in negative impacts to the composition and character of the marine environment around American Samoa, either before or after the establishment of the LVPA in 2002. Because the action would continue to prohibit longline fishing by large vessels from occurring within 12 nm of American Samoa, NMFS does not expect the action would result in such changes.

The American Samoa longline fishery does not operate within the boundaries of the National Marine Sanctuary of America Samoa, which extends from the shoreline out to a distance of approximately 3 nm. The American Samoa longline fleet targets highly migratory pelagic species such as albacore at considerable distances from the shoreline seaward of the outer-boundary of the American Samoa sanctuary. Because the action continues to prohibit longline fishing by large vessels from occurring within 12 nm of American Samoa and within the Sanctuary, NMFS does not expect the action would affect marine populations protected by the sanctuary.

Comment 17: Several commenters said that although there are only a few active alia longline vessels, the action would make it even more difficult for small alia vessels to re-enter the fishery because they would not be able to compete economically with the large longline vessels.

Response: Alia fishing vessels operated for years before and after the arrival of large longline vessels in American Samoa in the 1990s. Based on information available, NMFS believes the reduced participation of the small alia vessels in the fishery was driven primarily by low catch rates of albacore experienced across the South Pacific region combined with high economic and other operating costs. See EA section 3.1.4.1.

The Council has been working with the American Samoa government on several fishery development initiatives, including the design of a new multi-purpose alia fishing vessel and training in fresh fish handling for local and export markets. Smaller, alia-type vessels are likely better suited to conduct fresh fish operations targeting yellowfin and bigeye tunas and, as such, would minimize the potential economic

competition with larger longline vessels targeting albacore. Data indicates that gear competition between large longline and alia vessels has not been a contributing factor to the decline of alia vessels. Accordingly, NMFS has no reason to believe that the action will adversely affect reentry of fishery participants into the alia fishery. See also response to Comments 3 and 24.

Comment 18: Several commenters expressed concern that the action would be detrimental to the recreational fishery and the growing sportfish tourism industry in American Samoa.

Response: NMFS has no information to suggest that the action would adversely affect other fishery participants. NMFS and the Council established the LPVA in 2002 to separate small longline vessels from large longline and purse seine vessels, and reduce the potential for gear conflict and catch competition. At that time, the American Samoa longline fishery consisted of about 40 small alia and 25 large conventional mono-hull longline vessels. Since then, there has been an increase in participation by the recreational and sport fishing fisheries, which target species such as skipjack tuna, yellowfin tuna, mahimahi, wahoo and billfish. These species are only a minor component of the catch by American Samoa longline vessels. Information in the EA does not indicate longline fisheries are negatively affecting troll CPUE. Specifically the data showed that increased longline catches of skipjack and yellowfin are coincident with higher CPUEs of the same two species in the troll fishery. This suggests that the CPUEs for both fisheries are dependent on regional availability of skipjack and yellowfin tuna. Similar studies from other parts of the region and referenced in the EA showed no evidence of interactions and catch competition between troll and longline vessels. See also response to Comment 9.

Sport fishing vessels generally operate within 12 nm from shore and in offshore areas around banks and seamounts, which longline vessels actively avoid to reduce the potential for longline gear tangling on bottom substrates. Furthermore, sport fishing and subsistence fishing beyond 12 nm from shore does not occur at sufficient frequency or concentration to justify the continued restriction of large longline vessels out to the full 50 nm to control the potential for gear conflict or catch competition. Although NMFS allows recreational and non-commercial fishing within the Rose Atoll Marine National Monument beyond 12 nm with a federal permit, all commercial fishing, including longline fishing is prohibited throughout the monument out to a distance of approximately 50 nm around the atoll.

Comment 19: Several commenters thought that the action would affect the ability of recreational and subsistence fishermen to catch fish and feed their families.

Response: The commenters did not explain how the proposed action would affect their ability to catch fish. There is a wide variety of reef fish, deep bottomfish, and various pelagic species that will remain accessible exclusively for all fishermen with vessels smaller than 50 ft. NMFS does not expect the action would negatively impact the ability of these fishing sectors to catch fish for recreation or subsistence, as large longline vessels would continue to be prohibited from fishing within 12 nm around American Samoa.

Comment 20: Several commenters thought that allowing large longline vessels to fish on the banks and seamounts within the LVPA including South Bank, East Bank, Two Percent Bank, South East Bank, and North East Bank would deplete fish stocks and result in damage to bottom habitat.

Response: NMFS disagrees. See responses to Comments 10 and 11.

Comment 21: Several commenters said that existing federal regulations require American Samoa longline vessels to deploy all hooks below 100 m in depth to minimize interaction with sea turtles. Because of this existing gear regulation, longliners will avoid shallow banks and seamounts used by small vessels to minimize potential for gear loss.

Response: NMFS agrees. Federal regulations governing the American Samoa longline fishery at 50 CFR part 665 Subpart F require all longline hooks to be set at least 100 m deep. This is accomplished by requiring a minimum float line length of 30 m, together with a minimum of 70 m of blank mainline (no hooks) between each float line and the first branch line in either direction along the mainline. Both small and large longline vessels actively avoid bottom substrates to prevent gear entanglement and loss. See also response to Comment 10.

Comment 22: Several commenters said that albacore and other tuna species caught by the American Samoa longline fleet are highly migratory species and do not remain within the confines of the existing LVPA or the proposed exempted area and, therefore, there are no data to support public comments saying the longline fishery is detrimental to alia and sport fishing fleet.

Response: NMFS agrees. Not only do these pelagic species have an extensive migratory range, there are seasonal abundance trends that influence the catchability of these species throughout the year. This affects both large and small longliners. See also responses to Comments 11 and 18.

Comment 23: Several commenters felt that the action would result in gear conflicts between large longline vessels and small longline, troll, and recreational fishing vessels because NMFS and the Council underestimated the number of small vessels currently operating within the LVPA.

Response: A purpose in establishing the LVPA in 2002 was to separate small longline vessels from large longline and purse seine vessels to reduce the potential for gear conflict and catch competition. NMFS believes that the information presented by the Council and in the EA indicates that the conditions for the conservation and management need in establishing the LVPA no longer exist to the degree that requires its continuation. NMFS, moreover, believes that the 12 nm prohibition applied to large longline vessels provides adequate separation between small fishing vessels from the large longline and purse seine vessels, while still allowing for optimum yield for all fishing sectors.

Furthermore, the frequency and concentration of small alia longline vessels and small non-longline vessels fishing seaward of 12 nm is lower than that of the large longline vessels. Many of these small vessels are recreational and do not operate on a daily basis. The EA discusses the potential impacts of fishery participants, including impacts to the small vessel fleets and indicates this action will continue to provide for sufficient spatial separation between small and large vessels. The Council and NMFS used the best available information provided by the American Samoa Department of Marine and Wildlife Resources (DMWR) creel survey to estimate the number of vessels operating in the LVPA. See also response to Comment 18.

Comment 24: One commenter noted that two large local U.S. longliners already have permission to fish in the LVPA, and so there is nothing new about larger longline vessels fishing in the area.

Response: Comment noted. As part of the establishment of the LVPA regulations, NMFS exempted two individuals and their vessels from the LVPA restrictions on the basis that these individuals had made at least one landing of pelagic management unit species (MUS) with those vessels in the

LVPA area on or prior to November 13, 1997. See 50 CFR 665.818. NMFS has no information that the activity of these two vessels has created gear conflicts or affected the catches of smaller vessels within the LVPA.

Comment 25: Several commenters thought that the action would negatively affect the American Samoan Government's plan to build a fleet of 40 ft super alia intended to increase local indigenous Samoan participation in fishing in the LVPA.

Response: Based on information provided in comments submitted by the Government of American Samoa, the government has received a technical assistance grant from the U.S. Department of the Interior for the development of a prototype-fishing vessel called a super alia. Because the vessel has yet to be designed, constructed, or tested, and because additional capital would be required to build a fleet of these super alia envisioned under the Government's plan, NMFS cannot predict what changes, if any, may occur in the commercial fisheries because of this grant. However, the Council and NMFS are prepared to work with the Government of American Samoa to address potential regulatory and other impediments to sustainable fisheries development initiatives, once a super alia fleet is fully developed and the Government of American Samoa's alia program is implemented.

Comment 26: Several commenters said that a super alia fishing fleet is not realistic because fishermen will run into the same problems the previous alia fleet experienced, including high operation costs for longline gear, fuel, and bait.

Response: Comment noted. See responses to Comments 17 and 25.

Comment 27: Several commenters noted that in the Deed of Cession with the chiefs of the islands of Tutuila, Aunuu, and Manua Islands, the United States promised to protect the lands, preserve the traditions, customs, language and culture, Samoan way of life, and the waters surrounding the islands, and that all the science and environmental analysis should not supersede the rights of the people of these islands.

Response: NMFS' decision to approve the Council's recommendation to modify the LVPA is consistent with its authority under the Magnuson-Stevens Act to manage fishery resources in the U.S. EEZ. This action relieves an area restriction that applied to certain large commercial fishing operators within a portion of the US EEZ (generally 12 to 50 nm from shore), based on NMFS' determination that the restriction no longer serves the conservation and management purposes for which it was developed. Importantly, this action preserves full access to these waters by smaller vessels, including alias, sport fishers, and artisanal fishing vessels, throughout the EEZ, as authorized under the existing American Samoa Archipelagic Fishery Ecosystem Plan and implementing regulations. Further, this action does not alter the authority of American Samoa to manage its coastal fisheries to the extent authorized under the Magnuson-Stevens Act, 16 U.S.C. 1856.

NMFS took particular care to ensure that the views of American Samoa stakeholders, including fishermen, fishing communities, and the American Samoa government, were solicited and taken into account throughout the development of this action. Consistent with the Magnuson-Stevens Act, the Council and NMFS provided a number of opportunities for American Samoa's participation during all material phases of the development of this measure, including Council meetings to discuss the amendment, the Coastal Zone Management Act (CZMA) process, and public meetings held in American Samoa (see response to Comment 1).

Comment 28: One commenter expressed support for the purse seine fleet.

Response: Comment noted. This action does not change the existing prohibitions against purse seine fishing in the LVPA.

Comment 29: One commenter felt that the action is based on incomplete data because the Council based its decision solely on the decrease of the alia longline fishing activities, and did not consider fishing activities by troll and bottomfish vessels.

Response: NMFS disagrees that the Council did not consider troll and bottomfish vessels. The EA contains detailed description of fishing sectors of American Samoa, including catch and effort by the troll and bottomfish fisheries, and other small boat fisheries. See response to Comment 23.

Comment 30: One commenter said the Council did not adequately consult with stakeholders prior to recommending the proposed action at its 162nd meeting in March 2015.

Response: See response to Comment 1.

Comment 31: One commenter thought that the proposed action ignores the fact that there are significant fishing activities in the exemption areas, especially in the vicinity near the banks.

Response: NMFS disagrees. The EA identifies the types of fisheries that occur within the LVPA around American Samoa, including the alia longline fishery, troll and bottomfish fishery, and recreational fisheries. The EA also describes the number of vessels in each fishery, and provides catch and effort information and fishing location, where data is available. Moreover, the EA also provides an estimate of troll catch from the offshore banks as a percentage of total troll catch of American Samoa and analyzes the effects of the action on those fishing sectors.

Comment 32: One commenter felt that NOAA should increase the collection of information about seabirds and other protected species, by expanding current observer coverage as this fishery expands in size and area.

Response: NMFS strives to maintain an annual observer coverage rate of at least 20 percent in the American Samoa longline fishery, and has steadily increased observer coverage from approximately 6 percent in 2006 to nearly 20 percent in 2014. In some years, NMFS has been able to cover over 33 percent of all longline trips in the American Samoa longline fishery. However, NMFS' ability to increase and maintain observer coverage greater than 20 percent will be subject to available funding. NMFS also notes that the fishery may not increase in the total number of vessels because the number of available fishing permits is limited.

Comment 33: One commenter thought that, although the action would not alter fishing activities within the Rose Atoll Marine National Monument, the change may result in greater likelihood and frequency of derelict fishing gear washing ashore and recommends NMFS include measures to minimize derelict fishing gear.

Response: NMFS is unaware of any instances where such an event has occurred. Based on information provided in the USFWS Rose Atoll National Wildlife Refuge Comprehensive Conservation Plan (May 2014), the most significant derelict fishing gear is from the grounding of a Taiwanese vessel, which occurred in 1993, over 20 years ago. The plan also notes that observations of other forms of marine debris at Rose Atoll are rare, and do not constitute a significant visual presence in the atoll. NMFS does not expect this action to change the amount of fishing effort or other vessel operations, and is unlikely to increase frequency of derelict gear. For these reasons, NMFS is satisfied that additional measures to minimize derelict fishing gear from American Samoa longline fisheries are unnecessary at this time.

Comments on the Draft Environmental Assessment

Comment 34: One commenter said that NMFS should not open a currently closed area without a full environmental impact statement and additional sea turtle mitigation measures, including increased observer coverage and hard interaction limits.

Response: Based on the analysis presented in the EA, NMFS has determined that the proposed action would not result in significant impacts affecting the quality of the human environment and, therefore, does not warrant the preparation of an environmental impact statement. The analysis presented in the EA incorporates the best available scientific and commercial information on the fishery and its impacts on the environment, including sea turtles. Specifically, along with other relevant information, the EA considers the analysis from an October 30, 2015, biological opinion (2015 BiOp) that NMFS developed as part of a formal consultation under the Endangered Species Act. (See also responses to Comments 35–37).

Although participation and effort in the American Samoa longline fishery has varied and declined in recent years, NMFS expects that the level of participation, in terms of fleet-wide sets and hooks deployed, likely will return to historic levels. For this reason, the analysis in the 2015 BiOp anticipated the American Samoa longline fishery operating up to the level seen in 2007 when 29 vessels deployed 5,920 sets and approximately 17,554,000 hooks, and evaluated the potential environmental effects of the fishery operating at these levels. Additionally, NMFS anticipates the continued placement of observers on approximately 20 percent of all longline trips.

In the 2015 BiOp, NMFS concluded that the continued operation of the American Samoa longline fishery under existing federal regulations, and effort levels expected under the proposed action, is not likely to jeopardize the continued existence of any ESA-listed species, including sea turtles. NMFS based this conclusion on a thorough assessment of the effects of the action, together with the environmental baseline and the cumulative effects. The EA analysis considered the information presented in the 2015 BiOp and found that the expected level of fishery interactions under the proposed action would not result in significant population level effects for any ESA-listed species or their habitats, including sea turtles.

Comment 35: One commenter said that, based on its calculations from information contained in the draft EA, the American Samoa longline fishery has killed approximately three adult female leatherback sea turtles each year for four years.

Response: NMFS disagrees with the commenter's conclusion about leatherback mortality in the action. At the time that NMFS published the proposed rule, the agency was undergoing consultation pursuant to Section 7 of the ESA for the American Samoa pelagic longline fishery. As part of the consultation process, NMFS prepared a memorandum dated May 8, 2015, (amended July 21, 2015) under the authority of sections 7(a)(2) and 7(d) of the ESA for the proposed continued operation of the fishery while consultation was ongoing. The draft EA incorporated information on the estimated leatherback take from this memorandum, and projected that, by the completion of consultation in October 2015, the longline fishery could be expected to interact with 27 leatherbacks, the equivalent of one adult nesting female mortality every 1.566 years. Since publication of the proposed rule, NMFS completed the 2015 BiOp, which considered all relevant commercial and scientific information available on sea turtles, and which supersedes the information in the May 8, 2015 memorandum as amended on July 21, 2015. NMFS' final EA considers the information found in the 2015 BiOp.

In the 2015 BiOp, NMFS estimated anticipated future interactions between the fishery and leatherbacks sea turtles. NMFS used previous, observed interactions and anticipated effort in the fishery to predict the future level of take. NMFS then used a discounting methodology to analyze the impact of this level of take on the leatherback population.

NMFS based the interaction estimates in the BiOp on a random sample of longline trips on which scientific observers are deployed. Relying on Table 7 of the 2015 BiOp, NMFS estimates 36 total leatherback interactions between 2011 and mid-2015 (based on eight observed interactions). NMFS used these interactions to calculate an average rate of interaction. That was then multiplied by the anticipated annual effort in the fishery to determine that 23 leatherback interactions are anticipated annually. NMFS then applied a leatherback mortality rate of 70.6, based on observed mortalities, injuries, and applying the NMFS post-hooking mortality criteria (Ryder et al. 2006).

Accordingly, NMFS anticipates 23 interactions to result in 16.28 ($23 \times 0.76 = 16.28$) leatherback sea turtle mortalities. However, many of these interactions occur with juvenile sea turtles that already experience low survival rates even in the absence of fishing. Therefore, NMFS must apply a discount to the expected rate of annual interactions in order to estimate the risk that the proposed action would pose to the western Pacific leatherback sea turtle population.

NMFS first estimated the number of adult females or adult nester equivalents (ANE) harmed through injury or death related to the fishery. The American Samoa longline fishery interacts with male and female leatherback sea turtles, and they are predominantly juveniles (Van Houtan 2015). To estimate the number of adult females that could potentially be killed by 23 interactions, two adjustments were applied to the calculation above: (1) The proportion of females in the adult population (using a ratio of 65 percent females to 35 percent males); and (2) the adult equivalent represented by each juvenile interaction. The adult equivalent was determined using the discounting method (Van Houtan 2013, 2015). This discounting method summarized in the 2015 BiOp incorporates an exact demographic match to the observed interactions, and relies on length measurements by fishery observers of bycaught turtles, and conversion of these recorded lengths to ages. Therefore, of the estimated 16.28 leatherback sea turtle mortalities, NMFS estimates 10.58 would be females ($16.28 \times 0.65 = 10.58$). Applying the adult equivalent discounting method (Van Houtan 2013, 2015), NMFS estimates 23 leatherback interactions would result in the mortality of 0.55 adult females annually, or one adult female mortality every 1.8 years from a nesting population of 2,739 females (Van Houtan 2015). This represents less than 0.0002, or 0.02 percent of the nesting population in the region. NMFS considers this level of impact to the population to be negligible, and it will not adversely affect the species' ability to survive, successfully reproduce, and recover.

NMFS believes that the commenter made several assumptions in the calculations that led to a flawed conclusion on sea turtle mortality. The commenter assumed, for instance, an observer coverage rate of 20 percent over the four-year period, and then apparently multiplied the observed number of injured and killed since 2010

by a factor of five. The commenter incorrectly applied the NMFS post-hooking mortality criteria of 70.6 percent (Ryder et al. 2006) to the expanded number of injured turtles.

The mortality rate is an average rate where mortality is 100 percent and injuries are assessed at a rate between 0 and 100 percent, based on the observed hooking or entanglement injuries and using the NMFS post-hooking mortality criteria (Ryder et al. 2006). Therefore, the mortality rate of 70.6 percent already accounts for all observed mortalities. Thus, applying this rate to the expanded, injured turtle count is an incorrect use of the mortality rate. Furthermore, the mortality rate of 70.6 percent is a conservative mortality rate because NMFS did not separate out the larger turtles from the younger, smaller turtles that have a much higher mortality rate. The five smaller turtles were boarded dead (a mortality rate of 100 percent) and the three larger turtles that were not boarded had a mortality rate of 21.7 percent. When using these individual mortality rates in the ANE calculation, the ANE is 0.33 rather than 0.55. While NMFS provided exact measurements for two turtles, it is incorrect to assume the other turtles were adults. In fact, the fishery predominantly interacts with juvenile turtles; of the eight observed interactions with leatherbacks in this fishery, five were juveniles and three were adults.

NMFS, therefore, believes that the data and analysis contained in the 2015 BiOp and EA are the best available science on which to base determinations of the impact by the fishery to protected marine species.

Comment 36: One commenter said that the draft EA does not adequately discuss the impacts to endangered leatherback sea turtles from the fishery and its expansion into the LVPA.

Response: The analysis presented in the final EA incorporates the best available scientific and commercial information on the fishery and considers the 2015 BiOp, which NMFS developed as part of a formal consultation under the Endangered Species Act. The analysis in the 2015 BiOp indicates that under the proposed action the fishery could potentially interact with 23 leatherback sea turtles each year. Genetic analysis of three leatherback turtles caught incidentally in the American Samoa longline fishery indicate that they are from the Western Pacific genetic stock, which is comprised of nesting populations in Papua-Barat, Indonesia, Papua New Guinea and Solomon Islands.

Based on the analysis in the 2015 BiOp, NMFS estimates the longline fishery would cause 0.55 adult female mortalities annually. This is the equivalent of one adult female mortality every 1.8 years from a nesting population of 2,739 females in the Western Pacific population. (Van Houtan 2015). This represents less than 0.0002 (0.02 percent) of the nesting population in the region. In the 2015 BiOp, NMFS concluded that this anticipated level of interactions and associated adult female mortalities under the proposed action is not likely to jeopardize the continued existence of leatherback sea turtle populations. The analysis in the EA further indicates that 0.55 adult female mortalities annually or 1.65 adult female mortalities over a 3-yr period is not likely to pose an appreciable risk or result in significant impacts to leatherback sea turtle populations in the Western Pacific region.

Comment 37: One commenter said that the draft EA failed to assess adequately the proposed action and several upcoming actions all of which will increase risk of interactions with sea turtles. First, the proposed action will allow large longline vessels into pelagic habitat around American Samoa most likely occupied by leatherback sea turtles. Second, the proposed rule will increase fishing effort as measured by area of the activity and by hooks deployed. Finally, the proposed action's risk of increasing interactions must be considered with the Council approved amendments that create a shallow-set longline fishery by eliminating the depth requirement for hooks and increasing the swordfish retention trip limit.

Response: As discussed in response to comment 34, the final EA considers analysis presented in the 2015 BiOp, which estimates population level impacts to sea turtle populations resulting from the proposed action and in anticipation of increased fishing effort in coastal areas. After analyzing the proposed action, including the environmental baselines and cumulative effects, and its impact on protected species, NMFS concluded in the 2015 BiOp that the action is not expected to cause an appreciable reduction in the likelihood of both the survival and recovery of leatherback sea turtles in the wild, or other protected species in the action area. The final EA includes this information. In addition to impacts on protected resources, the final EA also analyzed whether the action would significantly affect the human and natural environment. Based on the analysis, NMFS determined that the impacts of the action were not significant (see Section 4 of the final EA). NMFS has no information to believe that the partial reopening of an area currently closed to longlining will result in unacceptable impacts to sea turtles or other protected species.

The targeting of swordfish generally requires deployment of hooks shallower than 100 meters. However, as described in the draft EA, current federal regulations require all hooks set by the fishery to be set deeper than 100 meters in order to minimize the risk of sea turtle interaction. Thus, current federal regulations prohibit American Samoa longline vessels from targeting swordfish with hooks set shallower than 100 meters in the American Samoa EEZ.

NMFS notes that the Council has taken action to recommend creating a shallow-set longline fishery in American Samoa. The Council, however, has not yet developed an amendment or associated environmental impact analyses describing such a fishery. Should the Council propose that action as an amendment, NMFS would conduct all necessary analyses to determine whether the action complies with the Magnuson-Stevens Act and all applicable laws. At this time, however, NMFS is satisfied that the final EA adequately assesses the cumulative impact of the Council action and all reasonably foreseeable actions.

Changes From the Proposed Rule

In this final rule, NMFS made minor housekeeping changes in the tables of boundary coordinates in § 665.818(b). In the proposed rule, NMFS had labeled the points for each coordinate with simple numbers. Using the same numbers for each table could lead to confusion among fishermen and enforcement officials, so in this final rule, NMFS added prefixes for boundary point labels that are different for each island or island group. Specifically, the Tutuila coordinates carry the prefix ''TU-,'' the Manua coordinates carry the prefix ''MA-,'' and the Swains coordinates carry the prefix ''SW-.''

Also in the proposed rule, in the table of boundary coordinates for Swain's Island at § 665.818(b)(3), NMFS only listed degrees and minutes in defining the latitude and longitude for each coordinate, and inadvertently omitted the seconds. In this final rule, NMFS corrects that omission by including degrees, minutes, and seconds for each boundary coordinate.

The final rule also corrects the first instance of the coordinate for MA point 1. The proposed rule listed the W. long. coordinate as 169°53′7″. The final rule

corrects the seconds so that the W. long. coordinate is now 169°53′37″.

This final rule also clarifies that the datum used to define the boundary coordinates in § 665.818(b) is the World Geodetic System 1984 (WGS84).

Classification

The Regional Administrator, Pacific Islands Region, NMFS, has determined that this final rule is necessary for the conservation and management of the pelagic fisheries of American Samoa, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule and does not repeat it here. NMFS received no comments on this certification; as a result, a regulatory flexibility analysis is not required, and none has been prepared.

Because this rule relieves a restriction by increasing the geographical area where fishing is allowed, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). Since 2002, NMFS has prohibited pelagic longline fishing by large U.S. vessels in the LVPA, which extended seaward approximately 30–50 nm around the various islands of American Samoa. At that time, the Council and NMFS intended the LVPA to prevent gear conflicts and catch competition between large and small fishing vessels. Since 2002, however, the conditions that led to the establishment of the LVPA in 2002 no longer support the full extent (30–50 nm) of the original prohibited area for longlining. The LVPA may be unnecessarily reducing the efficiency of the larger vessels by displacing them from a part of their historical fishing grounds. This action will allow large vessels to fish within the LVPA to as close as 12 nm around the islands. The action adds about 16,817 nm^2 of Federal waters that are accessible to these vessels. By allowing access to some of the previously restricted area, the action will improve the efficiency and economic viability of the American Samoa longline fleet.

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

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: January 28, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Revise § 665.818 to read as follows:

§ 665.818 Exemptions for American Samoa large vessel prohibited areas.

(a) *Exemption for historical participation.* (1) An exemption will be issued to a person who currently owns a large vessel to use that vessel to fish for western Pacific pelagic MUS in the American Samoa large vessel prohibited areas, if the person seeking the exemption had been the owner of that vessel when it was registered for use with a Western Pacific general longline permit, and has made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997.

(2) A landing of western Pacific pelagic MUS for the purpose of this paragraph must have been properly recorded on a NMFS Western Pacific Federal daily longline form that was submitted to NMFS, as required in § 665.14.

(3) An exemption is valid only for a vessel that was registered for use with a Western Pacific general longline permit and landed western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, or for a replacement vessel of equal or smaller LOA than the vessel that was initially registered for use with a Western Pacific general longline permit on or prior to November 13, 1997.

(4) An exemption is valid only for the vessel for which it is registered. An exemption not registered for use with a particular vessel may not be used.

(5) An exemption may not be transferred to another person.

(6) If more than one person, *e.g.,* a partnership or corporation, owned a large vessel when it was registered for use with a Western Pacific general longline permit and made at least one landing of western Pacific pelagic MUS in American Samoa on or prior to November 13, 1997, an exemption issued under this section will be issued to only one person.

(b) *Exemption for vessel size.* Except as otherwise prohibited in subpart I of this part, a vessel of any size that is registered for use with a valid American Samoa longline limited access permit is authorized to fish for western Pacific pelagic MUS within the American Samoa large vessel prohibited areas as defined in § 665.806(b), except that no large vessel as defined in § 665.12 may be used to fish for western Pacific pelagic MUS in the portions of the American Samoa large vessel prohibited areas, as follows:

(1) EEZ waters around Tutuila Island enclosed by straight lines connecting the following coordinates (the datum for these coordinates is World Geodetic System 1984 (WGS84)):

Point	S. lat.	W. long.
TU–1	14°01′42″	171°02′36″
TU–2	14°01′42″	170°20′22″
TU–3	14°34′31″	170°20′22″
TU–4	14°34′31″	171°03′10″
TU–5	14°02′47″	171°03′10″
TU–1	14°01′42″	171°02′36″

(2) EEZ waters around the Manua Islands enclosed by straight lines connecting the following coordinates (WGS84):

Point	S. lat.	W. long.
MA–1	13°57′16″	169°53′37″
MA–2	13°57′16″	169°12′45″
MA–3	14°28′28″	169°12′45″
MA–4	14°28′28″	169°53′37″
MA–1	13°57′16″	169°53′37″

(3) EEZ waters around Swains Island enclosed by straight lines connecting the following coordinates (WGS84):

Point	S. lat.	W. long.
SW–1	10°50′42″	171°17′42″
SW–2	10°50′42″	170°51′39″
SW–3	11°16′08″	170°51′39″
SW–4	11°16′08″	171°17′42″
SW–1	10°50′42″	171°17′42″

[FR Doc. 2016–01891 Filed 1–29–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE420

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2016 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 29, 2016, through 1200 hrs, A.l.t., March 10, 2016.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2016 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 3,827 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015) and inseason adjustment (81 FR 188, January 5, 2016).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2016 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,727 mt and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 28, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–01991 Filed 1–29–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XE392

Fisheries of the Exclusive Economic Zone off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2016 total allowable catch of Pacific cod to be harvested.

DATES: Effective February 1, 2016 through 2400 hours, Alaska local time (A.l.t.), December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2016 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the BSAI is 1,887 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and inseason adjustment (81 FR 184, January 5, 2016).

The 2016 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 meters(m)) length overall (LOA) using hook-and-line or pot gear in the BSAI is 4,476 mt as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and inseason adjustment (81 FR 184, January 5, 2016).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 1,750 mt of the A season apportionment of the 2016 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*). Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 1,750 mt of Pacific cod from the A season jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015)

and inseason adjustment (81 FR 184, January 5, 2016) are revised as follows: 137 mt to the A season apportionment and 1,394 mt to the annual amount for vessels using jig gear, and 6,226 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 28, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–01992 Filed 1–29–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 140918791–4999–02]

RIN 0648–XE419

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2016 Pacific cod total allowable catch apportioned to vessels using pot gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 1, 2016, through 1200 hours, A.l.t., June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2016 Pacific cod total allowable catch (TAC) apportioned to vessels using pot gear in the Central Regulatory Area of the GOA is 6,528 metric tons (mt), as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015) and inseason adjustment (81 FR 188, January 5, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2016 Pacific cod TAC apportioned to vessels using pot gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,518 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for vessels using pot gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 28, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–01989 Filed 1–29–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 22
Wednesday, February 3, 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

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. APHIS–2006–0085]

RIN 0579–AB24

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These proposed changes would affect sections in the regulations relating to variances and implementation dates, indoor facilities, outdoor facilities, space requirements, and water quality. We are also proposing to revise the regulations that relate to swim-with-the-dolphin programs. We believe these actions are necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current industry and scientific knowledge and experience.

DATES: We will consider all comments on this proposed rule that we receive on or before April 4, 2016. To be assured consideration, comments on the information collection requirements related to this proposal should be submitted on or before March 4, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0085.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2006–0085, 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-2006-0085* 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: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737–1234; (301) 851–3751.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of Regulatory Action

This proposed rule would affect sections in the regulations for the protection of all marine mammals in the United States relating to interactive programs (*e.g.,* swim-with-the-dolphin), space requirements, water quality, indoor facilities, outdoor facilities, implementation dates, and variances. The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) established regulations for these mammals in 1998, based on the outcome of meetings of the Marine Mammal Negotiated Rulemaking Advisory Committee. When the original regulations were published, the provisions we are now amending were written in a very general way because APHIS had few relevant scientific studies or data available to help design the most effective practical regulatory approach for these areas. Over time, more relevant studies and data involving these sections and interactive programs have become available and APHIS has gained substantial experience working with regulated parties.

II. Legal Authority

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and other regulated entities. Under the Act, APHIS established regulations in 1979 for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. The regulations contain standards for the humane handling, care, treatment, and transportation of marine mammals (part 3, subpart E, §§ 3.100 through 3.118).

III. Summary of Major Provisions

We propose to revise swim-with-the-dolphin program regulations, for which enforcement was suspended effective April 2, 1999. This proposal contains revised standards that we propose to enforce for these programs. The proposed standards address interactive program facility space requirements, layout, operations, staffing, recordkeeping, and related matters. We set forth the proposed standards as performance-based standards wherever we believe such an approach is feasible and supportable by current information and scientific documentation.

The current subpart E regulations include minimum space requirements for the primary enclosure for species of marine mammals. We do not propose substantive changes to any of the minimum space requirements (§ 3.104), but we do propose clarifying how such areas are measured, updating and correcting discrepancies between formal calculations and current entries into space tables, and other enclosure matters.

We also propose some changes to the regulations concerning water quality in facilities. These changes would implement the results of our review of recent studies of water quality and waterborne pathogens affecting marine mammals.

The current regulations include conditions and deadlines for variance requests for space. These deadlines are out of date, but the ability for APHIS to grant temporary variances is an important tool when assuring the welfare of marine mammals. Therefore, we propose to update the conditions that can be addressed by a variance and identify the factors we use to approve or disapprove a variance request.

The current regulations also provide standards for air and water temperatures, ventilation, and lighting at regulated indoor facilities that house marine mammals. We propose to revise these requirements to apply current best practices and recent scientific studies in order to ensure the welfare of the animals with respect to temperature,

ventilation, and lighting for indoor facilities.

We also propose to revise the regulations covering standards for outdoor facilities, to require that the air and water temperature ranges at outdoor facilities be in accordance with the currently accepted husbandry practices for the species housed.

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3.

Under the Act, APHIS established regulations in 1979 for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. The regulations contain standards for the humane handling, care, treatment, and transportation of marine mammals (part 3, subpart E, §§ 3.100 through 3.118). Some sections of these regulations have not been substantively amended since 1984.

Marine Mammal Regulations

In 1995, we established a Marine Mammal Negotiated Rulemaking Advisory Committee (the Committee) to advise the Department on revisions to the marine mammal regulations. The Committee met for three sessions between 1995 and 1996. Under the rules governing the negotiated rulemaking process, and in accordance with the organization protocols established by the Committee, APHIS agreed to publish as a proposed rule any consensus language developed during the meetings unless substantive changes were made as a result of authority exercised by another Federal Government entity. The Committee developed consensus language for changes to 13 of the 18 sections that comprise the 1979 regulations and for 1 paragraph in a 14th section.

On February 23, 1999, we published a proposed rule in the **Federal Register** (64 FR 8735–8755, Docket No. 93–076–11) that contained the language developed by the Committee for those sections of the regulations for which consensus had been reached. The rule was made final, with changes, on January 3, 2001 (66 FR 239–257, Docket No. 93–076–15), and became effective on April 3, 2001 (66 FR 8744, Docket No. 93–076–16).

Remaining Issues

Although consensus language was developed by the Committee for 13 of the 18 sections of the regulations in their entirety, and for 1 paragraph of another section, the Committee conducted extensive discussions on all sections of the regulations. No consensus language was developed for four sections of the standards: § 3.100 on variances and implementation dates; § 3.102 on indoor facilities; § 3.103 on outdoor facilities; and § 3.106 on water quality. Consensus language was developed for general space requirements for the 14th section, but not on the specific space requirements for particular marine mammals. The Committee agreed that APHIS would develop and promulgate a proposed rule to address those parts of the regulations for which consensus language was not developed.

Interactive Programs

In addition to the 1979 regulation and the 2001 amendments, we published a proposed rule to establish standards for swim-with-the-dolphin programs in a new § 3.111 on January 23, 1995 (60 FR 4383–4389, Docket No. 93–076–2). The swim-with-the-dolphin rule was a new standard and not included in the goal of updating the existing standards in subpart E. After reviewing the comments for the swim-with-the-dolphin proposed rule and the results from a National Oceanic and Atmospheric Administration (NOAA)-sponsored study conducted between 1992–1994,[1] we published a final rule in the **Federal Register** on September 4, 1998 (63 FR 47128–47151, Docket No. 93–076–10), that made final some of the proposed provisions, along with changes we made based on the comments received. The final rule became effective October 5, 1998.

Following publication of the final rule, a number of parties affected by the rule contacted us and asserted that they did not fully understand the regulatory implications of the proposed and final rules for wading programs, encounter programs, and other interactive programs. Specifically, these regulated parties stated that it had not been clear to them that we intended the provisions of the rule to apply to shallow-water interactive programs. Shallow-water interactive programs are programs in which members of the public enter the primary enclosure of a cetacean to interact with the animal, and in which the participants remain primarily stationary and nonbuoyant. The regulated parties stated that, because of this misunderstanding, they had not been able to participate fully in the rulemaking process.

In response to these concerns, on October 14, 1998 (63 FR 55012, Docket No. 9307612), we announced that, as of the effective date of the September 4, 1998, final rule, and until further notice, we would not enforce the standards relating to space for the interactive area and human participant/attendant ratio to shallow-water interactive programs. Subsequently, on April 2, 1999 (64 FR 15918–15920, Docket No. 93–076–13), we suspended enforcement of all of § 3.111. This meant that only the specific requirements of § 3.111 would be excluded from citation of noncompliant items. All interactive programs were and still are at AWA licensed facilities and thereby required to comply with all other regulations and standards appropriate for that facility. The facility and animals remained under AWA oversight by USDA.

Advance Notice of Proposed Rulemaking

On May 30, 2002 (67 FR 37731–37732, Docket No. 93–076–17), we published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) in which we solicited comments regarding appropriate changes or additions to the marine mammal standards for which consensus language was not developed during the negotiated rulemaking, as well as the standards for interactive programs such as swim-with-the-dolphin programs. We solicited comments for 60 days ending on July 29, 2002. We received 365 comments by that date. They were from private citizens, exhibitors, and professional organizations. We have reviewed and considered all of the comments and any information submitted with the comments. The issues raised by the commenters are discussed below.

A commenter recommended that § 3.100, ''Special considerations regarding compliance and/or variance,'' should be deleted, stating that there is no good reason to grant a variance from the space requirements. Another commenter suggested that temporary

[1] Samuels, A. and T.R. Spradlin. 1994. Quantitative behavioral study of bottlenose dolphins in Swim-With-The-Dolphin programs in the United States. Final Report to the National Marine Fisheries Service, Office of Protected Resources. 25 April 1994. 57 pp. Samuels, A. and T.R. Spradlin. 1995. Quantitative behavioral study of bottlenose dolphins in Swim-With-Dolphin programs in the United States. Marine Mammal Science, 11(4): 520–544.

variances be granted for 6 months with only one extension and that lifetime variances be granted only when necessary. The commenter also stated that APHIS should confiscate animals at facilities that fail to comply with the regulations after the expiration of the variance.

Several commenters asserted that rigid standards for air and water temperatures would be counterproductive and would not guarantee the health and well-being of the marine mammals. These commenters said that animals may be acclimated to temperatures outside of any ranges that APHIS may establish. On the other hand, another commenter said that water temperature requirements are necessary because water that is too warm is stressful to the animal and facilitates the spread of disease. Another commenter stated that APHIS should prohibit polar bear exhibits in tropical locales.

One commenter recommended that APHIS establish standards for sound that address decibel levels as well as the type of sound. Another commenter suggested that pools be required to have sloping walls in order to lessen underwater echoes.

A number of commenters stated that the regulations for ventilation and lighting were adequate; however, these commenters also stated that it wasn't unreasonable to require 6 hours of uninterrupted darkness per day.

Several commenters stated that some portion of an outdoor pool must be shaded. Other commenters suggested that the regulations concerning shade be amended to require that shade be provided if deemed necessary by a veterinarian.

One commenter recommended that seagull harassment of marine mammals be specifically addressed in the regulations. The commenter also recommended that pools be cleaned daily by a qualified diver.

A commenter asked APHIS to explore alternatives to chlorine to improve water quality. Several commenters suggested that requirements for water quality be established for each species based on the conditions the animal may encounter in the wild. Similarly, a commenter stated that marine species should be housed in saltwater tanks and freshwater species housed in freshwater tanks.

Some commenters recommended that enclosures resemble an animal's natural habitat. One commenter suggested that marine mammals should be moved from concrete enclosures to manmade lakes.

A number of commenters supported an increase in the space requirements for marine mammals. Several commenters stated that pool depth and volume should be used to determine the space requirements. These commenters stated that the average adult length of a species should be used to determine the minimum depth requirements and that the tables setting out the average adult length for each species should be updated. Finally, these same commenters stated that the space requirements should not take into account minimum width or longest straight-line swimming distance.

A commenter recommended that space requirements should be based on the maximum adult length of an animal instead of the average adult length. Several commenters suggested that APHIS match or exceed the minimum space requirements used in the United Kingdom, Brazil, and Italy. Some commenters recommended that pools be at least 300 feet wide and 60 feet deep. One commenter recommended that pools be at least 25 meters deep. One commenter suggested that the current space requirements be doubled within the next 5 years, while another commenter suggested a tenfold increase in the current space requirements.

A number of commenters claimed that it would be unfair and costly to require facilities to retrofit their marine mammal enclosures to comply with new space requirements. Several commenters stated that it would be financially unfeasible to retrofit facilities.

Some commenters stated that the regulations for interactive programs should be flexible enough to accommodate the wide variety of interactive programs in the United States. These commenters went on to state that the current regulations provide the necessary protection for marine mammals used in interactive programs.

One commenter asserted that APHIS should require that dolphins and humans participating in an interactive program be free of disease. The commenter noted that certain human diseases pose a threat to dolphins (*e.g.,* influenza, chicken pox). The commenter also stated that feeding a dolphin and grasping or holding a dolphin should be prohibited during interactive programs.

Several commenters argued that petting pools and dolphin-assisted therapy should be regulated as interactive programs. Another commenter stated that feeding and petting pools should be eliminated.

One commenter stated that interactive programs should be allowed only if the interactions are tightly controlled at all times by professional trainers and the animals are allowed to choose whether or not to participate.

A commenter stated that any release of a marine mammal into the wild should be authorized by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service prior to the release. Finally, a number of commenters asked APHIS to free or retire a killer whale named Lolita.

Based on our review of the ANPR comments, information submitted by exhibitors and professional organizations, a review of published scientific studies and current standards for lighting, ventilation, water quality, etc., and our experience with the marine mammal standards, we are now proposing to amend the regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These proposed changes would affect sections in the regulations relating to variances, indoor facilities, outdoor facilities, space requirements, and water quality. We are also proposing to revise the regulations that relate to swim-with-the-dolphin programs. Each of these changes is discussed in detail below.

Definitions

We are proposing to amend § 1.1 of the regulations, ''Definitions,'' by revising the terms *interactive area, interactive session, primary enclosure,* and *sanctuary area.* Section 1.1 defines an *interactive area* as ''that area in a primary enclosure for a swim-with-the dolphin program where an interactive session takes place.'' We are proposing to redefine *interactive area* to mean ''that area of a marine mammal primary enclosure where an interactive program takes place.'' Use of the term ''marine mammal'' is necessary because facilities may use marine mammals other than cetaceans in interactive programs. It is also consistent with our use of the term throughout proposed § 3.111, as well as elsewhere, unless reference to a specific species is necessary. The term ''interactive program'' replaces ''swim-with-the-dolphin program'' since we are proposing to no longer use the term ''swim-with-the-dolphin program,'' as discussed below.

Section 1.1 defines an *interactive session* to mean a ''swim-with-the-dolphin program session where members of the public enter a primary enclosure to interact with cetaceans.'' For the reasons given above for our changes to the definition of *interactive area,* we are proposing to redefine *interactive session* to mean ''the time during which a marine mammal and a member of the public are in the interactive area.''

Section 1.1 defines a *primary enclosure* to mean ''any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, or hutch.'' We are proposing to add additional examples of structures and devices that qualify as *primary enclosures.* Specifically, we are proposing to add that primary enclosures, which may also be referred to as ''enclosures'' in the regulations and standards, include, but are not limited to, display enclosures, holding enclosures, night enclosures, off-exhibit enclosures, and medical enclosures. This proposed change is nonsubstantive because the listed examples already qualify as *primary enclosures* under the existing definition of that term, but it is necessary because there has been some confusion over the years about what constitutes a primary enclosure. This proposed clarification would ensure that regulated entities apply all appropriate requirements, such as space, safety, sanitation, and protection from the elements, to all areas where regulated animals are kept, unless otherwise provided in the regulations or standards.

Section 1.1 defines a *sanctuary area* to mean ''that area in a primary enclosure for a swim-with-the-dolphin program that is off-limits to the public and that directly abuts the buffer area.'' We are proposing to redefine this term to mean ''that area in a primary enclosure for marine mammals that abuts the interactive area and is off-limits to the public.'' These changes are consistent with the reasons given above for our changes to the definition of *interactive area* and our intent to no longer use the term ''buffer area,'' as discussed below.

Section 1.1 defines *swim-with-the-dolphin (SWTD) program* to mean ''any human-cetacean interactive program in which a member of the public enters the primary enclosure in which an SWTD designated cetacean is housed to interact with the animal. This interaction includes, but such inclusions are not limited to, wading, swimming, snorkeling, or scuba diving in the enclosure.[2] This interaction excludes, but such exclusions are not limited to, feeding and petting pools, and the participation of any member(s) of the public audience as a minor segment of an educational presentation or performance of a show.''

We would remove the definition of *swim-with-the-dolphin (SWTD) program* and add in its place the term *interactive program.* We would define *interactive program* as ''any human-marine mammal interactive program where a member of the public enters a primary enclosure for a marine mammal with the intent of interacting with the marine mammal(s), except for potentially dangerous marine mammals, such as, but not limited to, polar bears. Such programs include, but are not limited to, sessions in which the human participants swim, snorkel, scuba dive, or wade in the enclosure and sessions in which the human participants sit on a dock or ledge, including therapeutic sessions. Such programs exclude, but such exclusions are not limited to, feeding or petting pools where the members of the public are not allowed to enter the enclosure, and the participation of an audience member at what has been traditionally known as a performance or show involving the exhibition of marine mammals.'' [3]

The proposed definition of *interactive program* differs from the definition of *swim-with-the-dolphin program* in several ways. It uses the term ''marine mammal'' in place of ''cetacean'' and clarifies that interactive programs are inappropriate for potentially dangerous marine mammals, such as, but not limited to, polar bears. This new definition also provides additional examples of interaction including ''sessions in which participants sit on a dock or ledge, including therapeutic sessions.'' However, the term interactive program would continue to exclude programs such as feeding or petting pools, or any other programs ''where members of the public are not allowed to enter the primary enclosure.'' The proposed definition of interactive program would also exclude participation of an audience member at what is traditionally known as a performance or show involving the exhibition of marine mammals. This would simplify the current requirement which excludes from consideration the participation of the public ''as a minor segment of an educational presentation or performance of a show.''

Finally, we would remove from § 1.1 the definition of *buffer area,* which is defined as ''that area in a primary enclosure for a swim-with-the-dolphin program that is off-limits to members of the public and that directly abuts the interactive area.'' This definition would no longer be necessary based upon our intention to remove the requirement in proposed § 3.111 that interactive programs must contain a buffer area for animals. We have found that it is redundant and not necessary to require both a buffer area and a sanctuary area as long as the animal has unrestricted access to a sanctuary area.

Variances

Section 3.100 contains the conditions under which a regulated facility may request and qualify for a variance for a limited period of time from one or more of the space requirements in § 3.104. The provisions were put into place to allow regulated facilities time to come into compliance with the space requirements made in 1984. These provisions are no longer applicable because we are not increasing the space requirements.

There were few recommendations on the implementation dates and variances in the comments on the ANPR. One commenter recommended that § 3.100, ''Special considerations regarding compliance and/or variance,'' be deleted because there is no good reason to grant a variance from the space requirements. Another commenter suggested that temporary variances be granted for 6 months with only one extension and that lifetime variances be granted only when necessary. The commenter also stated that APHIS should confiscate animals at facilities that fail to comply with the regulations after the expiration of the variance.

We propose to revise § 3.100 to make it operative once again with respect to exhibition and research facilities covered by the regulations. This will provide regulated facilities greater flexibility in complying with the regulations and standards. Regarding the comment about animal confiscation, APHIS' confiscation authority under the AWA is outlined in § 2.129 of the AWA regulations and standards. The animal must be found to be suffering as a result of noncompliance with the regulations and standards and the licensee fails to provide the remedy required by APHIS.

Indoor Facilities

Section 3.102 provides the standards for air and water temperatures, ventilation, and lighting at regulated facilities that house marine mammals.

Paragraph (a) of § 3.102 provides that the air and water temperatures in indoor facilities shall be sufficiently regulated by heating or cooling to protect the

[2] We note that interactive programs have been operating for over 20 years without any indications of health problems or incidents of aggression in marine mammals, as evidenced by medical records maintained by licensed facilities and observations by experienced APHIS inspectors.

[3] During such performances, 1 or 2 persons are typically brought from the audience to stand near and perhaps touch or signal the animal under the monitoring or control of a trainer. We do not consider animal performances that include brief participation by a few audience members to be interactive programs.

marine mammals from extremes of temperature, to provide for their good health and well-being and to prevent discomfort, in accordance with the currently accepted practices as cited in appropriate professional journals or reference guides. The section also states that rapid changes in air and water temperatures shall be avoided.

Animals kept in a temperature range appropriate to their species benefit from improved health and welfare.[4] While animals may be able to survive warmer or colder temperatures, animal metabolism has developed to function best within a particular temperature range for both air and water (thermoneutral zone). The animal may be able to survive outside this range, but the added stress can negatively affect the animal's metabolism as it tries to maintain internal temperatures and other metabolic processes [5] in non-ideal environmental conditions.

We are proposing no substantive changes to § 3.102(a). The question of ambient and environmental temperatures was discussed in depth during the negotiated rulemaking process. While the members of the Committee acknowledged the importance of maintaining marine mammals within their optimum temperature range, there was not enough published scientific data available to develop a list of acceptable temperature ranges for each marine mammal species. We are unaware of any definitive publications that combine the habitat ranges of marine mammals with the environmental temperature ranges in that habitat. This information would be beneficial to USDA and our licensees and we request any and all such data appropriate to marine mammal species during the comment period. That may not be possible, though, as we think it would require using diverse sources from fisheries data, biological oceanography species distributions, and physical oceanography sources on temperatures and salinity. Habitat usage budgets would also be needed in order to determine the most appropriate temperature range for the marine mammal. Since this information is not readily tabulated, we will continue to use the health and behavior of the marine mammals in assessing the adequacy and appropriateness of the pools and enclosure temperatures.

Several commenters on the ANPR asserted that rigid standards for air and water temperatures would be counterproductive and would not guarantee the health and well-being of the marine mammals. These commenters said that animals may be acclimated to temperatures outside of any ranges that APHIS may establish. On the other hand, another commenter said that water temperature requirements are necessary because water that is too warm is stressful to the animal and facilitates the spread of disease. As noted earlier, another commenter stated that APHIS should prohibit polar bear exhibits in tropical locales.

Taking into account the discussions regarding air and water temperatures during the negotiated rulemaking process and in the ANPR comments, we are retaining the performance-based standards of the current regulations and, as needed, will develop guidelines for appropriate temperature ranges for marine mammal species based on scientific and published data when, and if, it becomes available. We request any and all such data appropriate to marine mammal species during the comment period.

Paragraph (b) of § 3.102 contains the ventilation standards for indoor facilities housing marine mammals. It provides that facilities shall be ventilated by natural or artificial means to provide a flow of fresh air for the marine mammals and to minimize the accumulation of chlorine fumes, other gases, and objectionable odors.

The benefit of providing adequate ventilation for indoor marine mammal enclosures is improved animal welfare. Improved ventilation can reduce the effects of skin and mucous membrane irritation in marine mammals. Improvements in ventilation can also result in less accumulation of moisture and potential trapping of bacteria and particles on walls. Excessive moisture may allow for bacterial and mold growth in the enclosure area, risking the health and well-being of the marine mammals. These same considerations apply to personnel working in enclosure and exhibit areas, and potentially to the general public.

Few comments on the ANPR addressed the current ventilation requirements. Those commenters who did address the ventilation standards stated that the current performance-based standard was sufficient. However, based on our experience regulating marine mammal facilities and on commonly accepted human standards for ventilation followed by engineers and architects for buildings throughout the United States, we are proposing to modify the ventilation standards in several ways. The majority of the changes are performance-based in nature. Instead of stating that the ventilation shall minimize the accumulation of chlorine fumes, other gases, and objectionable odors, we are proposing that the ventilation would have to prevent the accumulation of chlorine/chloramine fumes, ammonia fumes, ozone, other gases, or odors at levels that would be objectionable or harmful to a person of average sensitivity. We would also add that the ventilation would have to maintain relative humidity at a level that prevents condensation in order to minimize the potential for bacterial, fungal, or viral contamination from condensation. Relative humidity can be controlled by a variety of methods, including increased ventilation with drier air or the use of dehumidifiers. Furthermore, we would provide that the average ventilation rate should exceed 0.2 cubic feet per minute per kilogram (cfm/kg) of animal. An average ventilation rate is the rate at which indoor air enters and leaves a building. We are proposing to require that the average ventilation rate should exceed 0.2 cfm/kg of animal in facilities with marine mammals because that is the rate necessary to dilute odors and limit the concentration of carbon dioxide and airborne pollutants harmful to marine mammals and humans.[6] These proposed requirements are based on commonly accepted standards for ventilation used by engineers, architects, and government agencies for buildings with human occupants.[7]

Lighting

Paragraph (c) of § 3.102 contains performance-based standards for lighting in indoor housing facilities, providing that the lighting shall: (1) Be of a quality, distribution, and duration that is appropriate for the species involved; (2) allow for routine inspections, observations, and cleaning; and (3) prevent exposure of the marine mammals to excessive illumination.

[4] ''Marine Mammals Ashore,'' Joseph R. Geraci and Valerie J. Lounsbury, Texas A&M Sea Grant Publication, 1993, outlines habitat ranges for many marine mammals.

[5] Akin, J. A. (2011) Homeostatic Processes for Thermoregulation. *Nature Education Knowledge* 3(10):7.

[6] See ASHRAE recommendations cited in footnote 7.

[7] ASHRAE recommendations minimize the accumulation of noxious and potentially toxic gases, such as chlorine, chloramines, methyl bromide, and ammonia: *2013 ASHRAE Handbook—Fundamentals (SI).* OSHA investigates reported incidents of potentially hazardous air quality conditions: *https://www.osha.gov/SLTC/ventilation/index.html.* NIH provides ventilation guidance for laboratory animals that can be used in general animal housing as well: *http://www.orf.od.nih.gov/PoliciesAndGuidelines/BiomedicalandAnimalResearchFacilitiesDesignPoliciesandGuidelines/DRMHTMLver/Chapter2/Pages/Section2-4AnimalResearchFacilities.aspx.*

The ANPR commenters that addressed this issue stated that the current requirements for lighting were adequate; however, the commenters also stated that it was not unreasonable to require 6 hours of uninterrupted darkness per day for marine mammals.

Ensuring the health and normal functioning of metabolic systems for animals used to a diurnal light pattern (day and night periods) can be impacted by the use of artificial lighting and changes to the normal pattern of diurnal fluctuations in the day and night light patterns. Natural light sources, such as large windows and skylights for indoor enclosures, provide marine mammals with both natural light variations and full-spectrum lighting. Full spectrum lighting approximates natural sunlight by providing all natural wavelengths of light from an artificial light source. Studies in animals suggest that natural and full spectrum lighting may be beneficial for animal welfare, behavior, physiology, and regulating diurnal cycles. When natural light sources are not available or light patterns do not closely mimic natural patterns of light and dark provided by the sun, there can be negative impacts on the health and metabolism of terrestrial and aquatic animals.[8]

In addition, sufficient light is needed to allow observation of the animals by the caretakers and the APHIS inspectors. This requirement is not changed in this docket, but the level of light recommended assures the ability to adequately observe the animals in the enclosure.

To better provide for the well-being of marine mammals, we believe the lighting standards need to be more specific. Accordingly, we propose to amend § 3.102(c) to state that, in addition to the general standards already provided, artificial lighting must provide full spectrum lighting. We are proposing this change so that the environment these mammals are housed in more closely resembles the natural world. We would also require that artificial light levels measured 1 meter above pools or decks should not exceed 500 lux, which is the minimum unit of measure of light sufficient to provide proper illumination for marine mammal primary enclosures.[9] This minimum level was developed to provide persons in the space sufficient light to see everything needed to operate safely within that area. In addition, the light levels that provide for the safety of the people in the space also allow for sufficient light to observe the animals. Employees must be able to observe the animals in order to assess their behavior and health, as well as to determine if the animals are interacting with portions of the enclosure, such as drains and pipes, that would present a potential health risk. The minimum light levels must be over all parts of the pool/enclosure. This requirement is compatible with the standards required by the Association of Zoos and Aquariums (AZA) in the reference material for accreditation.[10]

Facilities would be required to provide at least 6 hours of uninterrupted darkness during each 24-hour period, which mimics the normal diurnal cycles of light and dark that marine mammals are adapted to. When possible, the lighting should approximate the lighting conditions encountered by the animal in its natural environment. For example, if a species of marine mammal is primarily tropical, the lighting conditions for that animal should be as close to 12 hours of light and 12 hours of dark as possible, whereas the lighting conditions for other species of marine mammals may be closer to 10 hours of light and 14 hours of dark. Whatever the facilities' hours are, a minimum of 6 hours of dark must be provided to give all animals some period of night. We request comment on information on this minimum period of darkness, and whether it should be shorter or longer. We chose 6 hours as a reasonable minimum, since we think it may correspond with typical work hours at a facility. The lighting must not cause overexposure, discomfort, or trauma.

The standards for lighting that we are proposing are based on our review of findings and recommendations in scientific literature for lighting animal enclosures.[11] We reviewed general published articles and books, as well as those specific to marine mammals. We believe the proposed changes to § 3.102(c) are necessary to ensure that the lighting provided is of a quality, quantity, and duration that approximates the lighting conditions found in the animal's natural environment, a practice recognized by experts in the field of animal husbandry and behavior to be beneficial in maintaining the overall health of all animals.

Outdoor Facilities

Section 3.103 of the regulations provides the standards for air and water temperature, shelter, and perimeter fencing at outdoor facilities housing marine mammals. Paragraph (a) of § 3.103 provides that marine mammals shall not be housed in outdoor facilities unless the air and water temperature ranges they may encounter do not adversely affect their health and comfort. Paragraph (a) further provides that marine mammals shall not be introduced to an outdoor housing facility until they are acclimated to the air and water temperature ranges that they will encounter there.

We are proposing to make several changes to § 3.103(a). We are proposing to require that the air and water temperature ranges at outdoor facilities be in accordance with the currently accepted husbandry practices for the species housed.

Paragraph (a)(3) of § 3.103 provides that no sirenian or warm water dwelling species of pinnipeds or cetaceans shall be housed in outdoor pools where water temperature cannot be maintained within the temperature range to meet their needs. To clarify what we mean by the ''needs'' of marine mammals, we would revise this standard by specifying instead that the water temperature for these particular marine mammals be maintained within the temperature range needed to maintain their good health and to prevent discomfort in accordance with currently accepted practices as cited in appropriate professional journals or reference guides.[12]

[8] Gaston, Kevin J.; Duffy, James P.; Gaston, Sian; Bennie, Jonathan; Davies, Thomas W.; ''Human alteration of natural light cycles: causes and ecological consequences,'' *Oecologia* (2014) 176:917–931. Gaston, Kevin J.; Bennie, Jonathan; ''Demographic effects of artificial lighting on animal populations,'' *Environ. Rev.*(2014), 22:323–330. Edwards, L. and Torcellini, P., 2002, ''A Literature Review of the Effects of Natural Light on Building Occupants,'' (NREL/TP–550–30769), National Renewable Energy Laboratory, 58 pp. Rich, Catherine and Longcore, Travis (eds), 2006, ''Ecological Consequences of Artificial Night Lighting,'' Island Press. Covelo, CA. Pages 15–42. Kane, Lisa, Forthman, Debra, and Hancocks, David (eds.), 2005, ''Best Practices by the Coalition for Captive Elephant Well-Being,'' 33 pp., *http://www.elephantcare.org/protodoc_files/2008/CCEWBCore BestPractices.2.pdf.* Gage, Laurie (author), and Whaley, Janet E. (ed.), 2006, ''Interim Policies and Best Practices Marine Mammal Stranding Response, Rehabilitation, and Release Standards for Rehabilitation Facilities,'' NOAA National Marine Fisheries Service Marine Mammal Health and Stranding Response Program, 50 pp., *http://www.nmfs.noaa.gov/pr/pdfs/health/rehab_facilities.pdf.* Anderson, Kevin, 2013, ''Are the Lights On or Off?'' 12 pp., *http://www.alnmag.com/articles/2013/11/are-lights-or.* Hotz, Vitaterna, Martha, Takahashi, Joseph S., and Turek, Fred W., ''Overview of Circadian Rhythms,'' *http://pubs.niaaa.nih.gov/publications/arh25-2/85-93.htm.* Penev, Toncho, Radev, Veselin, Slavov, Todor, Kirov, Veselin, Dimov, Dimo, Atanassov, Alexandar and Marinov, Ivaylo, (2014), ''Effect of lighting on the growth, development, behaviour, production and reproduction traits in dairy cows,'' *Int. J. Curr. Microbiol. App. Sci* 3(11) 798–810.

[9] *http://www.gsa.gov/portal/content/101308.*

[10] *https://www.aza.org/uploadedFiles/Accreditation/AZA-Accreditation-Standards.pdf.*

[11] See footnote 8.

[12] Industry groups that have developed such practices include, but are not limited to, the

Paragraph (b) of § 3.103 contains the standards for providing shelter for marine mammals housed in outdoor facilities. It provides that natural or artificial shelter, as appropriate for the particular species when local climatic conditions are taken into consideration, shall be provided for all marine mammals kept outdoors to afford them protection from the weather or from direct sunlight.

Several commenters on the ANPR stated that some portion of an outdoor pool must be shaded. Other commenters suggested that the regulations concerning shade be amended to require that shade be provided if deemed necessary by a veterinarian.

Because marine mammals are susceptible to overheating and sunburn and/or eye damage from direct and/or reflected sunlight, and UV light reflections can cause or exacerbate damage to marine mammal eyes,[13] we are proposing to amend § 3.103(b) by adding that the shade must be accessible and must cover sufficient area to afford all the animals within the enclosure protection from direct sunlight while not limiting their ability to move or not be too close to another animal. The shaded areas need not be contiguous. In addition, feeding and training of animals must be performed so that the animals are not required to look directly into the sun. Shade requirements are compatible with published AZA standards. Shade structures may be permanent or temporary (easily moved or deployed). We believe the performance-based standard we are proposing will allow facilities to provide the required amount of shade according to the unique conditions of each enclosure. This standard expands the requirement in current § 3.103(b) that natural and artificial shelter must be provided to afford protection from direct sunlight.

Space Requirements

Section 3.104 contains the minimum space requirements for primary enclosures, including pools of water, housing marine mammals. These space requirements are based on standards and scientific information available at the time the regulations were promulgated in 1979, and amended in 1984. The current space requirements are based on circular pools which, while prevalent 30 years ago, have been largely replaced by more intricately shaped pools.

As discussed previously, some commenters on the ANPR recommended that enclosures resemble an animal's natural habitat. A number of commenters supported an increase in the space requirements for marine mammals, although the majority of commenters focused on the space requirements for cetaceans. A number of commenters claimed that it would be unfair and costly to require facilities to retrofit their marine mammal enclosures to comply with new space requirements. Several commenters stated that it would be financially unfeasible to retrofit facilities.

We are proposing to make a number of changes to § 3.104, as discussed in detail below. However, we are not proposing changes to the minimum space requirements (*i.e.,* minimum horizontal dimension (MHD), depth, volume, and surface area) at this time. In light of the disparate recommendations by the ANPR commenters (2002) and the limited scientific data available on this issue, we do not have sufficient scientific or other supporting data to propose space requirements changes at this time. We would appreciate any published literature, science-based data or other studies that would support changes in the space requirements for any marine mammals.

Space Requirements—General

Paragraph (a) of § 3.104 provides a general description of the space requirements for primary enclosures, including pools, that house marine mammals and sets out some of the requirements for temporary use of smaller enclosures. The general standards provided in § 3.104(a) reflect the consensus language that was developed by the Committee during the negotiated rulemaking sessions. We are proposing no substantive changes to the minimum space requirements (*i.e.,* minimum horizontal dimension, depth, volume, and surface area) for marine mammals in § 3.104(a) at this time. However, we propose to redesignate § 3.104(a) as § 3.104(a)(1) and to add a new paragraph (a)(2), which is discussed below.

In proposed § 3.104(a)(2), we would provide that only those areas that meet or exceed the minimum depth requirement could be used in determining whether the other parameters of MHD, volume, and surface area meet the space requirements. This requirement already appears elsewhere in § 3.104 when referring to the minimum depth requirements for primary enclosures housing particular species of marine mammals. We would include this standard in § 3.104(a) since it is a general requirement applicable to all enclosures housing marine mammals. Indeed, this standard is the basis for determining whether naturalistic or irregularly shaped pools meet the space requirements. In addition, we would provide that APHIS would be authorized to determine if partial obstructions of a horizontal dimension compromise the intent of the regulations and/or significantly restrict the freedom of movement of the animal(s) in the enclosure.

Space Requirements—Cetaceans

Paragraph (b) of § 3.104 provides that primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water. It further provides that, in determining the minimum space required in a pool holding cetaceans, requirements relating to MHD, depth, volume, and surface area must be satisfied.

We propose to remove the statement in current § 3.104(b), ''Primary enclosures housing cetaceans shall contain a pool of water and may consist entirely of a pool of water.'' This statement is unnecessary because cetaceans only need a pool of water.

In addition, we propose to amend § 3.104(b) by removing Tables I through IV and by adding a new Table 1 that sets out the average adult length and corresponding minimum space requirements for Group I and Group II cetaceans. We have also corrected a longstanding discrepancy between the figures in tables for volume required for additional animals and the actual calculated volume required. The proposed tables correct these entries, which have been included in the tables since 1984. In the last 30 years, however, this error has not presented any welfare issues, as the written formulas have been used only for calculations.

We would also remove paragraph (b)(2) of § 3.104, which provides that those parts of the primary enclosure pool which do not meet the minimum depth requirements cannot be included when calculating space requirements. As discussed previously, we would make this provision applicable to all marine mammal primary enclosures (proposed § 3.104(a)(2)) so it is unnecessary to include it here.

Association for Zoos and Aquariums (*https://www.aza.org*) and the Alliance of Marine Mammal Parks and Aquariums (*http://www.ammpa.org*).

[13] Gage, Laurie, ''Risk factors associated with cataracts and lens luxations in captive pinnipeds in the United States and the Bahamas,'' *Journal of the American Veterinary Medical Association,* August 15, 2010, Vol. 237, No. 4 (429–436) *http://www.ncbi.nlm.nih.gov/pubmed/20707754.* Gage, Laurie, ''Captive pinniped eye problems, we can do better,'' *Journal of Marine Animals and Their Ecology* (2011): *http://www.oers.ca/journal/volume4/issue2/Gage_Galley.pdf.*

We have been requested to consider updating the average adult lengths of certain cetaceans ((the Beluga whale (*Delphinapterus leucas*), the killer whale (*Orcinus orca*), and the Atlantic bottlenose dolphin (*Tursiops truncatus* (Atlantic)) based on empirical information that was compiled by the Alliance of Marine Mammal Parks and Aquariums (AMMPA) and the AZA and provided to APHIS. This proposed update would reflect the average adult lengths based on the actual sizes of certain species of marine mammals in exhibition facilities. These are the only three species for which data was submitted by the commenter. If used, the empirical lengths would result in decreased calculated minimum space requirements for these animals. The data provided by AMMPA and AZA reflect measurements from all killer whales at U.S. facilities, most of the beluga whales, and about 25 percent of the bottlenose dolphin population in the United States in 2002. It has been brought to our attention by NOAA that these figures do not take into account animals potentially added from the wild (stranded or taken by AMMPA permit), nor does it provide information on morphometrics that may have been published more recently. Taking this into account, APHIS is open to submission of all scientific data that may clarify the size of marine mammals. In updating Table 1, we have chosen to not include hybrid animals here, such as offspring of Atlantic and Pacific bottlenose dolphins. Space requirements for hybrid cetaceans would be handled on a case-by-case basis, as they are rare and reliable information is not generally available.

We welcome comments and data addressing this approach, including comments on the reliability and utility of the empirical average adult length data that is the basis for this proposed change.

Space Requirements—Sirenians

Paragraph (c) of § 3.104 provides that primary enclosures housing sirenians shall contain a pool of water and may consist entirely of a pool of water. Space requirements are based on meeting MHD and depth parameters.

We propose to remove the statement in current § 3.104(c), ''Primary enclosures housing sirenians shall contain a pool of water and may consist entirely of a pool of water.'' This statement is unnecessary since sirenians only need a pool of water. We would also add a new Table 2 which would provide average adult lengths for different sirenian species that are currently held by exhibitors on public display. Finally, we propose to remove the statement that those parts of the primary enclosure pool which do not meet the minimum depth requirement cannot be included when calculating space requirements for sirenians. As discussed previously, we propose to include this requirement in proposed § 3.104(a)(2) since it is a general requirement applicable to all enclosures housing marine mammals.

Space Requirements—Pinnipeds

Paragraph (d) of § 3.104 provides that primary enclosures housing pinnipeds shall contain a pool of water and a dry resting or social activity area that must be close enough to the water to allow easy access for entering or leaving the pool. Despite this requirement, APHIS is aware of instances where animals have shown difficulties getting in and out of pools when the distance between the water and the dry resting area has been too much for them to easily negotiate, either due to the size and strength of the animal, such as young animals, or health, such as older animals or those animals with injuries or infirmities such as arthritis.[14] Some facilities, due to the filtering systems on the pools, do not have the ability to easily raise the water level. As a result, other means of safe ingress and egress are needed to prevent further injury or death of such marine mammals. Many of the newer pinniped pools at a number of zoological facilities have a gradually sloping floor that is suitable for pinnipeds of all sizes and capacities to exit the pool. As more institutions commit to making improvements to their pinniped exhibits, the pools with an edge or ''lip'' that make exiting difficult for the very young or very old are becoming obsolete. However, many such pools remain in use.

Therefore, we propose to require that pool exit and entry areas be of a depth and grade that allows for easy access and exit for pinnipeds of all ages and infirmities. These changes would ensure that young, elderly, and ill or infirm pinnipeds are able to get out of the water to access their dry resting or social activity area. As a ramp or platform may cut down on the swimming space in a smaller pool, designing of the ramps or platforms which factors in the minimum space requirements is essential.

The list of Group I and Group II pinnipeds and their average adult length in feet and meters would be provided in a new Table 3. In proposed Table 3, we would reverse the order of displaying average adult length, with feet being shown first followed by meters. The average adult length information, which currently appears as part of Table 3 of the regulations, would not be changed except that we would add *Arctocephalus townsendi* (Guadalupe fur seal) to the Group I list, and the *Neomonachus schauinslandi*[15] (Hawaiian monk seal) to the Group II list of pinnipeds. We are proposing to add the Guadalupe fur seal and the Hawaiian monk seal to the list of Group I and Group II pinnipeds, respectively, because both species are now being held in captivity. We would also add the California sea lion to the list of Group I pinnipeds that will be considered as Group II when two or more sexually mature males are maintained together. In our experience, sexually mature male California sea lions can become aggressive during the breeding season, and visual barriers (*e.g.,* fences, rocks, or foliage) would provide relief from any aggressive animals.

We would also reference a proposed new Table 4, which would summarize the minimum space requirements for pinnipeds in captivity, including MHD, depth, and surface area, as well as the required dry resting and social activity area required for different pinniped species. This table would provide user-friendly calculations of space requirements that should spare licensees and other stakeholders from having to perform the calculations themselves.

Finally, we propose to remove the statement that those parts of the primary enclosure pool which do not meet the minimum depth requirement cannot be included when calculating space requirements for pinnipeds. As discussed previously, we propose to make this requirement applicable to all marine mammals (proposed § 3.104(a)(2)) and it is unnecessary to include it here.

Space Requirements—Polar Bears

Paragraph (e) of § 3.104 sets out the space requirements for primary enclosures housing polar bears. It provides that primary enclosures housing polar bears shall consist of a pool of water, a dry resting and social activity area, and a den.

We are proposing to amend § 3.104(e) to require that pool exit and entry areas be of a depth and grade that allows for easy access and exit for polar bears of all ages and infirmities. This change would ensure that young, elderly, and

[14] This information was derived from APHIS-Animal Care internal research based on several inquiries with professionals in the field.

[15] *http://www.pifsc.noaa.gov/library/pubs/Baker_etal_MMS_2014.pdf.*

ill or infirm polar bears are able to get out of the water to access their dry resting or social activity area.

Space Requirements—Sea Otters

Paragraph (f) of § 3.104 covers the space requirements for primary enclosures housing sea otters. Currently, paragraph (f) of § 3.104 provides that primary enclosures for sea otters must consist of a pool of water and a dry resting area. The minimum dry resting area required for one or two sea otters is based on the sea otter's average adult length, and is provided in Table V.

We propose to require that pool exit and entry areas be of a depth and grade that allows for easy access and exit for sea otters of all ages and infirmities. This change would ensure that young, elderly, and ill or infirm sea otters are able to get out of the water to access their dry resting or social activity area.

The regulations currently do not provide a surface area requirement. We would not change the existing formula for calculating the minimum dry resting area per animal. However, since sea otters do not readily use shared resting areas, we propose to add a requirement that individual areas or visual barriers separating appropriately sized individual resting spaces must be used.

Finally, we would redesignate Table V as Table 5. However, the information in the table would not be changed.

Water Quality

Currently, § 3.106 provides water quality standards for facilities housing marine mammals. Paragraph (a) provides a general introductory statement. Paragraphs (b), (c), and (d) contain requirements relating to bacterial standards, salinity, and filtration and water flow. We are proposing to make a number of changes throughout this section.

While sterile water was once considered the ideal standard, recent scientific research supports the point that non-sterile water is better for marine mammals. Non-sterile water seems to support the development of a healthy immune system, providing improved ability for marine mammals to better handle routine and novel types of bacteria. The presence of water quality test results that consistently show no bacteria may be indicative of an overly disinfected system, which may negatively impact the animals by causing skin and eye irritations from overchlorination. Over-disinfection may also reduce the effectiveness of the filtration system, which usually depends on a healthy microbial population for proper operation.

Paragraph (b) of § 3.106 contains the bacterial standards and related water quality testing requirements for facilities housing marine mammals. The bacterial standards provided in § 3.106(b) are based on accepted measures for monitoring water quality for human use at the time the regulations were promulgated in 1979. However, based on a review of the scientific literature [16] and the Environmental Protection Agency's (EPA's) 2012 Recreational Water Quality Criteria, we have determined that there are now additional tests that should be used to screen water quality. Accordingly, we are proposing to amend the bacterial standards in § 3.106(b) to reflect some of these current testing measures. We also propose to make other changes in the requirements for testing if high levels of bacteria are found. These changes are discussed below.

Coliform Testing

Most of the marine mammal standards were originally promulgated in 1979. The bacterial standards of § 3.106(b)(1) were based on the drinking water quality standards of that time and focused on coliform bacteria. Based on testing methods used during that time, the unit of measure was ''most probable number'' (MPN), a statistical measurement based on inoculation series (dilution series) using 1 mL aliquots of the sample. Usually 5–10 samples (diluted by powers of 10) were incubated and the actual number of bacteria present was estimated for a 100 ml sample.

With the advent of filtration techniques, the MPN method was no longer used as the sole measure of bacterial contamination in water samples. With MPN, actual numbers of bacteria in a 100 mL sample could now be measured and counted.[17]

As with other areas of technology, test kits have been developed to test for coliforms. These kits focus on enzymes and characteristic chemical properties to simplify bacterial testing and identification. The EPA is responsible for setting Recreational Water Quality Criteria recommendations for primary contact recreational uses (*i.e.,* swimming and similar water contact activities). The EPA has also produced documents explaining how alternative methods and indicators can be used in place of standard filtration methods.

The bacterial standards requirements in this section are devised to not only protect the health and well-being of the marine mammals housed in the enclosures, but to conform with the EPA and related standards that address human activities, such as swimming (interactive programs). Accepted criteria recommendations in place at the time of implementation of the current standards (1984) have been in use since that time. APHIS has not found that marine mammal facilities routinely have compliance issues with these historic requirements. We do acknowledge that testing techniques and accepted criteria recommendations have changed since 1984, and we are proposing to update this section to reflect those changes. We are requesting data and references that would support or refute these criteria.

The AWA does not require a specific methodology for coliform testing, but rather defines an upper limit for total coliforms. If the methodology selected provides an actual colony count, then that is interchangeable with MPN.

Current paragraph (b)(1) of § 3.106 provides that the coliform bacteria count of the primary enclosure pool shall not exceed 1,000 MPN per 100 mL of water. Should the coliform bacterial count exceed 1,000 MPN, two subsequent samples may be taken at 48-hour intervals and averaged with the first sample. If the average count does not fall below 1,000 MPN, then the water in the pool is deemed unsatisfactory, and the condition must be corrected immediately.

Paragraph (b)(3) of § 3.106 requires water samples to be taken and tested on a weekly basis for coliform count. We are proposing that the coliform count can be either a total coliform count or a fecal coliform count. In the case of a total coliform count, we propose that the coliform count shall not exceed 500 colonies per 100 mL. If a fecal coliform test is used, we propose that the fecal count shall not exceed 400 colonies per 100 mL.[18] While total or fecal coliforms

[16] Van Bonn, William, et al. (eds.), ''Maintaining Healthy Marine Mammal Pools,'' draft/correspondence (2015). Venn-Watson, S., et al, ''Primary bacterial pathogens in bottlenose dolphins Tursiops truncatus: Needles in haystacks of commensal and environmental microbes,'' *Dis. Aquat Organ,* (2008) 79(2): 87–93. IAAAM Water Quality Workshop 2015, notes. Health and Ecological Criteria Division, Office of Science and Technology, EPA, Office of Water 820–F–12–058 ''Recreational Water Quality Criteria.'' Donlan, R.M., ''Biofilms: Microbial life on surfaces,'' *Emerg. Infect. Dis.,* (2002) 49(1): 1–5.

[17] An example of this method is the Millipore filter kits that use differential media to grow only coliforms. Individual colonies could be re-plated and grown for identification if specific coliform type was needed, although most media provided a characteristic sheen to the fecal coliform colonies.

[18] Van Bonn, William, et al. (eds.), ''Maintaining Healthy Marine Mammal Pools,'' draft/correspondence (2015). Venn-Watson, S., et al, ''Primary bacterial pathogens in bottlenose dolphins *Tursiops truncatus:* Needles in haystacks of commensal and environmental microbes,'' Dis.

Continued

are one indicator of fecal contamination, they may not be the best sole criteria for determining true fecal contamination or the health of the water that marine mammals live in. Therefore, in addition to a total coliform or fecal coliform test, we propose to require that one [19] of the following tests also be conducted on a weekly basis:

Enterococci count (count shall not exceed 35 colonies per 100 mL); or
Pseudomonas count (count shall not exceed 10 colonies per 100 mL); or
Staphylococcus count (count shall not exceed 10 colonies per 100 mL).

These tests are used to indicate fecal contamination as well as pathogens in the water. Enterococci are bacteria that are primarily from the intestinal tract and can be a sensitive indicator of fecal contamination. If a facility only performs a total coliform test, this test would indicate the fecal portion of the coliform contamination. Pseudomonas is a bacterial pathogen very common to lung infections in marine mammals. Its presence in a water sample may indicate either an infection on an animal or the contamination of the environment of the animal with pathogenic bacteria. Staph bacteria can be pathogenic or non-pathogenic in all animals. It is a skin pathogen, and can also cause infections internally. Its presence can be an indicator of contamination and/or possible danger to the animals. We would require that one of these other bacterial tests be conducted, in addition to a total coliform or fecal coliform test, in order to obtain a more complete picture of the water quality of facilities housing marine mammals.

We propose to redesignate current § 3.106(b)(2), which covers chemical treatment of water, and § 3.106(b)(3), which concerns water sampling procedures, as § 3.106(b)(4) and § 3.106(b)(5), respectively, to accommodate the addition of new paragraphs § 3.106(b)(2) and (b)(3).

Proposed new paragraph § 3.106(b)(2) provides that if any of the above tests yield results that exceed the allowable bacterial count levels, then two followup samples must be taken to repeat the tests(s) for those bacterial contaminants identified as being present at levels exceeding the standards. The first followup sample would have to be taken immediately after the initial test result, while the second followup sample would have to be taken within 48 hours of the first followup sample. This timing requirement would differ from the existing standard in § 3.106(b), which provides that the two followup samples may be taken at 48-hour intervals.

The rationale regarding retesting after 48 hours is based on the fact that the lab testing (inoculation or filtration and incubation) takes 48 hours.[20] Regardless of testing methods and timing, § 3.106(a) should be the overriding consideration; the water must not be harmful to the animals. This means if high bacterial levels are found, they should be addressed immediately. Although we require averaging of test results when retesting, the goal is to get the coliform count below 500 (proposed standard) as soon as possible.

This amendment is to clarify the timing of the follow-up test. At it currently reads, some entities interpret the testing to be after the first test results are known. The coliform test, if using traditional microbiological techniques (culture and incubation) takes 48 hours. If the first test is 500 (proposed) MPN, the retesting should be done immediately (relative to knowing the test results).

In the last 3 years, approximately four citations issued to marine mammal facilities involved high coliform counts without the required retesting.

Over the years there has been some confusion among regulated facilities and inspectors as to exactly when the followup samples should be taken. This change would address this problem by clarifying that the first followup sample has to be carried out immediately following the initial test result and the second followup sample has to be taken within 48 hours of the first followup sample. We would continue to require that the test results of the three samples be averaged and, if the averaged value of the three samples still exceeds the allowable bacterial counts referenced above, then the pool water would be considered unsatisfactory and its condition would have to be corrected immediately.

Proposed new paragraph § 3.106(b)(3) would provide that additional testing for suspect pathogenic organisms must be conducted when there is evidence of health problems at the facility or a potential health hazard to the animals. In the past, we have suspected that water-borne pathogens contributed to the poor health of animals at certain facilities; however, the regulations did not require additional testing for pathogens. This change would address that issue in the regulations.

As discussed above, we would redesignate current § 3.106(b)(2) as § 3.106(b)(4). That paragraph provides that whenever the water is chemically treated, the chemicals shall be added so as not to cause harm or discomfort to the marine mammals, such as eye and skin irritation. We propose to amend the standard to state that any chemicals added to a pool must not cause harm or discomfort to the marine mammals during the introduction of the chemical or during the chemical's presence in the enclosure (in the water, on the surfaces, or in the air). This change would clarify that the health, safety, and welfare of the marine mammals must be taken into consideration not only when chemicals are added to the water, but whenever chemicals are present in and around the water.

As discussed previously, we would redesignate current paragraph § 3.106(b)(3) as § 3.106(b)(5). That paragraph contains the standards for water sampling and states that water samples shall be taken and tested at least weekly for coliform count and at least daily for pH and any chemicals (*e.g.,* chlorine and copper) that are added to the water to maintain water quality. Facilities that use natural seawater must test for coliforms, but are exempt from pH and chemical testing unless chemicals are added to the seawater to maintain water quality. Records must be kept that document when samples are taken and the test results. Records of the test results must be maintained by management for a 1-year period and must be made available for inspection by APHIS upon request.

We would remove the references to coliform testing in paragraphs (b)(1) and (b)(3) of § 3.106, since this subject would be covered in proposed § 3.106(b)(1). Under proposed § 3.106(b)(5), we would continue to provide that facilities must conduct daily testing for pH, as well as for any chemicals (*e.g.,* chlorine, ozone, and copper) that are added to the water. We propose to add a new requirement that the water also be tested daily for salinity to ensure conformance with the salinity standards set out in proposed § 3.106(c). We would remove the reference to ''facilities using natural seawater'' and substitute in its place the term ''natural lagoon and coastal enclosures.'' Facilities consisting of natural lagoon or coastal enclosures would continue to be exempt from pH testing but would be subject to testing for salinity, as well as

Aquat Organ, (2008) 79(2): 87–93. Health and Ecological Criteria Division, Office of Science and Technology, EPA, Office of Water 820–F–12–058 ''Recreational Water Quality Criteria.''

[19] While we would not require a facility to conduct more than one of these tests on a weekly basis, we would encourage facilities to conduct several of these tests weekly.

[20] In APHIS' view, the intent was to retest immediately if the results (48 hours after the initial sampling) exceed the 1000 MPN limit. Logic and bacteriology dictate that the first resample should be at 48 hours from the initial sample.

testing for any chemicals that have been added.[21]

Finally, we would move the discussion of water sampling recordkeeping from current § 3.106(b)(3) to a new paragraph, § 3.106(b)(6). This amendment would require that all water quality records be kept on site, not at a management office if that is located elsewhere. This will save APHIS time and effort in reviewing the records. APHIS needs to review the records at every inspection, as assessing the bacterial loads and the chemical make-up of the water is necessary to ensuring the health and welfare of the animals. For example, by reviewing such records, chlorine levels could be correlated with the eye issues of the animals in the enclosure. Identifying a probable cause not only will improve the welfare and health of the animal, but may speed the diagnosis of the underlying issue so that proper care can be provided.

We would also require that, in addition to noting the time of testing, the facility must document the date and location of the testing, including the particular pool and the sampling site within the pool. We would continue to provide that the records be maintained for a 1-year period. However, instead of providing that the records be maintained ''by management,'' which could be at a location away from the facility, we propose to require that the records be maintained ''at the facility.'' This would ensure that the records would be readily available to APHIS inspectors during inspections. We would also clarify the current requirement that records ''must be made available for inspection purposes on request'' to instead state that the records ''must be made readily available to APHIS inspectors.''

Paragraph (c) of § 3.106 contains the salinity standards for primary enclosure pools, providing that such pools of water shall be salinized for marine cetaceans as well as for those other marine mammals which require salinized water for their good health and well-being. The current standards provide that water salinity shall be maintained within a range of 15–36 parts per thousand.

We are proposing to amend the salinity standards in § 3.106(c) to reflect the current level of scientific knowledge and accepted industry practices. Specifically, instead of providing that the salinity standards shall apply ''to marine cetaceans and other marine mammals that require salinized water for their good health and well-being,'' we would be more specific in stating that ''all primary enclosure pools must be salinized for cetaceans, pinnipeds, and sea otters.'' However, we would specifically exempt from this requirement enclosures housing river dolphins and other species in fresh water, as well as enclosures housing pinnipeds that are provided salt supplements at appropriate levels, as determined by the attending veterinarian, and daily saltwater eye baths. We expect this will minimize additional costs and renovations at existing facilities.

We are also proposing to amend the currently required salinity range of 15–36 parts per thousand to a range of 24–36 parts per thousand in order to more closely approximate the salinity levels marine mammals encounter in their natural environments beyond certain coastal areas.[22] However, in the case of natural lagoon or coastal enclosures, where salinity can be lower due to mixing with freshwater sources entering into the oceans, we would require that the salinity level be no less than 15 parts per thousand, which is the lower limit of the currently allowed salinity range. If the salinity level falls below this level in such enclosures, the marine mammal facilities would have to temporarily house the animals in another enclosure where salinity can be controlled. We would further provide that the salinity requirements in § 3.106(c) would not preclude the use of other salinity levels when prescribed by the attending veterinarian to treat a specific medical condition or conditions. This proposed standard is not intended to limit treatment options prescribed by the attending veterinarian.

The benefits of requiring salinity monitoring and increasing the lower limit that is acceptable will benefit the health and well-being of the animals by maintaining pools closer to the actual conditions the animals would find in nature. The combination of the requirements regarding salinity will allow our inspectors to better assess the welfare of the marine mammals and potentially prevent any ongoing eye[23] or skin problems that can be associated with salinity issues.

Paragraph (d) of § 3.106 currently covers filtration and water flow. We are proposing to redesignate § 3.106(d) as § 3.106(e). In addition, we propose to add that water quality may also be maintained through naturally occurring tidal flow. This change would address those facilities with natural lagoon or coastal enclosures.

Finally, we propose to add a new § 3.106(d) covering the subject of water clarity. Although this subject is addressed generally in § 3.106(a), in recent years members of the public have contacted APHIS to express concern over the appearance of pool water at facilities. For our purposes, we believe pool water should be clear enough for caretakers to observe the animals. Therefore, under proposed § 3.106(d), we would require that pools be maintained in such a manner as to provide sufficient water clarity to view the animals in order to observe them and monitor their behavior and health. This performance-based requirement would provide flexibility while ensuring that the animals can be observed at any depth or placement in the pool in order to promote their health and well-being. If an animal cannot be observed clearly, it cannot be provided adequate animal welfare.

Interactive Programs

Section 3.111 contains additional regulatory requirements covering swim-with-the-dolphin (SWTD) programs. Specifically, § 3.111 includes provisions relating to space requirements, water clarity, employees and attendants, program animals, handling, recordkeeping, and veterinary care.

As previously discussed, in 1999 we suspended enforcement of the SWTD requirements found in § 3.111 and related definitions found in § 1.1. At that time, we solicited public comment on all aspects of the suspended regulations and on all human/marine mammal interactive programs. We accepted comments until July 1, 1999, and received 20 comments by that date.

The proposed changes to § 3.111 are based on the information contained in those comments; on our review of the comments received in response to the January 23, 1995, proposed rule; on information made available to us by the public following publication of the September 4, 1998, final rule; on our review of the ANPR comments; and on our experience enforcing the Act and the regulations. The proposed changes to § 3.111 are intended to address the need to monitor interactive programs, while giving consideration to program

[21] Enclosures that are not explicitly sea pens would need to be monitored and salinity adjusted as needed. There are approximately five facilities that pump sea water directly into on-land enclosures. These facilities would need to be monitored and salinity adjusted. The salinity adjustments would likely be for only 1–2 weeks a year to compensate for excessively rainy periods that would decrease salinity near the input pipes.

[22] *http://sam.ucsd.edu/sio210/lect_2/lecture_2.html*; SIO 210 Talley Topic 2: Properties of seawater, Lynne Talley, 2000.

[23] See footnote 13.

histories,[24] enforcement history, information and scientific documentation on the effects of interactive programs on marine mammals, the general health and well-being requirements already in effect regarding marine mammals, and the need to avoid promulgation of redundant provisions. We set forth the proposed standards as performance-based standards wherever we believe such an approach is feasible and supportable by current information and scientific documentation.

Throughout proposed § 3.111, we would use the term ''marine mammal(s)'' in place of ''cetaceans.'' We would also use the term ''interactive program(s)'' in place of SWTD program(s). These changes are designed to clarify that programs may involve animals other than cetaceans (*i.e.,* sea lions) and may involve activities other than swimming with the animal (*i.e.,* programs where the participants sit on a dock or ledge, including therapeutic sessions).

The current introductory paragraph to § 3.111 provides that SWTD programs shall comply with the requirements in this section, as well as with all other applicable requirements of the regulations pertaining to marine mammals. We propose to amend this introductory paragraph to more specifically provide that all marine mammal interactive programs must comply in all respects with the regulations set forth in 9 CFR parts 2 and 3, which address animal welfare.

Paragraph (a) of § 3.111 provides the space requirements for the primary enclosure used by animals in an interactive program. This includes the interactive area, a buffer area, and the sanctuary area. The regulations provide that none of these areas shall be made uninviting to the animals, and that movement of cetaceans into the buffer or sanctuary area shall not be restricted in any way. The space requirements for each of the three areas are based upon the ''horizontal dimension,'' the minimum surface area, the average depth, and minimum volume.[25] The horizontal dimension for each area must be at least three times the average adult body length of the species of cetacean used in the program. The minimum surface area required for each of the three areas is calculated as follows:

- Up to two cetaceans: Surface area = $(3 \times \text{average adult body length}/2)^2 \times 3.14$;
- Three cetaceans: Surface area = $(3 \times \text{average adult body length}/2)^2 \times 3.14 \times 2$; and
- Additional surface area for each animal in excess of three: Surface area = $(2 \times \text{average adult body length} \backslash 2)^2 \times 3.14$.

Generally, the average depth for sea pens, lagoons, and similar natural enclosures at low tide shall be at least 9 feet. The average depth for manmade enclosures or other structures not subject to tidal action shall also be at least 9 feet. The minimum volume required for each animal must equal 9 times the minimum surface area.

We are proposing that the sanctuary area for interactive programs meet the space requirements set forth in current and proposed § 3.104. The interactive area, however, would not have to meet the space requirements set forth in proposed § 3.104. Instead, we are proposing to require that the interactive area provide sufficient space for all marine mammals to freely swim or move about, consistent with the type of interaction. We believe that this performance-based standard would provide flexibility while promoting the health and well-being of the animals. We seek comment on this, and request any published scientific data or studies on this issue.

We are also proposing to remove the requirement for a separate buffer area. We are removing this requirement because we have found that it is unnecessary to require both a buffer area and a sanctuary area as long as the animal has unrestricted access to a sanctuary area. The intent of the buffer area was to provide a place where the animals could leave the interactive area but still be eligible for recall to the interactive area. This requirement has not been shown to be necessary for the welfare of the animals during the 20 years that these programs have been under USDA jurisdiction, and the requirement of no recall from the sanctuary area is sufficient to safeguard the animals during the interactive sessions. The sanctuary area is sufficient to safeguard the animal during the interactive sessions.

As proposed, § 3.111(a) would provide that each animal must have unrestricted access to the interactive area and the sanctuary area during an interactive session. Neither area shall be made uninviting to the animals. As previously discussed, the interactive area would not have to meet the minimum space requirements set forth in proposed § 3.104, but it must provide sufficient space for all marine mammals to freely swim or move about, consistent with the type of interaction, even with a full complement of public participants and employees in the area. We propose to require that the sanctuary area meet the minimum space requirements provided in § 3.104. Proposed paragraph (a) of § 3.111 would also provide that the sanctuary area may be within the enclosure containing the interactive area or it may be within a second enclosure to which free and unrestricted access is provided during the interactive session. The degree of free and unrestricted access would be assessed by the facility and the inspector through observation of whether the animals move freely between the areas during non-interactive periods.

Under current § 3.111(b), interactive programs are subject to certain water clarity standards. Paragraph (b) provides that sufficient water clarity be maintained so that attendants are able to observe cetaceans and humans at all times while within the interactive area. If water clarity does not allow these observations, the interactive sessions shall be canceled until the required clarity is provided. We propose to make only one change to § 3.111(b). We would substitute the phrase ''marine mammals and the human participants'' in place of ''cetaceans and humans'' for the reasons discussed previously.

Paragraph (c) of § 3.111 sets forth the minimum qualification requirements for personnel associated with a SWTD program. Each program must have a licensee or manager with at least 6 years of experience dealing with captive cetaceans; at least one head trainer/behaviorist with at least 6 years of experience in training cetaceans for SWTD behaviors, or an equivalent amount of experience involving in-water training of cetaceans; at least one full-time staff member with at least 3 years training and/or handling experience involving human/cetacean interaction programs; an adequate number of staff members who are adequately trained in the care, behavior, and training of the program animals; and at least one staff or consultant veterinarian who has at least the equivalent of 2 years full-time experience with cetacean medicine

[24] We note that interactive programs have been operating for over 20 years without any indications of health problems or significant and ongoing incidents of aggression in marine mammals, as evidenced by medical records maintained by licensed facilities and observations by experienced APHIS inspectors.

[25] The space requirements, as promulgated in 1984, were based on circular pools, as most if not all pools were circular at that time. Many pools today are neither circular nor rectangular, but rather more natural curved shapes. The AWA requirements mean that there will be at least the minimum area in the pool, which is sufficient space at the surface of the pool for all marine mammals in the enclosure to be able to breathe at the surface and have a degree of freedom of movement while at the surface.

within the past 10 years, and who is licensed to practice veterinary medicine.

We are proposing to amend § 3.111(c) so that personnel qualifications are not based entirely on job titles and absolute years of experience and training. We would instead provide standards that are based on the level of knowledge and skill needed to be a head trainer, or other trainers and attendants. This would provide the licensee or registrant greater flexibility to hire the most qualified individuals. We would also remove from § 3.111(c) the specific standards for the attending veterinarian. We believe that the current requirements in § 2.40 and § 3.110 provide sufficient oversight and guidance on this subject; interactive programs have not been shown to need additional restrictions.

In proposed § 3.111(c), we would change the heading from ''Employees and attendants'' to ''Employees.'' We propose to require that each interactive program have a sufficient number of adequately trained personnel to meet the husbandry and care requirements for the animals and comply with all training, handling, and attendant requirements of the regulations. We propose to provide that, during interactive sessions, there must be a trainer, handler, and sufficient number of adequately trained attendants, as specified in § 3.111(d)(4), which is discussed below.

In proposed § 3.111(c)(1), we would require that the head trainer/supervisor of the interactive program have demonstrable in-depth knowledge of the husbandry and care requirements of the family and species of marine mammals being exhibited, demonstrable knowledge of and skill in currently accepted professional standards and techniques in animal training and handling, and the ability to recognize normal and abnormal behavior and signs of behavioral stress in the animal families and species being exhibited. This proposed standard would differ from the current regulations, which focus on the person having a specific number of years of appropriate experience.

In proposed § 3.111(c)(2), we would require that all interactive program trainers and attendants have the knowledge and skill level sufficient to safely conduct and monitor an interactive session.

Current paragraph (d) of § 3.111 specifies what animals are eligible to participate in SWTD programs, providing only for cetaceans that meet certain requirements with respect to training and conditioning in human interaction, as well as being under the control of a trainer, handler, or attendant during sessions with the public as described and defined in the NOAA-sponsored study by Samuels and Spradlin (1994 and 1995) cited above. Such animals must also be in good health. We are proposing to remove this paragraph in its entirety, removing the provision that limits program animals to cetaceans. The standards relating to conditioning, the presence of trainers or attendants, and animal health are sufficiently covered in other paragraphs of § 3.111.

The introductory text of current paragraph (e) of § 3.111 covers the handling of cetaceans used in interactive sessions. With the removal of § 3.111(d) on program animals, we would redesignate § 3.111(e) as § 3.111(d), as well as make a number of other changes to simplify and clarify the handling requirements.

Paragraph (e)(1) of § 3.111 provides that the interaction time for ''each cetacean'' shall not exceed 2 hours per day and that each program cetacean shall have at least one period in each 24 hours of at least 10 continuous hours without public interactions. In newly designated § 3.111(d)(1), we propose to provide that the interactive time between marine mammals and the public (*i.e.,* interactive session) not exceed 3 hours per day. We are making this change based on information provided by licensees with long-standing interactive programs involving, for example, bottlenose dolphins, beluga whales, spinner dolphins, California sea lions, and harbor seals, which suggested that the marine mammals would not be harmed by a modest increase in interactive time per day, and a study of Atlantic bottlenose dolphins showing that interactive programs can be an important part of an enrichment program.[26] The requirement of at least 10 continuous hours without public interactions would remain in effect. We request data or evidence supporting or opposing this change.

Paragraph (e)(2) of § 3.111 provides that cetaceans used in interactive sessions shall be adequately trained and conditioned in human interaction, with the head trainer/behaviorist, trainer/supervising attendant, or attendant maintaining control of the nature and extent of the animal's interaction with the public at all times consistent with the findings and recommendations in the NOAA-sponsored study by Samuels and Spradlin (1994 and 1995) cited above. In newly designated § 3.111(d)(2), we propose to simplify this requirement to apply to the ''trainer, handler, or attendant.''

Newly designated § 3.111(d)(3) would parallel § 3.111(e)(3) of the current regulations by requiring that marine mammals be free of infectious disease and in good health. In addition, we would provide that marine mammals undergoing veterinary treatment may be used in interactive sessions only with the written approval of the attending veterinarian.

Current paragraph (e)(4) of § 3.111 provides that the ratio of human participants to cetaceans shall not be greater than 3 to 1. Paragraph (e)(4) also provides that the ratio of human participants to attendants or other authorized SWTD personnel (*i.e.,* head trainer/behaviorist or trainer/supervising attendant) shall also not exceed 3 to 1. In newly designated § 3.111(d)(4), instead of requiring the presence of a fixed number of certain personnel, we propose to require that there be a sufficient number of session attendants (which includes trainer, handler, or attendants) to effectively conduct the session in a safe manner. We propose this requirement based on the fact that the number of human participants and marine mammals swimming freely during such a session would determine the number of attendants needed to monitor and ensure the safety of all animal and human participants. This situation is different from a session in which fewer animals are used and participants are restricted to staying on a wharf or standing in shallow water.

We also propose to require at least one attendant per marine mammal in the session, and at least one attendant positioned to monitor each session. We would also provide that the number of public participants per marine mammal must not exceed the number that the attendant can monitor safely, appropriate to the type of interactive session.[27] These changes are intended to take into account the differences between shallow-water interactive programs (*i.e.,* sessions during which the marine mammal remains relatively

[26] See also L.J. Miller, J. Mellen, T. Greer, S.A. Kuczaj II, ''The effects of education programs on Atlantic bottlenose dolphin.'' *Animal Welfare* (2011): 159–172, for a discussion on interactive time limits. We acknowledge that while a limited number of species other than bottlenose dolphins are used in interactive programs, there is scant published scientific information available on the effect of education programs on these species.

[27] The number of attendants required to monitor each session may vary by facility according to how many are needed to ensure the safety of the animals and human participants involved in the interactive session. The programs are observed routinely by the attending veterinarian and the APHIS inspector to ensure safe functioning of the program.

stationary) and other interactive programs. We believe these changes would provide greater flexibility to interactive programs while still ensuring proper supervision to ensure the health and safety of marine mammals and human participants. We seek comment on this, and on any data or studies that support or refute this requirement.

Paragraph (e)(5) of § 3.111 provides that, prior to participating in an SWTD interactive session, public participants shall be provided with oral and written rules and instructions for the session, to include the telephone and fax numbers for APHIS, Animal Care, for reporting injuries or complaints. Public participants must agree in writing to abide by the rules and instructions before participating in an interactive session. Any public participant who fails to follow the rules or instructions will be removed from the interactive session by the facility.

Under newly redesignated § 3.111(d)(5), we would continue to require that participants be provided with oral rules and instructions prior to participating in the session; however, we propose to remove the requirement that participants must agree in writing to abide by the rules and instructions before being allowed to participate in the session. This requirement is unnecessary since we can enforce the regulations whether or not a participant has signed such an agreement. We would add a requirement that a copy of the written rules be made available to APHIS during an inspection. Furthermore, instead of requiring that participants be provided telephone and FAX numbers for APHIS, Animal Care, for reporting injuries or complaints, we propose to require that participants be provided with contact information for the appropriate Animal Care Field Operations office. We propose that this could be provided either in the form of a written handout to attendees, or in a notice, posted in a highly visible location, that summarizes the rules and instructions for the session and includes contact information for the appropriate Animal Care Field Operations office for reporting injuries or complaints.

We would also clarify the grounds for expelling session participants by providing that any participant who fails to follow the rules and instructions and jeopardizes human or animal safety or health must be immediately removed from the session by the facility management.

Paragraph (e)(6) of § 3.111 provides that all interactive sessions shall have at least two attendants or other authorized personnel (*i.e.,* head trainer/behaviorist or trainer/supervising attendant). At least one attendant shall be positioned out of the water, while one or more attendants or other authorized personnel may be positioned in the water. If a facility has more than two incidents (defined as when a participant or an animal has been harmed or the marine mammal exhibits aggression) during interactive sessions within a year's time span involving human or animal injury or aggression by the animal, APHIS, in consultation with the head trainer/behaviorist, will determine if changes in attendant positions are needed.

We are proposing to remove paragraph (e)(6) in its entirety. The requirements regarding the presence of session attendants at an interactive session would be covered as part of newly designated § 3.111(d)(4). Proposed § 3.111(d)(4) would require that there be at least one attendant per marine mammal in the session, and at least one attendant positioned to monitor the session. However, the new standards in proposed § 3.111(d)(4) would not include specific language requiring APHIS consultations with the trainer to discuss personnel changes in cases where the facility has had more than two session incidents over a year's time that would be considered dangerous or harmful to the animal or the human participant. We do not believe this provision is necessary based on the available accident and injury data and taking into account our authority under the Act to respond to any incident.

Current paragraph (e)(7) of § 3.111 provides that all SWTD programs shall limit interaction between cetaceans and humans so that the interaction does not harm the cetaceans, does not remove the element of choice from the cetaceans by actions such as, but not limited to, recalling the animal from the sanctuary area, and does not elicit unsatisfactory, undesirable, or unsafe behaviors from the cetaceans. All SWTD programs shall prohibit grasping or holding of the cetacean's body, unless under the direct and explicit instruction of an attendant eliciting a specific cetacean behavior, and shall prevent the chasing or other harassment of the cetaceans.

We propose to amend these provisions to simplify and clarify them. The amended standards would be located in newly designated § 3.111(d)(6) and in a new § 3.111(d)(7). In newly designated § 3.111(d)(6), we would provide that all interactive programs would have to limit interactions between marine mammals and human participants so that the interaction does not present an undue risk of harm to the marine mammal or humans, and does not restrict by word, action, or enclosure design, the ability of the animal to leave the interactive area and session as it chooses. Recalling animals from the sanctuary area would still not be allowed. If an animal removes itself or is removed from a session, the facility must maintain the appropriate balance of public participants per marine mammal, as discussed previously under proposed § 3.111(d)(4), by either removing human participants from the interactive area or introducing another animal.

In proposed § 3.111(d)(7), we would provide that all interactive programs must prohibit grasping or holding of the animal's body unless it is done under the direct and explicit instruction of the attendant. In addition, we would provide that all interactive programs must prohibit the chasing or other harassment of the animal(s). The proposed language in newly redesignated § 3.111(d)(7) would closely parallel requirements that appear in the current § 3.111(e)(7).

Paragraph (e)(8) of § 3.111 provides that, in cases where cetaceans exhibit unsatisfactory, undesirable, or unsafe behaviors during an interactive session, including, but not limited to, charging, biting, mouthing, or sexual contact with humans, such cetaceans shall either be removed from the interactive area or the session shall be terminated. Written criteria shall be developed by each SWTD program, and shall be submitted to and approved by APHIS regarding conditions and procedures for maintaining compliance with the required ratios of human participants to cetaceans and human participants to attendants, procedures for the termination of a session when removal of a cetacean is not possible, as well as procedures for handling program animals exhibiting unsatisfactory, undesirable, or unsafe behaviors, including retraining time and techniques, and removal from the program and/or facility, if appropriate. Paragraph (e)(8) provides that the head trainer/behaviorist shall determine when operations will be terminated, and when they may resume. In the absence of the head trainer/behaviorist, the determination to terminate a session shall be made by the trainer/supervising attendant. Only the head trainer/behaviorist may determine when a session may be resumed.

We would redesignate § 3.111(e)(8) as § 3.111(d)(8). In newly designated § 3.111(d)(8), we propose to provide that marine mammals that exhibit unsatisfactory, undesirable, or unsafe behaviors, including, but not limited to, charging, biting, mouthing, or sexual

contact with humans, must be removed from the interactive session immediately, or, if the animal cannot be removed, that the session be terminated. We propose to remove the requirement that the facility's staff determine when operations or sessions at the facility shall be terminated and when they resume. The focus would instead switch to the marine mammal(s) in question. We would provide that such animals must not be used in an interactive session until the trainer determines that the unsatisfactory, undesirable, or unsafe behavior is no longer being exhibited by the marine mammal. We would also simplify the requirements regarding the facility having a written plan in place in the case of a disruption due to the behavior of one or more marine mammals. We propose to require that written criteria that addresses the termination of a session due to such behavior and the retraining of such an animal be developed and maintained at the facility, and also be made available to APHIS during inspection or upon request. The written criteria must also disclose how the facility would maintain session staffing requirements, as provided in proposed § 3.111(d)(4), in the event of a disruption caused by one or more marine mammals during a session.

Paragraph (g) of § 3.111 requires that the attending veterinarian carry out certain duties with regard to animals used in interactive programs. This includes on-site evaluations of each cetacean at least once a month, as well as examination of related behavioral, feeding, and medical records, and discussion of each animal with the appropriate animal care personnel at the facility. The attending veterinarian must record the nutritional and reproductive status of each cetacean. The attending veterinarian must also observe an interactive session at the facility at least once a month. In addition, the attending veterinarian is required to conduct a complete physical examination of each cetacean at least once every 6 months, which must include a complete blood count and serum chemistry analysis, as well as the taking of smear tests for cytology and parasite evaluation. The attending veterinarian is responsible for examining water quality records. Paragraph (g) of § 3.111 also provides a timetable for conducting a necropsy in the event a cetacean dies. Complete necropsy results, including all appropriate histopathology, shall be recorded in the cetacean's individual file and shall be made available to APHIS officials during facility inspections, or as requested by APHIS.

We would remove § 3.111(g) as written and provide a new paragraph, § 3.111(e), on veterinary care. In response to the large number of comments on the lack of supporting evidence for requiring veterinary care measures beyond those required for all other marine mammals, we would provide that the facility would have to comply with all provisions in §§ 2.33, 2.40, and 3.110. Section 2.33 contains provisions on attending veterinarians and adequate veterinary care at research facilities, while § 2.40 contains provisions on attending veterinarians and adequate veterinary care applicable to animals held by dealers or exhibitors of animals. Section 3.110 provides veterinary care standards for marine mammals generally, as well as necropsy requirements should a marine mammal die in captivity. In addition to meeting the requirements of §§ 2.33, 2.40, and 3.110, proposed § 3.111(e) would require the attending veterinarian to observe an interactive session at least once a month or observe each interactive session if they are offered less frequently than twice a month, and review the feeding records, behavior records, and water quality records at least biannually or as often as needed to assure the health and well-being of the marine mammals.

Paragraph (f) of § 3.111 contains the recordkeeping requirements for facilities with interactive programs. We are proposing to amend § 3.111(f) by streamlining its content to reduce the burden on the regulated parties while continuing to require certain documentation for effective enforcement of the regulations and standards.

Paragraph (f)(1) of § 3.111 provides that each facility shall provide APHIS with a description of its program at least 30 days prior to initiation of the program, or not later than October 5, 1998 in the case of any program in place before September 4, 1998. The description shall include at least the following information: Identification of each cetacean in the program; a description of the educational content and agenda of planned interactive sessions, and the anticipated average and maximum frequency and duration of encounters per cetacean per day; the content and method of pre-encounter orientation, rules, and instructions; a description of the SWTD facility, including the primary enclosure and other SWTD animal housing or holding enclosures at the facility; a description of the training, including actual or expected number of hours each cetacean has undergone or will undergo prior to participation in the program; the resume of the licensee and/or manager, the head trainer/behaviorist, the trainer/supervising attendant, any other attendants, and the attending veterinarian; the current behavior patterns and health of each cetacean, to be assessed and submitted by the attending veterinarian; for facilities that employ a part-time attending veterinarian or consultant arrangements, a written program of veterinary care (APHIS form 7002), including protocols and schedules of professional visits; and a detailed description of the monitoring program to be used to detect and identify changes in the behavior and health of the cetaceans.

In proposed § 3.111(f)(1), we would continue to require that each facility provide APHIS with a description of its program at least 30 days prior to initiation of the program, or in the case of any program in place before the date a final rule is published, not later than 30 days after the effective date of the final rule. We also propose to provide that facilities that submitted the required documentation during the period of October through December 1998, and received approval letters, need only submit information that has changed. These letters were issued to approximately 16 facilities.

In proposed § 3.111(f)(1)(ii), we would clarify that the session agenda would have to include, at a minimum, written information distributed, topics addressed prior to entry in the water, and the planned program, including behaviors and activities expected to be presented or performed. We propose to delete current § 3.111(f)(1)(iii), which requires that the program description cover pre-encounter orientation. A similar requirement would appear in proposed § 3.111(f)(1)(ii). With the deletion of § 3.111(f)(1)(iii), we would redesignate paragraphs (f)(1)(iv) through (f)(1)(vi) of § 3.111 as (f)(1)(iii) through (f)(1)(v).

Current paragraph (f)(1)(iv) of § 3.111 requires that the program description include a description of the SWTD facility, including the primary enclosure and other SWTD animal housing or holding enclosures at the facility. In newly designated § 3.111(f)(1)(iii), we propose to clarify this requirement by providing that the program description must include a description of the interactive program enclosures, including identification of nonsession housing enclosures, sanctuary area, and interactive area. All enclosures housing or used by program animals would have to be covered in the description.

Current paragraph (f)(1)(v) of § 3.111 provides that the program description cover the training each cetacean has undergone or will undergo prior to

participation in the program. This includes the actual and expected number of hours of training. We propose making this requirement more performance-based. In newly designated § 3.111(f)(1)(iv), we would instead require that the program description include verification from the trainer that the program animals have received adequate and appropriate training for an interactive program. We would not require that the training description specifically include the number of hours of actual or expected training. Paragraph (f)(1)(vi) of § 3.111 currently provides that the program description include the resume of the licensee and/or manager, the head trainer/behaviorist, the trainer/supervising attendant, any other attendants, and the attending veterinarian. We propose to amend this requirement in newly designated § 3.111(f)(1)(v) to provide that the facility description include documentation of the experience and training of the trainer, handler, attendants, and attending veterinarian.

We propose to eliminate the requirements, currently appearing in § 3.111(f)(1)(vii) through (ix), that the facility description include information regarding the current behavior patterns and health of each cetacean, a written program of veterinary care for facilities that utilize a part-time attending veterinarian or consultant, and a detailed description of the monitoring program to be used to detect and identify changes in the behavior and health of the cetaceans. These requirements are redundant to what would already be required elsewhere in the regulations for maintaining medical and behavioral records for marine mammals held in captivity.

Current paragraph (f)(2) of § 3.111 provides that all SWTD programs shall comply in all respects with the regulations and standards set forth in 9 CFR parts 2 and 3. We would remove this language. A similar requirement would instead appear in the introductory paragraph at the beginning of § 3.111.

Paragraph (f)(3) of § 3.111 requires that all individual animal veterinary records, including all examinations, laboratory reports, treatments, and necropsy reports, be kept at the facility site for at least 3 years, while § 3.111(f)(4) requires that the facility retain for at least 3 years individual feeding and behavioral records. These records must be made available to APHIS officials during inspection. We would combine the information provided in paragraphs (f)(3) and (f)(4) into one paragraph, newly designated § 3.111(f)(2), which would require that medical, feeding, water quality, and any behavioral records be kept at the facility for at least 1 year. This is consistent with other recordkeeping requirements in the subpart. We would, however, continue to require that necropsy records be maintained for 3 years (§ 3.110(g)(2)). We would also continue to require that the records be made available to APHIS officials during inspection.

Paragraph (f)(5) of § 3.111 requires that the facility retain for at least 3 years certain statistical summaries involving the amount of time each day that animals participated in an interactive session, as well as the number of persons who participated in the interactive sessions per month. We propose to amend this requirement, to appear at newly designated § 3.111(f)(3), to instead provide that records of individual animal participation times (date, start time of interactive session, and duration) must be maintained by the facility for a period of at least 1 year and be made available to APHIS officials during inspection. It would no longer be necessary for facilities to maintain statistical summaries of the number of persons who participated in the interactive program each month.

Paragraph (f)(6) of § 3.111 requires the facility to submit on a semi-annual basis a description of any changes made in the SWTD program. We propose to remove this paragraph. A new paragraph addressing these requirements on program changes would appear as proposed § 3.111(f)(5), discussed below.

Current § 3.111(f)(7) provides that facilities must maintain records regarding all incidents resulting in injury to either cetaceans or humans participating in an interactive session. All such incidents shall be reported to APHIS within 24 hours of the incident and a written report of the incident that provides a detailed description of the incident and a plan of action for the prevention of further occurrences shall be submitted to the Administrator within 7 days. We would make certain changes to this provision, which would appear at newly designated § 3.111(f)(4). We propose to expand the applicability of this provision to apply not only in cases of injury to human participants or marine mammals, but also to other members of the public and facility staff. In addition, we propose to require that incidents that occur during training sessions also be reported. We would require this reporting so that we would have information about all incidents at a facility, not just those incidents involving members of the public, and we would be able to identify any patterns or problem areas that need to be addressed. We would continue to require that the incident be reported to APHIS within 24 hours of its occurrence, with a written report to be submitted to APHIS within 7 days. We would clarify that the 7-day deadline means 7 calendar days. We would add that, in addition to detailing the incident, the written report must also describe the facility's response to the incident. We would no longer require that the written report specifically include a plan of action for the prevention of further occurrences. We are proposing the latter change as we have determined from experience that working directly with the licensee after an incident is a more timely and flexible means to ensure that adequate measures are in place to prevent such an incident from occurring again.

We propose to add a new paragraph, to appear at § 3.111(f)(5), which would provide that any changes to the interactive program, such as, but not limited to, personnel, animals, facilities (enclosures and interactive areas), and behaviors used, must be submitted to APHIS within 30 calendar days of the change. As long as the change is consistent with requirements, no additional approval from APHIS would be needed. If there is any question of the change being consistent with requirements, APHIS would relay the information to the inspector to discuss with the licensee. This requirement would replace an existing requirement found at § 3.111(f)(6) that provides that the facility must submit on a semi-annual basis a description of any changes made in the SWTD program.

Miscellaneous

We also propose to make a number of minor editorial changes in various sections for clarity and consistency.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

We are proposing to amend six sections of 9 CFR part 3 subpart E: § 3.100 on variances and implementation dates; § 3.102 on indoor facilities; § 3.103 on outdoor facilities; § 3.104 on space requirements, § 3.106 on water quality; and § 3.111 on swim-with-the-dolphin programs. Objectives of this proposed rule are to provide regulated facilities with more flexibility in meeting the space requirements (§ 3.100); prevent the accumulation of chlorine/chloramine fumes, ammonia fumes, ozone, other gases, and odors; maintain relative humidity; and provide lighting that simulates natural lighting patterns for healthy animal metabolism (§ 3.102); ensure proper air and water temperature standards, and provide shelter to protect animals from overheating and sunburn due to direct sunlight (§ 3.103); provide easy access and exit for pinnipeds, polar bears, and sea otters of all ages and infirmities to ensure that young, elderly, and ill or infirm animals are able to get out of the water to access their dry resting or social activity area (§ 3.104); provide water quality standards including requirements relating to bacterial standards, salinity, filtration, and water flow (§ 3.106); and address the need to avoid promulgation of redundant provisions and enable APHIS to again enforce regulations covering marine mammal interactive programs which have been suspended since 1999 (§ 3.111).[28]

The entities primarily affected by this proposed rule would be 115 facilities that handle or maintain marine mammals in captivity, such as aquariums, zoos, marine life parks, marine mammal rehabilitation and conservation facilities that are open to the public, and research facilities. Other stakeholders include, but are not limited to, organizations and individuals who are dedicated to improving the welfare of marine mammals in captivity, other Federal agencies that are responsible for the protection and conservation of marine mammals, as well as members of the general public who view and interact with marine mammals in captivity.

A total of 1,544 marine mammals are listed in the latest APHIS inspection data: Dolphins (35 percent), sea lions (25 percent), and seals (21 percent) are the principal species housed at regulated facilities, followed by polar bears (5 percent), sirenians (4 percent), sea otters (3 percent), whales other than killer whales (3 percent), killer whales (2 percent) and walruses (1 percent). The number of marine mammals housed per facility varies from fewer than 4 animals (48 facilities or 42 percent of the 115 facilities) to over 50 animals (4 facilities or 3 percent of the total). Two-thirds of the 115 facilities currently house fewer than 9 marine mammals, and 13 facilities (11 percent) house more than 25 marine mammals. The average number of marine mammals housed is 13.

This proposed rule would directly impact these regulated facilities. Categories of expected benefits and costs of the proposed rule are summarized in Table 1.[29] As for the monetized costs, we estimate that one-time costs to the industry would total about $131,000 to $156,000 for providing easy access and exit ramps for pinnipeds, polar bears, and sea otters; individual visual barriers for sea otters; and portable refractometer for salinity testing. Annual recurring costs would total about $574,000 to $604,000 for shelters and bacterial testing for water quality. We estimate that the total additional annual revenue for the marine mammal interactive industry would be about $23 million to $24 million, but we lack data with which to estimate profits—which, rather than revenues, represent the benefits of this proposed rule's interactive program provision. We encourage the public to provide information that would help us to refine these estimates.

TABLE 1—SUMMARY OF EXPECTED BENEFITS AND COSTS OF THE PROPOSED RULE

Sections	Expected benefits (Benefits are primarily qualitative and are not monetized)	Expected costs	
		One-time costs	Annual recurring costs
§ 3.100 Variance ...	Make this section operative again and provide more flexibility.	None	None.
§ 3.102 Indoor facilities.	*Ventilation:* Reduce risks of skin and mucous membrane irritation and bacterial and mold growth.	*Ventilation:* None	*Ventilation:* None.

[28] Refer to the ''Interactive Programs'' section of the proposed rule for more information on the enforcement of interactive programs.

[29] The proposed changes are intended to benefit the welfare of marine mammals in captivity. These benefits are included in the table without monetizing as no studies or models to quantify these benefits are available. Impacts for the individual facilities would vary due to the degree to which they are already in compliance with the proposed amendments, and because various approaches and applications could be used when changes are needed. The proposed rule also includes certain changes that are for clarification purposes only, or for which the majority of affected entities are already in compliance. For these changes, we expect little or no associated economic impact, and they are therefore not included in the table.

TABLE 1—SUMMARY OF EXPECTED BENEFITS AND COSTS OF THE PROPOSED RULE—Continued

Sections	Expected benefits (Benefits are primarily qualitative and are not monetized)	Expected costs	
		One-time costs	Annual recurring costs
	Lighting: Ensure normal functioning of metabolic systems for animals and provide facility personnel sufficient light to observe animals and to operate safely.	*Lighting:* Expected to be small, if any, as most facilities are under compliance.	*Lighting:* Expected to be minimal, if any, due to increased energy-efficiency and longer-life of bulbs.
§ 3.103 Outdoor facilities.	*Environmental temperatures:* Clarify the requirements and help animals maintain their desired internal temperatures without stressing their metabolisms.	*Environmental temperatures:* Expected to be small, if any. (No citation in the last 3 years.).	*Environmental temperatures:* Expect little economic impact.
	Shelter: Minimize overheating and sunburn of animals from direct and reflective sunlight. For pinnipeds, limit the severity of lens-related disease.	*Shelter:* None	*Shelter:* $20,000–$50,000 (Annual or biennial costs, based on 50 pools.)
§ 3.104 Space requirements.	*Space requirements—general and species specific:* Clarify the requirements and update tables for average adult lengths and corresponding minimum space requirements.	*Space requirements—general and species specific:* None.	*Space requirements—general and species specific:* None.
	Easy access and exit ramps and visual barriers: Provide elderly, and ill or infirm animals with easy access to their dry resting areas, and, for sea otters provide safe resting spaces.	*Easy access ramps and visual barriers:* $85,000–$110,000 (Based on 50 fiberglass ramps @$1,500–$2,000 and 50 barriers @$200).	*Easy access ramps and visual barriers:* None.
§ 3.106 Water quality.	*Bacterial standards and salinity testing:* Clarify and update the bacterial count and salinity requirements to ensure animals' health and well-being and to conform to the EPA and related standards that protect the health and well-being of humans in the water, such as when taking part in interactive programs.	*Bacterial standards:* None ..... *Salinity testing:* $46,000 (Based on 460 pools and a cost of portable refractometer @$100).	*Bacterial standards:* $554,000 (Based on 460 pools, 20% lab-tests @$85 per week and 80% on-site tests with $7.70 test kit per week per pool). *Salinity testing:* None.
	On-site record keeping: Allow APHIS inspectors to better access the animal welfare information to assess the animal health.	*On-site record keeping:* A small cost to create a new on-site filing for those facilities which keep records at a centralized location.	*On-site record keeping: A small:* None.
	Water clarity, filtration and water flow: Through performance based standards, provide flexibility while ensuring animals' well-being.	*Water clarity, filtration and water flow:* None.	*Water clarity, filtration and water flow:* None.
§ 3.111 Marine mammal interactive programs.	*The program name and marine mammal species:* Provide consistency to the industry and bring other animals under the protection of interactive programs.	*The program name and marine mammal species:* None.	*The program name and marine mammal species:* None.
	The interactive area: Provide better use of resources while providing improved safety for animals and public participants.	*The interactive area:* None	*The interactive area:* None.
	Minimum qualification requirements for program personnel: Provide more flexibility in staffing decisions by focusing on an individual's needed knowledge, skills, and abilities.	*Minimum qualification requirements for program personnel:* None.	*Minimum qualification requirements for program personnel:* None.
	Interactive time between animals and the public and the ratio of human participants to animal: Proposed increase of daily interactive time from 2 hours to 3 hours could generate additional annual revenue of about **$23 million–$24 million** for the industry. (Assumptions—87 interactive programs, 3 participants per session in the programs, 360 days/year operations) The benefit of this provision would be increased profit, not increased revenue, but we have no net profit estimates for the industry.	*Interactive time between animals and the public and the ratio of human participants to animal:* Decisions to increase interactive program time are discretion of the facilities, and no costs are expected which are directly caused by the proposed changes.	*Interactive time between animals and the public and the ratio of human participants to animal:* None.

TABLE 1—SUMMARY OF EXPECTED BENEFITS AND COSTS OF THE PROPOSED RULE—Continued

Sections	Expected benefits (Benefits are primarily qualitative and are not monetized)	Expected costs	
		One-time costs	Annual recurring costs
	Written agreements by participants, a provision of APHIS consultations, recordkeeping, and veterinary care requirements: Streamline record-keeping requirements to reduce administrative burdens without compromising the quality of animal welfare.	*Written agreements by participants, a provision of APHIS consultations, recordkeeping, and veterinary care requirements:* None.	*Written agreements by participants, a provision of APHIS consultations, recordkeeping, and veterinary care requirements:* None.
Sum of monetized benefits and costs of the proposed rule.	Not available	$131,000–$156,000	$574,000–$604,000.

Source: Data compiled by APHIS based on publicly available costs and marine mammal interactive program fees.
Note 1: Number of facilities not currently in compliance is not available but is thought to be small.
Note 2: The total number of pools is not available. The number of pools at a given facility ranges widely from 1 pool at some small facilities to over 20 pools including back area holding pools in some large facilities.
Note 3: The annual industry revenue under the assumption that, on average, each interactive session has 1 marine mammal which is participating in the interactive session. The annual revenue for the industry is calculated by multiplying the 87 interactive programs by the average annual revenue per marine mammal interactive program. For more detail, refer to the marine mammal interactive programs in the expected benefit section.
Note 4: Revenues are estimated based on the information retrieved from Web sites of the 32 facilities.

As shown in Table 1, we expect that the proposed rule would not result in significant costs for most of the regulated facilities.

Facilities that house marine mammals for exhibition purposes are grouped under the following industries by the North American Industry Classification System: Zoos, Aquariums, and Botanical Gardens (NAICS 712130), Amusement and Theme Parks (NAICS 713110), and Nature Parks and other Similar Institutions (NAICS 712190). Establishments in these three industries are considered small according to the Small Business Administration's (SBA) size standards if annual receipts are, respectively, not more than $27.5 million (NAICS 712130), $38.5 million (NAICS 713110) and $7.5 million (NAICS 712190). Facilities that maintain marine mammals for research purposes (NAICS 541712) are considered small if they have 500 or fewer employees. In 2012, the average annual value of sales per entity for Zoos, Aquariums, and Botanical Gardens (NAICS 712130) was $5.2 million; for Amusement and Theme Parks (NAICS 713110), $27.6 million; and for Nature Parks and Other Similar Institutions (NAICS 712190), $1.1 million. Ninety-eight percent of the facilities that maintain marine mammals for research purposes (NAICS 541712) had fewer than 500 employees. Based on this information most if not all businesses in these industries are considered to be small.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2006–0085. Please send a copy of your comments to: (1) Docket No. APHIS–2006–0085, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

We are proposing to amend the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These proposed changes would affect sections in the regulations relating to variances, indoor facilities, outdoor facilities, space requirements, and water quality. We are also proposing to revise the regulations that relate to swim-with-the-dolphin programs. These proposed amendments may increase paperwork by requiring more records pertaining to water quality and by creating more frequent requests concerning variances and variance extensions from space requirements and other requirements for marine mammals. For interactive programs, the proposed amendments will decrease the amount of recordkeeping and reporting. However, because of an increase in these types of programs and a more inclusive definition of interactive programs under the proposed rule, a larger number of facilities may be required to maintain and report such records. In addition, the estimated annual number of respondents is the number of respondents that we estimate will respond to all of the information collections annually. We are soliciting comments from the public (as well as affected agencies) concerning our proposed reporting, third party disclosure, and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.31426 hours per response.

Respondents: Dealers, exhibitors, research facilities, intermediate carriers, veterinarians, marine mammal experts, and handlers.

Estimated annual number of respondents: 162.

Estimated annual number of responses per respondent: 90.

Estimated annual number of responses: 14,507.

Estimated total annual burden on respondents: 4,559 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.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act 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. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects

9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, we propose to amend 9 CFR parts 1 and 3 as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Section 1.1 is amended as follows:

■ a. By removing the definitions of *buffer area* and *swim-with-the-dolphin (SWTD) program.*

■ b. By revising the definitions of *interactive area, interactive session, primary enclosure,* and *sanctuary area.*

■ c. By adding, in alphabetical order, a definition of *interactive program.*

The addition and revisions read as follows:

§ 1.1 Definitions.

* * * * *

Interactive area means that area of a marine mammal primary enclosure where an interactive program takes place.

Interactive program means any human-marine mammal interactive program where a member of the public enters a primary enclosure for a marine mammal with the intent of interacting with the marine mammal(s), except for potentially dangerous marine mammals, such as, but not limited to, polar bears. Such programs include, but are not limited to, sessions in which the human participants swim, snorkel, scuba dive, or wade in the enclosure and sessions in which the human participants sit on a dock or ledge, including therapeutic sessions. Such programs exclude, but such exclusions are not limited to, feeding or petting pools where the members of the public are not allowed to enter the enclosure, and the participation of an audience member at what has been traditionally known as a performance or show involving the exhibition of marine mammals.

Interactive session means the time during which a marine mammal and a member of the public are in the interactive area.

* * * * *

Primary enclosure means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, or hutch. This term, which may also be referred to as enclosures, includes, but such inclusions are not limited to, display enclosures, holding enclosures, night enclosures, off-exhibit enclosures, and medical enclosures.

* * * * *

Sanctuary area means that area in a primary enclosure for marine mammals that abuts the interactive area and is off-limits to the public.

* * * * *

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 4. Section 3.100 is revised to read as follows:

§ 3.100 Special considerations regarding compliance and/or variance.

(a) All persons subject to the Animal Welfare Act who maintain or otherwise handle marine mammals in captivity must comply with the provisions of this subpart, except that they may request a variance [6] from the Deputy Administrator from one or more specified provisions of § 3.104.

(b) An application for a variance must be made to the Deputy Administrator in writing. The request must include:

(1) The species, number, and gender of animals involved;

(2) A statement from the attending veterinarian certifying the age and health status of the animals involved and how the granting of a variance would be beneficial or detrimental to the marine mammals involved;

(3) Each provision of § 3.104 that is not being met;

(4) The time period requested for a variance;

(5) The specific reasons why a variance is requested; and

(6) The estimated cost of coming into compliance, if construction is involved.

(c) After receipt of an application for a variance, APHIS may require the submission in writing of a report by two recognized experts selected by the Deputy Administrator concerning potential adverse impacts on the animals involved or on other matters relating to the effects of the requested variance on the health and well-being of such marine mammals. Such a report will be required in those cases where the Deputy Administrator determines that such expertise is necessary to determine whether the granting of a variance would cause a situation detrimental to the health and well-being of the marine mammals involved. All costs associated with such a report will be borne by the applicant.

(d) Variances may be granted for facilities because of ill or infirm marine mammals that cannot be moved without placing their well-being in jeopardy, or for facilities within 1 foot (0.3048 meters) of compliance with any linear space requirement. Such variances may

[6] Written permission from the Deputy Administrator to operate as a licensee or registrant under the Act without being in full compliance with one or more specified provisions of § 3.104.

be granted for up to the life of the marine mammals involved.

(e) The Deputy Administrator will deny any application for a variance if it is determined that the requested variance is not justified under the circumstances or that allowing it will be detrimental to the health and well-being of the marine mammals involved.

(f) A research facility may be granted a variance from specified requirements of this subpart when such variance is necessary for research purposes, is fully explained in the experimental design, and has the appropriate scientific research permit under the Marine Mammal Protection Act, Endangered Species Act, and Institutional Animal Care and Use Committee (IACUC) approval. Any time limitation stated in this section will not be applicable in such case. This provision cannot be used to avoid complying with § 3.104.

(g) A facility may be granted a variance from specified requirements of this subpart when such variance is necessary due to an emergency or temporary special circumstance. Any time limitation stated in this section will not be applicable in such case. This provision cannot be used to avoid complying with § 3.104.

■ 5. Section 3.102 is revised to read as follows:

§ 3.102 Facilities, indoor.

(a) *Ambient temperature.* The air and water temperatures in indoor facilities must be sufficiently regulated by heating or cooling to protect the marine mammals from extremes of temperature, to provide for their good health and well-being, and to prevent discomfort, in accordance with the currently accepted practices as cited in appropriate professional journals or reference guides, depending upon the species housed therein. Rapid changes in air and water temperatures must be avoided.

(b) *Ventilation.* Indoor housing facilities must be ventilated by natural and/or mechanical means to provide a flow of fresh air for the marine mammals that will prevent the accumulation of chlorine/chloramine fumes, ammonia fumes, ozone, other gases, or odors at levels that would be objectionable or harmful to a reasonable person of average sensitivity, and maintain relative humidity at a level that prevents condensation in order to minimize the potential for bacterial, fungal, or viral contamination from condensation. The average ventilation rate should exceed 0.2 cubic feet per minute per kilogram (cfm/kg) of animal. A vertical air space averaging at least 6 feet (1.83 meters) must be maintained in all enclosures housing marine mammals, including over pools.

(c) *Lighting.* Indoor housing facilities for marine mammals must have ample lighting, by natural or artificial means, or both, of a quality, distribution, and duration which is appropriate for the species involved. Artificial lighting must provide full spectrum lighting. Sufficient lighting must be available to provide uniformly distributed illumination which is adequate to permit routine inspection, observation, and cleaning of all parts of the enclosure including any den area(s). Artificial light levels measured 1 meter above pools or decks should not exceed 500 lux. Lighting intensity and duration must be consistent with the general well-being and comfort of the animals and provide at least 6 hours of uninterrupted darkness during each 24-hour period. Lighting must not cause overexposure, discomfort, or trauma to the marine mammals. To the extent possible, it should approximate the lighting conditions encountered by the animal in its natural environment.

■ 6. Section 3.103 is amended as follows:

■ a. By revising paragraphs (a) introductory text and (a)(3).

■ b. By revising paragraph (b).

The revisions read as follows:

§ 3.103 Facilities, outdoor.

(a) *Environmental temperatures.* Marine mammals must not be housed in outdoor facilities unless the air and water temperature ranges that they may encounter while they are so housed are in accordance with currently accepted practices for the species, as cited in appropriate professional journals or reference guides, and do not adversely affect their health and comfort. A marine mammal must not be introduced to an outdoor housing facility until it is acclimated to the air and water temperature ranges that it will encounter there. The following requirements will be applicable to all outdoor pools:

* * * * *

(3) Sirenians and primarily warm water dwelling species of pinnipeds or cetaceans must not be housed in outdoor pools where water temperature cannot be maintained within the temperature range needed to maintain their good health and prevent discomfort in accordance with currently accepted practices as cited in appropriate professional journals or reference guides.

(b) *Shelter.* Natural or artificial shelter that is appropriate for the species concerned, when the local climatic conditions are taken into consideration, must be provided for all marine mammals kept outdoors to afford them protection from the weather. Shade must be provided to protect marine mammals from direct sunlight, including during feeding and training sessions. Shade must be accessible and cover sufficient area to afford all animals within the enclosure protection. Shaded areas need not be contiguous and shade structures may be permanent or temporary for easy movement or deployment.

* * * * *

■ 7. Section 3.104 is amended as follows:

■ a. In paragraph (a), by designating the text following the paragraph heading ''*General.*'' as paragraph (a)(1) and adding paragraph (a)(2).

■ b. In paragraph (b) introductory text, by removing the first sentence after the paragraph heading ''*Cetaceans.*'' and by removing the words ''Table III'' and adding the words ''Table 1'' in their place.

■ c. In paragraph (b)(1)(i), footnote 8 is redesignated as footnote 7.

■ d. In paragraph (b)(1)(iv), in the last sentence, by removing the words '', and for Group II cetaceans in Table II'' and by adding the words ''and Group II'' after the words ''Group I''.

■ e. Following paragraph (b)(1)(iv), by removing Tables I, II, and III, and adding Tables 1, 2, 3, and 4 in their place.

■ f. In paragraph (b)(2), by removing the last sentence.

■ g. In paragraph (b)(3) introductory text, by removing the words ''Tables I, II, and IV'' and adding the words ''Table 1'' in their place.

■ h. In paragraph (b)(3)(ii), in the last sentence, by removing the words ''Table II'' and adding the words ''Table 1'' in their place.

■ i. In paragraph (b)(4)(i), by redesignating footnote 9 as footnote 8.

■ j. In paragraph (b)(4)(ii), by removing the last sentence and by redesignating footnote 10 as footnote 9.

■ k. In paragraph (b)(4)(iii), by removing the words ''Table IV'' and adding the words ''Table 1'' in their place.

■ l. Following paragraph (b)(4)(iii) introductory text, by removing Table IV.

■ m. In paragraph (c), by removing the first sentence following the paragraph heading ''*Sirenians.*''

■ n. In paragraph (c)(1), by adding a sentence after the last sentence.

■ o. In paragraph (c)(2), by removing the last sentence.

■ p. By revising paragraph (d)(1).

■ q. In paragraph (d)(3)(iii), by removing the last sentence.

■ r. In paragraph (e), by adding a sentence after the first sentence.

■ s. In paragraph (f)(1), by adding a sentence after the first sentence and by removing the words ''Table V'' and adding the words ''Table 5'' in their place.
■ t. In paragraph (f)(2), by removing the words ''Table V'' and adding the words ''Table 5'' in their place.
■ u. In paragraph (f)(3), by removing the words ''will result in the following figures:'' and adding the words ''are in Table 5. Since sea otters do not readily use shared resting areas, individual areas or visual barriers separating appropriately sized individual resting spaces must be used.'' in their place.
■ v. Following paragraph (f)(3) introductory text, in the table heading, by removing the words ''Table V'' and adding the words ''Table 5'' in their place.

The additions and revision read as follows:

§ 3.104 Space requirements.

(a) * * *

(2) Only those areas that meet or exceed the minimum depth requirement may be used in determining compliance with minimum horizontal dimension (MHD), volume, and surface area. APHIS will determine if partial obstructions in a horizontal dimension compromise the intent of the regulations and/or significantly restrict freedom of movement of the animal(s) in the enclosure.

(b) * * *

(1) * * *

(iv) * * *

BILLING CODE 3410–34–P

Table 1. Average adult lengths and minimum space requirements for cetaceans in captivity

Species Group I	Common name	Average adult length		Minimum horizontal dimension		Minimum depth		Volume of water for 1-2 animals		Volume of water required for each additional animal in excess of 2		Surface area for 1-2 animals[1]	
		Feet	Meters	Feet	Meters	Feet	Meters	$Feet^3$	$Meters^3$	$Feet^3$	$Meters^3$	$Feet^2$	$Meters^2$
Cephalorynchus commersonii	Commerson's dolphin	5.00	1.52	24.00	7.32	6.00	1.83	2,712.96	76.97	117.75	3.32	29.44	2.72
Delphinapterus leucas	Beluga whale	14.0	4.27	28.0	8.54	7.00	2.14	4,308.08	55.11	1,077.02	30.63	230.79	21.47
Eschrichtius robustus	Gray whale	42.60	13.00	85.20	26.00	21.30	6.50	121,374.78	3,449.29	3,0343.69	862.32	2136.88	199.00
Globicephala macrorhynchus	Short-finned pilot whale	18.00	5.49	36.00	10.98	9.00	2.75	9,156.24	260.26	2289.06	65.06	381.51	35.49
Globicephala melaena	Long-finned pilot whale	19.00	5.79	38.00	11.58	9.50	2.90	10,768.63	305.27	2692.16	76.32	425.08	39.47
Grampus griseus	Risso's dolphin	12.00	3.66	24.00	7.32	6.00	1.83	2,712.96	76.97	678.24	19.24	169.56	15.77
Inia geoffrensis	Amazon river dolphin	8.00	2.44	24.00	7.32	6.00	1.83	2,712.96	76.97	301.44	8.55	75.36	7.01
Monodon monoceros	Narwhal	13.00	3.96	26.00	7.92	6.50	1.88	3,499.29	92.57	862.32	20.86	192.92	16.65
Orcinus orca	Killer whale	24.0	7.32	48.0	14.64	12.0	3.66	21,793.68	615.79	5,425.92	153.95	678.24	63.09
Phocoena phocoena	Harbor porpoise	5.50	1.68	24.00	7.32	6.00	1.83	2,712.96	76.97	142.48	4.05	35.62	3.32
Platanista, all species	Ganges river dolphin	8.00	2.44	24.00	7.32	6.00	1.83	2,712.96	76.97	301.44	8.55	75.36	7.01
Pontoporia blainvillei	La Plata river dolphin or Franciscana	5.00	1.52	24.00	7.32	6.00	1.83	2,712.96	76.97	117.75	3.32	29.44	2.72
Pseudorca crassidens	False killer whale	14.30	4.35	28.60	8.70	7.15	2.18	4,591.00	129.53	1,147.75	32.38	240.79	22.28
Sotalia fluviatilis	Tucuxi or white dolphin	5.50	1.68	24.00	7.32	6.00	1.83	2,712.96	76.97	142.48	4.05	35.62	3.32

Tursiops truncatus (Atlantic)	Atlantic bottlenose dolphin	9.0	2.74	24.0	7.32	6.00	1.83	2,712.96	76.97	381.15	10.79	95.38	8.84
Tursiops truncatus (Pacific)	Pacific bottlenose dolphin	10.00	3.05	24.00	7.32	6.00	1.83	2,712.96	76.97	471.00	13.36	117.75	10.95

Species Group II	Common name	Average adult length		Minimum horizontal dimension		Minimum depth		Volume of water for 1-4 animals		Volume of water required for each additional animal in excess of 4		Surface area for 1-4 animals	
		Feet	Meters	Feet	Meters	Feet	Meters	$Feet^3$	$Meters^3$	$Feet^3$	$Meters^3$	$Feet^2$	$Meters^2$
Delphinus delphis	Common dolphin	8.50	2.59	34.00	10.36	8.50	2.59	7,713.41	218.22	1,928.35	54.55	85.07	7.90
Feresa attenuata	Pygmy killer whale	8.00	2.44	32.00	9.76	8.00	2.44	6,430.72	182.46	1,607.68	45.61	75.36	7.01
Kogia breviceps	Pygmy sperm whale	13.00	3.96	52.00	15.84	13.00	3.96	27,594.32	779.97	6,898.58	194.99	199.00	18.47
Kogia simus	Dwarf sperm whale	9.50	2.90	38.00	11.60	9.50	2.90	10,768.63	306.33	2,692.16	76.58	106.27	9.90
Lagenorhynchus acutus	Atlantic white-sided dolphin	9.50	2.90	38.00	11.60	9.50	2.90	10,768.63	306.33	2,692.16	76.58	106.27	9.90
Lagenorhynchus albirostris	White-beaked dolphin	9.00	2.74	36.00	10.96	9.00	2.74	9,156.24	258.37	2,289.06	64.59	95.38	8.84
Lagenorhynchus cruciger	Hourglass dolphin	5.60	1.70	24.00	7.32	6.00	1.83	2,712.96	76.97	590.82	16.61	36.93	3.40
Lagenorhynchus obliquidens	Pacific white-sided dolphin	7.50	2.29	30.00	9.15	7.50	2.29	5,298.75	150.50	1,324.69	37.71	66.23	6.17
Lissodelphis borealis	Northern right whale dolphin	9.00	2.74	36.00	10.96	9.00	2.74	9,156.24	258.37	2,289.06	64.59	95.38	8.84
Neophocaena phocaenoides	Finless porpoise	6.00	1.83	24.00	7.32	6.00	1.83	2,712.96	76.97	678.24	19.24	42.39	3.94
Peponocephala electra	Melon-headed whale	9.00	2.74	36.00	10.96	9.00	2.74	9,156.24	258.37	2,289.06	64.59	95.38	8.84
Phocoenoides dalli	Dall's porpoise	6.50	2.00	26.00	8.00	6.50	2.00	3,449.29	100.48	862.32	25.12	49.75	4.71
Stenella attenuata	Pantropical spotted dolphin	7.50	2.29	30.00	9.15	7.50	2.29	5,298.75	150.50	1,324.69	37.71	66.23	6.17

Stenella clymene	Short-snouted spinner dolphin	7.00	2.13	28.00	8.52	7.00	2.13	4,308.08	121.37	1,077.02	30.34	57.70	5.34
Stenella coeruleoalba	Striped dolphin	7.50	2.29	30.00	9.15	7.50	2.29	5,298.75	150.50	1,324.69	37.71	66.23	6.17
Stenella frontalis	Atlantic spotted dolphin/bridled dolphin	7.50	2.29	30.00	9.15	7.50	2.29	5,298.75	150.50	1,324.69	37.71	66.23	6.17
Stenella longirostris	Spinner dolphin	7.00	2.13	28.00	8.52	7.00	2.29	4,308.08	130.49	1,077.02	32.62	57.70	5.34
Steno bredanensis	Rough-toothed dolphin	8.00	2.44	32.00	9.76	8.00	2.44	6,430.72	182.46	1,607.68	45.61	75.36	7.01

[1] Surface area required for additional cetaceans will be calculated in accordance with paragraph (b)(1)(iii) of this section.

TABLE 2—AVERAGE ADULT LENGTHS OF SIRENIANS AND MUSTELIDS IN CAPTIVITY

Species	Common name	Average adult length	
		In feet	In meters
Sirenia:			
Dugong dugon	Dugong	11.00	3.35
Trichechus inunguis	Amazon manatee	8.00	2.44
Trichechus manatus	West Indian manatee	11.50	3.51
Mustelids:			
Enhydra lutris	Sea otter	4.10	1.25

TABLE 3—AVERAGE ADULT LENGTHS FOR PINNIPEDS IN CAPTIVITY

Species	Common name	Average adult length			
		In feet		In meters	
		Male	Female	Male	Female
Group I:					
*Arctocephalus australis**	South American fur seal	6.20	4.70	1.88	1.42
*Arctocephalus gazella**	Antarctic (or Kerguelen) fur seal	5.90	3.90	1.80	1.20
*Arctocephalus pusillis**	South African/Australian (or Cape) fur seal.	8.96	6.00	2.73	1.83
*Arctocephalus townsendi**	Guadalupe fur seal	6.27	4.29	1.90	1.30
*Arctocephalus tropicalis**	Subantarctic (or Amsterdam Island) fur seal.	5.90	4.75	1.80	1.45
*Callorhinus ursinus**	Northern fur seal	7.20	4.75	2.20	1.45
*Eumetopias jubatus**	Steller sea lion	9.40	7.90	2.86	2.40
*Halichoerus grypus**	Gray seal	7.50	6.40	2.30	1.95
Hydrurga leptonyx	Leopard seal	9.50	10.80	2.90	3.30
*Leptonychotes weddellii**	Weddell seal	9.50	10.30	2.90	3.15
Lobodon carcinophagus	Crabeater seal	7.30	7.30	2.21	2.21
Mirounga angustirostris	Northern elephant seal	13.00	8.20	3.96	2.49
*Mirounga leonina**	Southern elephant seal	15.30	8.20	4.67	2.50
*Odobenus rosmarus**	Walrus	10.30	8.50	3.15	2.60
*Ommatophoca rossi**	Ross seal	6.50	7.00	1.99	2.13
*Otaria byronia**	Southern (or Patagonian) sea lion	7.90	6.60	2.40	2.00
Phoca caspica	Caspian seal	4.75	4.60	1.45	1.40
Phoca fasciata	Ribbon seal	5.70	5.50	1.75	1.68
Phoca groenlandica	Harp seal	6.10	6.10	1.85	1.85
Phoca largha	Spotted seal	5.60	4.90	1.70	1.50
Phoca sibirica	Baikal seal	5.60	6.10	1.70	1.85
Phoca vitulina	Harbor seal	5.60	4.90	1.70	1.50
*Zalophus californianus**	California sea lion	7.30	5.70	2.24	1.75
Group II:					
Cystophora cristata	Hooded seal	8.50	6.60	2.60	2.00
Erignathus barbatus	Bearded seal	7.60	7.60	2.33	2.33
Neomonachus schauinslandi	Hawaiian monk seal	7.40	7.40	2.25	2.25
Phoca hispida	Ringed seal	4.40	4.30	1.35	1.30

* Any Group I animals maintained together will be considered as Group II when the animals maintained together include two or more sexually mature males from species marked with an asterisk, regardless of whether the sexually mature males are from the same species.

Table 4.—Minimum space requirements for pinnipeds in captivity

Common Name	Minimum horizontal dimension				Minimum depth				Surface area for 1-2 animals DRA for 1-2 animals			
	In feet		In meters		In feet		In meters		In feet^2		In meters^2	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Antarctic fur	8.40	9.11	2.70	2.25	3.00	3.00	0.92	0.92	69.62	30.42	6.48	2.88
Baikal seal	8.40	9.15	2.55	2.78	3.00	3.05	0.92	0.93	62.72	74.42	5.78	6.85
Bearded seal	11.40	11.40	3.50	3.50	3.80	3.80	1.17	1.17	167.50	167.50	15.74	15.74
California	10.95	8.55	3.36	2.55	3.65	3.00	1.12	0.92	106.58	64.98	10.04	6.13
Caspian seal	7.13	6.90	2.18	2.10	2.38	2.30	0.73	0.70	45.13	42.32	4.21	3.92
Crabeater	10.95	10.95	3.32	3.32	3.65	3.65	1.11	1.11	106.58	106.58	9.77	9.77
Gray seal	11.25	9.60	3.45	1.43	3.75	3.20	1.15	0.98	112.50	81.92	10.58	7.61
Guadalupe fur seal	9.41	6.44	2.85	1.95	3.14	3.00	0.95	0.92	78.63	36.81	7.22	3.38
Harbor seal	8.40	7.35	2.55	2.25	3.00	3.00	0.92	0.92	62.72	48.02	5.78	4.50
Harp seal	9.15	9.15	2.78	2.78	3.05	3.05	0.93	0.93	74.42	74.42	6.85	6.85
Hawaiian monk seal	11.10	11.10	3.38	3.38	3.70	3.70	1.12	1.12	158.80	158.80	14.68	14.68
Hooded seal	12.75	9.90	3.90	3.00	4.25	3.30	1.30	1.00	209.53	126.32	19.60	11.60
Leopard seal	14.25	16.20	4.35	4.95	4.75	5.30	1.45	1.65	180.50	233.28	16.82	21.78
Northern elephant seal	19.50	12.30	5.94	3.74	6.50	4.10	1.98	1.25	338.00	134.48	31.36	12.40
Northern fur	10.80	7.13	3.30	2.18	3.60	2.38	1.10	0.73	103.68	45.13	9.68	4.21
Ribbon seal	8.55	8.25	2.63	2.52	2.85	2.75	0.88	0.84	64.98	60.50	6.13	5.64
Ringed seal	6.60	6.45	2.03	1.95	2.20	2.15	0.68	0.65	56.14	53.62	5.29	4.90
Ross seal	9.75	10.50	2.99	3.20	3.25	3.50	1.00	1.07	84.50	98.00	7.92	9.07
South African/ Australian	13.44	9.00	4.10	2.75	4.48	3.00	1.37	0.92	160.56	72.00	14.91	6.70
South American fur seal	9.30	7.05	2.82	2.13	3.10	2.35	0.94	0.71	76.88	44.18	7.07	4.03
Subantarctic fur seal	8.40	7.13	2.70	2.18	3.00	3.00	0.92	0.92	69.62	45.13	6.48	4.21
Southern (Patagonian) sea lion	11.85	9.90	3.60	3.00	3.95	3.30	1.20	1.00	124.82	87.12	11.52	8.00
Southern elephant seal	22.95	12.30	7.01	3.75	7.65	4.10	2.34	1.25	468.18	134.48	43.62	12.50
Spotted seal	8.40	7.35	2.55	2.25	2.80	2.45	0.85	0.75	62.72	48.02	5.78	4.50
Steller sea	14.10	11.85	4.29	3.60	4.70	3.95	1.43	1.20	176.72	124.82	16.36	11.52
Walrus	15.45	12.75	4.73	3.90	5.15	4.25	1.58	1.30	212.18	144.50	19.85	13.52
Weddell seal	14.25	15.45	4.35	4.73	4.75	5.15	1.45	1.58	180.50	212.18	16.82	19.85

BILLING CODE 3410–34–C

* * * * *

(c) * * *

(1) * * * See Table 2 for the average adult lengths of sirenians.

* * * * *

(d) * * *

(1) Primary enclosures housing pinnipeds shall contain a pool of water and a dry resting area or social activity area that must be close enough to the

surface of the water to allow easy access for entering or leaving the pool for all animals regardless of age or infirmity. For the purposes of this subpart, pinnipeds have been divided into Group I pinnipeds and Group II pinnipeds as shown in Table 3 in this section. In certain instances some Group I pinnipeds shall be considered Group II pinnipeds. (See Table 3.) Minimum space requirements for pinnipeds are given in Table 4.

* * * * *

(e) * * * Exit and entry area to the pool shall be of a depth and grade to allow easy access and exit for all animals regardless of age or infirmity.

* * *

(f) * * *

(1) * * * Exit and entry area to the pool shall be of a depth and grade to allow easy access and exit for all animals regardless of age or infirmity.* * *

* * * * *

■ 8. Section 3.106 is revised to read as follows:

§ 3.106 Water quality.

(a) *General.* The primary enclosure must not contain water which could be detrimental to the health of the marine mammal contained therein.

(b) *Bacterial standards.* (1) All primary enclosure pools must be tested for fecal bacterial contamination on a weekly basis. The facility must conduct the following tests:

(i) Total coliform count (count shall not exceed 500 colonies per 100 mL) or fecal coliform count (count shall not exceed 400 colonies per 100 mL); and

(ii) Enterococci count (count shall not exceed 35 colonies per 100 mL); or

(iii) Pseudomonas count (count shall not exceed 10 colonies per 100 mL); or

(iv) Staphylococcus count (count shall not exceed 10 colonies per 100 mL).

(2) Should any of the bacterial counts exceed these levels, two followup samples must be taken to repeat the test(s) for those bacterial contaminants identified as being present at levels exceeding the standards. The first followup must be taken immediately after the initial test result and the second followup must be taken within 48 hours of the first followup. The results of the initial test result, first followup test result, and second follow up test result must be averaged. If the averaged value exceeds the acceptable levels above, the pool water is unsatisfactory and conditions must be corrected immediately.

(3) Additional testing for suspect pathogenic organism(s) should be conducted when there is sufficient evidence of health problems at the facility or of a potential health hazard to the animals.

(4) The addition of any chemicals to a pool must be done in a manner that will not cause harm or discomfort to the marine mammals during the introduction of the chemical or during its presence in the enclosure (in the water, on the surfaces, or in the air).

(5) Water samples must be taken at least daily for pH, salinity, and any chemicals (*e.g.,* chlorine and copper) that are added to the water to maintain water quality standards. Natural lagoon and coastal enclosures will be exempt from pH testing, but must be tested for salinity and any chemical additives, if used.

(6) Records must be kept documenting the date, time, location (pool and sampling site within the pool) of the sample collection and the results of the sampling. Records of all such test results must be maintained at the facility for a 1-year period and made readily available to APHIS inspectors.

(c) *Salinity.* (1) All primary enclosure pools must be salinized for cetaceans, pinnipeds, and sea otters, except for pools housing:

(i) River dolphins; or

(ii) Pinnipeds where oral administration of sodium chloride (salt) supplements at appropriate levels for the species, as determined by the attending veterinarian, is provided and saltwater eye baths are used on a daily basis.

(2) Salinity must be maintained within the range of 24–36 parts per thousand except in natural lagoon or coastal enclosures, where the salinity must be no less than 15 parts per thousand.

(3) The requirements in paragraphs (c)(1) and (2) of this section do not preclude the use of other salinity levels when prescribed by the attending veterinarian to appropriately treat specific medical conditions.

(d) *Water clarity.* Pools must be maintained in a manner that will provide sufficient water clarity to view the animals in order to observe them and monitor their behavior and health.

(e) *Filtration and water flow.* Water quality must be maintained by filtration, chemical treatment, naturally occurring tidal flow, or other means that will comply with the water quality standards specified in this section.

■ 9. Section 3.111 is revised to read as follows:

§ 3.111 Interactive programs.

All marine mammal interactive programs must comply with this section and all other appropriate provisions set forth in parts 2 and 3 of this subchapter.

(a) *Space requirements.* During an interactive session, each animal must have unrestricted access to the interactive area and the sanctuary area. Neither area may be made uninviting to the animals. Each area must meet the requirements of paragraphs (a)(1) and (2) of this section.

(1) The interactive area must provide sufficient space for all marine mammals to freely swim or move about, consistent with the type of interaction, even with a full complement of public participants and employees in the area.

(2) The sanctuary area may be within the enclosure containing the interactive area or it may be within a second enclosure to which free and unrestricted access is provided during the interactive session. The sanctuary area must meet the minimum space requirements found in § 3.104.

(b) *Water clarity.* Sufficient water clarity must be maintained so that attendants are able to observe the marine mammals and the human participants at all times while within the interactive area. If water clarity does not allow these observations, the interactive sessions must be canceled until the required clarity is provided.

(c) *Employees.* Each interactive program must have a sufficient number of adequately trained personnel to meet the husbandry and care requirements for the animals and comply with all training, handling, and attendant requirements of the regulations. For interactive programs, there must be a trainer, handler, and sufficient number of adequately trained attendants to comply with § 3.111(d)(4).

(1) The head trainer/supervisor of the interactive program must have demonstrable in-depth knowledge of the husbandry and care requirements of the family and species of marine mammals being exhibited, demonstrable knowledge of and skill in current accepted professional standards and techniques in animal training and handling, and the ability to recognize normal and abnormal behavior and signs of behavioral stress in the animal families and species being exhibited.

(2) All interactive program trainers and attendants must have the knowledge and skill level sufficient to safely conduct and monitor an interactive session.

(d) *Handling.* (1) Interactive time between marine mammals and the public (*i.e.,* interactive session) must not exceed 3 hours per day per animal. Each animal must have at least one period in each 24 hours of at least 10 continuous hours without public interactions.

(2) All marine mammals used in an interactive session must be adequately trained and conditioned in human interaction so that they respond in the session to the attendants with appropriate behavior for safe interaction. The trainer, handler, or attendant must, at all times, control the nature and extent of the marine mammal interaction with the public during a session using the trained responses of the program animal.

(3) All marine mammals used in interactive sessions must be in good health, including, but not limited to, not being infectious. Marine mammals undergoing veterinary treatment may be used in interactive sessions only with the written approval of the attending veterinarian.

(4) There must be a sufficient number of session attendants (includes trainer, handler, or attendants) to effectively conduct the session in a safe manner. There must be at least one attendant per marine mammal in the session, and at least one attendant positioned to monitor each session. The number of public participants per marine mammal must not exceed the number that the attendant can monitor safely, appropriate to the type of interactive session.

(5) Prior to participating in an interactive session, members of the public must be provided with oral rules and instructions for the session. The program must also either provide to the attendees in a written handout, or post in a highly visible location, a notice that summarizes the rules and instructions for the session and includes contact information for the appropriate Animal Care Field Operations office for reporting injuries or complaints. A copy of the written rules must be made available to APHIS during an inspection. Any participant who fails to follow the rules and instructions and jeopardizes human or animal safety or health must be immediately removed from the session by the facility management.

(6) All interactive programs must limit interactions between marine mammals and human participants so that the interaction does not harm the marine mammal or human participants, does not elicit unsatisfactory, undesirable, or unsafe behaviors from the marine mammal, and does not restrict by word or action (including recalling), from the sanctuary area, or enclosure design, the ability of the animal to leave the interactive area and session as it chooses. If an animal removes itself or is removed from a session, the facility must maintain the ratios of § 3.111(d)(4) by either removing human participants from the interactive area or introducing another animal.

(7) All interactive programs must prohibit grasping or holding of the animal's body unless it is done under the direct and explicit instruction of the attendant, and must prohibit the chasing or other harassment of the animal(s).

(8) Marine mammals that exhibit unsatisfactory, undesirable, or unsafe behaviors, including, but not limited to, charging, biting, mouthing, or sexual contact with humans, must be removed from the interactive session immediately, or, if the animal cannot be removed, the session must be terminated. Such an animal must not be used in an interactive session until the trainer determines that the animal is no longer exhibiting the unsatisfactory, undesirable, or unsafe behavior. Written criteria for the termination of a session due to such behavior and the retraining of such an animal must be developed and maintained at the facility and be made available to APHIS during inspection or upon request. This document must also address the procedures to be used to maintain compliance with § 3.111(d)(4) during such disruption of an interactive session.

(e) *Veterinary care.* The facility must comply with all provisions of §§ 2.33, 2.40, and 3.110 of this subchapter. In addition, the attending veterinarian must observe an interactive session at least once a month or each interactive session if they are offered less frequently than twice a month, and review the feeding records, behavior records, and water quality records biannually or more often if needed to assure the health and well-being of the marine mammals. Necropsy requirements are found in § 3.110(g).

(f) *Recordkeeping.* (1) Each facility must provide APHIS with a description of its program at least 30 days prior to initiation of the program, or in the case of any program in place before [*Date of publication of final rule*], not later than [*Date 30 days after effective date of final rule*]. Facilities that submitted the required documentation from October through December 1998 and received approval letters need only submit information about any regulated aspects of the program that have changed since that time. The description must, at least, include the following:

(i) Identification of each marine mammal in the interactive program, by means of name and/or number, sex, age, and any other means the Administrator determines to be necessary to adequately identify the animal;

(ii) An outline of the session agenda, including, but not limited to, written information distributed, topics addressed prior to entry in the water, an in-water program agenda, including behaviors and activities expected to be presented or performed;

(iii) A description of the interactive program enclosures, including identification of non-session housing enclosures, sanctuary area, and interactive area. All enclosures housing or used by program animals must be included;

(iv) Verification from the trainer that the program animals have received adequate and appropriate training for an interactive program; and

(v) Documentation of the experience and training of the trainer, handler, attendants, and attending veterinarian.

(2) Medical, feeding, water quality, and any behavioral records must be kept at the facility for at least 1 year or as otherwise required in this subchapter and be made available to APHIS during inspection or upon request.

(3) Records of individual animal participation times (date, start time of interactive session, and duration) must be maintained by the facility for a period of at least 1 year and be made available to APHIS officials during inspection or upon request.

(4) All incidents resulting in injury to either a marine mammal, members of the public, or facility staff during an interactive session or training session must be reported to APHIS within 24 business hours of the incident. A written report detailing the incident and the facility's response to the incident must be submitted to APHIS within 7 calendar days of the incident.

(5) Any changes to the interactive program, such as, but not limited to, personnel, animals, facilities (enclosures and interactive areas), and behaviors used, must be submitted to APHIS within 30 calendar days of the change.

(Approved by the Office of Management and Budget under control numbers 0579–0036 and 0579–0093)

Done in Washington, DC, this 21st day of January 2016.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2016–01837 Filed 2–2–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2016–BT–STD–0004]

RIN 1904–AD61

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Intent To Establish a Working Group for Circulator Pumps To Negotiate a Notice of Proposed Rulemaking for Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of intent and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (''DOE'' or, in context, ''the Department'') is giving notice of a public meeting and that DOE intends to establish a negotiated rulemaking working group 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'') to negotiate proposed amended energy conservation standards for circulator pumps. The purpose of the working group will be to discuss and, if possible, reach consensus on a proposed rule regarding definitions, test procedures, and energy conservation standards, as authorized by the Energy Policy and Conservation Act (EPCA) of 1975, as amended. The working group will consist of representatives of parties having a defined stake in the outcome of the proposed standards, and will consult as appropriate with a range of experts on technical issues. Per the ASRAC Charter, the working group is expected to make a concerted effort to negotiate a final term sheet by September 30, 2016.

DATES: DOE will host the first Working Group meeting, which is open to the public, and will be broadcast via webinar on March 3, 2016 from 9 a.m. to 5 p.m. in Washington, DC.

Written comments and applications (*i.e.,* cover letter, resume, and answers to application questions) to be appointed as members of the working group are welcome and should be submitted by February 17, 2016.

ADDRESSES: U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Washington, DC 20024, Room 6097. Individuals will also have the opportunity to participate by webinar. To register for the webinar and receive call-in information, please register *https://attendee.gotowebinar.com/register/2255868378911535105.*

Interested person may submit comments and an application for membership (which must include a cover letter describing their experience on negotiating committees and their direct impact on the negotiations, if applicable, and listed qualifications for being selected to this working group and a resume,), identified by docket number EERE–2016–BT–STD–0004, via any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ASRAC@ee.doe.gov.* Include docket number EERE–2016–BT–STD–0004 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at regulations.gov, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the EERE–2016–BT–STD–0004 index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE–2J), 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: 202–287–1692. Email: *asrac@ee.doe.gov*

SUPPLEMENTARY INFORMATION:

I. Authority
II. Background
III. Proposed Negotiating Procedures
IV. Comments Requested
V. Public Participation
VI. Approval of the Office of the Secretary

I. Authority

DOE is announcing its intent to negotiate proposed definitions, test procedures, and energy conservation standards for circulator pumps under the authority of sections 563 and 564 of the NRA (5 U.S.C. 561–570, Pub. L. 104–320). The regulation of circulator pump standards that DOE is proposing to develop under a negotiated rulemaking will be developed under the authority of EPCA, as amended, 42 U.S.C. 6311(1) and 42 U.S.C. 6291 *et seq*.

II. Background

As required by the NRA, DOE is giving notice that it is establishing a working group under ASRAC to discuss proposed energy conservation standards for circulator pumps.

A. Negotiated Rulemaking

DOE is supporting the use of the negotiated rulemaking process to discuss and develop proposed definitions, test procedures, and energy conservation standards for circulator pumps The primary reason for using the negotiated rulemaking process for this product is that stakeholders strongly support a consensual rulemaking effort. DOE believes such a regulatory negotiation process will be less adversarial and better suited to resolving complex technical issues. An important virtue of negotiated rulemaking is that it allows expert dialog that is much better than traditional techniques at getting the facts and issues right and will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation will enable DOE to engage in direct and sustained dialog with informed, interested, and affected parties when drafting the regulation, rather than obtaining input during a public comment period after developing and publishing a proposed rule. A rule drafted by negotiation with informed and affected parties is expected to be potentially more pragmatic and more easily implemented than a rule arising from the traditional process. Such rulemaking improvement is likely to provide the public with the full benefits of the rule while minimizing the potential negative impact of a proposed regulation conceived or drafted without the full prior input of outside knowledgeable parties. Because a negotiating working group includes representatives from the major stakeholder groups affected by or interested in the rule, the number of public comments on the proposed rule may be decreased. DOE anticipates that there will be a need for fewer substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final rule.

B. The Concept of Negotiated Rulemaking

Usually, DOE develops a proposed rulemaking using Department staff and consultant resources. Congress noted in the NRA, however, that regulatory development may ''discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *.'' 5 U.S.C. 561(2)(2). Congress also stated that ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' 5 U.S.C. 561(2)(3).

Using negotiated rulemaking to develop a proposed rule differs fundamentally from the Department-centered process. In negotiated rulemaking, a proposed rule is developed by an advisory committee or working group, chartered under FACA, 5 U.S.C. App. 2, composed of members chosen to represent the various interests that will be significantly affected by the rule. The goal of the advisory committee or working group is to reach consensus on the treatment of the major issues involved with the rule. The process starts with the Department's careful identification of all interests potentially affected by the rulemaking under consideration. To help with this identification, the Department publishes a notice of intent such as this one in the **Federal Register,** identifying a preliminary list of interested parties and requesting public comment on that list. Following receipt of comments, the Department establishes an advisory committee or working group representing the full range of stakeholders to negotiate a consensus on the terms of a proposed rule. Representation on the advisory committee or working group may be direct; that is, each member may represent a specific interest, or may be indirect, such as through trade associations and/or similarly-situated parties with common interests. The Department is a member of the advisory committee or working group and represents the Federal government's interests. The advisory committee or working group chair is assisted by a neutral mediator who facilitates the negotiation process. The role of the mediator, also called a facilitator, is to apply proven consensus-building techniques to the advisory committee or working group process.

After an advisory committee or working group reaches consensus on the provisions of a proposed rule, the Department, consistent with its legal obligations, uses such consensus as the basis of its proposed rule, which then is published in the **Federal Register.** This publication provides the required public notice and provides for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested), and request judicial review. DOE anticipates, however, that the pre-proposal consensus agreed upon by the advisory committee or working group will narrow any issues in the subsequent rulemaking.

C. Proposed Rulemaking for Test Procedures and Energy Conservation Standards Regarding Circulator Pumps

The NRA enables DOE to establish an advisory committee or working group if it is determined that the use of the negotiated rulemaking process is in the public interest. DOE intends to develop Federal regulations that build on the depth of experience accrued in both the public and private sectors in implementing standards and programs.

DOE is supporting the use of the regulatory negotiation process in order to provide for obtaining a diverse array of in-depth input, as well as an opportunity for increased collaborative discussion from both private-sector stakeholders and government officials who are familiar with the energy efficiency of circulator pumps.

D. Department Commitment

In initiating this regulatory negotiation process to develop definitions, test procedures, and energy conservation standards for circulator pumps, DOE is making a commitment to provide adequate resources to facilitate timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials, and personnel of the Department who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. DOE will provide administrative support for the process and will take steps to ensure that the advisory committee or working group has the dedicated resources it requires to complete its work in a timely fashion. Specifically, DOE will make available the following support services: properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the service of a facilitator; and such additional research and other technical assistance as may be necessary.

To the maximum extent possible consistent with the legal obligations of the Department, DOE will use the consensus of the advisory committee or working group as the basis for the rule the Department proposes for public notice and comment.

E. Negotiating Consensus

As discussed above, the negotiated rulemaking process differs fundamentally from the usual process for developing a proposed rule. Negotiation enables interested and affected parties to discuss various approaches to issues rather than asking them only to respond to a proposal developed by the Department. The negotiation process involves a mutual education of the various parties on the practical concerns about the impact of standards. Each advisory committee or working group member participates in resolving the interests and concerns of other members, rather than leaving it up to DOE to evaluate and incorporate different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able to control the process. The NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee or working group, unless the committee or working group itself unanimously agrees to use a different definition. 5 U.S.C. 562. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all parties, including DOE, in identifying their real interests in the rule, and thus will enable parties to focus on and resolve the important issues.

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

The following issues and concerns will underlie the work of the Negotiated Rulemaking Committee for circulator pumps and be limited to the items specified below:

- Definitions of circulator pumps,
- Test procedures for circulator pumps, and
- Energy conservation standards for circulator pumps.

To examine the underlying issues outlined above, all parties in the negotiation will need DOE to provide

data and an analytic framework complete and accurate enough to support their deliberations. DOE expects to start the Working Group's discussions with a list of analytical issues and data requests that should be considered for the negotiations and encourages interested parties to submit any data to be considered to the Working Group.

B. Formation of Working Group

A working group will be formed and operated in full compliance with the requirements of FACA and in a manner consistent with the requirements of the NRA. DOE has determined that the working group shall not exceed 25 members. The Department believes that more than 25 members would make it difficult to conduct effective negotiations. DOE is aware that there are many more potential participants than there are membership slots on the working group. The Department does not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations; nevertheless, each affected interest can be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. To provide adequate representation, those coalitions must agree to support, both financially and technically, a member of the working group whom they choose to represent their interests.

DOE recognizes that when it considers adding covered products and establishing energy efficiency standards for residential products and commercial equipment, various segments of society may be affected in different ways—in some cases, producing unique ''interests'' in a proposed rule based on income, gender, or other factors. The Department will pay attention to providing that any unique interests that have been identified, and that may be significantly affected by the proposed rule, are represented.

FACA also requires that members of the public have the opportunity to attend meetings of the full committee and speak or otherwise address the committee during the public comment period. In addition, any member of the public is permitted to file a written statement with the advisory committee. DOE plans to follow these same procedures in conducting meetings of the working group.

C. Interests Involved/Working Group Membership

DOE anticipates that the working group will comprise no more than 25 members who represent affected and interested stakeholder groups, at least one of whom must be a member of the ASRAC. As required by FACA, the Department will conduct the negotiated rulemaking with particular attention to ensuring full and balanced representation of those interests that may be significantly affected by the proposed rule governing standards for circulator pumps. Section 562 of the NRA defines the term ''interest'' as ''with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' Listed below are parties the Department to date has identified as being ''significantly affected'' by a proposed rule regarding the energy efficiency of circulator pumps.

- The Department of Energy;
- Trade Associations representing refrigeration system manufacturers of circulator pumps;
- Manufacturers of circulator pumps system components and related suppliers;
- Distributors or contractors selling or installers of circulator pumps;
- Utilities;
- Energy efficiency/environmental advocacy groups; and
- Commercial customers.

One purpose of this notice of intent is to determine whether Federal regulations for circulator pumps will significantly affect interests that are not listed above. DOE invites comment and suggestions on its initial list of significantly affected interests.

Members may be individuals or organizations. If the effort is to be fruitful, participants in the working group should be able to fully and adequately represent the viewpoints of their respective interests. This document gives notice of DOE's process to other potential participants and affords them the opportunity to request representation in the negotiations. Those who wish to be appointed as members of the working group, should submit a request to DOE, in accordance with the public participation procedures outlined in the DATES and **ADDRESSES** sections of this notice of intent. Membership of the working group is likely to involve:

- Attendance at approximately eight (8), one (1)- to two (2)-day meetings (with the potential for two (2) additional one (1)- or two (2)-day meetings);
- Travel costs to those meetings; and
- Preparation time for those meetings.

Members serving on the working group will not receive compensation for their services. Interested parties who are not selected for membership on the working group may make valuable contributions to this negotiated rulemaking effort in any of the following ways:

- The person may request to be placed on the working group mailing list and submit written comments as appropriate.
- The person may attend working group meetings, which are open to the public; caucus with his or her interest's member on the working group; or even address the working group during the public comment portion of the working group meeting.
- The person could assist the efforts of a workgroup that the working group might establish.

A working group may establish informal workgroups, which usually are asked to facilitate committee deliberations by assisting with various technical matters (*e.g.,* researching or preparing summaries of the technical literature or comments on specific matters such as economic issues). Workgroups also might assist in estimating costs or drafting regulatory text on issues associated with the analysis of the costs and benefits addressed, or formulating drafts of the various provisions and their justifications as previously developed by the working group. Given their support function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied. Because it recognizes the importance of this support work for the working group, DOE will provide appropriate technical expertise for such workgroups.

D. Good Faith Negotiation

Every working group member must be willing to negotiate in good faith and have the authority, granted by his or her constituency, to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition, therefore, should designate as its representative a person having the credibility and authority to ensure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking can require the appointed members to give a significant sustained for as long as the duration of the negotiated rulemaking. Other qualities of members that can be helpful are negotiating experience and skills,

and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, as opposed to keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from some of the positions often taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the working group's discussions.

E. Facilitator

The facilitator will act as a neutral in the substantive development of the proposed standard. Rather, the facilitator's role generally includes:

- Impartially assisting the members of the working group in conducting discussions and negotiations; and
- Impartially assisting in performing the duties of the Designated Federal Official under FACA.

F. Department Representative

The DOE representative will be a full and active participant in the consensus building negotiations. The Department's representative will meet regularly with senior Department officials, briefing them on the negotiations and receiving their suggestions and advice so that he or she can effectively represent the Department's views regarding the issues before the working group. DOE's representative also will ensure that the entire spectrum of governmental interests affected by the standards rulemaking, including the Office of Management and Budget, the Attorney General, and other Departmental offices, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion.

G. Working Group and Schedule

After evaluating the comments submitted in response to this notice of intent and the requests for nominations, DOE will either inform the members of the working group that they have been selected or determine that conducting a negotiated rulemaking is inappropriate.

Per the ASRAC Charter, the working group is expected to make a concerted effort to negotiate a final term sheet by September 30, 2016.

DOE will advise working group members of administrative matters related to the functions of the working group before beginning. While the negotiated rulemaking process is underway, DOE is committed to performing much of the same analysis as it would during a normal standards rulemaking process and to providing information and technical support to the working group.

IV. Comments Requested

DOE requests comments on which parties should be included in a negotiated rulemaking to develop draft language pertaining to the energy efficiency of circulator pumps and suggestions of additional interests and/or stakeholders that should be represented on the working group. All who wish to participate as members of the working group should submit a request for nomination to DOE.

V. Public Participation

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U. S. Passport or Passport Card; An Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of intent.

Issued in Washington, DC, on January 27, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 2016–01979 Filed 2–2–16; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R–1529]

RIN 7100 AE–43

Regulatory Capital Rules: The Federal Reserve Board's Framework for Implementing the U.S. Basel III Countercyclical Capital Buffer

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed policy statement with request for public comment.

SUMMARY: The Board is inviting public comment on a policy statement on the framework that the Board will follow in setting the amount of the U.S. countercyclical capital buffer for advanced approaches bank holding companies, savings and loan holding companies, and state member banks under the Board's Regulation Q (12 CFR part 217).

DATES: Comments must be received on or before March 21, 2016. Comments were originally due by February 19, 2016.

ADDRESSES: You may submit comments, identified by Docket No. R–1529 and RIN 7100 AE–43 by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include the docket number and RIN number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Robert V. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW., Washington, DC 20551) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: William Bassett, Deputy Associate Director, (202) 736–5644, or Rochelle Edge, Deputy Associate Director, (202) 452–2339, Office of Financial Stability Policy and Research; Sean Campbell, Associate Director, (202) 452–3760, Division of Banking Supervision and Regulation; Benjamin W. McDonough, Special Counsel, (202) 452–2036, Mark Buresh, Senior Attorney, (202) 452–5270, or Mary Watkins, Attorney, (202) 452–3722, Legal Division.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Proposed Policy Statement
III. Administrative Law Matters
A. Use of Plain Language
B. Paperwork Reduction Act Analysis
C. Regulatory Flexibility Act Analysis

I. Background

The Board of Governors of the Federal Reserve System (Board) issued in June 2013 a final regulatory capital rule (Regulation Q) in coordination with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) to strengthen risk-based and leverage capital requirements applicable to insured depository institutions and certain depository institution holding companies (banking organizations).[1] Among the changes that Regulation Q introduced was the institution of a countercyclical capital buffer (CCyB) for large, internationally active banking organizations.[2]

The CCyB is a macroprudential policy tool that the Board can increase during periods of rising vulnerabilities in the financial system and reduce when vulnerabilities recede.[3] The CCyB supplements the minimum capital requirements and other capital buffers included in Regulation Q, which themselves are designed to provide substantial resilience to unexpected losses created by normal fluctuations in economic and financial conditions. The CCyB is designed to increase the resilience of large banking organizations when the Board sees an elevated risk of above-normal losses. Increasing the resilience of large banking organizations should, in turn, improve the resilience of the broader financial system. Above-normal losses often follow periods of rapid asset price appreciation or credit growth that are not well supported by underlying economic fundamentals. The circumstances in which the Board would most likely use the CCyB as a supplemental, macroprudential tool to augment minimum capital requirements and other capital buffers would be to address circumstances when potential systemic vulnerabilities are somewhat above normal. By requiring advanced approaches institutions to hold a larger capital buffer during periods of increased systemic risk and removing the buffer requirement when the vulnerabilities have diminished, the CCyB has the potential to moderate fluctuations in the supply of credit over time.

The CCyB applies to banking organizations subject to the advanced approaches capital rules (advanced approaches institutions).[4] The advanced approaches capital rules generally apply to banking organizations with greater than $250 billion in total assets or $10 billion in on-balance-sheet foreign exposure and to any depository institution subsidiary of such banking organizations.[5]

The CCyB functions as an expansion of the Capital Conservation Buffer (CCB). The CCB requires that a banking organization hold a buffer of common equity tier 1 capital in excess of the minimum risk-based capital ratios greater than 2.5 percent of risk-weighted assets to avoid limits on capital distributions and certain discretionary bonus payments.[6] The CCB is divided into quartiles, each associated with increasingly stringent limitations on capital distributions and certain discretionary bonus payments as the firm's risk-based capital ratios approach regulatory minimums.[7]

As described in Regulation Q, the CCyB applies based on the location of exposures by national jurisdiction.[8] Specifically, the applicable CCyB amount for a banking organization is equal to the weighted average of CCyB amounts established by the Board for the national jurisdictions where the banking organization has private-sector credit exposures.[9] The CCyB amount applicable to a banking organization is weighted by jurisdiction according to the firm's risk-weighted private-sector credit exposures for a specific jurisdiction as a percentage of the firm's overall risk-weighted private-sector credit exposures.[10]

Regulation Q established the initial CCyB amount with respect to private-sector credit exposures located in the United States (U.S.-based credit exposures) at zero percent. Following a phase-in period, the amount of the CCyB will vary between 0 and 2.5 percent of risk-weighted assets. Under the phase-in schedule, the maximum potential amount of the CCyB for U.S.-based credit exposures is 0.625 percentage points in 2016, 1.25 percentage points in 2017, 1.875 percentage points in 2018, and 2.5 percentage points in 2019 and all subsequent years.[11] To provide banking organizations with sufficient time to adjust to any change to the CCyB, an increase in the amount of the CCyB for U.S.-based credit exposures will have an effective date 12 months after the determination, unless the Board determines that a more immediate implementation is necessary based on

[1] *See* 78 FR 62018 (October 11, 2013) (Board and OCC); 79 FR 20754 (April 14, 2014) (FDIC). Regulation Q applies generally to bank holding companies with more than $1 billion in total consolidated assets and savings and loan holding companies with more than $1 billion in total consolidated assets that are not substantially engaged in commercial or insurance underwriting activities. *See* 12 CFR 217.1(c)(1).

[2] 12 CFR 217.11(b).

[3] Implementation of the CCyB also helps respond to the provision in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that the agencies ''shall seek to make such [capital] requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.'' *See* 12 U.S.C. 1467a; 12 U.S.C. 1844; 12 U.S.C. 3907 (as amended by section 616 of the Dodd-Frank Act).

[4] An advanced approaches institution is subject to the CCyB regardless of whether it has completed the parallel run process and received notification from its primary Federal supervisor pursuant to § 217.121(d) of Regulation Q.

[5] 12 CFR 217.100(b)(1).

[6] 12 CFR 217.11(b)(1)(i).

[7] 12 CFR 217.11(a).

[8] 12 CFR 217.11(b)(1). The Board may adjust the CCyB amount to reflect decisions made by foreign jurisdictions. *See* 12 CFR 217.11(b)(3).

[9] 12 CFR 217.11(b)(1).

[10] *Id.*

[11] 12 CFR 217.300(a)(2).

economic conditions.[12] In contrast, Regulation Q states that a decision by the Board to decrease the amount of the CCyB for U.S.-based credit exposures would become effective the day after the Board decides to decrease the CCyB or the earliest date permissible under applicable law or regulation, whichever is later.[13] The amount of the CCyB for U.S.-based credit exposures will return to 0 percent 12 months after the effective date of any CCyB adjustment, unless the Board announces a decision to maintain the current amount or adjust it again before the expiration of the 12-month period.[14]

The Board expects to make decisions about the appropriate level of the CCyB on U.S.-based credit exposures jointly with the OCC and FDIC. In addition, the Board expects that the CCyB amount for U.S.-based credit exposures would be the same for covered insured depository institutions as for covered depository institution holding companies. The CCyB is designed to take into account the broad macroeconomic and financial environment in which banking organizations function and the degree to which that environment impacts the resilience of the group of advanced approaches institutions. Therefore, the Board's determination of the appropriate level of the CCyB for U.S.-based credit exposures would be most directly linked to the condition of the overall financial environment rather than the condition of any individual banking organization. But, the overall CCyB requirement for a banking organization will vary based on the organization's particular composition of private sector credit exposures located across national jurisdictions.

II. Proposed Policy Statement

The proposed policy statement (Policy Statement) describes the framework that the Board would follow in setting the amount of the CCyB for U.S.-based credit exposures. The framework consists of a set of principles for translating assessments of financial-system vulnerabilities that are regularly undertaken at the Board into the appropriate level of the CCyB. Those assessments are informed by a broad array of quantitative indicators of financial and economic performance and a set of empirical models. In addition, the framework includes a discussion of how the Board would assess whether the CCyB is the most appropriate policy instrument (among available policy instruments) to address the highlighted financial-system vulnerabilities.

The proposed Policy Statement is organized as follows. Section 1 provides background on the proposed Policy Statement. Section 2 is an outline of the proposed Policy Statement and describes its scope. Section 3 provides a broad description of the objectives of the CCyB, including a description of the ways in which the CCyB is expected to protect large banking organizations and the broader financial system. Section 4 provides a broad description of the factors that the Board considers in setting the CCyB, including specific financial-system vulnerabilities and types of quantitative indicators of financial and economic performance, and outlines of empirical models the Board may use as inputs to that decision. Further, section 4 describes a set of principles that the Board expects to use for combining judgmental assessments with quantitative indicators to determine the appropriate level of the CCyB. Section 5 discusses how the Board will communicate the level of the CCyB and any changes to the CCyB. Section 6 describes how the Board plans to monitor the effects of the CCyB, including what indicators and effects will be monitored.

The Board seeks comment on all aspects of the proposed Policy Statement.

Question 1. In what ways could the Board improve its proposed framework for making decisions on the CCyB?

Question 2. The proposed Policy Statement describes a set of principles for translating judgmental assessments of financial-system vulnerabilities into specific levels of the CCyB, a set of empirical models used as inputs to the judgmental process that distill and translate quantitative indicators of financial and economic performance into potential settings for the CCyB, and an assessment of whether the CCyB is the most appropriate policy instrument to address highlighted financial-system vulnerabilities. Are there any other considerations that should form part of the CCyB decision-making framework?

Question 3. To what extent does the Board's proposed framework for determining the appropriate level of the CCyB capture the appropriate set of financial-system vulnerabilities? Are there any vulnerabilities that should also be considered or are there vulnerabilities that should be given greater or less consideration? How should vulnerabilities developing outside of the banking sector be considered as compared to vulnerabilities developing inside of the banking sector?

III. Administrative Law Matters

A. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed policy statement in a simple and straightforward manner, and invites comment on the use of plain language.

B. Paperwork Reduction Act Analysis

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the proposed policy statement to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the proposal.

C. Regulatory Flexibility Act Analysis

The Board is providing an initial regulatory flexibility analysis with respect to this proposed Policy Statement. As discussed above, the proposed Policy Statement is designed to provide additional information regarding the factors that the Board expects to consider in evaluating whether to change the CCyB applicable to private-sector credit exposures located in the United States. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking. Under regulations issued by the Small Business Administration, a small entity includes a bank holding company with assets of $550 million or less (small bank holding company).[15] As of December 31, 2014, there were approximately 3,441 small BHCs, 187 small SLHCs, and 644 small state member banks.

The proposed Policy Statement would relate only to advanced approaches institutions, which, generally, are banking organizations with total consolidated assets of $250 billion or more, that have total consolidated on-balance sheet foreign exposure of $10 billion or more, are a subsidiary of an advanced approaches depository institution, or that elect to use the advanced approaches framework.[16] Banking organizations that would be covered by the proposed Policy

[12] 12 CFR 217.11(b)(2)(v)(A).

[13] 12 CFR 217.11(b)(2)(v)(B).

[14] 12 CFR 217.11(b)(2)(vi).

[15] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

[16] 12 CFR 217.100(b)(1).

Statement substantially exceed the $550 million asset threshold at which a banking entity would qualify as a small bank holding company, small savings and loan holding company, or small state member bank. Currently, no small top-tier bank holding company, small top-tier savings and loan holding company, or small state member bank is an advanced approaches institution, so there would be no additional projected compliance requirements imposed on small bank holding companies, small savings and loan holding companies, or small state member banks.

Therefore, there are no significant alternatives to the proposal that would have less economic impact on small banking organizations. There are no projected reporting, recordkeeping, or other compliance requirements of the proposal. The Board does not believe that the proposal duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposal, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the Board seeks comment on whether the proposal would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposal. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

List of Subjects in 12 CFR Part 217

Administrative practice and procedure, Banks, banking. Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to add the Policy Statement as set forth at the end of the Supplementary Information as appendix A to part 217 of 12 CFR chapter II as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS

■ 2. Appendix A to part 217 is added to read as follows:

Appendix A to Part 217—The Federal Reserve Board's Framework for Implementing the Countercyclical Capital Buffer

1. Background

The Board of Governors of the Federal Reserve System (Board) issued a final regulatory capital rule (Regulation Q) in coordination with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) that strengthened risk-based and leverage capital requirements applicable to insured depository institutions and depository institution holding companies (banking organizations).[1] Among those changes was the introduction of a countercyclical capital buffer (CCyB) for large, internationally active banking organizations.[2]

The CCyB is a macroprudential policy tool that the Board can increase during periods of rising vulnerabilities in the financial system and reduce when vulnerabilities recede. It is designed to increase the resilience of large banking organizations when policymakers see an elevated risk of above-normal losses. Increasing the resilience of large banking organizations should, in turn, improve the resilience of the broader financial system. Above-normal losses often follow periods of rapid asset price appreciation or credit growth that are not well supported by underlying economic fundamentals. The circumstances in which the Board would most likely use the CCyB as a supplemental, macroprudential tool to augment minimum capital requirements and other capital buffers would be to address circumstances when potential systemic vulnerabilities are somewhat above normal. By requiring large banking organizations to hold additional capital during those periods of excess and removing the requirement to hold additional capital when the vulnerabilities have diminished, the CCyB also is expected to moderate fluctuations in the supply of credit over time.[3] Further, Regulation Q established the initial CCyB amount with respect to U.S.-based credit exposures at zero percent and provided that the maximum potential amount of the CCyB for credit exposures in the United States was 2.5 percent of risk-weighted assets.[4]

The Board expects to make decisions about the appropriate level of the CCyB on U.S.-based credit exposures jointly with the OCC and FDIC, and expects that the CCyB amount for U.S.-based credit exposures will be the same for covered depository institution holding companies and insured depository institutions. The CCyB is designed to take into account the macrofinancial environment in which banking organizations function and the degree to which that environment impacts the resilience of the group of advanced approaches institutions. Therefore, the appropriate setting of the CCyB for private sector credit exposures located in the United States (U.S.-based credit exposures) is not closely linked to the characteristics of an individual institution. However, the overall CCyB for each institution will differ because the CCyB is weighted based on a banking organization's particular composition of private-sector credit exposures across national jurisdictions.

2. Overview and Scope of the Policy Statement

This Policy Statement describes the framework that the Board will follow in setting the amount of the CCyB for U.S.-based credit exposures. The framework consists of a set of principles for translating assessments of financial-system vulnerabilities that are regularly undertaken by the Board into the appropriate level of the CCyB. Those assessments are informed by a broad array of quantitative indicators of financial and economic performance and a set of empirical models. In addition, the framework includes an assessment of whether the CCyB is the most appropriate policy instrument (among available policy instruments) to address the highlighted financial-system vulnerabilities.

3. The Objectives of the CCyB

The objectives of the CCyB are to strengthen banking organizations' resilience against the build-up of systemic vulnerabilities and reduce fluctuations in the supply of credit. The CCyB supplements the minimum capital requirements and the capital conservation buffer, which themselves are designed to provide substantial resilience to unexpected losses created by normal fluctuations in economic and financial conditions. The capital surcharge on global systemically important banking organizations adds an additional layer of defense for the largest and most systemically important institutions, whose financial distress can have outsized effects on the rest of the financial system and real economy.[5] However, periods of financial excesses, as reflected in episodes of rapid

[1] *See* 78 FR 62018 (October 11, 2013) (Board and OCC); 79 FR 20754 (April 14, 2014) (FDIC).

[2] 12 CFR 217.11(b). The CCyB applies only to banking organizations subject to the advanced approaches capital rules, which generally apply to those banking organizations with greater than $250 billion in assets or more than $10 billion in on-balance-sheet foreign exposures. *See* 12 CFR 217.100(b). An advanced approaches institution is subject to the CCyB regardless of whether it has completed the parallel run process and received notification from its primary Federal supervisor. *See* 12 CFR 217.121(d).

[3] Implementation of the CCyB also helps respond to the Dodd-Frank Act's requirement that the Board seek to make its capital requirements countercyclical 12 U.S.C. 1844(b), 1464a(g)(1), and 3907(a)(1) (codifying sections 616(a), (b), and (c) of the Dodd-Frank Act).

[4] The CCyB is subject to a phase-in arrangement between 2016 and 2019. *See* 12 CFR 217.300(a)(2).

[5] *See* 80 FR 49082 (August 14, 2015).

asset price appreciation or credit growth not well supported by underlying economic fundamentals, are often followed by above-normal losses that leave banking organizations and other financial institutions undercapitalized. Therefore, the Board would most likely apply the CCyB in those circumstances when systemic vulnerabilities are somewhat above normal.

The CCyB is expected to help provide additional resilience for advanced approaches institutions, and by extension the broader financial system, against elevated vulnerabilities primarily in two ways. First, advanced approaches institutions will likely hold more capital to avoid limitations on capital distributions and discretionary bonus payments resulting from implementation of the CCyB. Strengthening their capital positions when financial conditions are accommodative would increase the capacity of advanced approaches institutions to absorb outsized losses during a future significant economic downturn or period of financial instability, thus making them more resilient. The second and related goal of the CCyB is to promote a more sustainable supply of credit over the economic cycle.

During a credit cycle downturn, better-capitalized institutions have been shown to be more likely to have continued access to funding and less likely to take actions that lead to broader financial-sector distress and its associated macroeconomic costs, such as large-scale sales of assets at prices below their fundamental value and sharp contractions in credit supply.[6] Therefore, it is likely that as a result of the CCyB having been put into place during a period of rapid credit creation, advanced approaches institutions would be better positioned to continue their important intermediary functions during a subsequent economic contraction. A timely and credible reduction in the CCyB requirement during a period of high credit losses could reinforce those beneficial effects of a higher base level of capital, because it would permit advanced approaches institutions either to realize loan losses promptly and remove them from their balance sheets or to expand their balance sheets, for example by continuing to lend to creditworthy borrowers.

Likewise, during a period of cyclically increasing vulnerabilities, advanced approaches institutions might react to an increase in the CCyB by tightening lending standards, otherwise reducing their risk exposure, augmenting their capital, or some combination of those actions. They may choose to raise capital by taking actions that would increase net income, reducing capital distributions through share repurchases or dividends, or issuing new equity. In this regard, an increase in the CCyB would not prevent advanced approaches institutions from maintaining their important role as credit intermediaries, but would reduce the likelihood that banking organizations with insufficient capital would foster unsustainable credit growth or engage in imprudent risk taking. The specific combination of adjustments and the relative size of each adjustment will depend in part on the initial capital positions of advanced approaches institutions, the cost of debt and equity financing, and the earnings opportunities presented by the economic situation at the time.[7]

4. The Framework for Setting the U.S. CCyB

The Board regularly monitors and assesses threats to financial stability by synthesizing information from a comprehensive set of financial-sector and macroeconomic indicators, supervisory information, surveys, and other interactions with market participants.[8] In forming its view about the appropriate size of the U.S. CCyB, the Board will consider a number of financial-system vulnerabilities, including but not limited to, asset valuation pressures and risk appetite, leverage in the nonfinancial sector, leverage in the financial sector, and maturity and liquidity transformation in the financial sector. The decision will reflect the implications of the assessment of overall financial-system vulnerabilities as well as any concerns related to one or more classes of vulnerabilities. The specific combination of vulnerabilities is important because an adverse shock to one class of vulnerabilities could be more likely than another to exacerbate existing pressures in other parts of the economy or financial system.

The Board intends to monitor a wide range of financial and macroeconomic quantitative indicators including, but not limited to, measures of relative credit and liquidity expansion or contraction, a variety of asset prices, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk.[9] In addition, empirical models that translate a manageable set of quantitative indicators of financial and economic performance into potential settings for the CCyB, when used as part of a comprehensive judgmental assessment of all available information, can be a useful input to the Board's deliberations. Such models may include those that rely on small sets of indicators—such as the credit-to-GDP ratio, its growth rate, and combinations of the credit-to-GDP ratio with trends in the prices of residential and commercial real estate—which some academic research has shown to be useful in identifying periods of financial excess followed by a period of crisis on a cross-country basis.[10] Such models may also include those that consider larger sets of indicators, which have the advantage of representing conditions in all key sectors of the economy, especially those specific to risk-taking, performance, and the financial condition of large banks.[11]

However, no single indictor or fixed set of indicators can adequately capture all the key vulnerabilities in the U.S. economy and financial system. Moreover, adjustments in the CCyB that were tightly linked to a specific model or set of models would be imprecise due to the relatively short period that some indicators are available, the limited number of past crises against which the models can be calibrated, and limited experience with the CCyB as a macroprudential tool. As a result, the types of indicators and models considered in assessments of the appropriate level of the CCyB are likely to change over time based on advances in research and the experience of the Board with this new macroprudential tool.

The Board will determine the appropriate level of the CCyB for U.S.-based credit exposures based on its analysis of the above factors. Generally, a zero percent U.S. CCyB amount would reflect an assessment that U.S. economic and financial conditions are broadly consistent with a financial system in which levels of system-wide vulnerabilities are not somewhat above normal. The Board could increase the CCyB as vulnerabilities build, and a 2.5 percent CCyB amount for U.S.-based credit exposures would reflect an assessment that the U.S. financial sector is experiencing a period of significantly elevated or rapidly increasing system-wide vulnerabilities. Importantly, as a macroprudential policy tool, the CCyB will be activated and deactivated based on broad developments and trends in the U.S. financial system, rather than the activities of any individual banking organization.

Similarly, the Board would remove or reduce the CCyB when the conditions that led to its activation abate or lessen, rather than leaving the nonzero level of the buffer in place over periods when financial and

[6] For additional background on the relationship between financial distress and economic outcomes, see Carmen Reinhart and Kenneth Rogoff (2009), *This Time is Different.* Princeton University Press; Oscar Jordà & Moritz Schularick & Alan M. Taylor (2011), ''Financial Crises, Credit Booms, and External Imbalances: 140 Years of Lessons,'' *IMF Economic Review,* Palgrave Macmillan, vol. 59(2), pages 340–378; and Bank for International Settlements (2010), ''Assessing the Long-Run Economic Impact of Higher Capital and Liquidity Requirements.''

[7] For estimates of the size of certain adjustments, see Samuel G. Hanson, Anil K. Kashyap, and Jeremy C. Stein (2011), ''A Macroprudential Approach to Financial Regulation,'' *Journal of Economic Perspectives* 25(1), pp. 3–28; Skander J. Van den Heuvel (2008), ''The Welfare Cost of Bank Capital Requirements.'' *Journal of Monetary Economics* 55, pp. 298–320.

[8] Tobias Adrian, Daniel Covitz, and Nellie Liang (2014), ''Financial Stability Monitoring.'' *Finance and Economics Discussion Series* 2013–021. Washington: Board of Governors of the Federal Reserve System, *http://www.federalreserve.gov/pubs/feds/2013/201321/201321pap.pdf.*

[9] *See* 12 CFR 217.11(b)(2)(iv).

[10] *See, e.g.,* Jorda, Oscar, Moritz Schularick and Alan Taylor, 2012. ''When Credit Bites Back: Leverage, Business Cycles and Crises,'' Working Papers 1224, University of California, Davis, Department of Economics, and Drehmann, Mathias, Claudio Borio, and Kostas Tsatsaronis, 2012. ''Characterizing the financial cycle: don't lose sight of the medium term!'' BIS Working Papers 380, Bank for International Settlements. Jorda, Oscar, Moritz Schularick and Alan Taylor, 2015. ''Leveraged Bubbles,'' Center for Economic Policy Research Discussion Paper No. DP10781. BCBS (2010), ''Guidance for national authorities operating the countercyclical capital buffer,'' BIS.

[11] *See, e.g.,* Aikman, David, Michael T. Kiley, Seung Jung Lee, Michael G. Palumbo, and Missaka N. Warusawitharana (2015), ''Mapping Heat in the U.S. Financial System,'' Finance and Economics Discussion Series 2015–059. Washington: Board of Governors of the Federal Reserve System, *http://dx.doi.org/10.17016/FEDS.2015.059* (providing an example of the range of indicators used and type of analysis possible).

economic developments suggest the absence of notable risks to financial stability. Indeed, for it to be most effective, the CCyB should be deactivated or reduced in a timely manner. This would reduce the likelihood that advanced approaches institutions would significantly pare their risk-weighted assets in order to maintain their capital ratios during a downturn.

The pace and magnitude of changes in the CCyB will depend importantly on the underlying conditions in the financial sector and the economy as well as the desired effects of the proposed change in the CCyB. If vulnerabilities are rising gradually, then incremental increases in the level of the CCyB may be appropriate. Incremental increases would allow banks to augment their capital primarily through retained earnings and allow policymakers additional time to assess the effects of the policy change before making subsequent adjustments. However, if vulnerabilities in the financial system are building rapidly, then larger or more frequent adjustments may be necessary to increase loss-absorbing capacity sooner and potentially to mitigate the rise in vulnerabilities.

The Board will also consider whether the CCyB is the most appropriate of its available policy instruments to address the financial-system vulnerabilities highlighted by the framework's judgmental assessments and empirical models. The CCyB primarily is intended to address cyclical vulnerabilities, rather than structural vulnerabilities that do not vary significantly over time. Structural vulnerabilities are better addressed though targeted reforms or permanent increases in financial system resilience. Two key factors for the Board to consider are whether advanced approaches institutions are exposed—either directly or indirectly—to the vulnerabilities identified in the comprehensive judgmental assessment or by the quantitative indicators that suggest activation of the CCyB and whether advanced approaches institutions are contributing—either directly or indirectly—to these highlighted vulnerabilities.

The Board, in setting the CCyB for advanced approaches institutions that it supervises, plans to consult with the OCC and FDIC on their analyses of financial-system vulnerabilities and on the extent to which banking organizations are either exposed to or contributing to these vulnerabilities.

5. Communication of the U.S. CCyB With the Public

The Board expects to consider at least once per year the applicable level of the U.S. CCyB. The Board will review financial conditions regularly throughout the year and may adjust the CCyB more frequently as a result of those monitoring activities.

Further, the Board will continue to communicate with the public in other formats regarding its assessment of U.S. financial stability, including financial-system vulnerabilities. For example, the Board's biannual Monetary Policy Report to Congress, usually published in February and July, will continue to contain a section that reports on developments pertaining to the stability of the U.S. financial system.[12] That portion of the report will be an important vehicle for updating the public on how the Board's current assessment of financial-system vulnerabilities bears on the setting of the CCyB.

6. Monitoring of the Effects of the U.S. CCyB

The effects of the U.S. CCyB ultimately will depend on the level at which it is set, the size and nature of any adjustments in the level, and the timeliness with which it is increased or decreased. The extent to which the CCyB may affect vulnerabilities in the broader financial system depends upon a complex set of interactions between required capital levels at the largest banking organizations and the economy and financial markets. In addition to the direct effects, the secondary economic effects could be amplified if financial markets extract a signal from the announcement of a change in the CCyB about subsequent actions that might be taken by the Board. Moreover, financial market participants might react by updating their expectations about future asset prices in specific markets or broader economic activity based on the concerns expressed by the regulators in communications announcing a policy change.

The Board will monitor and analyze adjustments by banking organizations and other financial institutions to the CCyB. Factors that will be considered include (but are not limited to) the types of adjustments that affected banking organizations might undertake. For example, it will be useful to monitor whether a change in the CCyB leads to observed changes in risk-based capital ratios at advanced approaches institutions, as well as whether those adjustments are achieved passively through retained earnings, or actively through changes in capital distributions or in risk-weighted assets. Other factors to be monitored include the extent to which loan growth and spreads on loans issued by affected banking organizations change relative to loan growth and loan spreads at banking organizations that are not subject to the buffer. Another key consideration in setting the CCyB and other macroprudential tools is the extent to which the adjustments by advanced approaches institutions to higher capital buffers lead to migration of credit market activity outside of those banking organizations, especially to the nonbank financial sector. Depending on the amount of migration and which institutions are affected, those adjustments could cause the Board to favor either a higher or a lower value of the CCyB.

The Board will also monitor information regarding the levels of and changes in the CCyB in other countries. The Basel Committee on Banking Supervision is expected to maintain this information for member countries in a publically available form on its Web site.[13] Using that data in conjunction with supervisory and publicly available datasets, Board staff will be able to draw not only upon the experience of the United States but also that of other countries to refine estimates of the effects of changes in the CCyB.

By order of the Board of Governors of the Federal Reserve System, December 21, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–01934 Filed 2–2–16; 8:45 am]

BILLING CODE P

[12] For the most recent discussion in this format, see box titled ''Developments Related to Financial Stability'' in Board of Governors of the Federal Reserve System, *Monetary Policy Report to Congress,* July 2015, pp. 24–25.

[13] BIS, Countercyclical capital buffer (CCyB), *www.bis.org/bcbs/ccyb/index.htm.*

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AG66

Small Business Investment Company Program—Impact SBICs

AGENCY: U.S. Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this proposed rule, the U.S. Small Business Administration (SBA) is defining a new class of small business investment companies (SBICs) that will seek to generate positive and measurable social impact in addition to financial return. With the creation of this class of ''Impact SBICs,'' SBA is seeking to expand the pool of investment capital available primarily to underserved communities and innovative sectors as well as support the development of America's growing impact investing industry. This proposed rule sets forth regulations applicable to Impact SBICs with respect to licensing, leverage eligibility, fees, reporting and compliance requirements.

DATES: Comments on the proposed rule must be received on or before March 4, 2016.

ADDRESSES: You may submit comments, identified by RIN 3245–AG66, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail, Hand Delivery/Courier: Mark Walsh, Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post comments on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Nate T. Yohannes, Office of Investment and Innovation, 409 Third Street SW., Washington, DC 20416. Highlight the information that you consider to be CBI

and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether or not it will publish the information.

FOR FURTHER INFORMATION CONTACT: Nate T. Yohannes, Office of Investment and Innovation, (202) 205–6714.

SUPPLEMENTARY INFORMATION:

I. Background Information

''Impact investing'' is a term used to describe an investment approach that combines the pursuit of financial return with the goal of generating measurable social, environmental or economic impact. The term ''social impact investing'' is often used synonymously with the term impact investing, and refers, collectively, to all types of impact investing, including social, environmental and economic. Impact investors are active throughout the capital markets, and though their strategies may vary, according to the Global Impact Investing Network, a non-profit organization dedicated to increasing the scale and effectiveness of impact investing, impact investors share three defining traits. First, impact investors invest with the explicit intention of generating a positive social impact. This is in contrast to other types of investors who attempt to avoid generating negative social impacts or who are entirely indifferent to the social outcomes resulting from their investments. Second, though their return requirements vary, impact investors are not grant providers and always expect a return on their invested capital. Finally, impact investors share a commitment to measure the effect of their investments on the employees, customers and communities of the companies in which they invest. *See,* The Global Impact Investing Network, *About Impact Investing, http://www.thegiin.org/cgi-bin/iowa/resources/about/index.html.*

Impact investing currently constitutes a small segment of global investment activity. Each year, J.P. Morgan and the Global Impact Investing Network (''GIIN'') publish an annual survey of leading impact investors. In their May 2015 findings, available at *http://www.thegiin.org/cgi-bin/iowa/resources/research/662.html,* 146 survey respondents reported managing a collective total of $60 billion in impact investments. Compared with the $64 trillion in global assets under management, a figure drawn from PricewaterhouseCoopers' (''PwC'') 2014 report *Asset Management 2020: A Brave New World,* available at *http://www.pwc.com/gx/en/asset-management/publications/asset-management-2020-a-brave-new-world.jhtml,* impact investments comprise a small fraction of invested capital worldwide.

However, the size of the impact industry belies both its growth potential and that of the broader sustainable finance sector. This is a sector focused on ''creating economic and social value through financial models, products and markets that are sustainable over time.'' *See,* Center for Responsible Business, Haas School of Business, University of California Berkeley, *Sustainable Finance, http://responsiblebusiness.haas.berkeley.edu/programs/sustainablefinance.html.* The Forum for Sustainable and Responsible Investment estimates that U.S.-domiciled assets managed using sustainable, responsible or impact investing strategies increased by a compound annual rate of 33% between 2012 and 2014. If that trend continues, sustainable finance will continue to outpace overall market growth. According to the 2014 PwC report, global AUM will grow at a compound annual growth rate of just nearly 6 percent in coming years.

SBA's formal efforts in the impact investing space began on April 7, 2011, when it announced the launch of the SBIC program's Impact Investing Initiative (the ''Initiative''), building upon SBA's belief that targeting capital investments into segments of the U.S. economy where capital formation gaps exist, such as small businesses located in low-to-moderate income (''LMI'') and other underserved areas, has the potential to effect meaningful and sustained economic development impact in those areas. The Initiative made available $1 billion in debenture leverage, over the course of 5 years, to SBICs that committed to deploy at least 50 percent of their total invested capital in ''impact investments.'' Under the Initiative, investments in small businesses located in LMI areas, economically-distressed areas and rural areas generally qualified as impact investments, as did investments in small businesses active in the education and clean energy sectors.

Since 2011, SBA has made several changes to the Initiative in an effort to enhance its effectiveness. Most recently, in September 2014, SBA expanded the scope of the Initiative and renamed it the ''Impact Investment Fund'' to reflect SBA's commitment to extend its impact investing efforts beyond the Initiative's initial 5-year term.

This rule follows from that commitment and seeks to recognize, within the SBIC program's regulations, the important role impact investors can play in helping the SBIC program achieve its goal of providing capital and long-term loan funds for the growth, expansion and modernization of small businesses.

II. Section by Section Analysis

§ 107.50—Definitions. SBA proposes to add the defined terms ''Fund-Identified Impact Investment,'' ''Impact Investment,'' ''Impact SBIC'' and ''SBA-Identified Impact Investment.''

''Fund-Identified Impact Investment,'' ''Impact Investment,'' and ''SBA-Identified Impact Investment''

The definition of ''Impact Investment'' included in this proposed rule consists of two categories, each of which is also a defined term in the proposed rule: (1) SBA-Identified Impact Investments, which are investments in geographic areas and sectors of national priority that SBA designates in notices published from time to time on SBA's SBIC program Web site (*www.sba.gov/inv*); and (2) Fund-Identified Impact Investments, which are investments that meet an SBIC's own definition of an ''Impact Investment'' and which an SBIC applicant must propose and SBA must approve during the licensing process, as described in proposed § 107.331—Evaluation and selection of Impact SBICs.

''Impact SBIC''

The regulatory definition of an Impact SBIC has several key points. First, an Impact SBIC must be organized as a limited partnership. Although the current regulations permit other forms of organization, the vast majority of existing SBICs are limited partnerships. SBA believes that having a degree of uniformity in organizational structure will facilitate a more timely and efficient licensing process for Impact SBICs.

Second, the ''Impact SBIC'' designation would apply only to SBICs licensed under this rule as well as those licensees designated as Impact SBICs after the launch of the Initiative in 2011 and before the effective date of this rule.

Third, an Impact SBIC must invest at least 50 percent of its financing dollars in small business concerns that meet the criteria set forth in the definition of Impact Investment in this rule (referred to hereafter as the ''50 percent requirement''). SBA believes the 50 percent threshold indicates a significant focus, while still giving Impact SBICs flexibility in developing their portfolios. Per the proposed rule, follow-on investments in a portfolio company that qualified as an ''Impact Investment'' at the time of the SBIC's initial financing

would count towards the 50 percent requirement.

An Impact SBIC may satisfy the 50 percent requirement exclusively through SBA-Identified Impact Investments or Fund-Identified Impact Investments, but may also satisfy the 50 percent requirement through a combination of these investments. Per proposed § 107.331, SBA must approve all Fund-Identified Impact Investment definitions and strategies during the licensing process, regardless of whether such investments will be used to meet all or only a portion of the 50 percent requirement.

§ 107.301—Impact SBIC licensing fee discount. This section proposes a 60% reduction in the licensing fees Impact SBIC applicants must pay under § 107.300. The discount is intended to incentivize the formation of Impact SBICs. Despite the fee reduction, SBA will devote neither less time nor fewer resources to the assessment of Impact SBIC applications than it devotes to the assessment of standard SBIC applications.

However, § 107.301 would provide that in the event an Impact SBIC applicant were to ultimately be approved for an SBIC license as anything other than an Impact SBIC, SBA would be entitled to recover the value of any discounts the applicant received prior to licensing. This provision was added to cover cases in which an applicant decides mid-process, with SBA permission, to seek a standard SBIC license instead of an Impact SBIC license. These types of changes sometimes occur during the fundraising process as fund managers adjust to the expectations of private capital providers. Although licensees designated as Impact SBICs under the Initiative would be eligible for fee discounts as of the effective date of this rule, SBA will not return any fees these licensees paid prior to that date.

Finally, any Impact SBIC, whether licensed under the Initiative or under this rule, may submit a written request to SBA seeking to convert to a standard SBIC license. SBA would generally expect to grant such a request, provided that SBA recovers the value of any discounts the licensee received.

§ 107.310—When and how to apply for licensing as an Early Stage SBIC. America's impact investment industry includes fund managers focused on making equity investments in early stage companies. In order to accommodate these fund managers, proposed § 107.310 permits applicants to apply simultaneously for an Impact SBIC and Early Stage SBIC license. Further, such dual applicants will be permitted to submit their application at any time and will not be subject to the submission deadlines specified in Early Stage Notices SBA may publish in the **Federal Register**. However, those applicants licensed as both Early Stage and Impact SBICs will be subject to every regulation pertaining to either type of licensee.

§ 107.330—Evaluation and selection of Impact SBIC license applicants making SBA-Identified Impact Investments. Impact SBIC license applicants proposing to meet their impact investment requirements exclusively through SBA-Identified Impact Investments will be evaluated and selected based on the standards outlined in § 107.305, which are used to assess all SBIC applicants. In addition, SBA will evaluate the managers' skills and experience in building and managing a portfolio of impact investments. However, an applicant's potential to generate social, environmental or economic impact will be considered relevant only to its eligibility to participate in the SBIC program as an Impact SBIC and will not serve as a substitute for any of the factors cited in § 107.305.

§ 107.331—Evaluation and selection of Impact SBIC license applicants making Fund-Identified Impact Investments.

Under proposed § 107.331, Impact SBIC license applicants seeking approval to make Fund-Identified Impact Investments will be subject first and foremost to the evaluation process and qualification standards outlined in § 107.305, which are used to assess all SBIC applicants. An applicant's potential to generate social, environmental or economic impact will be considered relevant only to its eligibility to participate in the SBIC program as an Impact SBIC and will not serve as a substitute for any of the factors cited in § 107.305.

Using SBA Form 2181 (Applicant Narrative), applicants will be expected to provide definition(s) of the Fund-Identified Impact Investments they intend to make for the purposes of complying with the requirement that 50 percent of the total dollar amount of their financings be deployed in Impact Investments. Applicants will also be required to describe, using qualitative and quantitative analysis, the expected social, environmental or economic impact of their proposed Fund-Identified Impact Investments.

SBA will review any Fund-Identified Impact Investment definition(s), along with an applicant's overall investment strategy, in order to determine whether the proposed definitions and strategy are consistent with SBA's mission, as well as the letter and spirit of the SBIC program's regulations. For instance, a Fund-Identified Impact Investment definition that targets financial intermediaries would not be approved if SBA determines it risks running afoul of the regulatory prohibition on financing ''relenders'' or ''reinvestors.''

SBA will next determine whether the applicant's proposed Fund-Identified Impact Investments are likely to yield a positive impact when all the potential social, environmental and economic effects of the investments are considered. SBA's evaluation may consider factors such as whether the strategy will include investments in Portfolio Concerns that increase services to low income communities, engage in environmentally sustainable business practices or manufacture environmentally sustainable products, or that operate in industries of national priority other than in the sectors identified by SBA as an SBA-Identified Impact Investment. The Agency acknowledges that reaching a definitive and objective conclusion regarding a strategy's overall impact may be challenging. Impact is often described in qualitative, rather than quantitative terms. In anticipation of that challenge, the proposed rule has been drafted to mitigate the risk that SBA would be put in the position of having to accept or reject a proposed definition based solely on a value judgment.

Applicants will be expected to make reasonable arguments, supported by convincing evidence, that their proposed definitions can meet the impact requirements of this rule. In this regard, the process SBA will use to evaluate proposed Fund-Identified Impact Investment definitions differs little from the process used to assess fund manager qualifications. SBA will use its standard due diligence tools, including principal interviews and reference calls, to test the strength of an applicant's proposal and the validity of the evidence presented therein. Just as a standard SBIC applicant might be rejected for making unsubstantiated track record claims, so too could a Fund-Identified Impact Investment definition be turned down if diligence suggests it lacks credibility.

SBA takes a nuanced approach to its licensing decisions and does not rely solely on easy-to-measure financial metrics. An applicant's past financial performance is always carefully weighed against less tangible factors such as the level of cohesion among the proposed management team members; the alignment of incentives between the fund manager and private investors; and

the quality of the proposed investment strategy, among other variables.

SBA expects to receive few, if any, Fund-Identified Impact Investment definition proposals that are intended solely to obtain the fee reduction benefits of an Impact SBIC license. The fee reductions in the proposed rule are not material compared to the amount of capital raised by an SBIC applicant, and Impact SBIC licensees are subject to enhanced regulatory reporting requirements. Moreover, fund managers that have expressed interest in SBA's impact investing efforts have, to-date, all proposed strategies with clear benefits and no obvious risk of yielding negative effects. The following are examples of the types of impact investments being made in the market today and which SBA anticipates Impact SBICs applying under this section may target:

- Healthcare companies that offer affordable, high-quality services to low-income consumers
- Education companies that provide evidence-based, supplemental learning services designed to enhance student achievement
- Energy efficiency and sustainability consulting firms
- Agricultural businesses that employ humane and environmentally sustainable farming practices
- Businesses that collect and reprocess industrial waste for alternative use
- Alternative credit scoring firms that enhance access to financial services for low-income consumers

In addition to approving an applicant's proposed definition of a Fund-Identified Impact Investment, SBA must be satisfied with the applicant's impact measurement and assessment plan, which an applicant must submit in accordance with proposed § 107.331(b). Under this section, the applicant must outline its plan to comply with proposed § 107.665, which requires Impact SBICs making Fund-Identified Impact Investments to obtain an assessment of their impact (1) from an independent, third-party assessment provider, (2) using an SBA-approved impact measurement standard, a list of which SBA will publish on its Web site from time to time, and (3) using an assessment process that is both transparent and comprehensive.

Impact measurement is a defining characteristic of impact investors. Without it, impact fund managers and their capital providers face a much bigger challenge in determining whether their goal of generating positive social impact has been met. Unfortunately, determining whether a fund has reached its impact target is far more complicated than evaluating its financial performance. The process requires establishing a standard by which the targeted outcomes will be measured, then crafting an evaluation framework capable of weighing the resulting measurements to yield an overall assessment of impact.

With regard to measurement, the proposed rule would require Impact SBICs licensed under this section to measure their impact using one of several pre-approved measurement standards. At the outset, SBA intends to approve the use of the three sets of standards listed below, although SBA may approve additional standards as they become more widely adopted by the impact investing industry:

—The Impact Reporting and Investment Standards (''IRIS''), an impact evaluation framework created by GIIN;
—The G4 Sustainability Reporting Standards, produced by the Global Reporting Initiative (''GRI''); and
—The standards produced and maintained by the Sustainability Accounting Standards Board (''SASB'').

The purpose of these standards is to establish a common language companies and investors can use to report the positive and negative impacts that result from their activities. These standards are part of a broader industry effort to bring to impact measurement what the Generally Accepted Accounting Standards (''GAAP'') provide for financial reporting. When comparing the GAAP-compliant financial statements of two different companies, an investor can be confident the same set of rules was used to report items such as revenue, inventory and operating cash flow in both statements. GAAP does not provide guidance on how to interpret the data, but it does ensure consistency in reporting.

Impact measurement standards were developed to offer the same proposition. Consider the simple example of two Impact SBICs, both of which are pursuing similar strategies to create high-wage jobs in a particular region. In the absence of a measurement standard, the tasks of defining a ''job'' and calculating a ''wage'' are left to the funds themselves, which leaves room for methodological discrepancies. One fund may include the value of benefits in its calculation of wages, while the other restricts its definition to direct cash payments. An investor trying to determine which fund has been more effective in reaching its impact goal would have difficulty in this scenario. Measurement standards help reduce these definitional challenges. Were the two funds to use IRIS metrics, for instance, they could both rely on the IRIS definition of a ''full-time'' or ''permanent'' employee and use the method IRIS has established for calculating the wages of those employees.

The impact investing industry has yet to coalesce around a single set of measurement standards and may never do so. However, the three standards SBA intends to approve were selected, in part, because of their prominence in the industry and the flexibility they provide for different types of impact strategies. Of the three, IRIS is likely the best-known and most widely used set of standards. GRI has a focus on sustainability, which may provide environmentally focused Impact SBICs additional flexibility. Finally, SASB's standards are designed primarily for public corporations and may facilitate reporting for Impact SBICs with portfolio companies that are already public or intend to go public.

With clear options available for the measurement of impact, Impact SBICs can turn to the second component of SBA's proposed evaluation system, which deals with the assessment of impact. As noted above, impact measurement standards only provide guidance on how to report impact data. They are silent on how to interpret that data. Returning to the example above, the two fund managers may report IRIS-compliant employee and wage data to their investors, but an assessment framework is needed to determine what constitutes a ''strong'' level of employment growth, what threshold determines a wage is ''high'', or how to weigh the growth in wages against the growth in employment when evaluating the funds' overall impact.

As with financial performance, each individual investor is empowered to reach his or her own conclusions about what constitutes ''success'' with regard to impact. While numbers, such as an internal rate of return, cannot be easily manipulated by a fund manager, investors could receive biased reports on impact returns if a fund manager were to selectively choose metrics and the weighting associated with those metrics. The use of independent and transparent assessment systems not only helps reduce the risk of selective reporting, but it also promotes the use of best practices across the industry.

For these reasons, SBA considers the assessment component of its proposed impact evaluation system critical to the credibility of the program. Impact SBIC

applicants seeking a license under this section of the proposed rule must identify the assessment providers they expect to use to fulfill their reporting requirements and describe the systems those providers employ. Further, the applicant must provide evidence that each assessment provider is independent, that the criteria and weightings the providers use are publicly available and that each provider is capable of conducting a comprehensive assessment of the Impact SBIC's impact. A comprehensive assessment is one capable of evaluating the social, environmental and economic impacts of the applicant's proposed strategy.

One assessment system SBA has already approved for use under its current Impact Investment Fund policy is the Global Impact Investment Ratings System (''GIIRS''), a product of the non-profit organization B Lab, which uses a standard set of IRIS impact metrics. GIIRS was created to bring to the impact investment industry the kind of consistent and comparable rating reports traditional finance has had for decades in the form of mutual fund ratings or credit ratings. With each investment fund they rate, B Lab staff collects a standard set of IRIS impact metrics from each company in the portfolio. That data is then run through the GIIRS assessment criteria, each of which is assigned a specific weight. The end result is a ratings report with an overall impact score and scores for each individual sub-component of the overall assessment. Since each rating uses the same set of core metrics, assessment criteria and weightings, one investment fund's score can be compared to that of another.

With each new Impact SBIC licensed under this section, SBA will build a portfolio of investment strategies and impact reports that it hopes will help guide future applicants to the program. Both to facilitate that learning process and to ensure program transparency, Section 107.331(d) allows the Agency to publish information about the investment strategies and assessment systems the Impact SBICs licensed under this section have employed.

However, the provisions of paragraph (d) will not release SBA from its responsibility to protect the confidential business information of its licensees. SBA intends only to publish general descriptions of the investment strategies it has approved and will not reveal any details that might compromise an applicant or licensee's confidential business information. Similarly, the Agency will make public the names of assessment providers it has approved and descriptions of the assessment systems those providers use, but will not reveal the results of any individual impact assessment.

§ 107.502—Representations to the public. SBA is proposing to add new paragraphs (b) and (c) to this section, which would require Impact SBIC license applicants and Impact SBICs to identify themselves as impact investment funds when marketing their funds to prospective investors. This requirement is meant to ensure that investors are made aware that the Impact SBIC applicant intends to participate, or that a licensed Impact SBIC is participating, in the SBIC program as an Impact SBIC. Requiring Impact SBICs to identify themselves as such will also help deter applicants whose sole interest in obtaining an Impact SBIC license is to benefit from the associated fee discounts.

§ 107.610—Required certifications for Loans and Investments. Proposed new paragraph (g) would provide for new certifications by Impact SBICs and the small businesses in which they make Impact Investments, certifying the basis for which each investment qualifies as an Impact Investment. As with most of the existing certifications in this section, the Impact certifications would be retained in the SBIC's files and be available for SBA's review.

The paragraph would require different levels of certification depending on the type of Impact Investment. SBA-Identified Impact Investments will be based on certifications from both the Impact SBIC and its portfolio concerns; Fund-Identified Impact Investments will only require the certification of the Impact SBIC. Since SBA-Identified Impact Investments will be based on definitions in federal regulation and will generally depend on specific statistics collected at the company level, it is reasonable to expect the leaders of those businesses to certify the accuracy of their information. By contrast, Fund-Identified Impact Investments may be based on sector data or other information outside the control of the small business being financed. Therefore, for Impact SBICs making Fund-Identified Impact Investments, the regulation places the full certification burden on the Impact SBIC.

As noted above, per the proposed rule, follow-on financings in Impact Investments would count towards the 50 percent requirement, and therefore, SBA will not require Impact SBICs to re-certify the investment as part of a follow-on financing. SBA believes that requiring Impact SBICs to re-certify their follow-on financings as Impact Investments might deter them from making long-term capital commitments out of concern that future financings might not count towards the ''50 percent requirement.'' Nonetheless, SBA is soliciting comments from the public on whether such follow-on investments should count towards the 50 percent requirement only if the Impact SBIC re-certifies the investment as an Impact Investment at the time a follow-on investment is made.

§ 107.665—Measurement and reporting requirements for Impact SBICs making Fund-Identified Impact Investments. This proposed section would require Impact SBICs making Fund-Identified Impact Investments to obtain independent assessments of the social, environmental and economic impact of their investment strategy. Unless the licensee obtains SBA approval to do otherwise, these assessments must be prepared in manner consistent with the plan approved during the licensing process.

Impact SBICs subject to this section will face penalties if they fail to obtain impact assessments, but SBA will neither penalize nor reward an Impact SBIC based solely on the results of those impact assessments. One purpose of permitting Impact SBICs to make Fund-Identified Impact Investments is to encourage innovative approaches to social, environment and economic challenges. Penalizing licensees that fail to meet their impact goals, despite their best efforts, would be counterproductive. Instead, the Agency trusts that successful fund managers will earn their rewards in the market place, using the strength of their financial and social returns to attract private capital. SBA will also look favorably on subsequent Impact SBIC applicants with a record of strong social and financial performance. By contrast, Impact SBICs with poor impact assessments are more likely to face difficulty raising private capital and obtaining a subsequent Impact SBIC license.

§ 107.693—Impact SBIC examination fee discount. This new proposed section would allow a 10% reduction in the examination ''base fee'' that would otherwise be applicable to Impact SBICs under existing § 107.692. SBA will devote neither less time nor fewer resources to the examination of Impact SBIC licensees as a result of this discount. Under the proposed rule, licensees designated as Impact SBICs prior to the effective date of this rule will be eligible for fee discounts on a going-forward basis, but SBA will not return fees already paid.

§ 107.1120—General eligibility requirements for Leverage. Proposed

new paragraph (l) would provide for a new certification by Impact SBICs seeking an SBA leverage commitment or draw. The Impact SBIC would be required to certify that it will invest at least 50 percent of the aggregate dollar amount of its financings in Impact Investments, in compliance with the Impact Investment and Impact SBIC definitions in § 107.50. This prospective certification is consistent with the other certifications required by § 107.1120. SBA intends to monitor Impact SBICs' performance in making Impact Investments to ensure that they are making investments that meet this requirement.

§ 107.1810—Events of default and SBA's remedies for Licensee's noncompliance with terms of Debentures. SBA is proposing two changes in this section that would apply only to Impact SBICs. First, under proposed § 107.1810(f)(13), it would be an event of default if an Impact SBIC fails to meet the requirement to invest at least 50 percent of its financing dollars in Impact Investments, as defined in proposed § 107.50. If the Impact SBIC fails to cure to SBA's satisfaction, SBA could invoke the remedies in existing § 107.1810(g), which includes the right to declare outstanding debenture leverage immediately due and payable. SBA would generally not expect to invoke such remedies if an Impact SBIC's failure to meet the 50 percent requirement appears to be temporary.

Second, under proposed § 107.1810(f)(14), it would be an event of default if an Impact SBIC licensed under an SBA-approved plan to make Fund-Identified Impact Investments fails to obtain an acceptable independent, third-party assessment to measure the social, environmental or economic impact of the fund's Impact Investment strategy within the time frames required by proposed § 107.665. If the Impact SBIC fails to cure to SBA's satisfaction, SBA could invoke the remedies in existing § 107.1810(g), which include the right to declare outstanding debenture leverage immediately due and payable.

§ 107.1940—Impact SBIC licensee noncompliance with regulations. SBA proposes creating in this new section a series of actions the Agency may take with respect to Impact SBICs that fail to meet the 50 percent requirement and Fund-Identified Impact SBICs that fail to meet assessment requirements. Regardless of whether an Impact SBIC has outstanding leverage, if an event of default would have been triggered under proposed § 107.1810(f)(13) or (14), SBA will have the authority, upon written notice, to take any or all of the following actions: (1) Convert the licensee's Impact SBIC license to a standard SBIC license (including, in SBA's discretion, requiring the licensee to notify its private investors of the conversion); and (2) require the licensee to return to SBA up to the full dollar amount of any licensing or examinations fee discounts it has received prior to the date of the written notice. However, SBA will be authorized to take these actions only after giving the licensee at least 15 days to resolve its non-compliance and only after the licensee fails to resolve its non-compliance within the time period given.

SBA included these additional remedies to address two areas of concern. First, the events of default proposed under § 107.1810(f) would only apply to Impact SBICs with outstanding leverage. As a result, Impact SBICs that are licensed as non-leveraged funds or those that pre-pay their leverage in full would not be subject to any remedies if they were to fall out of compliance with the 50 percent requirement or, as applicable, the assessment requirement. Second, the fee discounts proposed under this rule generally reward Impact SBIC applicants and licensees for future, rather than past behavior. For instance, an Impact SBIC will be eligible for a 60 percent discount on its licensing fee based on its proposal to deploy at least 50 percent of its capital in Impact Investments. Without the provisions proposed under this section, SBA would have limited authority to recover those benefits or otherwise take action against the fund if it fails to follow through on that commitment.

Compliance With Executive Orders 12866, 12988, 13132, 13563, 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 has determined that this rule is a ''significant'' regulatory action under Executive Order 12866. The Regulatory Impact Analysis is set forth below.

1. Need for Regulation

The Small Business Investment Act of 1958, as amended, established the SBIC program to ''stimulate and supplement the flow of private equity capital and long-term loan funds'' to U.S.-based small businesses. 15 U.S.C. 661. As part of that effort, the Act contains several provisions aimed at promoting the flow of capital to several special categories of small business, including those located in low income geographic areas, those engaged in energy-saving activities and ''smaller'' businesses.15 U.S.C. 683(b)(2)(C), 683(b)(2)(D), 683(d).

Over the past several years, SBA's focus on achieving these economic development goals has yielded results, but progress has come at a slower pace than anticipated. Despite the recent growth in the number of SBIC-financed businesses located in LMI areas, which rose from 216 in fiscal year (''FY'') 2012 to 229 in FY 2014, the program has yet to return to the high level achieved in FY 2011, during which SBICs financed 351 businesses located in LMI areas. The LMI Debenture, a leverage instrument meant to help facilitate these types of investments, is rarely used. Similarly, there has yet to be a single draw of SBA's Energy Savings Debenture, which has been available since 2012 to help finance small businesses involved in reducing the use of non-renewable energy sources.

The proposed rule was crafted to enhance the SBIC program's effectiveness in channeling much-needed capital to these and other underserved segments of the U.S. economy. From an overall economic development perspective, SBA believes that capital investments made into small businesses located in LMI and other underserved areas have the potential to have the most meaningful and sustained impact due to the capital formation gaps in those areas.

2. Alternative Approaches to Regulation

SBA considered several alternatives to the proposed regulation, each of which will be discussed below. First, SBA considered pursuing its impact investment objectives solely through existing policy initiatives. Based on extensive feedback received from SBIC fund managers, lower-middle market industry representatives, impact investment fund managers, impact policy thought leaders and others, SBA rejected this alternative. SBA's existing impact investing policies impose additional burdens without providing sufficient incentives to attract Impact SBIC fund managers to the program. Further, given that SBIC licensees have operational lives of ten years or more, the market will be reluctant to embrace SBA's impact investing efforts unless the Agency demonstrates a lasting commitment to the space by promulgating regulations.

SBA faced a challenge in developing a definition of an ''Impact Investment'' that dealt appropriately with the subjectivity inherent in any non-financial measure of performance. Initially, SBA considered restricting the

definition of an Impact Investment to financings that meet requirements already outlined in federal regulations, such as Energy-Savings Investments, LMI Investments or investments in rural areas. These investments are aligned with federal policy priorities and are easy to define and monitor. The original Impact Investment Initiative policy launched in 2011 was structured in this manner and was slow to attract applicants. Given the nascence of the impact investing industry, which supports a diverse range of investment strategies, SBA determined a more accommodative approach would be more effective.

The proposed rule has been drafted to allow Impact SBIC applicants to make SBA-Identified Impact Investments, which target federal priority areas, or make Fund-Identified Impact Investments that align with their own definitions of impact. This approach expands the reach of SBA's impact investing efforts beyond the limited subset of investments that meet existing regulatory criteria. The Agency also recognizes the complexities Fund-Identified Impact Investments may introduce to the SBIC licensing and monitoring process.

SBA had to carefully consider the bases on which it would approve an Impact SBIC's proposed Fund-Identified Impact Investment definition. One option the Agency considered was to outline, as part of this regulation, a series of sector-specific eligibility requirements that Fund-Identified Impact Investments would have to satisfy. Working with colleagues at the U.S. Department of Education, SBA staff made an initial attempt at preparing guidelines for investments in the education sector but quickly discovered the impracticality of the approach. Even within a single sector, there exists such a tremendous diversity of economic activity that establishing requirements specific-enough to be useful would require an inordinate commitment of time and resources.

An alternative approach would be to remove SBA from the approval process altogether and give Impact SBIC applicants complete latitude to pursue Fund-Identified Impact Investments of their choice. Under this approach, SBA would evaluate Impact SBICs using its existing licensing process without any additional consideration of the impact-related aspects of the applicant's proposal. A key advantage of this approach is that it would allow SBA to fully cede the definitional challenge of impact to fund managers and their private investors. It would also ensure the program remains open to innovative impact strategies.

SBA will always encourage applicants to propose innovative investment strategies, but the Agency must retain the ability to review and approve proposed Fund-Identified Impact Investment definitions. Not only must the Agency ensure that SBICs are making investments that are consistent with the letter and spirit of program regulations, but it must also consider the reputation of the SBIC program within the private investor community. The statute underlying the SBIC program, known as the Small Business Investment Act, makes clear that the program should be implemented in a manner that ''insure[s] the maximum participation of private financing sources.'' 15 U.S.C. 661. Were SBA to ignore an applicant's proposed Fund-Identified Impact Investment definitions, private impact investors might take the Agency's approach as a signal of indifference to market development.

In fact, the approach SBA has taken reflects the Agency's interest in not only enhancing the impact of the SBIC program, but also promoting industry best practices. SBA is as concerned with the process used to make Fund-Identified Impact Investments as it is with the outcomes of those investments. Each Impact SBIC applicant will have the burden of demonstrating, with qualitative or quantitative analysis, that its investment strategy will, in aggregate, generate a measurable positive impact. SBA staff will supplement their evaluation of the applicant's analysis and its other application materials with the results obtained using the standard tools of due diligence, such as interviews with the management team, reference calls, consultations with industry experts, public record searches and other research.

As long as a fund manager is qualified and its definition does not run afoul of the Agency's mission, statutes, regulations or policies, SBA intends to give applicants substantial leeway in defining their Fund-Identified Impact Investments. The measurement and assessment requirements of the proposed rule ensure that even those Impact SBICs that fail to meet their targeted social returns will contribute to market development. Measuring results, good and bad, contributes to the industry's understanding of the relationship between financial and social returns and helps investors identify the most talented managers.

SBA confronted two key questions as it considered how to create a robust measurement and assessment process. First, what means should SBA use to assess the impact of Fund-Identified Impact Investments? Second, what consequences, if any, should Impact SBICs face based on the result of their impact assessments?

With regard to the first question, SBA could have assumed the full burden of evaluating each Fund-Identified Impact Investment to determine its impact. This alternative was rejected because SBA staff lack sufficient time, resources and expertise to properly evaluate the full range of potential Fund-Identified Impact Investments. A second alternative was to leverage the expertise of Impact SBIC fund managers themselves and allow them to prepare their own assessments. While it may be appropriate to have Impact SBIC applicants argue the merits of their Fund-Identified Impact Investment definitions during the licensing process, SBA considered it imprudent to allow Impact SBICs to evaluate their own success.

The proposed rule instead requires Impact SBICs to obtain independent, third-party impact evaluations based on industry-adopted standards. The use of independent third parties helps reduce the bias inherent in a fund's own impact evaluation and relieves SBA of the potentially significant burden of assessing a wide range of impact investment strategies.

With regard to the second question, SBA has chosen not to penalize licensees based on the results of their impact assessments. As noted above, assessments provide private capital with greater transparency regarding an applicant's track record of generating impact. Given that most fund managers seek to follow their first investment vehicle with a second, the assessment process itself creates sufficient risk that investors will decline to invest in a second fund. Accordingly, SBA does not believe that an Impact SBIC should incur regulatory penalties based on the results of an impact assessment.

3. Potential Benefits and Costs

The proposed rule offers two primary benefits to SBA and its stakeholders. First, it offers the potential to enhance the overall social, environmental and economic impact of the SBIC program. Existing SBICs already have tremendous impact on America's small business economy. In FY 2014, SBICs together invested nearly $5.5 billion in more than 1,000 small business concerns, helping them to grow and modernize their operations. The introduction of Impact SBICs will increase the portion of those annual financings that are

intentionally directed towards economically-distressed communities and companies taking innovative approaches to social problems.

SBA also hopes the proposed rule will support the development of the impact investing industry more broadly. The rule has been drafted to incorporate impact investing best practices, especially with regard to the measurement and assessment of impact. As more and more SBA- and Fund-Identified Impact Investments are made, the SBIC program will have more data to contribute to the industry on the balance between financial and social performance.

In terms of costs, Impact SBICs are anticipated to have an additional 3% higher loss rate than regular SBICs, due to the risks that may be associated with Impact Investments contemplated under the proposed rule. Although SBA is targeting $200 million in commitments per year in terms of licensing, the number of Impact SBICs that SBA may license or the amount of debenture leverage commitments that may be approved for Impact SBICs in any year is subject to the limitations set forth in annual appropriations acts or in other statutes or regulations. In addition, both newly licensed Impact SBICs and previously licensed Impact SBICs have the opportunity to receive new leverage commitments in any year. The SBIC program subsidy model for FY 2017 has been formulated to reflect the provision proposed in this rule that Impact SBICs are allowed to be licensed as Early Stage SBICs. Early Stage SBICs are expected to have approximately a 10% higher loss rate than regular SBICs. The resulting fee of 34.7 basis points for FY 2017 remains well within historical ranges for the SBIC Debenture annual fee.

Executive Order 12988

This action meets applicable standards set forth in section 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 presumptive effect.

Executive Order 13132

The proposed rule will not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this proposed rule has no federalism implications warranting the preparation of a federalism assessment.

Executive Order 13563

In drafting this proposed rule, SBA considered the input of impact investment industry experts on ways to facilitate the growth of private-sector led impact investing as a strategy to create jobs and strengthen communities. With the assistance of the White House Office of Social Innovation and Civic Participation, which included a White House hosted event in June 2014 (*see, https://www.whitehouse.gov/blog/2014/06/25/executive-actions-accelerate-impact-investing-create-jobs-and-strengthen-communities*), SBA held roundtable discussions with representatives from endowments, foundations, institutional asset managers, high net worth individuals, investment funds, standard SBICs, existing Impact SBICs, not-for-profit entities, banks, and other federal government agencies. The roundtables covered topics such as: (1) Increasing the flow of private capital toward sustainable business models; (2) supporting private sector investment in high-impact sectors and underserved communities; (3) making innovative impact enterprises investment-ready; (4) removing regulatory barriers that keep capital on the sidelines; and (5) growing the impact economy through policy interventions.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rulemaking proposes additional reporting requirements as defined by the Paperwork Reduction Act. Specifically, as discussed above, all Impact SBICs utilizing a Fund-Identified Impact strategy would be required to submit to SBA independent, third-party evaluations of the impacts of such investments. This proposed rule would also codify two other reporting requirements that are already imposed on Impact SBICs based on the terms and conditions of the Impact Investment Fund established by SBA on April 11, 2011, as amended on September 25, 2014, available at *https://www.sba.gov/content/impact-investment-fund-overview.* First, at the time of application, Impact SBIC applicants are currently required to outline in their proposed investment strategy whether a particular strategy is an ''Impact Investment.'' This requirement is not being changed by this rule; it is merely being codified in the regulations. Furthermore, this requirement is already approved as part of SBA Form 2181, Appendix 2 (OMB Control Number 3245–0062). Second, as part of reporting on their portfolio financings, Impact SBICs are also currently required to identify whether a completed financing is an Impact Investment. Therefore, this requirement is also not being imposed for the first time by this rule but rather merely being codified in the regulations. To make it easier for SBICs to meet this requirement, SBA recently proposed adding two questions to the Portfolio Financing Report (an existing information collection approved under OMB Control Number 3245–0078), to enable Impact SBICS to specifically identify whether a particular investment qualifies as an SBA-Identified or Fund Identified investment. This particular change will be made in conjunction with other revisions to Form 1031 as a result of other amendments to the SBIC program in the proposed rule, *Small Business Investment Companies; Passive Business Expansion & Technical Clarifications.* (RIN: 3245–AG67) (80 FR 60077, October 5, 2015). The description, number of respondents, and the purpose of the information collection that would be imposed by this rule is discussed below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the requirements for the collection of information.

A. Impact Evaluations

Title: Independent, Third-Party Impact Evaluations.

Summary: The proposed rule requires Impact SBICs licensed to make Fund-Identified Impact Investments to submit two impact evaluations to SBA. Each assessment must be completed by an independent third-party based on industry standards. One assessment is due within two years of licensing, while the second must be submitted between the 5th and 7th year after licensing. These independent evaluations are required only of Impact SBICs that make Fund-Identified Impact Investments. Impact SBICs that restrict themselves to SBA-Identified Impact Investments bear no additional reporting burden beyond what is required of all SBICs.

Description and Number of Respondents: Only those Impact SBICs licensed to make Fund-Identified Impact Investments will be required to complete this requirement.

Annual Estimated Number of Responses: SBA estimates that it may receive approximately 2 responses each year based on an annual average of 6 Impact SBICs requiring assessments during years 1–2 and again in years 5–7 of their lifecycle.

Estimated Annual Hour and Cost Burden: Impact SBICs licensed to make Fund-Identified Impact Investments will be required to obtain an impact evaluation and may incur costs. SBA estimates that it may have approximately 6 Impact SBICs making Fund-Identified Impact Investments in any given year. One independent provider charges between $3,500 and $7,500 for a full portfolio rating, depending on the size of the fund and the number of portfolio companies. Two ratings completed at the maximum price of $7,500 would require an Impact SBIC to spend a total of $15,000 over the course of its 10 year fund life. On an annualized basis, the cost would be $1,500 per year. The total annual cost burden for the estimated 6 Impact SBICs making Fund-Identified Impact Investments is $9,000.

The hourly burden for these respondents would be negligible, as the assessment work would be completed by an independent third-party. The total time required to contact the provider and initiate an assessment is estimated at a total of 24 hours per assessment. Impact SBICs subject to the third-party assessment requirement must submit a total of two assessments over the course of their 10 year fund life. On an annualized basis, these applicants each will spend 4.8 hours per year. With an estimated 6 Impact SBICs making Fund-Identified Impact Investments in the portfolio at any given time, the total annual hourly burden is estimated at 28.8 hours.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency promulgates a rule, the Regulatory Flexibility Act requires the agency to prepare an initial regulatory flexibility analysis (IRFA) which describes the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule would affect all SBICs issuing debentures, of which there are currently 193, most of which are small entities. Therefore, SBA has determined that this proposed rule would have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule will not be significant. SBA keeps the SBIC program at a zero subsidy cost to taxpayers by charging up front and annual fees on its leverage. SBA calculates the annual fee each year using historical data to assess the appropriate fee to keep the program at zero subsidy cost. Because SBA expects Impact SBICs to be riskier than standard SBICs, SBA adjusted the SBIC debenture program budget formulation model which determines the annual fee needed to keep the debenture program at a zero subsidy cost.

The projected leverage allocation to Impact SBICs would increase the annual fee charged to all SBICs seeking new debenture commitments by approximately 6.1 basis points. The annual fee would remain in line with historical levels. Since 2000, the annual fee has ranged from a high of 100 basis points (1 percent) to a low of 29 basis points, with a 15-year median of 83 basis points. The annual fee for FY 2015 is approximately 74.2 basis points. Although the cost will vary in the future based on economic factors and assumptions used to develop the annual fee, SBA expects the fee to remain under 1 percent, comparable to historical annual fees and below the statutory maximum of 1.38 percent. Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant impact on a substantial number of small entities. SBA welcomes comment from members of the public who believe there will be a significant impact either on SBICs, or on companies that receive funding from SBICs.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Licensing fees, Examination fees, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 681 *et seq.,* 683, 687(c), 687b, 687d, 687g, 687m.

■ 2. Amend § 107.50 by adding in alphabetical order definitions of ''Fund-Identified Impact Investment,'' ''Impact Investment,'' ''Impact SBIC'' and ''SBA-Identified Impact Investment'' to read as follows:

§ 107.50 Definition of terms.

* * * * *

Fund-Identified Impact Investment means a Financing by an Impact SBIC that meets the definition of an Impact Investment proposed by the SBIC and approved by SBA in writing at the time of licensing, as described in § 107.331.

* * * * *

Impact Investment means an SBA-Identified Impact Investment or Fund-Identified Impact Investment.

Impact SBIC means any Section 301(c) Partnership Licensee that must make at least 50 percent of all of its Loans and Investments (in dollars) in Impact Investments and is designated by SBA as an ''Impact SBIC.''

* * * * *

SBA-Identified Impact Investment means a Financing that meets SBA's definition of an Impact Investment, which SBA will publish from time to time on its Web site and which will include geographies and sectors of national priority.

* * * * *

■ 3. Add § 107.301 to read as follows:

§ 107.301 Impact SBIC licensing fee discount.

(a) All applicants seeking to be licensed as an Impact SBIC will receive a 60 percent discount, rounded to the nearest one-hundred dollars, on any fees to which they are subject under § 107.300.

(b) In the event an applicant seeking to be licensed as an Impact SBIC is licensed as anything other than an Impact SBIC, SBA reserves the right to recover, prior to licensing, the full dollar amount of any licensing fee discounts the applicant has received.

■ 4. In § 107.310, designate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 107.310 When and how to apply for licensing as an Early Stage SBIC.

* * * * *

(b) Impact SBIC applicants. An applicant may elect to apply simultaneously for licensing as both an Early Stage SBIC and an Impact SBIC. Such applicants may apply as described in § 107.300 at any time and are not subject to the submission deadlines set forth in paragraph (a) of this section. Applicants seeking a dual license must comply with the regulations in this part pertaining to Early Stage SBICs and Impact SBICs, and to any requirements, other than submission deadlines, specified in the most recently published Early Stage Notice in the **Federal Register**.

■ 5. Add §§ 107.330 and 107.331 to read as follows:

§ 107.330 Evaluation of Impact SBIC license applicants.

SBA will evaluate each applicant seeking to be licensed as an Impact SBIC based on the same factors applicable to

other license applicants, as set forth in § 107.305, with particular emphasis on the managers' skill and experience in originating, evaluating, executing and monitoring Impact Investments consistent with the applicant's investment strategy.

§ 107.331 Evaluation of Fund-Identified Impact Investments and measurement plans.

If an applicant intends to qualify for an Impact SBIC license based on investments in Fund-Identified Impact Investments, SBA will evaluate the applicant's proposed definition(s) of a Fund-Identified Impact Investment and its plan to comply with the measurement and reporting requirements of § 107.665, and will approve the same in writing at the time of licensing based the applicant's satisfaction of the following:

(a) *Fund-Identified Impact Investments.* Using the submitted application materials, any interviews with the applicant's management team, the results of public record searches and any other due diligence conducted by SBA, SBA will assess the likelihood that the applicant's proposed investment strategy and Fund-Identified Impact Investment definition(s) will generate, in the aggregate, beneficial social, environmental or economic impacts. SBA's evaluation may consider factors such as whether the strategy will include investments in Portfolio Concerns that increase services to low income communities, engage in environmentally sustainable business practices or manufacture environmentally sustainable products, or that operate in industries of national priority other than in the sectors identified by SBA as an SBA-Identified Impact Investment.

(b) *Measurement and reporting plan.* During licensing, each applicant seeking an Impact SBIC license under § 107.331 must identify the assessment provider(s) and assessment system(s) it intends to use in order to comply with the requirements of § 107.665. Using the submitted application materials, any interviews with the applicant's management team, the results of public record searches and any other due diligence conducted by SBA, SBA will assess the applicant's proposed measurement and reporting plan based on the following factors:

(1) The applicant's proposed assessment system(s) must employ at least one approved measurement standard, from a list of approved standards published by SBA on its Web site from time to time.

(2) The applicant's proposed assessment system must comply with the following:

(i) The assessment system's criteria and weightings are publicly available; and

(ii) The assessment system is capable of producing an assessment of the social, environmental and/or economic effects of impact investments.

(3) The applicant's proposed assessment provider(s) must each be an independent, third-party. An assessment provider will not be considered an independent third-party if any of the following conditions exist at the time of licensing or assessment:

(i) The assessment provider is an Associate of the Impact SBIC or any of its Portfolio Concerns; or

(ii) The assessment provider is materially financed by an association that represents the interests of the specific industry in which the Impact SBIC or its Portfolio Concerns are engaged.

(c) *Publication.* SBA may periodically publish on its Web site:

(i) General descriptions of impact investment strategies pursued by Impact SBICs licensed to make Fund-Identified Impact Investments; and

(ii) Detailed descriptions of the assessment systems SBA has approved for use by Impact SBICs licensed to make Fund-Identified Impact Investments.

■ 6. In § 107.502, designate the existing text as paragraph (a) and add paragraphs (b) and (c) to read as follows:

§ 107.502 Representations to the public.

* * * * *

(b) Impact SBIC applicants must declare their intention to apply for an Impact SBIC license in any solicitation to investors.

(c) Impact SBIC licensees must indicate that they have obtained an Impact SBIC license from SBA in any solicitation to investors.

■ 7. Amend § 107.610 by adding paragraphs (g) and (h) to read as follows:

§ 107.610 Required certifications for Loans and Investments.

* * * * *

(g) For each SBA-Identified Impact Investment:

(i) A certification by the concern, dated as of the date of application for SBIC financing, as to the basis for its qualification as an Impact Investment; and

(ii) A certification by the Impact SBIC, made contemporaneously with the certification of the concern, that the concern qualifies as an Impact Investment as of the date of the concern's certification and the basis for such qualification.

(h) For each Fund-Identified Impact Investment, a certification by the Impact SBIC, as of the date of the financing, that the concern qualifies as a Fund-Identified Impact Investment under the definition(s) approved in writing by SBA and the basis for such qualification.

■ 8. Add § 107.665 to read as follows:

§ 107.665 Measurement and reporting requirements for Impact SBICs making Fund-Identified Impact Investments.

Impact SBICs that SBA approved in writing to make Fund-Identified Impact Investments must obtain an assessment of their impact investment strategy from an independent, third-party provider within two years after licensing and again between five and seven years after licensing. Without prior written SBA approval, the Impact SBIC may not use an assessment system(s) or assessment provider(s) different from those the Impact SBIC identified and SBA approved during the licensing process. Each assessment must be submitted to SBA within 30 days of its completion.

■ 9. Add § 107.693 to read as follows:

§ 107.693 Impact SBIC examination fee discount.

An Impact SBIC will receive a 10% discount on its examination base fee, rounded to the nearest one-hundred dollars, subject to the following:

(a) The discount will be calculated based on the examination base as determined prior to any adjustments provided for under § 107.692.

(b) Impact SBICs also licensed as Early Stage SBICs are entitled to any additional discounts, but exempt from any premium, that Early Stage SBICs would otherwise be required to pay under § 107.692.

■ 10. Amend § 107.1120 by adding paragraph (l) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(l) If you are an Impact SBIC, certify in writing that, in accordance with § 107.1810(f)(13), at least 50 percent of the aggregate dollar amount of your Financings will qualify as Impact Investments defined in § 107.50.

■ 11. Amend § 107.1810 by adding paragraphs (f)(13) and (14) to read as follows:

§ 107.1810 Events of default and SBA's remedies for Licensee's noncompliance with terms of Debentures.

* * * * *

(f) * * *

(13) *Failure by an Impact SBIC to meet investment requirements.* You are

an Impact SBIC and, beginning on the first fiscal quarter end when your cumulative total Financings (in dollars) are at least equal to your Regulatory Capital, you have not made at least 50 percent of such Financings to Small Businesses that at the time of your initial Financing were Impact Investments.

(14) *Failure by an Impact SBIC to meet assessment requirements.* You are an Impact SBIC making Fund-Identified Impact Investments and you fail to obtain an independent, third-party assessment within two years of your licensing date and, again, between five and seven years from your licensing date, pursuant to the requirements under § 107.665.

* * * * *

■ 12. Add § 107.1940 to read as follows:

§ 107.1940 Impact SBIC licensee noncompliance with regulations.

(a) For any occurrence (as determined by SBA) of one or more of the events in this paragraph (a), SBA may avail itself of one or more of the remedies in paragraph (b) of this section.

(1) Failure by an Impact SBIC to meet investment requirements. You are an Impact SBIC and, beginning on the first fiscal quarter end when your cumulative total Financings (in dollars) are at least equal to your Regulatory Capital, you have not made at least 50 percent of such Financings to Small Businesses that at the time of your initial Financing were Impact Investments.

(2) Failure by an Impact SBIC to meet assessment requirements. You are an Impact SBIC making Fund-Identified Impact Investments and you fail to obtain an independent, third-party assessment within two years of your licensing date and, again, between five and seven years from your licensing date, pursuant to the requirements under § 107.665.

(b) SBA may exercise any or all of the following rights:

(1) Convert your Impact SBIC license to a standard SBIC license (including, in SBA's discretion, requiring you to promptly notify your investors of the conversion); and

(2) Require you to refund to SBA up to the full dollar amount of any licensing or examination fee discounts you have received prior to the date of your written notice.

(c) SBA may invoke the remedies in paragraph (b) of this section only if:

(1) It has given you at least 15 days to cure the noncompliance;

(2) You fail to cure the noncompliance to SBA's satisfaction within the allotted time.

Dated: October 7, 2015.

Maria Contreras-Sweet,

Administrator.

Editorial Note: This document was received for publication by the Office of the Federal Register on January 29, 2016.

[FR Doc. 2016–01986 Filed 2–2–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–8060; Airspace Docket No. 15–ASW–4]

Proposed Establishment of Class E Airspace; Moriarty, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Moriarty, NM. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures developed at Moriarty Airport, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 21, 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–2015–8060; Docket No.15–ASW–4, 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: Raul Garza Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5874.

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 establish Class E airspace at Moriarty Airport, Moriarty, NM.

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–2015–8060/Airspace Docket No. 15–ASW–4.'' 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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Central Service Center, Operation Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request 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 establishing Class E airspace extending upward from 700 feet above the surface within an 7.5-mile radius of Moriarty Airport, Moriarty, NM, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

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

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

In consideration of the foregoing, 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:

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

* * * * *

ASW NM E5 Moriarty, NM [New]

Moriarty Airport, NM
(Lat. 34°58′41″ N., long. 106°00′00″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Moriarty Airport.

Issued in Fort Worth, TX, on January 20, 2015.

Christopher L. Southerland,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–01877 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR–5904–A–01]

Strengthening Oversight of Over-Income Tenancy in Public Housing; Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Advanced notice of proposed rulemaking (ANPR).

SUMMARY: Through this notice, HUD announces that it is considering rulemaking to ensure that individuals and families residing in HUD public housing in fact continue to need housing assistance from HUD after admission. HUD's consideration of rulemaking is prompted by a report recently issued by HUD's Office of Inspector General (OIG). The report found, through comparison of annual household income reported in HUD's Public and Housing Information Center for approximately 1.1 million families to the applicable 2014 admission income limit, that as many as 25,226 families were subsequently over-income. Some of those families significantly exceeded the income limits. HUD seeks comment from PHAs and other interested parties and members of the public on the questions presented in this notice, including how HUD can structure policies to reduce the number of individuals and families in public housing whose incomes significantly exceed the income limit and have significantly exceeded the income limit for a sustained period of time after initial admission.

DATES: *Comments Due Date:* March 4, 2016.

ADDRESSES: Interested persons are invited to submit comments to the Office of the General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

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

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

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

Public Inspection of Comments. All comments and communications submitted to HUD will be available, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Todd Thomas, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4100, Washington DC 20410–4000; telephone number (678) 732–2056 (this is not a toll-free number). Persons with hearing or speech impairments may contact this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The United States Housing Act of 1937 (42 U.S.C. 1437 *et. seq.*) (1937 Act), which is the primary statute that governs public housing and its administration by HUD and PHAs, provides that public housing dwelling units shall be rented only to families who are low-income families at the time of their initial occupancy of such units. In accordance with the 1937 Act, and HUD regulations and policies, PHAs must undertake periodic reviews of family income. The 1937 Act does not require eviction or termination of tenancy of families whose income exceeds the income limits while residing in public housing. *See* 42 U.S.C. 1437a. HUD's regulations at 24 CFR part 960, which govern public housing admissions, reflect this statutory framework.

The parameters for income limits that determine initial eligibility for public housing are developed by HUD and outlined in 24 CFR part 5, subpart F. In general, HUD sets the low-income limit at 80 percent and very low-income limit at 50 percent of the median income for the county or metropolitan area in which the household resides. Income limits vary from area to area and may be adjusted based on local market conditions.[1] Annual income is the anticipated total income from all sources received from the family head and spouse, and each additional member of the family 18 years of age or older. An individual's or family's rent is referred to as the Total Tenant Payment (TTP) and is based on a family's anticipated annual income less deductions, if any, or the applicable flat rent.

On July 21, 2015, HUD's OIG issued an audit report that presented the results of OIG's review of the number of families residing in HUD public housing whose income exceed the current income limits used in determining eligibility for such housing, several of whom significantly exceeded the income limits. The families identified by HUD OIG met the income limits at the time of admission to public housing but their income now exceeds such income limits. Currently, the regulations do not prohibit a family from continued occupancy when their income rises above the limit for initial admission. An increase in income is a good and welcomed event for families, and when a family's income steadily rises, it may be an indication that the family is on its way to self-sufficiency. However, an increase in income may be minimal or temporary, and a minimal or temporary rise in income should not be the basis for termination of public housing assistance. This ANPR solicits comment on how to structure policies to reduce the number of individuals and families whose incomes significantly exceed the income limit and have significantly exceeded the income limit for a sustained period of time after initial admission.

HUD takes seriously its obligation to provide clean, safe affordable housing to the neediest population. The Public Housing program is an essential resource for some of the nation's most vulnerable families. HUD strongly supports the efforts of PHAs to further the goals of providing quality affordable housing to eligible families in a manner that moves families toward increased and sustained self-sufficiency. At the same time, scarce public resources must be provided to those most in need of affordable housing. Any changes that would require the termination of tenancy for over-income families should be enacted with caution so as not to impede a family's progress towards self-sufficiency.

In a final rule published on November 26, 2004, at 69 FR 68786, HUD gave PHAs the authority to terminate the tenancy of or evict over-income residents. *See* 24 CFR 960.261. The final rule did not require PHAs to take action to evict over-income residents but provides PHAs with discretion to implement such policies and thereby make units available to applicants who are income eligible. The final rule noted that the 1937 Act did not require eviction and the purpose of rulemaking was to clarify that the absence of such a statutory requirement did not prohibit PHAs from terminating the tenancy of over-income families. The preamble to the rule stated that PHAs may decide that an over-income family is able to find other housing, and that the family's public housing unit could be made available to a family with greater housing need. The rule included discussion of the many factors that could be considered in developing these policies, including local market conditions, community stability, the source and duration of increased

[1] 2015 Income Limit Documentation *http://www.huduser.gov/portal/datasets/il/il15/HUD_sec8_15.pdf.*

income, and whether the resident was elderly or disabled.

HUD is considering revising HUD's regulations at 24 CFR 960.261 (Restriction on eviction of families based on income) in a manner that would continue to give PHAs discretion on when to evict or terminate the tenancies of over-income families but narrow that discretion by providing circumstances that would require a PHA to terminate tenancy or evict an over-income family. Specifically, HUD is considering whether a family whose income significantly exceeds the income limit and has exceeded such limit for a sustained period of time must be notified by the PHA that the family will be evicted or tenancy terminated. HUD is also considering what a reasonable period of time to find alternative housing would be.

HUD is not considering whether to alter the existing statutorily based exceptions to eviction or termination of tenancy related to income limits. Specifically, a family over the income limits who has a valid contract for participation in a Family Self-Sufficiency (FSS) program administered under HUD regulations in 24 CFR part 984 would not be subject to eviction or termination of tenancy. Additionally, a PHA may not evict a family over the income limits if the family is currently receiving the earned income disallowance authorized by the 1937 Act (*See* 42 U.S.C. 1473a(d)) and implemented through HUD regulations in 24 CFR 960.255 and 24 CFR 960.261(b).

II. Request for Comments

In a letter provided to PHAs on September 3, 2015, HUD strongly recommended that PHAs adopt local over-income policies while considering many factors, including, but not limited to how over-income is defined, income stability, length of time to provide a safety net for fluctuating incomes, preference for return and hardship policies.[2] In anticipation of a proposed rulemaking, HUD specifically solicits comment on the following issues:

1. How should HUD define income that ''significantly'' exceeds the income limit for public housing residency? Should such higher amount be determined by dollar amount, by a percentage, or as a function of the current income limit, and what should the amount be?

2. Should area cost of living and family finances be taken into consideration when determining whether an individual or family no longer needs public housing assistance? Are there limits to the circumstances in which said data should be requested and applied in a determination?

3. What period of time in which an individual or family has had income that significantly exceeds the income limits should be determined as indicative that the individual or family no longer needs public housing assistance?

4. How should local housing market conditions or housing authority wait list data be considered?

5. What period of time should be allowed for an individual or family to find alternative housing?

6. Are there exceptions to eviction or termination of tenancy that HUD should consider beyond those listed in HUD's regulation in 24 CFR 960.261?

7. Should HUD allow over-income individuals or families to remain in public housing, while paying unsubsidized or fair market, rent? How would such a provision impact PHA operations and finances?

8. Should HUD require a local appeals process for individuals or families deemed over-income?

9. Where over-income policies have been implemented, what were the results to public housing residents and PHAs? What were the specific positive and negative impacts?

10. What financial impact would over-income policies have on PHA operations, and how can any negative impacts be mitigated?

11. What are the potential costs and benefits to public housing residents and PHAs that could result from the forcible eviction of public housing tenants?

12. What evidence currently exists in favor of or against the adoption of this type of policy?

It is the responsibility of HUD and PHAs to ensure that public housing units are available to those who need HUD assistance. All comments directed to steps that HUD and PHAs can take to ensure availability of public housing units for individuals and families meeting the income limits are welcome.

Dated: January 25, 2016.

Lourdes Castro Ramírez,

Principal Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2016–01921 Filed 2–2–16; 8:45 am]

BILLING CODE 4210–67–P

[2] This letter can be found at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–1011]

RIN 1625–AA09

Drawbridge Operation Regulation; Broad Creek, Laurel, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the Norfolk Southern Railroad Bridge over Broad Creek, mile 8.0, at Laurel, DE. This proposed rule will change the current regulation requiring a four-hour advance notice and allow the bridge to remain in the closed position for the passage of vessels.

DATES: Comments and related material must reach the Coast Guard on or before March 21, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2015–1011 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mrs. Jessica Shea, Fifth Coast Guard District (dpb), at (757) 398–6422, email *jessica.c.shea2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The current operating schedule for the bridge is set out in 33 CFR 117.233 (a) issued September 11, 2006. As outlined in this regulation, the Norfolk Southern Railroad Bridge shall open on signal if at least four hours notice is given. The Fifth Coast Guard District Commander received a request from the bridge owner in July 2015 to consider making a permanent change to the operating regulation for the Norfolk Southern Railroad Bridge per 33 CFR 117.8(a).

This proposed rulemaking aligns the new schedule with the observed lack of marine traffic that requires a bridge opening and the operating regulations for the Poplar Street and US Highway 13A, which also cross Broad Creek. The proposed change would amend the existing regulation to state that the bridge need not open.

The Norfolk Southern Railroad Bridge over Broad Creek, mile 8.0, at Laurel, DE, has a vertical clearance of fourteen feet above mean high water in the closed position and is unlimited in the open position. The charted depth at the bridge is four feet. The existing structure is a swing bridge that was authorized in 1910. The structure has been used by trains since it was completed in 1915; however, the bridge owner reported that no openings have been requested since it was acquired by Norfolk Southern in 1999.

Milford Fertilizer had a dock that was used by commercial traffic upstream of the railroad bridge when the existing structure was issued a bridge permit in 1910. Prior to publishing this NPRM, the Coast Guard contacted the fertilizer company to determine if there would be any impacts to their operations. The fertilizer plant modified the operations conducted in this location and has not used the dock since the 1970s. There is no record of any other commercial maritime traffic on Broad Creek, DE. There are residential docks and municipal boat ramps downstream of the Norfolk Southern Railroad Bridge. Recreational traffic is present during the boating season with the peak during the summer months.

III. Discussion of Proposed Rule

This NPRM proposes to change the status of the Norfolk Southern Railroad Bridge to need not open for the passage of vessels. In order to align the operating schedule of the bridge with observed marine traffic, the proposed change amends the regulation to state that the bridge need not open. The lack of requests from vessels for bridge openings since 1999 illustrate that the vessels that use this waterway can safely navigate while the drawbridge is in the closed-to-navigation position.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and E.O.s and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. Based on current maritime traffic, using Norfolk Southern documentation and notes in the Coast Guard bridge files, there will be few, if any, vessels impacted by this proposed change as there has not been a requested opening since 1999.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, since there have been no requests for openings since 1999, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of

actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this document, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.233(a) to read as follows:

§ 117.233 Broad Creek.

(a) The draw of the Norfolk Southern bridge at mile 8.0, at Laurel, need not open for the passage of vessels.

* * * * *

Dated: January 14, 2016.

Stephen P. Metruck,

Rear Admiral, United States Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 2016–01897 Filed 2–2–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150629562–6025–01]

RIN 0648–BF25

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Management in the Bering Sea Pollock Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 110 and this proposed rule would improve the management of Chinook and chum salmon bycatch in the Bering Sea pollock fishery by creating a comprehensive salmon bycatch avoidance program. This action is necessary to minimize Chinook and chum salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maintaining the potential for the full harvest of the pollock total allowable catch within specified prohibited species catch limits. Amendment 110 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Comments must be received no later than March 4, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0081 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-2015-0081,* 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 Amendment 110 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action (collectively the ''Analysis'') may be obtained from *www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by email

to *OIRA_Submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Alicia Miller, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This proposed rule would implement Amendment 110 to the FMP. The Council has submitted Amendment 110 for review by the Secretary of Commerce, and a Notice of Availability (NOA) of this amendment was published in the **Federal Register** on January 8, 2016, with comments invited through March 8, 2015 (81 FR 897). Respondents do not need to submit the same comments on both the NOA and this proposed rule. All relevant written comments received by the end of the applicable comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 110 and addressed in the response to comments in the final decision.

The following sections describe the fisheries and the current management programs that would be affected by Amendment 110 and this proposed rule: (1) The Bering Sea pollock fishery, (2) salmon bycatch in the Bering Sea pollock fishery, (3) importance of salmon in western Alaska, (4) management of salmon bycatch in the Bering Sea and Aleutian Islands, (5) objectives of and rationale for Amendment 110 and this proposed rule, (6) proposed salmon bycatch management measures, (7) proposed changes to monitoring and enforcement requirements, and (8) other regulatory changes in the proposed rule.

The Bering Sea Pollock Fishery

Amendment 110 and this proposed rule would apply to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Gadus chalcogrammus*) fishery in the Bering Sea subarea of the BSAI. Currently, pollock in the BSAI is managed in three separate geographic units: The Bering Sea subarea, the Aleutian Islands subarea, and the Bogoslof District of the Bering Sea subarea. Amendment 110 and this proposed rule only apply to management of the pollock fishery in the Bering Sea subarea. Amendment 110 would not affect the management of pollock fisheries in the Aleutian Islands or the status of pollock fishing in the Bogoslof District. Therefore, in this proposed rule, the term ''pollock fishery'' refers only to the Bering Sea pollock fishery, unless otherwise specified.

The pollock fishery is the largest single species fishery, by volume, in the United States. The wholesale gross value of this fishery was more than 1.329 billion dollars in 2013, the most recent year of complete wholesale value data. The pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note). In October 1998, Congress enacted the AFA, which ''rationalized'' the pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. For more information on the AFA, please see the final rule implementing the AFA (67 FR 79692, December 30, 2002).

Under the AFA, 10 percent of the pollock total allowable catch (TAC) is allocated to the CDQ Program. After the CDQ Program allocation is subtracted, an amount needed for the incidental catch of pollock in other non-pollock groundfish fisheries is subtracted from the TAC. In 2015, the pollock TAC was 1,310,000 metric tons (mt). In 2015, the CDQ allocation was 131,000 mt of pollock and the incidental catch allowance was 47,160 mt. The ''directed fishing allowance'' is the remaining amount of pollock, after subtraction of the CDQ Program allocation and the incidental catch allowance. The directed fishing allowance is then allocated among the AFA inshore sector (50 percent), the AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). Annually, NMFS further apportions the pollock allocations to the CDQ Program and the AFA sectors between two seasons—40 percent to the A season (January 20 to June 10) and 60 percent to the B season (June 10 to November 1) (see § 679.20(a)(5)(i)(B)(*1*)).

The allocation of pollock to the CDQ sector is further allocated among the six non-profit corporations (CDQ groups) that represent the 65 communities eligible for the CDQ Program under section 305(i)(1)(D) of the Magnuson-Stevens Act. The current percentage allocations of pollock among the six CDQ groups were approved by NMFS in 2005 based on recommendations from the State of Alaska (State). These percentage allocations are now the required allocations of pollock among the CDQ groups under section 305(i)(1)(B) of the Magnuson-Stevens Act. More information about the allocations of pollock, other groundfish, crab, and prohibited species (including Chinook salmon) among the six CDQ groups is provided in the **Federal Register** notice that described the effect of the 2006 amendments to the Magnuson-Stevens Act on CDQ Program allocations (71 FR 51804, August 31, 2006).

CDQ groups typically sell or lease their pollock allocations to harvesting partners, including vessels owned, in part, by the CDQ group. Although CDQ groups are not required to partner with AFA-permitted vessels to harvest CDQ pollock, to date, the vessels harvesting CDQ pollock have also been AFA-permitted vessels. Specifically, the CDQ pollock allocations have most often been harvested by AFA catcher/processors, and to a lesser extent, AFA catcher vessels delivering to a mothership. A relatively small amount of CDQ pollock has been harvested by AFA catcher vessels delivering to inshore processing plants.

The AFA allows for the formation of fishery cooperatives within the non-CDQ sectors. A purpose of these AFA cooperatives is to further subdivide each sector's or inshore cooperative's pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of pollock among the cooperative members, enforce contract provisions, and participate in an intercooperative agreement to minimize non-Chinook salmon bycatch and an incentive plan agreement to minimize Chinook salmon bycatch.

Each year, catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors may form inshore cooperatives associated with a particular inshore processor. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation. The amount of pollock allocated to each inshore cooperative is based on the member vessel's pollock catch history from 1995 through 1997, as required under section 210(b) of the

AFA (16 U.S.C. 1851 note). These catcher vessels are not required to join an inshore cooperative. Those that do not join an inshore cooperative are managed by NMFS under the ''inshore open access fishery.'' For 2015, seven inshore cooperatives have been formed by AFA eligible inshore catcher vessels and their partner inshore processors.

The AFA catcher/processor sector is made up of the catcher/processors and catcher vessels eligible under the AFA to deliver to catcher/processors. Owners of the catcher/processors that are listed by name in the AFA and are still active in the pollock fishery have formed a cooperative called the Pollock Conservation Cooperative (PCC). Owners of the catcher vessels eligible to deliver pollock to the catcher/processors have formed a cooperative called the High Seas Catcher's Cooperative (HSCC). Collectively, the AFA catcher/processor sector operates as a single entity and coordinates the harvesting of its pollock allocation. All participants that harvest pollock allocated to the catcher/processor sector are members of the two cooperatives, except for one participant. Section 208(e)(21) of the AFA expressly limits the amount of harvest by the one participant in the catcher/processor sector who is not a member of a cooperative to 0.5 percent of the TAC allocated to the catcher/processor sector.

The AFA mothership sector is made up of three motherships named in the AFA that are eligible to receive and process pollock harvested by catcher vessels, and the catcher vessels eligible under the AFA to deliver pollock to these motherships. All catcher vessels delivering to these three motherships have formed a cooperative called the Mothership Fleet Cooperative (MFC). The primary purpose of the cooperative is to sub-allocate the mothership sector pollock allocation among the catcher vessels authorized to harvest this pollock and to manage these allocations.

The cooperatives control the harvest by their member vessels so that the pollock allocation to the sector is not exceeded. However, NMFS monitors pollock harvest by all members of the catcher/processor sector and mothership sector. NMFS retains the authority to close directed fishing for pollock by a sector if vessels in that sector continue to fish once the sector's seasonal allocation of pollock has been harvested.

Salmon Bycatch in the Bering Sea Pollock Fishery

Pollock is harvested with fishing vessels using trawl gear, which are large nets towed through the water by the vessel. Pollock can occur in the same locations as Chinook salmon and chum salmon. Consequently, Chinook salmon and chum salmon are incidentally caught in the nets as fishermen target pollock.

Section 3 of the Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, which are not sold or kept for personal use. Therefore, Chinook salmon and chum salmon caught in the pollock fishery are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 and section 303(a)(11) of the Magnuson-Stevens Act require the Council to select, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

The bycatch of culturally and economically valuable species like Chinook salmon and chum salmon, which are fully allocated and, in some cases, facing conservation concerns, are categorized as prohibited species under the FMP. They are the most regulated and closely managed category of bycatch in the groundfish fisheries off Alaska, and specifically in the BS pollock fishery. In addition to Pacific salmon, other species including steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring are classified as prohibited species in the groundfish fisheries off Alaska. As a prohibited species, fishermen must avoid salmon bycatch and any salmon caught must either be donated to the Prohibited Species Donation (PSD) Program (see regulations at § 679.26), or returned to Federal waters as soon as is practicable, with a minimum of injury, after an observer has determined the number of salmon and collected any scientific data or biological samples.

The PSD Program was established to reduce the amount of edible protein discarded under prohibited species catch (PSC) regulatory requirements (see regulations § 679.21). One reason for requiring the discard of prohibited species is that some of the fish may live if they are returned to the sea with a minimum of injury and delay. However, salmon caught incidentally in trawl nets die as a result of that capture due to damage they suffer within the nets. The PSD Program allows permitted seafood processors to retain salmon bycatch for distribution to economically disadvantaged individuals through tax-exempt hunger relief organizations. Section 4.5.6 of the Analysis provides additional detail on the PSD Program and donations received and processed through that program.

Chinook Salmon Bycatch

The pollock fishery catches more than 95 percent of the Chinook salmon taken incidentally in the BSAI groundfish fisheries, based on data from 1992 through 2014. However, the amount of Chinook salmon bycatch taken by the pollock fishery has declined since 2007. From 1992 through 2001 the average Chinook salmon bycatch in the pollock fishery was 32,482 fish per year. Bycatch increased substantially from 2002 through 2007, to an average of 74,067 Chinook salmon per year. A historic high of approximately 122,000 Chinook salmon was taken in the pollock fishery in 2007. However, since 2007 Chinook salmon bycatch declined substantially to an average of 15,500 Chinook salmon per year from 2008 to 2014. The decline is most likely due to a combination of factors, including changes in abundance and distribution of Chinook salmon and pollock, as well as changes in fleet behavior to avoid salmon bycatch.

In years of historically high Chinook salmon bycatch in the pollock fishery (2002 through 2007), the rate of Chinook salmon bycatch averaged 52 Chinook salmon per 1,000 tons of pollock harvested. With so few salmon relative to the large amount of pollock harvested, Chinook salmon encounters are difficult to predict or avoid. Vessel-level cooperation to share information about areas of high Chinook salmon encounter rates probably is the best tool that the industry currently has to quickly identify areas of high bycatch and to avoid fishing there. However, it will continue to be difficult to predict when and where large amounts of Chinook salmon bycatch will be encountered by the pollock fleet, primarily because of the current lack of understanding of the biological and oceanographic conditions that influence the distribution and abundance of salmon in the areas where the pollock fishery occurs.

Chinook salmon taken in the pollock fishery originate from river systems in Alaska, the Pacific Northwest, and Canada. Estimates vary from year to year, but on average approximately 65 percent of the Chinook salmon bycatch in the pollock fishery may be destined for western Alaska. Western Alaska includes the Bristol Bay, Kuskokwim, Yukon, and Norton Sound areas. Chinook salmon destined for elsewhere in Alaska, the Pacific Northwest, and Canada comprise approximately 28 percent of the bycatch. Section 3.4 of

the Analysis provides additional information about Chinook salmon biology, distribution, and stock assessments by river system or region (see **ADDRESSES**).

Chum Salmon Bycatch

The pollock fishery catches over 95 percent of the chum salmon taken incidentally as bycatch in the BSAI groundfish fisheries. The pollock fishery catches chum salmon almost exclusively in the B season (after June 10). The pollock fishery has caught large numbers of chum, with a historic high of approximately 700,000 chum salmon taken in 2005. Since then, bycatch levels in the pollock fishery have been quite variable, ranging from a low of 13,280 chum salmon in 2010 to a high of 309,646 chum salmon in 2006. Average chum salmon bycatch from 2006 through to 2014 was 115,190 chum salmon. In 2014, the pollock fishery caught 219,428 chum salmon.

Genetic information indicates that the majority of the chum salmon caught in the pollock fishery are of Asian origin (approximately 60 percent) while a smaller percentage (approximately 21 percent) originate from aggregate streams in western Alaska. Chum salmon from elsewhere in Alaska, the Pacific Northwest, and Canada comprise the remaining percentage of the bycatch (approximately 19 percent). While the genetics cannot differentiate hatchery-origin fish from wild Asian chum salmon, given the high proportion of Pacific Rim hatchery-released chum from Japan, much of the Asian origin chum observed in the bycatch is likely to be of Asian hatchery-origin. Alaska chum salmon runs have indicated a history of volatility in run sizes, and chum salmon stocks in Alaska are generally at higher levels of abundance than historical periods. Section 3.4 of the Analysis provides additional information about chum salmon biology, distribution, and stock assessments by river system or region (see **ADDRESSES**).

Importance of Salmon in Western Alaska

The Council and NMFS have been concerned about the potential impact of Chinook and chum salmon bycatch on returns to western Alaska given the relatively large proportion of bycatch from these river systems that occurs in the pollock fishery. Chinook salmon and chum salmon destined for western Alaska support commercial, subsistence, sport, and personal use fisheries. The Alaska Board of Fisheries adopts regulations through a public process to conserve salmon and to allocate salmon to the various users. The State of Alaska Department of Fish and Game manages the salmon commercial, subsistence, sport, and personal use fisheries. The first management priority is to meet spawning escapement goals to sustain salmon resources for future generations. The next priority is for subsistence use under both State and Federal law. Salmon is a primary subsistence food in some areas. Subsistence fisheries management includes coordination with U.S. Federal agencies where Federal rules apply under the Alaska National Interest Lands Conservation Act. Section 3.4 of the Analysis provides a detailed description of the State and Federal management process. Appendix A–4 of the Analysis provides an overview of the importance of subsistence salmon harvests and commercial salmon harvests.

Management of Salmon Bycatch in the Bering Sea and Aleutian Islands (BSAI)

Over the last 20 years, the Council and NMFS have adopted and implemented several management measures to limit salmon bycatch in the BSAI trawl fisheries, and particularly in the pollock fishery. Management measures have focused on minimizing Chinook salmon bycatch, chum salmon bycatch, and non-Chinook salmon bycatch. Non-Chinook bycatch is a category that includes all salmon species except Chinook salmon, but is comprised predominantly of chum salmon.

In 1994, the Chum Salmon Savings Area in the eastern Bering Sea was established by an emergency rule (59 FR 35476, July 12, 1994). This Chum Salmon Savings Area corresponded to a region of historically high chum salmon bycatch compared to other areas in the Bering Sea. The Council subsequently recommended maintaining the Chum Salmon Savings Area under Amendment 35 to the FMP (60 FR 34904, July 5, 1995). Amendment 35 closed the Chum Salmon Savings Area to all trawling from August 1 through August 31 and established a 42,000 non-Chinook salmon PSC limit for trawl vessels operating in the Bering Sea. A PSC limit is effectively a bycatch limit; it constrains fishing once the amount of PSC is reached. Amendment 35 also established a separate Catcher Vessel Operational Area. The Catcher Vessel Operational Area corresponds to another region in the eastern Bering Sea where trawl catcher vessels had historically been observed to have high non-Chinook salmon (*i.e.,* chum salmon) bycatch. Under Amendment 35, if the non-Chinook salmon PSC limit was caught in the Catcher Vessel Operational Area between August 15 and October 14, NMFS prohibited fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area. Figure 9 to part 679 shows the Chum Salmon Savings Area and Catcher Vessel Operational Area.

In 1995, NMFS also established the Chinook Salmon Savings Area, which was implemented under Amendment 21b to the FMP (60 FR 61215, November 29, 1995). The Chinook Salmon Savings Area was established based on historic information regarding the location and timing of Chinook salmon bycatch. Regulations implementing Amendment 21b established annual PSC limits for Chinook salmon and specific seasonal no-trawling zones in the Chinook Salmon Savings Area that would close when the limits were reached. Once the 48,000 Chinook salmon PSC limit was reached, these regulations prohibited trawling in the Chinook Salmon Savings Area through April 15.

In 2000, NMFS implemented Amendment 58 to the FMP, which reduced the Chinook Salmon Savings Area PSC limit from 42,000 to 29,000 Chinook salmon, redefined the Chinook Salmon Savings Area as two non-contiguous areas (Area 1 in the Aleutian Islands subarea and Area 2 in the Bering Sea subarea), and established new closure periods (65 FR 60587, October 12, 2000).

In 2005, NMFS implemented Amendment 82 to the FMP. Amendment 82 established the Aleutian Islands Chinook salmon PSC limit of 700 fish. If the limit is reached, NMFS will close the directed pollock fishery in the Aleutian Islands Chinook Salmon Savings Area (70 FR 9856, March 1, 2005).

In 2007, NMFS implemented Amendment 84 to the FMP to enhance the effectiveness of salmon bycatch measures. The Council and NMFS were concerned that increases in Chinook salmon and non-Chinook (predominantly chum) salmon bycatch in the pollock fishery were occurring despite Chinook and chum salmon PSC limits being reached and the closures of the Chinook Salmon Savings Area and Chum Salmon Savings Area (72 FR 61070, October 29, 2007). Amendment 84 exempted pollock vessels from Chinook Salmon Savings Area and Chum Salmon Savings Area closures if they participate in an intercooperative agreement (ICA) to reduce salmon bycatch. Amendment 84 also exempted vessels participating in non-pollock trawl fisheries from Chum Salmon Savings Area closures because these

fisheries intercept minimal amounts of salmon. In 2010, NMFS implemented Amendment 91 to the FMP to manage Chinook salmon bycatch in the pollock fishery (75 FR 53026, August 30, 2010), and to remove Chinook salmon from the Amendment 84 regulations. However, Amendment 84 continues to apply to non-Chinook salmon bycatch.

The ICA allowed vessels participating in the pollock fishery to use their internal cooperative structure to reduce Chinook salmon and non-Chinook salmon bycatch using a method called the voluntary rolling hotspot system. Amendment 84 required that parties to the ICA include the AFA cooperatives; the six CDQ groups; at least one third-party group, including any organizations representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction but do not directly fish in a groundfish fishery; and at least one entity retained to facilitate bycatch avoidance behavior and information sharing. All AFA cooperatives and CDQ groups participated in the ICA and continue to do so to avoid incidentally catching non-Chinook salmon.

Amendment 84 continues to exempt vessels participating in the ICA from the Chum Salmon Savings Area closure. Closure of the Chum Salmon Savings Area was designed to reduce the total amount of chum salmon bycatch by closing areas with historically high levels of chum salmon bycatch. The ICA operates in lieu of a fixed area closure, and is required to identify and close areas of high salmon bycatch and move vessels to other areas.

Fishery participants provide the ICA with real-time salmon bycatch information and the ICA uses that information to inform other fishery participants to avoid areas of high non-Chinook salmon bycatch rates. Using a system specified in regulations, the ICA assigns vessels in a cooperative to certain tiers, based on bycatch rates of vessels in that cooperative relative to a base rate established in regulations, and implements large area closures for vessels in tiers associated with higher bycatch rates. The ICA managers monitor salmon bycatch in the pollock fisheries and announce area closures for areas with relatively high salmon bycatch rates. Monitoring and enforcement are accomplished through private contractual arrangements. The efficacy of voluntary closures and bycatch reduction measures are reported to the Council annually.

Amendment 91, as implemented in 2010 to manage Chinook salmon bycatch in the pollock fishery (75 FR 53026, August 30, 2010), combined a limit on the amount of Chinook salmon that may be caught incidentally with a novel approach designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years, while providing the fleet the flexibility to harvest the pollock TAC. Amendment 91 removed Chinook salmon from the Amendment 84 regulations, and established two Chinook salmon PSC limits for the pollock fishery—60,000 and 47,591 Chinook salmon. Under Amendment 91, the PSC limit is 60,000 Chinook salmon if some, or all, of the pollock fishery participates in an industry-developed contractual arrangement, called an incentive plan agreement (IPA). An IPA establishes an incentive program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA is voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA is subject to a restrictive opt-out allocation (also called a backstop cap). Since Amendment 91 was implemented, all AFA vessels have participated in an IPA.

To ensure participants develop effective IPAs, participants provide the Council and NMFS an annual report that describes the efforts each IPA is taking to accomplish the intent of the program that each vessel actively avoids Chinook salmon at all times while fishing for pollock and, collectively, that bycatch is minimized in each year. The IPA system is designed to be flexible, responsive, and can be tailored by each sector to fit its operational needs. The IPAs impose rewards for avoiding Chinook salmon bycatch or penalties for failure to avoid Chinook salmon bycatch at the vessel level. While the IPAs provide an incentive to minimize bycatch in all years to a level below the limit, a limit of 60,000 Chinook salmon provides the industry the flexibility to harvest the pollock TAC in high-encounter years when bycatch is difficult to avoid.

Since implementation, all the participants in the pollock fishery are currently participating in IPA agreements. There are three NMFS-approved IPA agreements currently in place: the Inshore Chinook Salmon Savings Incentive Plan Agreement, the Mothership Salmon Savings Incentive Plan Agreement, and the Catcher Processor Chinook Salmon Bycatch Reduction Incentive Plan and Agreement. Section 2.1.2.3 of the Analysis provides details on the features of the current IPA agreements.

Under Amendment 91, if fishery participants do not form any IPAs, the 47,591 Chinook salmon PSC limit applies rather than the 60,000 Chinook salmon PSC limit. This PSC limit was the approximate 10-year average of Chinook salmon bycatch from 1997 to 2006, the years considered by the Council and NMFS when developing Amendment 91. The 47,591 Chinook salmon PSC limit constrains Chinook salmon bycatch in the pollock fishery if no other incentives, namely the IPAs, are operating to minimize bycatch below this level.

Both the 60,000 and 47,591 Chinook salmon PSC limits are apportioned between the A and B seasons and allocated to the AFA catcher/processor sector, the AFA mothership sector, the AFA inshore sector, and CDQ Program. NMFS further allocates the AFA inshore sector PSC among the inshore cooperative and the CDQ Program PSC among the CDQ groups. Chinook salmon PSC allocations made to sectors, inshore cooperatives, and the CDQ groups are transferable. Transferability mitigates the variation in the salmon encounter rates among sectors, inshore cooperatives, and CDQ groups, in a given pollock season. It allows eligible participants to obtain a larger portion of the PSC allocation in order to harvest their pollock allocation or to transfer surplus PSC allocation to other entities. When a Chinook salmon PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group must stop fishing for pollock for the remainder of the season even if its pollock allocation has not been fully harvested.

Amendment 91 also established a performance standard as an additional tool to ensure that the IPA is effective and that the AFA sectors and the CDQ Program do not fully harvest their Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. For an AFA sector or the CDQ Program to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that AFA sector or the CDQ Program may not exceed its annual threshold amount in any three years within seven consecutive years. If this performance standard is not met, that AFA sector or CDQ Program will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit. The risk of bearing the potential adverse economic impacts of a reduction from the 60,000 PSC limit to the 47,591 PSC limit creates incentives for fishery participants to cooperate in an effective IPA.

Before each fishing year, NMFS calculates each sector's annual threshold amount. If some, but not all, members of a sector were to participate in an IPA, NMFS would reduce that

sector's annual threshold amount by an amount equal to the sum of each non-participating vessel's portion of the applicable performance standard. At the end of each fishing year, NMFS evaluates each sector's annual bycatch against that sector's annual threshold amount. Only the bycatch of vessels or CDQ groups participating in an IPA accrue against a sector's annual threshold amount. A sector's annual threshold amount does not change when vessels from other sectors or entire sectors opt out of an IPA or if another sector exceeds its performance standard.

Additional information the provisions of Amendment 91 are provided in the final rule prepared for that action (75 FR 53026, August 30, 2010).

Objectives of and Rationale for Amendment 110 and This Proposed Rule

In April 2015, the Council adopted Amendment 110. The objective of Amendment 110 and this proposed rule is to create a comprehensive salmon bycatch avoidance program that would work more effectively than the current salmon bycatch programs to avoid Chinook salmon bycatch and Alaska-origin chum salmon bycatch. The Council's action is designed to consider the importance of continued production of critical chum salmon runs in western Alaska by focusing on bycatch avoidance of Alaskan chum salmon runs. These runs have a history of volatility in run sizes, and are of historic importance in the subsistence lifestyle of Alaskans. Additional protections to other chum stocks outside of Alaska are embedded in the Council's objective to avoid the high bycatch of chum salmon overall, recognizing that most non-Alaska chum salmon are likely from Asian hatcheries.

The Council recognized that the chum salmon bycatch reduction program under Amendment 84 does not meet the Council's objective for the pollock fishery to effectively avoid both Chinook salmon and chum salmon bycatch. Amendment 84 did not provide the flexibility necessary to avoid Chinook salmon when fishermen encountered both species, avoid Alaska chum salmon stocks, or to harvest pollock in times and places that best support those goals.

The Council recognized that Chinook salmon are an extremely important resource to Alaskans who depend on local fisheries for their sustenance and livelihood. Multiple years of historically low Chinook salmon abundance have resulted in significant restrictions for subsistence users in western Alaska and failure to achieve conservation objectives. The current Chinook salmon bycatch reduction program under Amendment 91 was designed to minimize bycatch to the extent practicable in all years, under all conditions of salmon and pollock abundance. While Chinook salmon bycatch impact rates have been low under the program, the Council determined that there is evidence that improvements could be made to ensure the program is reducing Chinook salmon bycatch at low levels of salmon abundance. An analysis of the possible improvements is provided in section 3.5.3 of the Analysis.

The Council considered a broad suite of measures to induce some level of behavior change to further avoid salmon bycatch, which is the primary objective of this action. Experience has shown that salmon avoidance requires flexibility and the ability of vessels to adjust to real-time information and fishery conditions. The Council also considered the trade-offs between the potential salmon saved and the forgone pollock catch.

In selecting the proposed salmon bycatch avoidance program, the Council considered five alternatives, with many options, to assess the impacts of minimizing Chinook salmon and chum salmon bycatch to the extent practicable while maintaining the potential for the full harvest of the pollock TAC. The Analysis contains a complete description of the alternatives and a comparative analysis of the potential impacts of the alternatives (see **ADDRESSES**).

The Council recommended all four action alternatives as Amendment 110. Amendment 110 would adjust the existing Chinook salmon bycatch program to incorporate revised chum salmon bycatch measures into the existing IPAs. In addition, the Council sought to provide greater incentives to avoid Chinook salmon by strengthening incentives during times of historically low Chinook salmon abundance in western Alaska. Thus, the management measures included in Amendment 110 focus on retaining the incentives to avoid Chinook salmon bycatch at all levels of abundance as intended by Amendment 91. The Council also expressed that it remains extremely important to provide the incentives to avoid Alaska-origin chum salmon while maintaining the flexibility to avoid Chinook salmon.

In developing Amendment 110, the Council and NMFS considered consistency with the Magnuson-Stevens Act's 10 National Standards and sought to balance the competing demands of the National Standards. Specifically, the Council and NMFS recognized the need to balance and be consistent with both National Standard 9 and National Standard 1. National Standard 9 requires that conservation and management measures minimize bycatch to the extent practicable. National Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U. S. fishing industry. Amendment 110 meets National Standards 1 and 9, as well as the other eight National Standards. Amendment 110 also retains the structure and meets the original goals of Amendment 91, but makes improvements by providing greater incentives to minimize salmon bycatch in all conditions of abundance, while also providing a reasonable opportunity to harvest the full pollock TAC each year and to achieve the optimum yield for pollock over the long term.

The provisions of Amendment 110, and the rational for each provision, are described in the following section on the proposed salmon bycatch management measures.

Proposed Salmon Bycatch Management Measures

Amendment 110 and this proposed rule would—

- incorporate chum salmon avoidance into the IPAs established under Amendment 91 to the FMP, and remove the non-Chinook salmon bycatch reduction ICA previously established under Amendment 84 to the FMP;
- modify the requirements for the content of the IPAs to increase the incentives for fishermen to avoid Chinook salmon;
- change the seasonal apportionments of the pollock TAC to allow more pollock to be harvested earlier in the year;
- reduce the Chinook salmon PSC limit and performance standard in years with low Chinook salmon abundance in western Alaska; and
- improve the monitoring of salmon bycatch in the pollock fishery.

Incorporate Chum Salmon Avoidance Into the Incentive Plan Agreements (IPAs)

Currently, Chinook salmon and chum salmon bycatch are managed under two different programs (Amendment 84 for chum salmon bycatch and Amendment 91 for Chinook salmon bycatch). This has created inefficiencies, as having separate programs does not allow participants in the pollock fishery the flexibility to modify harvest patterns

and practices to effectively minimize both Chinook salmon and chum salmon bycatch. Adding chum salmon measures to the IPAs would increase flexibility in responding to changing conditions and provide greater incentives to reduce bycatch of both salmon species, thereby making salmon bycatch management more effective, comprehensive, and efficient. The chum salmon-specific requirements in the Amendment 84 implementing regulations sometimes prevent fishery participants from making decisions to avoid Chinook salmon when vessels encounter both chum salmon and Chinook salmon.

Amendment 110 and this proposed rule would incorporate chum salmon avoidance into the IPAs established under Amendment 91. This proposed rule would remove the Amendment 84 implementing regulations by removing § 679.21(g). However, Amendment 110 and this proposed rule would maintain the current non-Chinook salmon PSC limit of 42,000 fish and the closure of the Chum Salmon Savings Area to the pollock fishery when the 42,000 non-Chinook salmon PSC limit has been reached (see the above section *Management of Salmon Bycatch in the Bering Sea and Aleutian Islands (BSAI)* for more detail on the existing salmon regulations). Vessels that participate in an IPA would be exempt from the Chum Salmon Savings Area closure. The purpose of maintaining the non-Chinook salmon PSC limit and the Chum Salmon Savings Area closure is to provide additional incentives for vessels to join an IPA, and to serve as back-stop chum salmon measures for those vessels that choose not to participate in an IPA.

Incorporating chum salmon into the IPAs meets the purpose of this action by providing measures to prevent high chum salmon bycatch, while also giving participants in the pollock fishery the flexibility to avoid Alaska chum stocks, and to use coordinated management under the IPAs to adapt quickly to changing conditions. The Council determined and NMFS agreed that this action for chum bycatch would strike an appropriate balance between regulatory requirements and adaptive management.

To incorporate chum salmon into the IPAs, the proposed rule would modify the required contents of the IPAs at § 679.21(f)(12), to include the following:

- The incentives for the operator of each vessel to avoid Chinook salmon and chum salmon bycatch under any condition of pollock and Chinook salmon abundance in all years.
- An explanation of how the incentives to avoid chum salmon do not increase Chinook salmon bycatch.
- The rewards for avoiding Chinook salmon, and the penalties for failure to avoid, Chinook salmon at the vessel level.
- An explanation of how the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon and chum salmon bycatch rates relative to what might have occurred in absence of the incentive program.
- An explanation of how the incentive measures in the IPA promote Chinook salmon savings and chum salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon and chum salmon.
- An explanation of how the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's Chinook salmon bycatch to keep total bycatch below the performance standard for the sector in which the vessel participates.
- An explanation of how the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska.
- The rolling hot spot program for salmon bycatch avoidance and the agreement to provide notifications of closure areas and any violations of the rolling hot spot program to at least one third party group representing western Alaskans who depend on salmon and do not directly fish in a groundfish fishery.

Amendment 110 and this proposed rule would maintain the important chum salmon avoidance features of the Amendment 84 ICAs. Amendment 110 and this proposed rule would: (1) Ensure that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska, (2) require the use of the rolling hot spot program for salmon bycatch avoidance, and (3) require notifications of closure areas and any violations of the rolling hot spot program to at least one third party group representing western Alaskans. Because Amendment 110 and this proposed rule would require a rolling hot spot program for both Chinook and chum salmon, the notification process would apply for both species. This proposed rule would also add reporting requirements to the IPA Annual Report in regulations at § 679.21(f)(13) to require the IPA representative to describe how the IPA addresses the goals and objectives in the IPA provisions related to chum salmon. Section 3.5.2 of the Analysis provides more detail on adding elements of chum salmon management.

Modify the IPAs To Increase the Incentives to Avoid Chinook Salmon

Amendment 110 and this proposed rule would modify the IPAs to increase the incentives for fishermen to avoid Chinook salmon. The Council and NMFS recognize that the IPAs were effective at providing incentives for each vessel to avoid Chinook salmon, but that additional measures were necessary to address higher Chinook salmon PSC rates observed in October (the last month when the pollock fishery is authorized to operate) and to address concerns with individual vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time. The Council and NMFS wanted to ensure the use of salmon excluder devices (*i.e.,* gear modifications that are designed to exclude salmon bycatch while retaining pollock) and a rolling hotspot program. The proposed new provisions described below are intended to provide an opportunity for IPAs to increase their responsiveness in October, and improve performance of individual vessels.

These new provisions would increase the incentives to reduce Chinook salmon bycatch within the IPAs. To incorporate additional incentives for Chinook salmon savings into the IPAs, the proposed rule would modify the required contents of the IPAs at § 679.21(f)(12) to include the following six provisions.

- Restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time.
- Requirement that vessels to enter a fishery-wide in-season salmon PSC data sharing agreement.
- Requirement for the use of salmon excluder devices, with recognition of contingencies, from January 20 through March 31 and from September 1 until the end of the B season.
- Requirement for a rolling hotspot program that operates throughout the entire A and B seasons.
- For savings-credit-based IPAs, limititation on the salmon savings credits to maximum of three years.
- Restrictions or performance criteria to ensure that Chinook salmon PSC rates in October are not significantly higher than those achieved in the preceding months, thereby avoiding late-season spikes in salmon PSC.

Restrictions or penalties targeted at vessels that consistently have

significantly higher Chinook salmon PSC rates. To reduce the potential for a vessel to consistently maintain higher rates of Chinook salmon PSC than other vessels fishing at the same time (*i.e.,* an outlier), Amendment 110 and this proposed rule would incorporate additional restrictions or penalties targeted at individual vessels that consistently have significantly higher PSC rates as a way for IPAs to increase their responsiveness and improve an individual vessel's performance. Restrictions or penalties targeted at the outliers have the potential to induce changes in fishing behaviors. Strong incentives will induce vessel operators to change where they fish to avoid Chinook salmon bycatch. Changes in fishing patterns can involve several different behaviors: Avoiding an area that has historically or recently had high bycatch; using and sharing more information on high-bycatch areas; and moving immediately once high bycatch has been observed. Section 3.5.3.1 of the Analysis provides more detail on this addition to the IPA requirements.

Require vessels to enter a fishery-wide in-season salmon PSC data sharing agreement. Information sharing is a core component of the IPA agreements for all sectors. While unlikely, communication about salmon bycatch could be withheld or distorted with the new incentives that would reward or punish vessels based on their relative performance. In order to reduce this possibility, Amendment 110 and this proposed rule would require the IPAs to require sharing information on PSC. PSC data is not confidential. Section 3.5.3.1 of the Analysis provides more detail on this addition to the IPA requirements.

Require use of a salmon excluder device. Salmon excluder devices are modifications to trawl gear that allow salmon to escape the trawl net while the net is in the water. The majority of pollock fishermen in the Bering Sea regularly use salmon excluder devices as part of the steps taken by the fishery to reduce its salmon bycatch. Amendment 110 and this proposed rule would require that IPAs require all vessels to use a salmon excluder device from January 20 through March 31, and from September 1 until the end of the B season. This is the time when there is a potential for pollock fishermen to encounter Chinook salmon bycatch. Salmon excluder devices would not be required in the few remaining months of the pollock season when Chinook salmon are not typically encountered.

The Council and NMFS also recognize that contingencies exist when vessels cannot use excluder devices. Trawl gear can have problems; therefore, salmon excluder devices would not be required during rare occasions such as when a net tears or a spare excluder device is not available. In order to allow for innovation that might lead to the development of better excluder devices, the requirement to use a salmon excluder device does not specify the type of design. Section 3.5.3.2 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Require a rolling hotspot program. A Chinook salmon rolling hotspot program is a component of the current IPAs, however, it is not a mandatory requirement. The catcher/processor IPA and the mothership IPA have a rolling hotspot program in place throughout the year. The inshore IPA has a rolling hotspot program that can be suspended during the season. This provision would require all IPAs to have a rolling hot spot program that operates throughout the entire A and B seasons. This provision would also require notifications of closure areas and any violations of the rolling hot spot program to at least one third party group representing western Alaskans, consistent with the requirement for the chum salmon rolling hotspot program. This notification provision, which is an important feature of the current Amendment 84 ICAs, would not entail the release of any confidential data. Section 3.5.3.3 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Limit the use of salmon savings credits to a maximum of three years. The inshore IPA and mothership IPA allow vessels to earn credits by avoiding salmon in one year, which they can use in the future to fish above the vessel or mothership platform's share of the performance standard for a limited number of years. In no case can credits saved in the inshore IPA or mothership IPA allow that sector to exceed its annual allocation of Chinook salmon PSC. Savings credits can only be used by vessels within an IPA up to the overall allocation for the AFA mothership sector or inshore cooperative.

For IPAs based on savings credits, Amendment 110 and this proposed rule would limit the amount of time savings credits could be used to three years after the year that the savings credits are earned. The Council and NMFS reviewed the use of savings credits and concluded that limiting the duration of credits to three years would likely increase the incentive to earn credits and increase the incentive to reduce Chinook salmon PSC. Section 3.5.3.4 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Restrictions or performance criteria to prevent significantly higher Chinook salmon PSC rates in October. The purpose of this provision is for the IPAs to implement restrictions or criteria designed to ensure that vessels do not have ''excessive'' bycatch late in October. Chinook salmon bycatch rates are generally higher in October. This provision would strengthen incentives to fish early in the B season and provide greater flexibility to vessels to catch their pollock quota while ensuring vessels do not have excessively high Chinook salmon bycatch late in the season. Section 3.5.3.5 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Revise the Bering Sea Pollock Seasonal Allocations

This proposed rule would change the pollock allocation between the A and B seasons at § 679.20(a)(5)(i)(B)(*1*). Five percent of the pollock allocation for the B season would be reallocated to the A season for new seasonal apportionments of 45 percent in the A season and 55 percent in the B season. The proposed rule maintains the rollover of any remaining pollock from the A season to the B season. The Council recognized that shifting a limited amount of pollock to the A season would relieve some fishing pressure in the B season and allow the fleet more flexibility to change fishing practices to avoid salmon bycatch while harvesting the pollock TAC. Additionally, because pollock is more valuable in the A season, this allocation change may increase the value of pollock and offset the costs associated with avoiding salmon bycatch.

Revising the season allocation would work in conjunction with the new IPA requirements to shift effort out of the late B season and provide fishery participants more flexibility to avoid Chinook salmon PSC in the late B season. Both the research on salmon migration patterns and Chinook salmon bycatch rates show the time at which there is the greatest overlap with Chinook salmon and pollock fishing. In general, more Chinook salmon are on the grounds in the early A season and the late B season, and less Chinook salmon on the grounds during the late A season and early B season. This provision is intended to shift pollock effort away from these high overlap periods and allow for more effort during the low overlap periods. With the existing rollover provision, this adjustment in the seasonal allocation of pollock does not mandate that more

pollock be harvested in the A season, but it does provide the flexibility for up to 5 percent more pollock to be harvested in times when salmon PSC is lower. Section 3.5.4 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Reduce the Chinook Salmon Performance Standard and PSC Limit in Years of Low Chinook Salmon Abundance in Western Alaska

Amendment 110 and this proposed rule would add a new lower Chinook salmon performance standard and PSC limit for the pollock fishery in years of low Chinook salmon abundance in western Alaska. The Council and NMFS determined that a lower performance standard and PSC limit would be appropriate at low levels of Chinook salmon abundance in western Alaska to accommodate the fact that most of the Chinook salmon bycatch comes from western Alaska. These provisions would work in conjunction with the proposed changes to the IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

Each year, NMFS would determine whether Chinook salmon was at low abundance based on information provided by the State. By October 1 of each year, the State would provide an index of abundance based on the post-season in-river Chinook salmon run size for the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping. When this index is less than or equal to 250,000 Chinook salmon, the new lower performance standard and low PSC limit would apply.

The Council and State conducted an extensive analysis about the appropriate index to use to indicate a low Chinook salmon abundance year. Low Chinook salmon abundance years are years characterized by difficulty meeting escapement goals and in-river salmon fisheries being severely restricted or fully closed. Section 2.6 of the Analysis evaluates various indices and shows that the 3-system index (Unalakleet, Upper Yukon, and Kuskokwim river systems) meets the objectives. These river systems provide a broad regional representation of stocks and signify very important river systems and subsistence fisheries in western Alaska. Subsistence harvests from these three river systems account for up to 87 percent of the statewide subsistence harvest of Chinook salmon. As shown in the Analysis, having more than one system in the index and having broad regional representation makes the index more robust. The Analysis also shows a clear natural break in the data that index sizes less than 250,000 Chinook salmon correspond to years with historically low run sizes.

If NMFS determines it was a low Chinook salmon abundance year, NMFS would set the performance standard at 33,318 Chinook salmon and the PSC limit at 45,000 Chinook salmon for the following pollock fishing year. NMFS would publish the lower PSC limit and performance standard in the annual harvest specifications. In years when abundance is above 250,000 Chinook salmon, NMFS would manage under the current 47,591 Chinook salmon performance standard and 60,000 Chinook salmon PSC limit established under Amendment 91.

The performance standard of 33,318 Chinook salmon would function the same as the existing performance standard of 47,591 Chinook salmon under Amendment 91. The 33,318 performance standard would apply to each sector that has at least some members participating in an IPA. In each low Chinook salmon abundance year, NMFS would allocate the 33,318 performance standard as an ''annual threshold amount'' to the catcher/processor sector, the mothership sector, the inshore sector, and the CDQ Program. The same seasonal and sector apportionments would apply to both performance standards. Although Chinook salmon PSC allocations are made to the inshore cooperatives and the CDQ groups, the performance standard applies to the sector, not to individual inshore cooperatives or CDQ groups. In addition to participation by at least some members in an IPA, for each sector to continue to receive its allocation of the 45,000 Chinook salmon PSC limit in low Chinook salmon abundance years, the total annual Chinook salmon bycatch by all members of a sector participating in an IPA could not exceed the sector's annual threshold amount (the sector's annual portion of the performance standard) in any three years within a consecutive seven-year period. The 33,318 performance standard would also be the PSC limit in low abundance years if no IPA was approved or for a sector that had exceeded its performance standard.

If there is an approved IPA, then the PSC limit in low Chinook salmon abundance years would be 45,000 Chinook salmon. The 45,000 PSC limit would function the same as the 60,000 Chinook salmon PSC limit under Amendment 91. NMFS would issue allocations of the 45,000 PSC limit to the AFA catcher/processor sector, the AFA mothership sector, the AFA inshore cooperatives, and the CDQ groups using the same seasonal and sector apportionments. Separate allocations would be issued for the A season and the B season. Chinook salmon remaining from the A season could be used in the B season (''rollover''). Entities could transfer PSC allocations within a season and could also receive transfers of Chinook salmon bycatch to cover overages (''post-delivery transfers'').

The inclusion of a lower PSC limit and performance standard is based on the need to reduce bycatch when these Chinook salmon stocks are critically low in order to minimize the impact of the pollock fishery on the stocks. Any additional Chinook salmon returning to Alaska rivers improves the ability to meet the State's spawning escapement goals, which is necessary for long-term sustainability of Chinook salmon and the people reliant on salmon fisheries. While the performance standard is the functional limit in the IPAs, the Council and NMFS determined that the 60,000 PSC limit should also be reduced given the potential for decreased bycatch reduction incentives should a sector exceed its performance standard before the PSC limit is reached. The reduced PSC limit is intended to encourage vessels to avoid bycatch to a greater degree in years of low abundance, and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

Proposed Changes to Monitoring and Enforcement Requirements

This proposed rule would amend the monitoring and enforcement regulations to clarify and strengthen those implemented by Amendment 91. These changes would: Revise salmon retention and handling requirements on catcher vessels; improve observer data entry and transmission requirements aboard catcher vessels; clarify the requirements applicable to viewing salmon in a storage container; and clarify the requirements for the removal of salmon from an observer sample area at the end of a haul or delivery.

Salmon Retention and Handling on Catcher Vessels

Current catch handling practices on catcher vessels includes the delivery of ''deckloaded'' pollock to shoreside processors or stationary floating processors. Deckloading is the practice of retaining catch in the codend of the net rather than dumping the catch in refrigerated saltwater tanks (RSW). For reasons detailed in the Section 2.7 of the Analysis, NMFS has recognized deckloading as a historic and operationally important practice for

catcher vessels participating in the pollock fishery. This proposed rule would move regulations currently at § 679.21(c) to § 679.21(f)(15), modify regulations currently at § 679.21(c)(2)(ii) to remove the requirement to store all salmon bycatch in an RSW, which is not possible when a vessel's catch exceeds the storage capacity of the RSW tanks, and add the following requirements at § 679.21(f)(15)(ii)(B) to clarify catch handling, sorting, and storage requirements on board catcher vessels:

(1) All salmon must be retained until delivery to the processor.

(2) The vessel operator must notify the observer at least 15 minutes prior to the transfer of fish from one storage location to another, or any sorting, handling, or discard of catch prior to delivery.

(3) After the observer has completed sampling duties, catch must be secured on board the vessel until delivery. (Catch may be handled after securing it, but only if the observer is notified and catch re-secured after the completion of catch handling activity.)

These additional catch handling and notification requirements would facilitate observer sampling during the delivery, and ensure observers are given the opportunity to monitor all catch handling activities when sorting or discard of salmon may occur. This would ensure accurate salmon accounting at the processor receiving the vessel's catch.

Observer Data Entry and Transmission Requirements Aboard Catcher Vessels

Catcher vessels participating in the pollock fishery are required to carry an observer on all trips but only catcher vessels greater than or equal to 125 ft length overall (LOA) are required to provide a computer, data entry software, and data transmission capabilities to the observer. Currently, an observer on board a catcher vessel less than 125 ft LOA sends data to NMFS on paper forms via facsimile at the completion of each trip. Observer data sent to NMFS via fax can take a week or more to be available for management purposes. Access to a computer for electronic data entry significantly increases the speed at which observer data can be made available for inseason management and catch accounting. Further, the data validation measures built into the software improve initial data quality and decrease the need for corrections during the observer debriefing process. Additional information about the projected costs and benefits of this proposed regulatory amendment are detailed in Sections 2.7 and 4.8.4 of the Analysis.

This proposed regulatory amendment will clarify the existing observer data entry and communications requirements and expand the equipment and software requirements to apply to all catcher vessels less than 125 ft LOA participating in the pollock fishery. NMFS proposes to reorganize regulations at § 679.51(e)(1)(iii) to separate the equipment requirements from the applicability paragraphs to clearly identify which vessel operators must provide a computer, software, and data transmission capabilities. As a result of this proposed action, current requirements for observer data entry equipment, software, and transmission would remain, and the computer and software requirements would be expanded to apply to catcher vessels less than 125 ft LOA participating in the pollock fishery.

Viewing Salmon in a Storage Container

Regulations at § 679.28(d)(7)(ii) require that all salmon stored in the salmon storage container on a catcher/processor or mothership must remain in view of the observer at the observer sampling station at all times during the sorting of each haul. NMFS proposes to revise the wording of this regulation to better reflect the intent that the salmon storage container (and not each individual salmon in the container) must remain in view of the observer at the observer sampling station at all times during the sorting of each haul.

Removal of Salmon From Observer Sample Area at the End of a Haul or Delivery

Current regulations do not require that all salmon be removed from the observer sampling area and the salmon storage location at the end of each haul or each delivery. NMFS proposes to modify regulations at § 679.21(f)(15)(ii)(A)(3) and § 679.21(f)(15)(ii)(C)(6) to require that all salmon must be removed, in the presence of the observer, from the salmon storage container and adjacent area at the end of each haul or delivery after the observer has completed his or her data collection duties. NMFS proposes this revision to the regulations to ensure that salmon are properly accounted for between hauls and deliveries.

Other Regulatory Changes

NMFS proposes to revise to the regulations for clarity and efficiency, as follows—

- Remove Tables 47a, b, c, and d to part 679;
- Correct a cross reference error in paragraph (6) of the definition of a fishing trip in § 679.2.
- Remove the requirement to submit an application form with a proposed IPA or amended IPA at § 679.21(f)(12)(iii)(A) and § 679.21(f)(12)(v)(C);
- Remove the requirement at § 679.21(f)(12)(v)(C)(*2*) that an amendment to the list of IPA participants be received by NMFS no later than 1700 hours, Alaska local time, on December 1;
- Move and consolidate the regulations for the non-Chinook salmon PSC limit and Chum Salmon Savings Area from § 679.21(e) to § 679.21(f)(14);
- Move and consolidate the regulations for Chinook salmon bycatch in the Aleutian Islands pollock fishery from § 679.21(e) to § 679.21(g);
- Correct a cross reference error in § 679.51(e)(2);
- Remove ''aboard the vessel'' from § 679.51(e)(2)(iii)(B)(*3*); and
- Make additional very minor non-substantive technical edits.

Remove Tables 47a, b, c, and d

NMFS proposes to remove Tables 47a, b, c, and d to part 679 from the regulations and would instead maintain these tables on the NMFS Alaska Region Web site. Removing these tables would not impose any costs on industry and would decrease the costs of regulatory amendments necessary to update the tables in the future.

NMFS added Tables 47a, b, c, and d to part 679 with the final rule to implement Amendment 91. At that time, Tables 47a, b, c, and d were the most efficient way to be transparent about the values NMFS uses in making the necessary calculations under Amendment 91: The percent of each sector's pollock allocation, numbers of Chinook salmon associated with each vessel in the sector used to calculate the opt-out allocation and annual threshold amounts, and the percent of the pollock allocation associated with each vessel that NMFS uses to calculate minimum participation in the IPAs.

Since these tables were published in August 2010, catcher vessels have changed names and consolidated pollock allocations. In June 2014, NMFS recalculated the pollock allocations and Chinook salmon limits for catcher vessels whose allocation and limits has changes since 2010. NMFS revised Table 47c to show the original and revised information and published the revised table on the NMFS Alaska Region's Web site.

However, a regulatory amendment is required to change these tables in the

regulations. Changes to the information in these tables may become more frequent as vessels change names, ownership, or are replaced under the provisions of the recently implemented regulations for Amendment 106 (79 FR 54590, September 12, 2014). Removing these tables from regulation, and posting the necessary information on the Alaska Region Web site, would reduce inaccuracies that could exist between actual vessel characteristics and the table in regulations.

Correct a Cross Reference Error in the Definition of a Fishing Trip

The proposed rule would correct a cross reference error in paragraph (6) of the definition of a fishing trip in § 679.2. This paragraph defines a fishing trip for purposes of implementing the post-delivery transfer provisions under Amendment 91. These provisions are described in more detail on page 14026 and 14027 of the proposed rule for Amendment 91 (75 FR 14016; March 23, 2010). The cross reference to the CDQ Program prohibition in paragraph (6) of the fishing trip definition should refer to § 679.7(d)(5)(ii)(C)(*2*) instead of § 679.7(d)(9).

Remove Requirement To Submit an Application With a Proposed or Amended IPA

NMFS proposes to remove the requirement at § 679.21(f)(12)(iii)(A) and § 679.21(f)(12)(v)(C) that an IPA representative submit an application form along with a proposed IPA or amended IPA based on public comment under the Paperwork Reduction Act. Under the Paperwork Reduction Act, every three years NMFS is required to obtain approval from the Office of Management and Budget (OMB) to continue to collect information authorized under previous final rules. The most recent request for public comments on renewal of the information collection authorized under the AFA (OMB Control Number 0648–0401) was published in the **Federal Register** on June 19, 2014 (79 FR 35150). In response to this request for comments, NMFS received a comment that the requirement to submit an application form in addition to submitting a proposed or amended IPA was duplicative with the information in the IPA itself. NMFS agrees that the application form is unnecessary and therefore proposes removing it from the regulations.

Remove the Deadline for an Amendment to the List of IPA Participants

NMFS proposes to remove the requirement at § 679.21(f)(12)(v)(C)(*2*) that an amendment to the list of IPA participants (vessels) must be received by NMFS no later than 1700 hours, A.l.t., on December 1. In removing this requirement, NMFS proposes to add a requirement at § 679.21(f)(12)(ii)(D) that once a member of an IPA, a vessel owner or CDQ group cannot withdraw from the IPA during the fishing year. This change more directly implements the Amendment 91 requirement that IPA members cannot leave an IPA mid-year and that changes to an IPA membership must be made after the directed pollock fishery closes by regulation (after November 1 of each year).

Move and Consolidate the Regulations for the Non-Chinook Salmon PSC Limit and Chum Salmon Savings Area

Regulations at § 679.21(e)(1)(vii), (e)(3)(i)(A)(*3*)(*ii*), (e)(7)(vii), and (e)(7)(ix) pertain to the non-Chinook salmon PSC limit, the allocation of the non-Chinook salmon PSC to the CDQ Program, the closure of the Chum Salmon Savings Area, and the exemption to the closure for participants in an ICA. NMFS proposes to move these regulations to § 679.21(f)(14) where other salmon bycatch regulations are found because they are management measures to address salmon bycatch in the pollock fishery. NMFS does not propose any substantive changes to these regulations, except to replace the term ''ICA'' with ''IPA'' in the regulations to be consistent with the proposed revisions described earlier in this preamble.

Move and Consolidate the Regulations for Chinook Salmon Bycatch in the Aleutian Islands Pollock Fishery

Regulations at § 679.21(e)(1)(viii), (e)(3)(i)(A)(*3*)(*i*), and (e)(7)(viii) pertain to the Chinook salmon PSC limit for the Aleutian Islands pollock fishery, the allocation of the Aleutian Islands Chinook salmon PSC to the CDQ Program, and closure of the Aleutian Islands Chinook Salmon Savings Area. NMFS proposes to move these regulations to § 679.21(g). NMFS does not propose any substantive changes to these regulations.

Correct a Cross Reference Error in § 679.51(e)(2)

The proposed rule would correct a cross reference error in § 679.51(e)(2). This paragraph describes the applicability of manager responsibilities for a shoreside processor or stationary floating processor required to maintain observer coverage. The cross reference to the observer requirements for shoreside processors and stationary floating processors should refer to § 679.51(b) instead of § 679.51(d).

Remove ''Aboard the Vessel'' From § 679.51(e)(2)(iii)(B)(3)

Regulations at § 679.51(e)(2)(iii)(B)(*3*) pertain to the observer data entry and communications equipment required at a shoreside processor or stationary floating processor, some of which are not vessels. Therefore, NMFS proposes to remove the language ''aboard the vessel'' from this paragraph for clarity.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended Amendment 110 based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA for this proposed action describes the reasons why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of the proposed action, its

purpose, and the legal basis are contained earlier in this preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

Number and Description of Small Entities Regulated by the Proposed Action

The proposed action applies only to those entities that participate in the directed pollock trawl fishery in the Bering Sea. These entities include vessels harvesting pollock under the AFA and the six CDQ groups that receive allocations of pollock.

The RFA requires consideration of affiliations among entities for the purpose of assessing if an entity is small. The AFA pollock cooperatives are a type of affiliation. All the non-CDQ entities directly regulated by the proposed action were members of AFA cooperatives in 2014 and, therefore, NMFS considers them ''affiliated'' large (non-small) entities for RFA purposes. Section 5.6 of the IRFA notes that all of the AFA cooperatives have gross annual revenues that are substantially greater than $20.5 million, the standard used by the Small Business Administration to define the annual gross revenue of a large (non-small) business engaged in finfish harvesting, such as pollock. Therefore, all the non-CDQ pollock fishery participants are defined as large (non-small) entities.

Due to their status as non-profit corporations, the six CDQ groups are identified as ''small'' entities for RFA purposes. This proposed action directly regulates the six CDQ groups. As described in regulations implementing the RFA (13 CFR 121.103), the CDQ groups' affiliations with other large entities do not define them as large entities.

The six CDQ groups, formed to manage and administer the CDQ allocations, investments, and economic development projects, are the Aleutian Pribilof Island Community Development Association, the Bristol Bay Economic Development Corporation, the Central Bering Sea Fishermen's Association, the Coastal Villages Region Fund, the Norton Sound Economic Development Corporation, and the Yukon Delta Fisheries Development Association. The 65 communities, with approximately 27,000 total residents, benefit from participation in the CDQ Program, but are not directly regulated by this action.

Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule would revise some existing requirements and remove some requirements. The revised requirements are those related to—

- Development and submission of proposed IPAs and amendments to approved IPAs;
- An annual report from the participants in each IPA, documenting information and data relevant to the Bering Sea Chinook salmon bycatch management program; and
- Salmon handling and storage on board a vessel, and obligations to facilitate observer data reporting.

The proposed rule would remove the requirements for an application form for a proposed IPA or amended IPA.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The proposed action is a comprehensive program to minimize Chinook and chum salmon bycatch that accomplished the stated objectives and is consistent with applicable statutes. No alternatives were identified in addition to those analyzed in the IRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. Section 2.10 of the Analysis contains a detailed discussion of alternatives considered and eliminated from further analysis (see **ADDRESSES**).

This proposed rule includes performance standards, rather than design standards, to minimize Chinook salmon and chum salmon bycatch, while limiting the burden on CDQ groups. A system of transferable PSC allocations and a performance standard, even in years of low Chinook salmon abundance, would allow CDQ groups to decide how best to comply with the requirements of this action, given the other constraints imposed on the pollock fishery (*e.g.,* pollock TAC, market conditions, area closures associated with other rules, gear restrictions, climate and oceanographic change).

Tribal Summary Impact Statement (E.O. 13175)

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Tribal Consultation and Coordination Policy of the U.S. Department of Commerce (May 21, 2013), outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 in Division H of Public Law 108–199 (188 Stat. 452), as amended by section 518 in Division H of Public Law 108–447 (118 Stat. 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act regional and village corporations on a government-to-government basis pursuant to Executive Order 13175 which establishes several requirements for NMFS, including (1) to provide regular and meaningful consultation and collaboration with Indian tribal governments and Alaska Native corporations in the development of Federal regulatory practices that significantly or uniquely affect their communities, (2) to reduce the imposition of unfunded mandates on Indian tribal governments, and (3) to streamline the applications process for and increase the availability of waivers to Indian tribal governments. Executive Order 13175 requires Federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal governments.

Section 5(b)(2)(B) of Executive Order 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves Amendment 110, a tribal impact summary statement that summarizes and responds to issues raised in all tribal consultations on the proposed action and describes the extent to which the concerns of tribal officials have been met will be included in the final rule for Amendment 110.

The consultation process for this action started during the Council process when the Council started developing Amendment 110. A number of tribal representatives and tribal organizations provided written public comments and oral public testimony to the Council during Council outreach meetings on Amendment 110 and at the numerous Council meetings at which Amendment 110 was discussed.

NMFS conducted two tribal consultations, one in December 2014 and one in April 2015, with representatives from the Tanana Chiefs Conference; the Association of Village Council Presidents; the Yukon River Drainage Fisheries Association; the Kawerak, Inc.; and the Bering Sea Fishermen's Association. These organizations prepared letters for the Council and requested the consultations to discuss the salmon bycatch management measures under consideration by the Council. NMFS posted reports from these consultations on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov/tribal-consultations.*

NMFS continued the consultation process by sending a letter to all Alaska Native representatives when the Notice of Availability for Amendment 110 published in the **Federal Register** notifying them of the opportunity to comment.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

OMB Control Number 0648–0318

Public reporting burden is estimated to average 5 minutes per individual response for use of a vessel's computer, software, and data transmission; 5 minutes per individual response for notification of observer before handling the vessel's Bering Sea pollock catch; and 5 minutes for notification of crew person responsible for ensuring all sorting, retention, and storage of salmon.

OMB Control Number 0648–0393

Public reporting burden is estimated to average 8 hours per individual response for the Application to Receive Transferable Chinook Salmon PSC Allocations, including the attached contract; 4 hours for the amendment to contract; and 15 minutes for the Application for the Transfer of Chinook Salmon PSC Allocations.

OMB Control Number 0648–0401

Public reporting burden is estimated to average 40 hours per individual response for the Salmon Bycatch Incentive Plan Agreement (IPA); and 8 hours for the IPA Annual Report.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding (1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the burden estimate; (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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

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. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 28, 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 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2:

■ a. Remove the definition for ''Chinook salmon bycatch incentive plan agreement (IPA)'';

■ b. Revise the definitions for ''Chum Salmon Savings Area of the BSAI CVOA'', and paragraph (6) of ''Fishing trip'';

■ c. Remove the definition for ''Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)'';

■ d. Revise the definition for ''PSQ reserve''; and

■ c. Add the definition for ''Salmon bycatch incentive plan agreement (IPA)'' in alphabetical order;

The revisions and additions read as follows:

§ 679.2 Definitions.

* * * * *

Chum Salmon Savings Area of the BSAI CVOA (See § 679.21(f)(14) and Figure 9 to this part).

* * * * *

Fishing trip means: * * *

(6) For purposes of § 679.7(d)(5)(ii)(C)(*2*) for CDQ groups and § 679.7(k)(8)(ii) for AFA entities, the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel.

* * * * *

PSQ reserve means the amount of a prohibited species catch limit established under § 679.21 that has been allocated to the CDQ Program under § 679.21.

* * * * *

Salmon bycatch incentive plan agreement (IPA) is a voluntary private contract, approved by NMFS under § 679.21(f)(12), that establishes incentives for participants to avoid Chinook salmon and chum salmon bycatch while directed fishing for pollock in the BS.

* * * * *

■ 3. In § 679.7:

■ a. Revise paragraphs (d)(5)(ii)(B), (d)(5)(ii)(C)(*5*), and (k)(8) heading;

■ b. Redesignate paragraph (k)(8)(iv) as (k)(8)(v); and

■ c. Add new paragraph (k)(8)(iv).

The revisions and addition read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(5) * * *

(ii) * * *

(B) *Non-Chinook salmon.* For the operator of a vessel, to use trawl gear to harvest pollock CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-Chinook salmon PSQ is attained, unless the vessel is participating in an approved IPA under § 679.21(f)(12).

(C) * * *

(*5*) For the operator of a catcher vessel delivering pollock CDQ catch to a

shoreside processor or stationary floating processor to:

(*i*) Deliver pollock CDQ to a processor that does not have a catch monitoring and control plan approved under § 679.28(g).

(*ii*) Handle, sort, or discard catch without notifying the observer 15 minutes prior to handling, sorting, or discarding catch as described in § 679.21(f)(15)(ii)(B)(*2*).

(*iii*) Fail to secure catch after the completion of catch handling and the collection of scientific data and biological samples as described in § 679.21(f)(15)(ii)(B)(*3*).

* * * * *

(k) * * *

(8) *Salmon PSC.* * * *

* * * * *

(iv) *Catcher vessels.* (A) For the operator of a catcher vessel, to handle, sort, or discard catch without notifying the observer 15 minutes prior to handling, sorting, or discarding catch as described in § 679.21(f)(15)(ii)(B)(*2*).

(B) For the operator of a catcher vessel to fail to secure catch after the completion of catch handling and the collection of scientific data and biological samples as described in § 679.21(f)(15)(ii)(B)(*3*).

* * * * *

■ 4. In § 679.20, revise paragraph (a)(5)(i)(B)(*1*) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(B) * * *

(*1*) *Inshore, catcher/processor, mothership, and CDQ sectors.* The portions of the BS subarea pollock directed fishing allowances allocated to each sector under sections 206(a) and 206(b) of the AFA and the CDQ allowance in the BSAI will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows:

(*i*) A Season, 45 percent;

(*ii*) B Season, 55 percent.

* * * * *

5. In § 679.21:

a. Remove and reserve paragraph (c);

b. Remove paragraphs (e)(1)(vi), (vii), and (viii); (e)(3)(i)(A)(*3*); and (e)(7)(vii), (viii), and (ix); and

c. Revise paragraphs (f) and (g) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(f) *Salmon Bycatch Management in the BS Pollock Fishery* —(1) *Applicability.* This paragraph contains regulations governing the bycatch of salmon in the BS pollock fishery.

(2) *Chinook salmon prohibited species catch (PSC) limit.* Each year, NMFS will allocate to AFA sectors listed in paragraph (f)(3)(ii) of this section a portion of the applicable Chinook salmon PSC limit. NMFS will publish the applicable Chinook salmon PSC limit in the annual harvest specifications after determining if it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. By October 1 of each year, the State of Alaska will provide to NMFS an estimate of Chinook salmon abundance based on a post-season in-river Chinook salmon run size index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

(i) An AFA sector will receive a portion of the 47,591 Chinook salmon PSC limit, or, in a low Chinook salmon abundance year, the 33,318 Chinook salmon PSC limit, if—

(A) No Chinook salmon bycatch incentive plan agreement (IPA) is approved by NMFS under paragraph (f)(12) of this section; or

(B) That AFA sector has exceeded its performance standard under paragraph (f)(6) of this section.

(ii) An AFA sector will receive a portion of the 60,000 Chinook salmon PSC limit, or, in a low Chinook salmon abundance year, the 45,000 Chinook salmon PSC limit, if—

(A) At least one IPA is approved by NMFS under paragraph (f)(12) of this section; and

(B) That AFA sector has not exceeded its performance standard under paragraph (f)(6) of this section.

(3) *Allocations of the Chinook salmon PSC limits*—(i) *Seasonal apportionment.* NMFS will apportion the Chinook salmon PSC limits annually 70 percent to the A season and 30 percent to the B season, which are described in § 679.23(e)(2).

(ii) *AFA sectors.* Each year, NMFS will make allocations of the applicable Chinook salmon PSC limit to the following four AFA sectors:

AFA Sector:	Eligible participants are:
(A) Catcher/processor	AFA catcher/processors and AFA catcher vessels delivering to AFA catcher/processors, all of which are permitted under § 679.4(l)(2) and (l)(3)(i)(A), respectively.
(B) Mothership	AFA catcher vessels harvesting pollock for processing by AFA motherships, all of which are permitted under § 679.4(l)(3)(i)(B) and (l)(4), respectively.
(C) Inshore	AFA catcher vessels harvesting pollock for processing by AFA inshore processors, all of which are permitted under § 679.4(l)(3)(i)(C).
(D) CDQ Program	The six CDQ groups authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program.

(iii) *Allocations to each AFA sector.* NMFS will allocate the Chinook salmon PSC limits to each AFA sector as follows:

(A) If a sector is managed under the 60,000 Chinook salmon PSC limit, the maximum amount of Chinook salmon PSC allocated to each sector in each season and annually is—

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) Catcher/processor	32.9	13,818	17.9	3,222	28.4	17,040
(*2*) Mothership	8.0	3,360	7.3	1,314	7.8	4,674
(*3*) Inshore	49.8	20,916	69.3	12,474	55.6	33,390
(*4*) CDQ Program	9.3	3,906	5.5	990	8.2	4,896

(B) If the sector is managed under the 45,000 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) Catcher/processor	32.9	10,363	17.9	2,415	28.4	12,780
(*2*) Mothership	8.0	2,520	7.3	987	7.8	3,510
(*3*) Inshore	49.8	15,687	69.3	9,355	55.6	25,020
(*4*) CDQ Program	9.3	2,930	5.5	743	8.2	3,690

(C) If the sector is managed under the 47,591 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) Catcher/processor	32.9	10,906	17.9	2,556	28.4	13,516
(*2*) Mothership	8.0	2,665	7.3	1,042	7.8	3,707
(*3*) Inshore	49.8	16,591	69.3	9,894	55.6	26,485
(*4*) CDQ Program	9.3	3,098	5.5	785	8.2	3,883

(D) If the sector is managed under the 33,318 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) Catcher/processor	32.9	7,673	17.9	1,789	28.4	9,462
(*2*) Mothership	8.0	1,866	7.3	730	7.8	2,599
(*3*) Inshore	49.8	11,615	69.3	6,926	55.6	18,525
(*4*) CDQ Program	9.3	2,169	5.5	550	8.2	2,732

(iv) *Allocations to the AFA catcher/processor and mothership sectors.* (A) NMFS will issue transferable Chinook salmon PSC allocations under paragraph (f)(3)(iii) of this section to entities representing the AFA catcher/processor sector and the AFA mothership sector if these sectors meet the requirements of paragraph (f)(8) of this section.

(B) If no entity is approved by NMFS to represent the AFA catcher/processor sector or the AFA mothership sector, then NMFS will manage that sector under a non-transferable Chinook salmon PSC allocation under paragraph (f)(10) of this section.

(v) *Allocations to inshore cooperatives and the AFA inshore open access fishery.* NMFS will further allocate the inshore sector's Chinook salmon PSC allocation under paragraph (f)(3)(iii) of this section among the inshore cooperatives and the inshore open access fishery based on the percentage allocations of pollock to each inshore cooperative under § 679.62(a). NMFS will issue transferable Chinook salmon PSC allocations to inshore cooperatives. Any Chinook salmon PSC allocated to the inshore open access fishery will be as a non-transferable allocation managed by NMFS under the requirements of paragraph (f)(10) of this section.

(vi) *Allocations to the CDQ Program.* NMFS will further allocate the Chinook salmon PSC allocation to the CDQ Program under paragraph (f)(3)(iii) of this section among the six CDQ groups based on each CDQ group's percentage of the CDQ Program pollock allocation. NMFS will issue transferable Chinook salmon PSC allocations to CDQ groups.

(vii) *Accrual of Chinook salmon bycatch to specific PSC allocations.*

If a Chinook salmon PSC allocation is:	Then all Chinook salmon bycatch:
(A) A transferable allocation to a sector-level entity, inshore cooperative, or CDQ group under paragraph (f)(8) of this section.	By any vessel fishing under a transferable allocation will accrue against the allocation to the entity representing that vessel.
(B) A non-transferable allocation to a sector or the inshore open access fishery under paragraph (f)(10) of this section.	By any vessel fishing under a non-transferable allocation will accrue against the allocation established for the sector or inshore open access fishery, whichever is applicable.
(C) The opt-out allocation under paragraph (f)(5) of this section	By any vessel fishing under the opt-out allocation will accrue against the opt-out allocation.

(viii) *Public release of Chinook salmon PSC information.* For each year, NMFS will release to the public and publish on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*):

(A) The Chinook salmon PSC allocations for each entity receiving a transferable allocation;

(B) The non-transferable Chinook salmon PSC allocations;

(C) The vessels fishing under each transferable or non-transferable allocation;

(D) The amount of Chinook salmon bycatch that accrues towards each transferable or non-transferable allocation;

(E) Any changes to these allocations due to transfers under paragraph (f)(9) of this section, rollovers under paragraph (f)(11) of this section, and deductions from the B season non-transferable allocations under paragraphs (f)(5)(v) or (f)(10)(iii) of this section; and

(F) Tables for each sector that provide the percent of the sector's pollock allocation, numbers of Chinook salmon associated with each vessel in the sector used to calculate the opt-out allocation and annual threshold amounts, and the percent of the pollock allocation associated with each vessel that NMFS will use to calculate IPA minimum participation assigned to each vessel.

(4) *Reduction in allocations of the Chinook salmon PSC limit*—(i) *Reduction in sector allocations.* NMFS will reduce the seasonal allocation of the Chinook salmon PSC limit to the catcher/processor sector, the mothership sector, the inshore sector, or the CDQ Program under paragraph (f)(3)(iii)(A) or (B) of this section, if the owner of any permitted AFA vessel in that sector, or any CDQ group, does not participate in an approved IPA under paragraph (f)(12) of this section. NMFS will subtract the amount of Chinook salmon from each sector's allocation associated with each vessel not participating in an approved IPA.

(ii) *Adjustments to the inshore sector and inshore cooperative allocations.* (A) If some members of an inshore cooperative do not participate in an approved IPA, NMFS will reduce the allocation to the cooperative to which those vessels belong, or the inshore open access fishery.

(B) If all members of an inshore cooperative do not participate in an approved IPA, the amount of Chinook salmon that remains in the inshore sector's allocation, after subtracting the amount of Chinook salmon associated with the non-participating inshore cooperative, will be reallocated among the inshore cooperatives participating in an approved IPA based on the proportion each participating cooperative represents of the Chinook salmon PSC initially allocated among the participating inshore cooperatives that year.

(iii) *Adjustment to CDQ group allocations.* If a CDQ group does not participate in an approved IPA, the amount of Chinook salmon that remains in the CDQ Program's allocation, after subtracting the amount of Chinook salmon associated with the non-participating CDQ group, will be reallocated among the CDQ groups participating in an approved IPA based on the proportion each participating CDQ group represents of the Chinook salmon PSC initially allocated among the participating CDQ groups that year.

(iv) *All members of a sector do not participate in an approved IPA.* If all members of a sector do not participate in an approved IPA, the amount of Chinook salmon that remains after subtracting the amount of Chinook salmon associated with the non-participating sector will not be reallocated among the sectors that have members participating in an approved IPA. This portion of the PSC limit will remain unallocated for that year.

(5) *Chinook salmon PSC opt-out allocation.* The following table describes requirements for the opt-out allocation:

(i) What is the amount of Chinook salmon PSC that will be allocated to the opt-out allocation in the A season and the B season?.	The opt-out allocation will equal the sum of the Chinook salmon PSC deducted under paragraph (f)(4)(i) of this section from the seasonal allocations of each sector with members not participating in an approved IPA.
(ii) Which participants will be managed under the opt-out allocation?	Any AFA-permitted vessel or any CDQ group that is a member of a sector eligible under paragraph (f)(2)(ii) of this section to receive allocations of the 60,000 PSC limit or the 45,000 PSC limit, but that is not participating in an approved IPA.
(iii) What Chinook salmon bycatch will accrue against the opt-out allocation?.	All Chinook salmon bycatch by participants under paragraph (f)(5)(ii) of this section.
(iv) How will the opt-out allocation be managed?	All participants under paragraph (f)(5)(ii) of this section will be managed as a group under the seasonal opt-out allocations. If the Regional Administrator determines that the seasonal opt-out allocation will be reached, NMFS will publish a notice in the **Federal Register** closing directed fishing for pollock in the BS, for the remainder of the season, for all vessels fishing under the opt-out allocation.
(v) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation exceeds the amount allocated to the A season opt-out allocation?.	NMFS will deduct from the B season opt-out allocation any Chinook salmon bycatch in the A season that exceeds the A season opt-out allocation.
(vi) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation is less than the amount allocated to the A season opt-out allocation?.	If Chinook salmon bycatch by vessels fishing under the opt-out allocation in the A season is less than the amount allocated to the opt-out allocation in the A season, this amount of Chinook salmon will not be added to the B season opt-out allocation.
(vii) Is Chinook salmon PSC allocated to the opt-out allocation transferable?.	No. Chinook salmon PSC allocated to the opt-out allocation is not transferable.

(6) *Chinook salmon bycatch performance standard.* If the total annual Chinook salmon bycatch by the members of a sector participating in an approved IPA is greater than that sector's annual threshold amount of Chinook salmon in any three of seven consecutive years, that sector will receive an allocation of Chinook salmon under the 47,591 PSC limit in all future years, except in low Chinook salmon abundance years when that sector will receive an allocation under the 33,318 Chinook salmon PSC limit.

(i) *Annual threshold amount.* Prior to each year, NMFS will calculate each sector's annual threshold amount. NMFS will post the annual threshold amount for each sector on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). At the end of each

year, NMFS will evaluate the Chinook salmon bycatch by all IPA participants in each sector against that sector's annual threshold amount.

(ii) *Calculation of the annual threshold amount.* A sector's annual threshold amount is the annual number of Chinook salmon that would be allocated to that sector under the 47,591 Chinook salmon PSC limit, as shown in the table in paragraph (f)(3)(iii)(C) of this section, or the 33,318 Chinook salmon PSC limit in low Chinook salmon abundance years, as shown in the table in paragraph (f)(3)(iii)(D) of this section. If any vessels in a sector do not participate in an approved IPA, NMFS will reduce that sector's annual threshold amount by the number of Chinook salmon associated with each vessel not participating in an approved IPA. If any CDQ groups do not participate in an approved IPA, NMFS will reduce the CDQ Program's annual threshold amount by the number of Chinook salmon associated with each CDQ group not participating in an approved IPA.

(iii) *Exceeding the performance standard.* If NMFS determines that a sector has exceeded its performance standard by exceeding its annual threshold amount in any three of seven consecutive years, NMFS will issue a notification in the **Federal Register** that the sector has exceeded its performance standard. In all subsequent years, NMFS will allocate to that sector either the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(C) of this section or, in low Chinook salmon abundance years, the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(D) of this section. All members of the affected sector will fish under this lower PSC allocation regardless of whether a vessel or CDQ group within that sector participates in an approved IPA.

(7) *Replacement vessels.* If an AFA-permitted vessel is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, NMFS will assign the portion and number of Chinook salmon associated with that vessel to the replacement vessel or distribute it among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action.

(8) *Entities eligible to receive transferable Chinook salmon PSC allocations.* (i) NMFS will issue transferable Chinook salmon PSC allocations to the following entities, if these entities meet all the applicable requirements of this section.

(A) *Inshore cooperatives.* NMFS will issue transferable Chinook salmon PSC allocations to the inshore cooperatives permitted annually under § 679.4(l)(6). The representative and agent for service of process (see definition at § 679.2) for an inshore cooperative is the cooperative representative identified in the application for an inshore cooperative fishing permit issued under § 679.4(l)(6), unless the inshore cooperative representative notifies NMFS in writing that a different person will act as its agent for service of process for purposes of this paragraph (f). An inshore cooperative is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(B) *CDQ groups.* NMFS will issue transferable Chinook salmon PSC allocations to the CDQ groups. The representative and agent for service of process for a CDQ group is the chief executive officer of the CDQ group, unless the chief executive officer notifies NMFS in writing that a different person will act as its agent for service of process. A CDQ group is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(C) *Entity representing the AFA catcher/processor sector.* NMFS will authorize only one entity to represent the catcher/processor sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the catcher/processors eligible to fish under transferable Chinook salmon PSC allocations. NMFS will issue transferable Chinook salmon allocations under the Chinook salmon PSC limit to the entity representing the catcher/processor sector if that entity represents all the owners of AFA-permitted vessels in this sector that are participants in an approved IPA.

(D) *Entity representing the AFA mothership sector.* NMFS will authorize only one entity to represent the mothership sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the vessels eligible to fish under transferable Chinook salmon PSC allocations. NMFS will issue transferable Chinook salmon allocations under the Chinook salmon PSC limit to an entity representing the mothership sector if that entity represents all the owners of AFA-permitted vessels in this sector that are participants in an approved IPA.

(ii) *Request for approval as an entity eligible to receive transferable Chinook salmon PSC allocations.* A representative of an entity representing the catcher/processor sector or the mothership sector may request approval by NMFS to receive transferable Chinook salmon PSC allocations on behalf of the members of the sector. The application must be submitted to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and a contract, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in, including the affidavit affirming that each eligible vessel owner, from whom the applicant received written notification requesting to join the sector entity, has been allowed to join the sector entity subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the sector entity. The application form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address in paragraph (b)(6) of this section.

(B) *Contract.* A contract containing the following information must be attached to the completed application form:

(*1*) Information that documents that all vessel owners party to the contract agree that the entity, the entity's representative, and the entity's agent for service of process named in the application form represent them for purposes of receiving transferable Chinook salmon PSC allocations.

(*2*) A statement that the entity's representative and agent for service of process are authorized to act on behalf of the vessel owners party to the contract.

(*3*) Signatures, printed names, and date of signature for the owners of each AFA-permitted vessel identified in the application form.

(C) *Contract duration.* Once submitted, the contract attached to the application form is valid until amended or terminated by the parties to the contract.

(D) *Deadline.* An application form and contract must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the Chinook salmon PSC allocations are effective.

(E) *Approval.* If more than one entity application form is submitted to NMFS, NMFS will approve the application form for the entity that represents the most eligible vessel owners in the sector.

(F) *Amendments to the sector entity.* (*1*) An amendment to the sector entity

contract, with no change in entity participants, may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the entity representative. To amend a contract, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section.

(*2*) To make additions or deletions to the vessel owners represented by the entity for the next year, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section, by December 1.

(iii) *Entity representative.* (A) The entity's representative must—

(*1*) Act as the primary contact person for NMFS on issues relating to the operation of the entity;

(*2*) Submit on behalf of the entity any applications required for the entity to receive a transferable Chinook salmon PSC allocation and to transfer some or all of that allocation to and from other entities eligible to receive transfers of Chinook salmon PSC allocations;

(*3*) Ensure that an agent for service of process is designated by the entity; and

(*4*) Ensure that NMFS is notified if a substitute agent for service of process is designated. Notification must include the name, address, and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the entity or its members within the 5-year period from the time the agent is identified in the application to NMFS under paragraph (f)(8)(ii) of this section.

(B) Any vessel owner that is a member of an inshore cooperative, or a member of the entity that represents the catcher/processor sector or the mothership sector, may authorize the entity representative to sign a proposed IPA submitted to NMFS, under paragraph (f)(12) of this section, on his or her behalf. This authorization must be included in the contract submitted to NMFS, under paragraph (f)(8)(ii)(B) of this section, for the sector-level entities and in the contract submitted annually to NMFS by inshore cooperatives under § 679.61(d).

(iv) *Agent for service of process.* The entity's agent for service of process must—

(A) Be authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of an entity receiving a transferable allocation of Chinook salmon PSC or with respect to a CDQ group. Service on or notice to the entity's appointed agent constitutes service on or notice to all members of the entity.

(B) Be capable of accepting service on behalf of the entity until December 31 of the year five years after the calendar year for which the entity notified the Regional Administrator of the identity of the agent.

(v) *Absent a catcher/processor sector or mothership sector entity.* If the catcher/processor sector or the mothership sector does not form an entity to receive a transferable allocation of Chinook salmon PSC, the sector will be managed by NMFS under a non-transferable allocation of Chinook salmon PSC under paragraph (f)(10) of this section.

(9) *Transfers of Chinook salmon PSC.* (i) A Chinook salmon PSC allocation issued to eligible entities under paragraph (f)(8)(i) of this section may be transferred to any other entity receiving a transferable allocation of Chinook salmon PSC by submitting to NMFS an application for transfer described in paragraph (f)(9)(iii) of this section. Transfers of Chinook salmon PSC allocations among eligible entities are subject to the following restrictions:

(A) Entities receiving transferable allocations under the 60,000 PSC limit may only transfer to and from other entities receiving allocations under the 60,000 PSC limit.

(B) Entities receiving transferable allocations under the 45,000 PSC limit may only transfer to and from other entities receiving allocations under the 45,000 PSC limit.

(C) Entities receiving transferable allocations under the 47,591 PSC limit may only transfer to and from other entities receiving allocations under the 47,591 PSC limit.

(D) Entities receiving transferable allocations under the 33,318 PSC limit may only transfer to and from other entities receiving allocations under the 33,318 PSC limit.

(E) Chinook salmon PSC allocations may not be transferred between seasons.

(ii) *Post-delivery transfers.* If the Chinook salmon bycatch by an entity exceeds its seasonal allocation, the entity may receive transfers of Chinook salmon PSC to cover overages for that season. An entity may conduct transfers to cover an overage that results from Chinook salmon bycatch from any fishing trip by a vessel fishing on behalf of that entity that was completed or is in progress at the time the entity's allocation is first exceeded. Under § 679.7(d)(5)(ii)(C)(*2*) and (k)(8)(v)(B), vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a new fishing trip for pollock in the BS on behalf of that same entity for the remainder of that season.

(iii) *Application for transfer of Chinook salmon PSC allocations*—(A) *Completed application.* NMFS will process a request for transfer of Chinook salmon PSC provided that a paper or electronic application is completed, with all information fields accurately filled in. Application forms are available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address in paragraph (b)(6) of this section.

(B) *Certification of transferor*—(*1*) *Non-electronic submittal.* The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(*2*) *Electronic submittal.* The transferor's designated entity representative must log onto the NMFS online services system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key, and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(C) *Certification of transferee*—(*1*) *Non-electronic submittal.* The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(*2*) *Electronic submittal.* The transferee's designated representative must log onto the NMFS online services system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(D) *Deadline.* NMFS will not approve an application for transfer of Chinook salmon PSC after June 25 for the A season or after December 1 for the B season.

(10) *Non-transferable Chinook salmon PSC allocations.* (i) All vessels belonging to a sector that is ineligible to receive transferable allocations under paragraph (f)(8) of this section, any catcher vessels participating in an inshore open access fishery, and all vessels fishing under the opt-out allocation under paragraph (f)(5) of this section will fish under specific non-transferable Chinook salmon PSC allocations.

(ii) All vessels fishing under a non-transferable Chinook salmon PSC allocation, including vessels fishing on behalf of a CDQ group, will be managed together by NMFS under that non-transferable allocation. If, during the fishing year, the Regional Administrator determines that a seasonal non-transferable Chinook salmon PSC allocation will be reached, NMFS will publish a notice in the **Federal Register** closing the BS to directed fishing for pollock by those vessels fishing under that non-transferable allocation for the remainder of the season or for the remainder of the year.

(iii) For each non-transferable Chinook salmon PSC allocation, NMFS will deduct from the B season allocation any amount of Chinook salmon bycatch in the A season that exceeds the amount available under the A season allocation.

(11) *Rollover of unused A season allocation*—(i) *Rollovers of transferable allocations.* NMFS will add any Chinook salmon PSC allocation remaining at the end of the A season, after any transfers under paragraph (f)(9)(ii) of this section, to an entity's B season allocation.

(ii) *Rollover of non-transferable allocations.* For a non-transferable allocation for the mothership sector, catcher/processor sector, or an inshore open access fishery, NMFS will add any Chinook salmon PSC remaining in that non-transferable allocation at the end of the A season to that B season non-transferable allocation.

(12) *Salmon bycatch incentive plan agreements (IPAs)*—(i) *Minimum participation requirements.* More than one IPA may be approved by NMFS. Each IPA must have participants that represent the following:

(A) *Minimum percent pollock.* Parties to an IPA must collectively represent at least 9 percent of the BS pollock quota.

(B) *Minimum number of unaffiliated AFA entities.* Parties to an IPA must represent any combination of two or more CDQ groups or corporations, partnerships, or individuals who own AFA-permitted vessels and are not affiliated, as affiliation is defined for purposes of AFA entities in § 679.2.

(ii) *Membership in an IPA.* (A) No vessel owner or CDQ group is required to join an IPA.

(B) For a vessel owner in the catcher/processor sector or mothership sector to join an IPA, that vessel owner must be a member of the entity representing that sector under paragraph (f)(8).

(C) For a CDQ group to be a member of an IPA, the CDQ group must sign the IPA and list in that IPA each vessel harvesting BS pollock CDQ, on behalf of that CDQ group, that will participate in that IPA.

(D) Once a member of an IPA, a vessel owner or CDQ group cannot withdraw from the IPA during a fishing year.

(iii) *Request for approval of a proposed IPA.* The IPA representative must submit a proposed IPA to NMFS at the address in paragraph (b)(6) of this section. The proposed IPA must contain the following information:

(A) *Affidavit.* The IPA must include the affidavit affirming that each eligible vessel owner or CDQ group, from whom the IPA representative received written notification requesting to join the IPA, has been allowed to join the IPA subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the IPA.

(B) *Name of the IPA.*

(C) *Representative.* The IPA must include the name, telephone number, and email address of the IPA representative who submits the proposed IPA on behalf of the parties and who is responsible for submitting proposed amendments to the IPA and the annual report required under paragraph (f)(13) of this section.

(D) *Third party group.* The IPA must identify at least one third party group. Third party groups include any entities representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction but do not directly fish in a groundfish fishery.

(E) *Description of the incentive plan.* The IPA must contain a description of the following—

(*1*) The incentive(s) that will be implemented under the IPA for the operator of each vessel participating in the IPA to avoid Chinook salmon and chum salmon bycatch under any condition of pollock and Chinook salmon abundance in all years.

(*2*) How the incentive(s) to avoid chum salmon do not increase Chinook salmon bycatch.

(*3*) The rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both.

(*4*) How the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon and chum salmon bycatch rates relative to what would have occurred in absence of the incentive program.

(*5*) How the incentive measures in the IPA promote Chinook salmon and chum salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon and chum salmon.

(*6*) How the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's Chinook salmon bycatch to keep total bycatch below the performance standard described in paragraph (f)(6) of this section for the sector in which the vessel participates.

(*7*) How the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska.

(*8*) The rolling hot spot program for salmon bycatch avoidance that operates throughout the entire A season and B season and the agreement to provide notifications of closure areas and any violations of the rolling hot spot program to the third party group.

(*9*) The restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time.

(*10*) The requirement for vessels to enter a fishery-wide in-season salmon PSC data sharing agreement.

(*11*) The requirement for the use of salmon excluder devices, with recognition of contingencies, from January 20 to March 31, and from September 1 until the end of the B season.

(*12*) The requirement that salmon savings credits are limited to a maximum of three years for IPAs with salmon savings credits.

(*13*) The restrictions or performance criteria used to ensure that Chinook salmon PSC rates in October are not significantly higher than those achieved in the preceding months.

(F) *Compliance agreement.* The IPA must include a written statement that all parties to the IPA agree to comply with all provisions of the IPA.

(G) *Signatures.* The names and signatures of the owner or representative for each vessel and CDQ group that is a party to the IPA. The representative of an inshore cooperative, or the representative of the entity formed to represent the AFA catcher/processor sector or the AFA mothership sector under paragraph (f)(8) of this section may sign a proposed IPA on behalf of all vessels that are members of that inshore cooperative or sector level entity.

(iv) *Deadline and duration*—(A) *Deadline for proposed IPA.* A proposed IPA must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the IPA is proposed to be effective.

(B) *Duration.* Once approved, an IPA is effective starting January 1 of the year

following the year in which NMFS approves the IPA, unless the IPA is approved between January 1 and January 19, in which case the IPA is effective starting in the year in which it is approved. Once approved, an IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the IPA representative notifies NMFS in writing that the IPA is no longer in effect, whichever is later. An IPA may not expire mid-year. No party may join or leave an IPA once it is approved, except as allowed under paragraph (f)(12)(v)(C) of this section.

(v) *NMFS review of a proposed IPA*—(A) *Approval.* An IPA will be approved by NMFS if it meets the following requirements:

(*1*) Meets the minimum participation requirements in paragraph (f)(12)(i) of this section;

(*2*) Is submitted in compliance with the requirements of paragraphs (f)(12)(ii) and (iv) of this section; and

(*3*) Contains the information required in paragraph (f)(12)(iii) of this section.

(B) *IPA identification number.* If approved, NMFS will assign an IPA identification number to the approved IPA. This number must be used by the IPA representative in amendments to the IPA.

(C) *Amendments to an IPA.* Amendments to an approved IPA may be submitted to NMFS at any time and will be reviewed under the requirements of this paragraph (f)(12). An amendment to an approved IPA is effective upon written notification of approval by NMFS to the IPA representative.

(D) *Disapproval.* (*1*) NMFS will disapprove a proposed IPA or a proposed amendment to an IPA for either of the following reasons:

(*i*) If the proposed IPA fails to meet any of the requirements of paragraphs (f)(12)(i) through (iii) of this section, or

(*ii*) If a proposed amendment to an IPA would cause the IPA to no longer be consistent with the requirements of paragraphs (f)(12)(i) through (iv) of this section.

(*2*) *Initial Administrative Determination (IAD).* If, in NMFS' review of the proposed IPA, NMFS identifies deficiencies in the proposed IPA that require disapproval of the proposed IPA, NMFS will notify the applicant in writing. The IPA representative will be provided one 30-day period to address, in writing, the deficiencies identified by NMFS. Additional information or a revised IPA received by NMFS after the expiration of the 30-day period specified by NMFS will not be considered for purposes of the review of the proposed IPA. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Regional Administrator determines that the additional information addresses deficiencies in the proposed IPA, the Regional Administrator will approve the proposed IPA under paragraphs (f)(12)(iv)(B) and (f)(12)(v)(A) of this section. However, if, after consideration of the original proposed IPA and any additional information submitted during the 30-day period, NMFS determines that the proposed IPA does not comply with the requirements of paragraph (f)(12) of this section, NMFS will issue an initial administrative determination (IAD) providing the reasons for disapproving the proposed IPA.

(*3*) *Administrative Appeals.* An IPA representative who receives an IAD disapproving a proposed IPA may appeal under the procedures set forth at § 679.43. If the IPA representative fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination to approve the proposed IPA, then the IPA will be effective as described in paragraph (f)(12)(iv)(B) of this section.

(*4*) *Pending appeal.* While appeal of an IAD disapproving a proposed IPA is pending, proposed members of the IPA subject to the IAD that are not currently members of an approved IPA will fish under the opt-out allocation under paragraph (f)(5) of this section. If no other IPA has been approved by NMFS, NMFS will issue all sectors allocations of the 47,591 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(C) of this section, or, in low Chinook salmon abundance years, allocations of the 33,318 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(D) of this section.

(vi) *Public release of an IPA.* NMFS will make all proposed IPAs and all approved IPAs and the list of participants in each approved IPA available to the public on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*).

(13) *IPA Annual Report.* The representative of each approved IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(i) *Submission deadline.* The IPA Annual Report must be received by the Council no later than March 15.

(ii) *Information requirements.* The IPA Annual Report must contain the following information:

(A) A comprehensive description of the incentive measures, including the rolling hot spot program and salmon excluder use, in effect in the previous year;

(B) A description of how these incentive measures affected individual vessels;

(C) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures, including the effectiveness of—

(*1*) Measures to ensure that chum salmon were avoided in areas and at times where chum salmon are likely to return to western Alaska;

(*2*) Restrictions or penalties that target vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels; and

(*3*) Restrictions or performance criteria used to ensure that Chinook PSC rates in October are not significantly higher than in previous months.

(D) A description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the IPA were made.

(E) The sub-allocation to each participating vessel of the number of Chinook salmon PSC and amount of pollock (mt) at the start of each fishing season, and number of Chinook salmon PSC and amount of pollock (mt) caught at the end of each season.

(F) The following information on in-season transfer of Chinook salmon PSC and pollock among AFA cooperatives, entities eligible to receive Chinook salmon PSC allocations, or CDQ groups:

(*1*) Date of transfer;

(*2*) Name of transferor;

(*3*) Name of transferee;

(*4*) Number of Chinook salmon PSC transferred; and

(*5*) Amount of pollock (mt) transferred.

(G) The following information on in-season transfers among vessels participating in the IPA:

(*1*) Date of transfer;

(*2*) Name of transferor;

(*3*) Name of transferee;

(*4*) Number of Chinook salmon PSC transferred; and

(*5*) Amount pollock (mt) transferred.

(14) *Non-Chinook salmon prohibited species catch (PSC) limit and Chum Salmon Savings Area.* (i) The PSC limit for non-Chinook salmon caught by vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area, as defined under § 679.22(a)(5) and in Figure 2 to this part, is 42,000 fish.

(ii) 10.7 percent of the non-Chinook PSC limit is allocated to the CDQ Program as a PSQ reserve.

(iii) If the Regional Administrator determines that 42,000 non-Chinook salmon have been caught by vessels using trawl gear during the period August 15 through October 14 in the Catcher Vessel Operational Area, NMFS will prohibit fishing for pollock for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9 to this part.

(iv) Trawl vessels participating in directed fishing for pollock and operating under an IPA approved by NMFS under paragraph (f)(12) of this section are exempt from closures in the Chum Salmon Savings Area.

(15) *Salmon handling.* Regulations in this paragraph apply to vessels directed fishing for pollock in the BS, including pollock CDQ, and processors taking deliveries from these vessels.

(i) *Salmon discard.* The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD Program at § 679.26 if the salmon were taken incidental to a directed fishery for pollock in the BS until the number of salmon has been determined by the observer and the observer's collection of any scientific data or biological samples from the salmon has been completed.

(ii) *Salmon retention and storage.* (A) Operators of catcher/processors or motherships must—

(*1*) Sort and transport all salmon bycatch from each haul to an approved storage container located adjacent to the observer sampling station that allows an observer free and unobstructed access to the salmon (see § 679.28(d)(2)(i) and (d)(7)). The salmon storage container must remain in view of the observer from the observer sampling station at all times during the sorting of the haul.

(*2*) If, at any point during sorting of a haul or delivery, the salmon are too numerous to be contained in the salmon storage container, cease all sorting and give the observer the opportunity to count the salmon in the storage container and collect scientific data or biological samples. Once the observer has completed all counting and sampling duties for the counted salmon, the salmon must be removed by vessel personnel from the approved storage container and the observer sampling station, in the presence of the observer.

(*3*) Before sorting of the next haul may begin, give the observer the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous haul. When the observer has completed all counting and sampling duties for a haul or delivery, vessel personnel must remove the salmon, in the presence of the observer, from the salmon storage container and the observer sampling station.

(*4*) Ensure no salmon of any species pass the observer sample collection point, as identified in the scale drawing of the observer sample station (see § 679.28(d)(2)(i) and (d)(7)).

(B) Operators of vessels delivering to shoreside processors or stationary floating processors must—

(*1*) Retain all salmon taken incidental to a directed fishery for pollock in the BS until the salmon are delivered to the processor receiving the vessel's BS pollock catch.

(*2*) Notify the observer at least 15 minutes before handling catch on board the vessel, including, but not limited to, moving catch from one location to another, sorting, or discard of catch prior to the delivery of catch to the processor receiving the vessel's BS pollock catch. This notification requirement is in addition to the notification requirements in § 679.51(e).

(*3*) Secure all salmon and catch after the observer has completed the collection of scientific data and biological samples and after the vessel crew has completed handling the catch. All salmon and any other catch retained on board the vessel must be made unavailable for sorting and discard until the delivery of catch to the processor receiving the vessel's BS pollock catch. Methods to make salmon or retained catch unavailable for sorting or discard include but are not limited to securing the catch in a completely enclosed container above or below deck, securing the catch in an enclosed codend, or completely and securely covering the fish on deck.

(*4*) Comply with the requirements in paragraphs (f)(15)(ii)(B)(*2*) and (*3*) of this section, before handling the catch prior to delivery.

(C) Shoreside processors or stationary floating processors must —

(*1*) Comply with the requirements in § 679.28(g)(7)(vii) for the receipt, sorting, and storage of salmon from deliveries of catch from the BS pollock fishery.

(*2*) Ensure no salmon of any species pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the plant in the Catch Monitoring Control Plan (CMCP).

(*3*) Sort and transport all salmon of any species to the salmon storage container identified in the CMCP (see § 679.28(g)(7)(vi)(C) and(g)(7)(x)(F)). The salmon must remain in that salmon storage container and within the view of the observer at all times during the offload.

(*4*) If, at any point during the offload, salmon are too numerous to be contained in the salmon storage container, cease the offload and all sorting and give the observer the opportunity to count the salmon and collect scientific data or biological samples. The counted salmon then must be removed from the area by plant personnel in the presence of the observer.

(*5*) At the completion of the offload, give the observer the opportunity to count the salmon and collect scientific data or biological samples.

(*6*) Before sorting of the next offload of catch from the BS pollock fishery may begin, give the observer the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous offload of catch from the BS pollock fishery. When the observer has completed all counting and sampling duties for the offload, plant personnel must remove the salmon, in the presence of the observer, from the salmon storage container and location where salmon are counted and biological samples or scientific data are collected.

(iii) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors and SFPs that are required to retain salmon under paragraph (f)(15)(i) of this section must designate and identify to the observer aboard the vessel, or at the shoreside processor or SFP, a crew person or employee responsible for ensuring all sorting, retention, and storage of salmon occurs according to the requirements of (f)(15)(ii) of this section.

(iv) *Discard of salmon.* Except for salmon under the PSD Program at § 679.26, all salmon must be returned to the sea as soon as is practicable, following notification by an observer that the number of salmon has been determined and the collection of scientific data or biological samples has been completed.

(g) *Chinook salmon bycatch management in the AI pollock fishery*—(1) *Applicability.* This paragraph contains regulations governing the bycatch of Chinook salmon in the AI pollock fishery.

(2) *AI Chinook salmon PSC limit.* (i) The PSC limit for Chinook salmon caught by vessels while harvesting pollock in the AI is 700 fish.

(ii) 7.5 percent of the PSC limit is allocated to the CDQ Program as a PSQ reserve.

(3) *Area closures.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon by vessels using trawl gear while directed fishing for pollock in the AI will reach the PSC limit, NMFS, by notification in the **Federal Register**, will close the AI Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear on the following dates:

(i) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(ii) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

* * * * *

■ 6. In § 679.22, revise paragraph (a)(10) to read as follows:

§ 679.22 Closures.

(a) * * *

(10) *Chum Salmon Savings Area.* Directed fishing for pollock by vessels using trawl gear is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(f)(14)). Vessels directed fishing for pollock in the BS, including pollock CDQ, and operating under an approved IPA under § 679.21(f)(12) are exempt from closures in the Chum Salmon Savings Area.

* * * * *

■ 7. In § 679.28, revise paragraphs (d)(7)(i), (ii), and (iii) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(7) * * *

(i) A salmon storage container must be located adjacent to the observer sampling station;

(ii) The salmon storage container must remain in view of the observer at the observer sampling station at all times during the sorting of each haul; and

(iii) The salmon storage container must be at least 1.5 cubic meters.

* * * * *

■ 8. In § 679.51, revise paragraphs (e)(1)(iii), (e)(2) introductory text, and (e)(2)(iii)(B)(*3*) to read as follows:

§ 679.51 Observer requirements for vessels and plants.

* * * * *

(e) * * *

(1) * * *

(iii) *Communications and observer data entry*—(A) *Observer use of equipment.* Allow an observer to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observer or the United States.

(B) The operator of a catcher/processor, mothership, or catcher vessel 125 ft LOA or longer (except for a catcher vessel fishing for groundfish with pot gear) must provide the following equipment, software and data transmission capabilities:

(*1*) *Observer access to computer.* Make a computer available for use by the observer.

(*2*) *NMFS-supplied software.* Ensure that the most recent release of NMFS data entry software provided by the Regional Administrator or other approved software is installed on the computer described in paragraph (e)(1)(iii)(B)(*1*) of this section.

(*3*) *Data transmission.* The computer and software described in paragraphs (e)(1)(iii)(B)(*1*) and (*2*) of this section must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(*4*) *Functional and operational equipment.* Ensure that the required equipment described in paragraph (e)(1)(iii)(B) of this section and that is used by an observer to enter or transmit data is fully functional and operational. ''Functional'' means that all the tasks and components of the NMFS-supplied, or other approved, software described in paragraph (e)(1)(iii)(B)(*2*) of this section and any required data transmissions to NMFS can be executed effectively aboard the vessel by the equipment.

(C) The operator of a catcher vessel participating in the Rockfish Program or a catcher vessel less than 125 ft LOA directed fishing for pollock in the BS must comply with the computer and software requirements described in paragraphs (e)(1)(iii)(B)(*1*), (*2*), and (*4*) of this section.

* * * * *

(2) *Shoreside processor and stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (b) of this section must:

* * * * *

(iii) * * *

(B) * * *

(*3*) *Functional and operational equipment.* Ensuring that the communications equipment required under paragraph (e)(2)(iii)(B) of this section that is used by observers to enter and transmit data is functional and operational. ''Functional'' means that all the tasks and components of the NMFS-supplied, or other approved, software described at paragraph (e)(2)(iii)(B)(*2*) of this section and any data transmissions to NMFS can be executed effectively by the communications equipment.

* * * * *

Tables 47a through 47d to Part 679 [Removed]

■ 9. Remove Tables 47a through 47d to part 679.

[FR Doc. 2016–01890 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 22
Wednesday, February 3, 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

National Institute of Food and Agriculture

Submission for OMB Review; Comment Request; Correction

January 28, 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 March 4, 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: Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.

Action: Notice; Correction.

OMB Control Number: 0524–0036.

Summary of Collection: The Department of Agriculture published a document in the **Federal Register** on January 22, 2016, Volume 81, page 3779 concerning a request for comments on the Information Collection ''Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds'' OMB control number 0524–0036. The document contained incorrect burden hours. The total burden hours should be 49,248 not 49 as published.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–01985 Filed 2–2–16; 8:45 am]

BILLING CODE 3410–09–P

COMMISSION ON CIVIL RIGHTS

Revised Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Revised briefing notice.

DATES: *Date and Time:* Friday, February 5, 2016; 9:00 a.m.–4:30 p.m. EST.

ADDRESSES: *Place:* National Place Building, 1331 Pennsylvania Ave. NW., 11th Floor, Suite 1150, Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Gerson Gomez, Media Advisor at telephone: (202) 376–8371, TTY: (202) 376–8116 or email: *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This briefing is open to the public. The public may listen on the following toll-free number: 1–888–510–1785 with passcode 2485466. Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

During the briefing, Commissioners will ask questions and discuss the briefing topic with the panelists. The public may submit written comments on the topic of the briefing to the above address for 30 days after the briefing. Please direct your comments to the attention of the ''Staff Director'' and clearly mark ''Briefing Comments Inside'' on the outside of the envelope. Please note we are unable to return any comments or submitted materials. Comments may also be submitted by email to *EJcomments@usccr.gov.*

Topic: Completion of Briefing on Environmental Justice: Toxic Materials, Poor Economies, and the Impact to Low-Income, Minority Communities; *A review of the Environmental Protection Agency's Civil Rights Enforcement of Environmental Justice in the Context of Title VI, E.O. 12,989 and the Coal Ash Rule.*

Agenda

I. Introductory Remarks by Chairman: 9:00 a.m.

II. Presentations: Community Leaders/Advocates Who Have Experienced the Impacts of Environmental Injustices: 9:20 a.m.–10:05 a.m.
Speakers' Remarks
- Esther Calhoun, Alabama Resident
- Dulce Ortiz, Illinois Resident
- Rev. Leo Woodberry, South Carolina Resident

III. Panel 1: Health Issues: 10:10 a.m.–11:30 a.m.
- Barbara Gottlieb, Physicians for Social Responsibility
- Abel Russ, Environmental Integrity Project
- Dr. Yolanda Whyte, Physician

IV. Panel 2: Coal Industry Executives and Advocacy Groups: 11:40 a.m.–12:55 p.m.
- Thomas Adams, American Coal Ash Association
- Amelia Shenstone, Southern Alliance for Clean Energy
- Lisa Hallowell, Environmental Integrity Project
- James Roewer, Utilities Solid Waste Group
- Michael Smith, Arrowhead Landfill Facility

V. Panel 3: Coal Ash Activists/ Advocates: 1:55p.m.–3:10 p.m.
- Andrea Delgado, Earth Justice
- Marianne Engelman-Lado, Earth Justice
- Rhiannon Fionn, Coal Ash Chronicles
- Prof. David Konisky, Indiana University
- Anthony L. Francois, Pacific Legal Foundation

VI. Panel 4: Environmental Justice Panel: 3:15 p.m.–4:30 p.m.
- David Ludder, Environmental Justice Attorney
- Roger Clegg, Center for Equal Opportunity
- Lois Gibbs, Center for Health, Environment & Justice
- Prof. Chris Timmins, Duke University

VII. Adjourn Briefing–4:30 p.m.

Dated: February 1, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–02167 Filed 2–1–16; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–4–2016]

Foreign-Trade Zone (FTZ) 196—Fort Worth, Texas; Notification of Proposed Production Activity, General Electric Transportation (Locomotives, Drill Equipment, Off-Highway Vehicle Wheels, Inverters and Brake Systems); Fort Worth and Haslet, Texas

General Electric Transportation (GE Transportation) submitted a notification of proposed production activity to the FTZ Board for its facilities in Fort Worth and Haslet, Texas within FTZ 196. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 20, 2016.

A separate application for subzone designation at the GE Transportation facility was submitted and will be processed under Section 400.38 of the Board's regulations. The facility is used for the manufacturing, kitting, repairing, warehousing and distribution of locomotives, off-highway vehicle (OHV) wheels, OHV inverters, OHV brake systems, locomotive components, OHV components and drill equipment. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt GE Transportation from customs duty payments on the foreign-status components used in export production. On its domestic sales, GE Transportation would be able to choose the duty rates during customs entry procedures that apply to: AC combo units; AC motors; AC traction motors; air brakes; air brake arrangements; air brake supports; air duct assemblies; air inlets; angles; angle assemblies; armature assemblies; auxiliary cabs; axles; banding strips; bases; bearing housings; bearing kits; bearing retainers; bearing supports; blowers; blower cab assemblies; brackets; bracket assemblies; brake line brackets; brake shoes; electronic brake valve assemblies; breaker supports; bumpers; cab control desk-helper consoles; cables; cable assemblies; cams; cam assemblies; cam sections; cam shafts; cap assemblies; capacitors; carrier assemblies; casting assemblies; channel assemblies; cleat supports; conduits; conduit assemblies; conduit fittings; connecting rods; connection straps; console modules; contact assemblies; control groups; cover kits; deck plates; deck plate assemblies; doors; door arrangements; door assemblies; door latch clamps; door posts; door stop assemblies; electric panels—operator cab; electric panel assemblies; emergency valve assemblies; end plates; end sheet assemblies; exciter poles; fans; fan blades; fan hubs; fittings; flanges; flange assemblies; flexible conduits; floor trim kits; foot rests; frames; frame assemblies; frame structures; gas spring assemblies; gears; gear and pinion assemblies; gear and pinion shafts; guard assemblies; gussets; handrails; handrail support assemblies; handrail support bracket-bases; harnesses; hatch covers; hinges; hooks; hubs; identification tags; insulation; intercoolers; intercooler fans; interlocks; interlocking panels; inverters; locomotives; lube oil pumps; lube sticks; machined frames; machined torque tubes; magnetic valves; manifold assemblies; name plates; oil filters; oil pumps; panels; panel assemblies; pins; pin assemblies; pinion gears; pipes; plates—steel machined; reflectors; resistor panels; rings; ring gears; rocker arms; rods—steel support for battery box; rotor assemblies; rotor poles; rotor supports; rotor yokes; safety guard assemblies; sand support assemblies; sand trap sub-assemblies; sheetshields; shims; shrouds; side wall assemblies; slack adjusters; spacers for air rack assemblies; spacers for helpers consoles; stator assemblies; stator frames; steps; stiffener assemblies; banding strips; strongbacks for power assemblies; strut assemblies; support assemblies; support brackets; supports for air brake assemblies; supports for interlock assemblies; steel pipe supports for air brake assemblies; tape rails; threaded pipe fittings; tie rings; torque tubes; trucks; truck assemblies; truck modules; tube assemblies; machined u-tubes; valve assemblies; vent hoses; walkway assemblies; water discharge pipes; water pump assemblies; weldments; wheels; wheel hubs; windows; wire plugs; and, wire pull kits (duty rate ranges from duty-free to 9.9%) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: 12-Point bolts; 3-tone air horns; 45-degree elbows; AC coils; AC combination assemblies; AC combo units; AC motors; AC traction motors; accumulator over flows; acorn nuts; activators; adapters; adapter fittings; adapter plates; adhesives; adhesive tapes; adjustment rings for water pumps; aftercoolers; air brakes; air brake arrangements; air brake conduits; air brake supports; air cleaners; air compressors; air dryers; air ducts; air duct assemblies; air hoses; air inlets; air rack welds; air turners; alternators; alternator connection rings; angles; angle assemblies; antennas; antenna adapters; antenna cables; antenna mounts; antenna plates; anti-seize compounds; anti-skid coatings; arm rests; armatures; armature assemblies; aspect display units; audio alarm panels; auxiliary cab lists; auxiliary speed indicators; axles; back plates; baffles; bags; baggie filters; ball bearings; ball valves; ballast; ballast box assemblies; banding strips; banjo bolts; round and flat hot rolled steel bar; bar assemblies; barbed hose fittings; barrels—frame structure from casting; barrels—frame structure from rolled ring; barrel bolt assemblies; barrier assemblies; base assemblies; bases for auxiliary cab assemblies; bases for panel assemblies; bases for resistor panel assemblies; battery boxes; battery box liners; battery box weldments; battery switches; AC Euro auxiliary battery transformers; bearings; bearing caps; journal bearing caps; bearing housings; bearing kits; bearing retainers; bearing retainer rings; bearing supports; bells; blank labels; blocks for truck assemblies; blocks for motorized wheel assemblies; blocks for rotor assemblies; blocks for stator frames; blow out coils; blowers; blower cab assemblies; blower case castings; blower motor bushings; bobbins; bolsters; bolts; bolt locks; bottom plates; braces for backbone platform assemblies; brackets; bracket

assemblies; brake adapters; brake cylinders; brake hubs; brake line assemblies; brake line brackets; brake shoes; electronic brake valve assemblies; braking potentiometer kits; braze alloys; brazing strips; breaker supports; bridge housings; brush holders; bumpers; busbar assemblies; busbar kits; bushings; bushing reducers; cab display units; cab signal panels; cables; cable assemblies; cable caps; cable cleats; cable interfaces; cable markers; cable supports; cable tray assemblies; cable wires; cabling trays; cams; cam bearings; cam sections; cam sensors; cam shafts; camera subassemblies; canister hose assemblies; caps; quick disconnect caps; cap assemblies; cap screws; capacitors; capacitor discharge indicator panels; capacitor supports; captive bolts; carbon brushes; carbon inserts; programmable controller cards; card holders; carrier assemblies; carrier castings; cartridges; castings; casting assemblies; c-clamps; cell antennas; cell modem kits; cement; chains; channel assemblies; charcoal foam; chase nipples; check fire control units; check valve assemblies; chloroprene rubber; chokes; circuit breakers; circuit breaker covers; c-clamps for engine fuel lines; cushion clamps; hose clamps; clamp bar assemblies for radiator cabs; busring clamps for stator assemblies; clamps for radios; clamps for wire harnesses; cleat assemblies; cleat supports; steel clevis for parking brakes; cloth bags; cloth by the roll for insulation; coalescers for diesel engines; coalescer pipe assemblies; coat & hangar hooks; coil springs; collar assemblies; collars for armature bearing assemblies; collars for axle bearing assemblies; collision posts; commutators; compressor assemblies; computers; flex conduits for locomotive assemblies; conduits for final locomotive assembly piping; rigid conduits for pipe rack assemblies; steel threaded conduits; conduit assemblies; conduit couplings; conduit fittings; conduits for platform piping; conduit tubes; connecting rods; connection assemblies; connection straps; connectors; connector plugs; console assemblies; console control box assemblies; console modules; contacts; contact assemblies; contact pins; contact sockets; contactors; control consoles; control groups; control units; control valves; controller kits; copper tubing; cotter pins; couplers; coupler stops; coupler supports; couplings; coupling assemblies; coupling bolts; diesel engine covers; cover assemblies; covers for AC motors; covers for assemblies; covers for panels; cover for panel assemblies; cover kits; cover plates; cover plates for engine assemblies; crankshafts; crimpring assemblies; current indicator lamps; cushion assemblies; customized decals; cut out cocks; dampers; damping sheets; decals; lettering decals; deck plates; deck plate assemblies; deflectors; detector arrangements; diesel engines; diffusers; diodes; diode panels; dipstick assemblies; dipstick tubes; displays; door and trim seals; door arrangements; door assemblies; oil filter door assemblies; door latch clamps; door latch keepers; door latch kits; door liners; door locks; door locomotive assemblies; door posts; door seals; door stops; dowel pins; drain hoses; drain plugs; drain valves; drain valve assemblies; drive rings; drive shafts; drive shaft plugs; ducts; duct assemblies; duct strappings; duct tape; dust caps; dynamic brakes; dynamic brake assemblies; dynamic brake blocks; dynamic brake weldments; eductor tube assemblies; 90 and 45 degree grooved pipe fitting elbows; 90 degree with spiral bellow pipe fitting elbows; alloy steel pipe fitting elbows; aluminum elbow assemblies; elbows—butt welded or threaded pipe fitting—iron or nonalloy steel; steel pipe fitting elbows; elbow assemblies; elbow sockets; elbow unions; electrical equipment alcoves; electrical equipment locker kits; electronic control area modules; electronic control unit-auxiliary cabs; emergency valves; enclosures; end plates; end plate seals; end sheets; end sheet assemblies; engine cab kits; engine control units; engine mounts; engine wedges; epoxy sheets; equipment boxes; ethylene propoleve o-ring seals; event recorders; exciter poles; external microphones; extraction tools; fans; fan blades; fan hubs; felt; felt seals; female contacts; ferrule; fiber glass cords; fiberglass tape; field transformers; fill caps; filters; filter antennas; filter assemblies; filter bracket assemblies; filter discharge relays; finger assemblies; fire extinguishers; fire protection system arrangements; fire suppression controllers; first aid kits; copper fittings; fuel line fittings; iron non-threaded fittings; malleable iron or steel fittings; quick disconnect coupling with fluorocarbon seat fittings; quick disconnect high pressure fittings; stainless steel 37 degree coupling fittings; threaded iron fittings; fitting adapters; fitting quick connects; flag racks; flanges; flange assemblies; flash drives; flat bars; flat heads; flat washers; flex ducts; flex tubing; flexible conduits; flexible hoses; flexible tubing; flinger assemblies; floor mats; floor trim kits; foam tape; folding seats; foot handrail supports; foot rests; foot switches; forgings; frames; frame assemblies; frame castings; frame casting structures; frame weldments; front plates; fuel drain valves; fuel filters; fuel gages; fuel heater assemblies; fuel line assemblies; fuel pumps; fuel tank assemblies; fuses; fuse holders; gages; gas spring assemblies; gaskets; gate drive inverters; gate drivers for insulated gate bipolar transistors (power converter); gears; gear and pinion assemblies; gear and pinion shafts; gear case covers; glass; glass covers; glass tape; glasscloth; globe valves; GPS receivers; grab handles; grab handle gratings; grease; grease fittings; flared rubber grommets; ground blocks; ground detection panels; electrical switch guards; neoprene strip guards; operator cab assembly guards; rain guards; wire guards; guard assemblies; guide pins; gussets; handrails; handrail support assemblies; handrail bases; hardened spacers; hardened washers; harnesses; hatch covers; hatch lift assemblies; headlight shell assemblies; heat sinks; heated windows; heaves; heavy duty anti-seize lubricant compounds; hex bolts; hex head pins; hex head screws; hex reducing nipples; hex screws; hex socket bolts; hex tube fittings; hinges; hinge pins; hooks; horns; air and signal hoses; flexible hoses; rear wiper hose assemblies; rubber hoses; single ply neoprene hoses; hose assemblies; hose clamps; hose connectors; hose supports; hoses with fittings; hoses without fittings; housing bases for insulated gate bipolar transistors (power converter); housing bearings; housings for insulated gate bipolar transistors (power converter); hubs; hub bearings; humidity sensors; HVAC—unitary heater and air conditioning units for locomotives; hydraulic cylinder rings; hydraulic jacks; identification tags for locomotive consoles; indicators; indicator light supports; indicator plates; inlet valves; inner seals; inserts; insulated gate bipolar transistor (power converter) modules; insulating bolts; insulation; intercoolers; intercooler fans; interlocks; interlocking panels; internal battery assemblies; inverters; inverter weldments; isolators; journal bearings; joy sticks; jumper cables; junction boxes; keys; knife switches; knurled studs; labels; ladders; lamps; lamp assemblies; lamp holders; lamp receptacles; lamp sockets; lamp units; lanyard assemblies—distributed air brake system; latches; lead-acid batteries; led diodes; LED lite box assemblies; lenses; levers; lever assemblies; lift plates; lifting hooks; lifting lugs; light assemblies; light box assemblies; light covers; operator cab wall lining sheets; lining sidewalls for electrical panels; lock assemblies; lock kits; lock pins; lock rings; lock washers;

lockwires; locomotive assemblies; locomotive horns; logic power supplies; louver assemblies; low speed bearings; lube oil; lube oil pumps; lube sticks; lubricants; lubricating materials; machined screws; machined castings; machined frames; machined gears; machined hubs; machined sleeves for wheel assemblies; machined torque tubes; magnetic frames; magnetic plugs; magnetic valves; magnetic valve panels; main sills; male contact plugs; male elbows; manifolds; manifold assemblies; manifold blocks; marker lights; marking labels—electronic rack assemblies; metal conduits; metal tubing; mica; microphone subassemblies; mirrors; modems; modules; module assemblies; module pneumatic systems; mounting axles; mounting clips; mounting flange castings; mounting plates; mounting plate assemblies; mounting rings; mufflers; name plates; negative panels; nested springs; alloy steel pipe fitting nipples; hot dipped galvanized intermediate metal conduit—threaded nipples; nipple pipe fittings—galvanized; nipple pipe fittings—threaded furnace welded steel pipe; non-skid mats; nozzles; nuts; nylon paper; nylon washers; oil coolers; oil fill covers; oil filters; oil filter weldments; oil hoses; oil inlet flanges; oil pumps; oil seals; operator cab helper's console workstations; O-rings; rubber O-rings; O-ring lubricant; o-seals; overhead consoles; paint; pan head screws; panels; panel assemblies; paper; parking brakes; pedestal liners; pedestals; pedestal seats; phone handsets; pilot pipe supports; contact pins; guide and locating pins; pin assemblies; pin connectors; pinion gears; pinion shafts; pipes; pipe assemblies; pipe caps; pipe clamps; pipe plugs; plastic pipe plugs; pipe supports; planet gear; planet gear pinions; planet shafts; plastic pipes; plastic tubing; plates; plate assemblies; connector plugs; plastic plugs; polyimide wire covers; polyimide film with silicone adhesive; pop rivets; positive panels; potentiometers; power block rectifiers; power supplies; power tap panels; prelube pumps; pressure regulators; pressure sensors; pressure switches; pressure transducers; primer paint; printed wire board assemblies; pullboxes; pumps; push button switches; push-pull switches; putty; PVC pipe; quick connectors; quick disconnect couplings; quick disconnect fittings; quick disconnect plugs; quick links; radiators; radiator cab assemblies; radiator cab weldments; radiator fans; radiator shutters; radios; radio speaker assemblies; rail antennas; rail conductor seats; rain guards; reactors; connector pin receptacles; rectifiers; reducer tees; reducing bushings; reflectors; refrigerators; relays; relief valves; resistors; resistor panels; retainer bushings; retainer rings; retaining springs; retention tanks; rheostats; rheostat knobs; rigid conduits; rim locks; ring gears; ring gear forgings; road number lenses; road number light assemblies; rocker arms; roller bearings; roller spherical bearings; roof sheets; rope/roll (permafil); rotary switches; rotor assemblies; rotor locks; rotor poles; rotor supports; rotor yokes; round bars; rubber boots; rubber dust caps; rubber hoses; rust inhibitors; rust preventative; safety screens; safety valves; sand brackets; sand fill assemblies; sand hoses; sand piping arrangements; sand traps; sand trap subassemblies; sanding support kits; screens; screen assemblies; screws; screw taps; seal assemblies; seal rings; seal strips; seal strip assemblies; sealants; sealed batteries; sealers; sealing rings; sealing tape; seats; seat supports; security screws; sensors; sensor and signal arrangements; sensor modules; set light arrangements; set screws; shafts; sheets; sheet assemblies; sheetshields; shells; shields; shield assemblies; shims; shrouds; shunts; shutters; side wall assemblies; sidebearers; signal alerters; slack adjusters; steel tubing machined sleeves; sleeving; slip ring grinding tools; slot wedges; slotted filister heads; snap action switches; universal snow plows; snowblaster nozzles; snubbers; snubber panel assemblies; sockets; solid state relays; spacers—axle bearing assemblies; back plate spacers; blower cab spacers; commutator spacers; controller assembly spacers; dynamic brake assembly spacers; exciter panel spacers; exhaust manifold bolt spacers; machined steel spacers; neoprene cable spacers; operator cab assembly spacers; operator cab weldment spacers; radiator fan assembly spacers; resistor assembly spacers; resistor spacers; stator bus rings spacers; speakers; speed sensors; speed sensor cable assemblies; splicing tape; springs; spring assemblies; spring hinges; spring seats; spur gear; staples; stator assemblies; stator frames; stators; frame castings; steel sheet; steel wood screws; steps; step assemblies; step ladders; stiffener assemblies; stops; stove pipes; strainers; strap assemblies; strips; strip heaters; strip hold-down seals; strongbacks; structural steel; strut assemblies; studs; sump assemblies; sump kits; sun visors; super cab weldments; air brake supports; balance weight supports; cleat supports; handrail supports; panel assembly supports; support assemblies; support blocks; support brackets; switches; swivels; tags; tap blocks; all weather tape; glass tape; reinforced mica tape; tape rails; tapered roller bearings; tapped blocks; alloy steel tees; threaded fitting tees; tee fittings; terminals; terminal assemblies; terminal boards; thermal detector arrangements; thermistors; thermo heater assemblies; thermocouples; thermostat switches; thrust bearings; thrust bronze washers; thrust rings; thyristors; tie bar sets; tie rings; tie wraps; tier springs; toilets; toilet cover dispensers; tool boxes; toothed couplings; top plates; torque tubes; traction pins; transducers; transformers; transmissions; transponders; tray cablings; treaded plugs; treaded rods; trim edges; trim strips; tripod seat mountings; trucks; truck assemblies; truck modules; tube assemblies; steel tube; tube tees; turbo dischargers; u-bolts; uncoupling links; unions; union tees; u-pieces; u-tube grease; u-tube machining; valves; valve assemblies; valve guides; valve mounts; varistor assemblies; varnish; vent fittings; vent hoses; vent pipe assemblies; vestibule assemblies; victaulic couplings; 45-degree victaulic elbows; victaulic flange assemblies; victaulic pipes; victaulic pipe assemblies; victaulic reducer couplings; victaulic reduction couplings; vinyl trim; visors; v-rings; v-ring seals; walkway assemblies; water discharge pipes; water drain tank assemblies; water drain valves; water gages; water pump assemblies; water separators; water separator assemblies; water tank assemblies; water tight strain relief bushings; water valves; wear plates; wedges; weld screws; weld studs; weldments; wheels; wheel axle collars; wheel hubs; wheel hub castings; wheel hub fabrications; windows; window glazing; wiper arms; wiper hoses; wiper motors; wires; wire markers; wire plugs; wire pull kits; wireways; wiring; and, yaw dampers (duty rate ranges from duty-free to 12.5%). The request indicates that inputs classified under HTSUS Subheadings 5603.94, 5607.50, 5909.00, 6305.20, 6307.90, 7019.19 and 7019.51 as well as HTSUS Headings 3208 and 3209 will be admitted to the zone in privileged foreign status (19 CFR 146.41) or domestic status (19 CFR 146.43), thereby precluding inverted tariff benefits on such items.

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 14, 2016.

A copy of the notification 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 Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: January 27, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–02045 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–8–2016]

Foreign-Trade Zone 279—Terrebonne Parish, Louisiana; Application for Subzone; Thoma-Sea Marine Constructors, LLC, Houma and Lockport, Louisiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Houma-Terrebonne Airport Commission, grantee of FTZ 279, requesting subzone status for the facilities of Thoma-Sea Marine Constructors, LLC, located in Houma and Lockport, Louisiana. 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 28, 2016.

The proposed subzone would consist of the following sites in Terrebonne and Lafourche Parishes: *Site 1* (14.44 acres)—137 Barry Belanger Street (1874 Industrial Boulevard), Houma; *Site 2* (63.758 acres)—6130 Louisiana Highway 308, Lockport; *Site 3* (21.8 acres)—429 Rome Woodard Street (429 Main Port Court), Houma; and, *Site 4* (18.377 acres)—139 Joe Brown Road, Lockport. The proposed subzone would be subject to the existing activation limit of FTZ 279. A notification of proposed production activity has been submitted and will be published separately for public comment.

In accordance with the FTZ 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 FTZ Board's Executive Secretary at the address below. The closing period for their receipt is March 14, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 29, 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 Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: January 28, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–02058 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 3, 2016.

FOR FURTHER INFORMATION CONTACT: George McMahon or Samuel Brummitt AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1167 or (202) 482–7851, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2015, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on certain lined paper products from India.[1] Pursuant to timely requests from interested parties, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period of review (POR) September 1, 2014, through August 31, 2015: Goldenpalm Manufacturers PVT Limited (Goldenpalm), Kokuyo Riddhi Paper Products Private Limited (Kokuyo), Lodha Offset Limited (Lodha), Magic International Pvt. Ltd. (Magic International), Marisa International, Navneet Education Ltd. (Navneet), Pioneer Stationery Pvt. Ltd. (Pioneer), SAB International, SGM Paper Products, and Super Impex.[2] On November 16, 2015, Super Impex timely withdrew its request for a review.[3] On November 17, 2015, SAB International timely withdrew its request for a review.[4]

Partial Rescission of the 2014–2015 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department initiated the instant review on November 9, 2015.[5] Super Impex and SAB International withdrew their requests for a review on November 16, 2015, and November 17, 2015, respectively, which is within the 90-day deadline. No other party requested an administrative review of Super Impex or SAB International. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the antidumping duty order on certain lined paper products from India, in part, with respect to Super Impex and SAB International. The administrative review will continue with respect to Goldenpalm, Kokuyo, Lodha, Magic International, Marisa International, Navneet, Pioneer, and SGM Paper Products.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, Super Impex and SAB International, antidumping duties shall be assessed at rates equal to the cash deposit of

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 52741 (September 1, 2015).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 69193 (November 9, 2015) (*Initiation Notice*).

[3] *See* Letter from Super Impex to the Department, ''Certain Lined Paper Products from India: Withdrawal of Request for Anti-dumping Duty Administrative Review of Super Impex,'' dated November 16, 2015.

[4] *See* Letter from SAB International to the Department, ''Certain Lined Paper Products from India: Withdrawal of Request for Anti-dumping Duty Administrative Review of SAB International,'' filed on November 17, 2015.

[5] *See Initiation Notice.*

estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period September 1, 2014, through August 31, 2015, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 28, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–02003 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2016

The following Sunset Reviews are scheduled for initiation in March 2016 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

	Department Contact
Antidumping Duty Proceedings	
Carbon Steel Butt-Weld Pipe from Brazil (A–351–602) (4th Review)	Matthew Renkey (202) 482–2312.
Frozen Warmwater Shrimp from Brazil (A–351–838) (2nd Review)	David Goldberger (202) 482–4136.
Carbon Steel Butt-Weld Pipe Fittings from China (A–570–814) (4th Review)	Matthew Renkey (202) 482–2312.
Frozen Warmwater Shrimp from China (A–570–893) (2nd Review)	David Goldberger (202) 482–4136.
Frozen Warmwater Shrimp from India (A–533–840) (2nd Review)	David Goldberger (202) 482–4136.
Carbon Steel Butt-Weld Pipe Fittings from Japan (A–588–602) (4th Review)	Matthew Renkey (202) 482–2312.
Carbon Steel Butt-Weld Pipe Fittings from Taiwan (A–583–605) (4th Review)	Matthew Renkey (202) 482–2312.
Carbon Steel Butt-Weld Pipe Fittings from Thailand (A–549–807) (4th Review)	Matthew Renkey (202) 482–2312.
Frozen Warmwater Shrimp from Thailand (A–549–822) (2nd Review)	David Goldberger (202) 482–4136.
Frozen Warmwater Shrimp from Vietnam (A–552–802) (2nd Review)	David Goldberger (202) 482–4136.
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty orders is scheduled for initiation in March 2016.	
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in March 2016.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 28, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–02006 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting a new shipper review (''NSR'') of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam''). The period of review (''POR'') is August 1, 2014, through January 31, 2015. The review covers one exporter of subject merchandise: Hai Huong Seafood Joint Stock Company (''HHFISH''). The Department has preliminarily determined that HHFISH did not sell subject merchandise at less than normal value (''NV''). We invite interested parties to comment on the preliminary results.

DATES: *Effective Date:* February 3, 2016.

FOR FURTHER INFORMATION CONTACT: Kenneth Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6491.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2015, the Department initiated the NSR of the antidumping duty order on certain frozen fish fillets from Vietnam.[1] On September 21, 2015, the Department extended the deadline for the preliminary results until November 20, 2015.[2] On November 20, 2015, the Department extended the deadline for preliminary results until December 21, 2015.[3] On December 21, 2015, the Department extended the deadline for preliminary results until January 20, 2016.[4]

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus.* These products are classifiable under tariff article code 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius,* including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[5] Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.[6]

Methodology

The Department is conducting this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.214. Export prices have been calculated in accordance with section 772 of the Act. Because Vietnam is a non-market economy within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, please see the 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* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

The Department preliminarily finds that the following margins exist for the period August 1, 2014, to January 31, 2015.

Exporter	Producer	Weighted-average margin (dollars per kilogram)
Hai Huong Seafood Joint Stock Company	Hai Huong Seafood Joint Stock Company	0.00

Disclosure and Public Comments

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results of this review. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary

[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review; 2014–2015,* 80 FR 17390 (April 1, 2015).

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2014–2015 New Shipper Review,'' dated September 21, 2015.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2014–2015 New Shipper Review,'' dated November 20, 2015.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2014–2015 New Shipper Review,'' dated December 21, 2015.

[5] Until June 30, 2004 these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004 until December 31, 2006 these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007 until December 31, 2011 these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011 the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (''CBP'') that the subject merchandise may enter under: 1604.19.2000 and 1604 19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012 the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

[6] *See* ''Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Decision Memorandum for the Preliminary Results of the 2012–2013 Antidumping Duty Administrative Review,'' dated concurrently with and hereby adopted by this notice (''Preliminary Decision Memorandum''), for a complete description of the Scope of the Order.

results of review.[7] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.[8]

Any interested party may request a hearing within 30 days of publication of these preliminary results.[9] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[10]

The Department intends to issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in all comments and at any hearing, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and U.S. Customs Border and Protection (''CBP'') shall assess, antidumping duties on all appropriate entries on a per-unit basis for HHFISH. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from HHFISH entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by HHFISH, the cash deposit rate will be the rate established in the final results of this review (except, if a rate is zero or *de minimis,* no cash deposit will be required); (2) for subject merchandise exported by HHFISH but not manufactured by HHFISH, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* $2.39 per kilogram); and (3) for subject merchandise manufactured by the HHFISH, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: January 21, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
5. Bona Fides Analysis
6. Non-Market Economy Country
7. Separate Rates
8. Surrogate Country
9. Economic Comparability
10. Significant Producers of Identical or Comparable Merchandise
11. Data Availability
12. Determination of a Comparison Method
13. Fair Value Comparisons
14. U.S. Price
15. Normal Value
16. Factor Valuations
17. Currency Conversion
18. Conclusion and Recommendation

[FR Doc. 2016–02005 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* 19 CFR 351.309(c)(1)(ii).

[8] *See* 19 CFR 351.309(d)(1)–(2).

[9] *See* 19 CFR 351.310(c).

[10] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (''the Department'') is initiating a new shipper review (''NSR'') of the antidumping duty (''AD'') order on honey from the People's Republic of China (''PRC'') with respect to Shanghai Sunbeauty Trading Co., Ltd. (''Shanghai Sunbeauty''). The period of review (''POR'') for this NSR is December 01, 2014, through November 30, 2015.

DATES: *Effective Date:* February 3, 2016.

FOR FURTHER INFORMATION CONTACT: Jessica Weeks, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4877.

SUPPLEMENTARY INFORMATION:

Background

The AD order on honey was published in the **Federal Register** on December 10, 2001.[1] On December 17, 2015, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(b), the Department received a NSR request from Shanghai Sunbeauty.[2] Shanghai Sunbeauty certified that it is the exporter of the subject merchandise upon which the request is based and that its affiliate, Xiping Haina Trade Co., Ltd., is the producer of the subject merchandise.[3]

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b)(2)(ii), Shanghai Sunbeauty certified that it did not export subject merchandise to the United States during the period of investigation (''POI'').[4] Further, Xiping Haina Trade Co., Ltd. certified that it is the producer of the subject merchandise upon which the request is based. In

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China,* 66 FR 63670 (December 10, 2001) (''*Order*'').

[2] *See* Letter from Shanghai Sunbeauty, ''Honey from the People's Republic of China: Request for New Shipper Review,'' dated December 17, 2015 (''NSR Request'').

[3] *Id.,* at 1–2 and Exhibit 1.

[4] *Id.*

addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Shanghai Sunbeauty certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), Shanghai Sunbeauty also certified that its export activities were not controlled by the government of the PRC.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Shanghai Sunbeauty submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment and subsequent shipments; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

Finally, the Department conducted a U.S. Customs and Border Protection (''CBP'') database query and confirmed the price and quantity reported by Shanghai Sunbeauty.[8]

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and 19 CFR 351.214(d)(1), and based on the evidence provided by Shanghai Sunbeauty, we find that its request meets the threshold requirements for initiation of the NSR for shipments of honey from the PRC produced by Xiping Haina Trade Co., Ltd. and exported by Shanghai Sunbeauty.[9] The POR is December 01, 2014, through November 30, 2015.[10] If the information supplied by Shanghai Sunbeauty is found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review for Shanghai Sunbeauty or apply facts available pursuant to section 776 of the Act, depending on the facts on the record.

Absent a determination that the new shipper review is extraordinarily complicated, the Department intends to issue the preliminary results of this NSR within 180 days from the date of initiation and the final results within 90 days after the date on which the preliminary results are issued.[11]

It is the Department's usual practice, in cases involving non-market economies (''NMEs''), to require that a company seeking to establish eligibility for an antidumping duty rate separate from the NME entity-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Shanghai Sunbeauty that will include a section requesting information concerning its eligibility for a separate rate. The NSR will proceed if the responses provide sufficient indication that Shanghai Sunbeauty is not subject to either *de jure* or *de facto* government control with respect to its exports of subject merchandise.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of this review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the requesting companies in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Shanghai Sunbeauty certified that its affiliate Xiping Haina Trade Co., Ltd. produced the subject merchandise which Shanghai Sunbeauty exported, the sales of which are the basis for the NSR request, we will instruct CBP to permit the use of a bond only for subject merchandise which Xiping Haina Trade Co., Ltd produced and Shanghai Sunbeauty exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214, and 19 CFR 351.221(c)(1)(i).

Dated: January 27, 2016.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–02004 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–DS–P

[5] *Id.*

[6] *Id.*

[7] *Id.,* at 4 and Exhibit 2.

[8] *See* Memorandum to the File from Catherine Bertrand, Program Manager, AD/CVD Operations, Office V regarding ''U.S. Customs and Border Protection Query Results for Shanghai Sunbeauty Co., Ltd.'' dated concurrently with this notice.

[9] *See* Memorandum to the File, from Jessica Weeks, International Trade Compliance Analyst, ''Honey from the People's Republic of China: New Shipper Initiation Checklist,'' dated concurrently with this notice.

[10] *See* 19 CFR 351.214(g)(1)(ii)(B).

[11] *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The request described below for a new shipper review of the antidumping duty (AD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules, (''solar cells'') from the People's Republic of China (''PRC'') meets the statutory and regulatory requirements for initiation. The period of review (''POR'') for the new shipper review is December 1, 2014 through November 30, 2015.

DATES: *Effective Date:* February 3, 2016.

FOR FURTHER INFORMATION CONTACT: Erin Kearney, 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) 482–0167.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, the Department of Commerce (''Department'') published the AD order on solar cells from the PRC.[1] On December 30, 2015, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(c), the Department received a timely request for a new shipper review from Anji DaSol Solar Energy Science & Technology Co., Ltd. (''Anji DaSol'').[2] On January 19, 2016, the Department received entry data from U.S. Customs and Border Protection (''CBP'') related to Anji DaSol's request for a new shipper review, and on January 21, 2016, we requested comments on the entry data from

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012).

[2] *See* Letter from Anji DaSol to the Secretary of Commerce ''Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Request for New Shipper Review,'' dated December 30, 2015 (''NSR Request'').

interested parties.[3] Because the Department has certain concerns with the CBP entry data, on January 21, 2016, we also issued a questionnaire to Anji DaSol in order to seek additional information with respect the data.[4] The Department intends to address these, and any remaining issues, after initiation of this NSR.[5] We intend to request entry documents from CBP in order to confirm certain information reported by Anji DaSol. The continuation of the new shipper review will be contingent upon confirmation of the information reported in the review request.

Anji DaSol stated that it is the producer and exporter of the subject merchandise upon which its request for a new shipper review is based. Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Anji DaSol certified that it did not export solar cells to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Anji DaSol certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported solar cells to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Anji DaSol also certified that its export activities were not controlled by the central government of the PRC.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Anji DaSol submitted documentation establishing the following: (1) The date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption in the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

The Department conducted a CBP database query and confirmed by examining the results that the sale of subject merchandise that Anji DaSol reported to the Department entered the United States during the POR specified by the Department's regulations.[8]

Period of Review

Pursuant to 19 CFR 351.214(g)(1)(i)(A), the POR for the new shipper review of Anji DaSol is December 1, 2014, through November 30, 2015.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b), and based on the information on the record, the Department finds that Anji DaSol meets the threshold requirements for initiation of a new shipper review of its shipment of solar cells from the PRC.[9] However, if the information supplied by Anji DaSol is later found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review or apply facts available pursuant to section 776 of the Act, depending upon the facts on the record.

Pursuant to 19 CFR 351.221(c)(1)(i), the Department will publish the notice of initiation of a new shipper review no later than the last day of the month following the anniversary or semiannual anniversary month of the order. The Department intends to issue the preliminary results of this new shipper review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.[10]

It is the Department's usual practice, in cases involving non-market economies (''NME''), to require that a company seeking to establish eligibility for an AD rate separate from the NME-wide entity rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Anji DaSol which will include a section requesting information with regard to its export activities for the purpose of establishing its eligibility for a separate rate. The new shipper review of Anji DaSol will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its exports of solar cells.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from Anji DaSol in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Anji DaSol certified that it exports and produces the subject merchandise that is the subject of this new shipper review, we will instruct CBP to permit the use of a bond only for entries of subject merchandise which Anji DaSol exported and produced.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: January 27, 2016.

James Maeder,

Senior Director Antidumping and Countervailing Duty Operations, Office I.

[FR Doc. 2016–02002 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that

[3] *See* Letter to All Interested Parties ''Request for a New Shipper Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China 12/01/2014–11/30/15: Anji DaSol Solar Energy Science & Technology Co., Ltd.,'' dated January 21, 2016 (''CBP Data'').

[4] Due to the business proprietary nature of the CBP data, *see* Initiation Checklist at Part I, question 15 for further information.

[5] *See* Letter to Anji DaSol, ''Request for New Shipper Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,'' dated January 21, 2016.

[6] *See* NSR Request, at Exhibit 1.

[7] *Id.* at Exhibit 2.

[8] *See* 19 CFR 351.214(g)(1)(i)(A).

[9] *See, generally,* Memorandum to the File through Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, ''Initiation of Antidumping New Shipper Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Anji DaSol Solar Energy Science & Technology Co., Ltd., Initiation Checklist,'' dated concurrently with this notice (''Initiation Checklist'').

[10] *See* section 751(a)(2)(B)(iv) of the Act; 19 CFR 351.214(i).

antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after February 2016, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request A Review: Not later than the last day of February 2016,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period of review
Antidumping Duty Proceedings	
Brazil:	
Frozen Warmwater Shrimp, A–351–838	2/1/15–1/31/16
Stainless Steel Bar, A–351–825	2/1/15–1/31/16
France: Uranium, A–427–818	2/1/15–1/31/16
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/15–1/31/16
Certain Preserved Mushrooms, A–533–813	2/1/15–1/31/16
Frozen Warmwater Shrimp, A–533–840	2/1/15–1/31/16
Stainless Steel Bar, A–533–810	2/1/15–1/31/16
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/15–1/31/16
Certain Preserved Mushrooms, A–560–802	2/1/15–1/31/16
Italy: Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/15–1/31/16
Japan:	
Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/15–1/31/16
Stainless Steel Bar, A–588–833	2/1/15–1/31/16
Malaysia: Stainless Steel Butt-Weld Fittings, A–557–809	2/1/15–1/31/16
Mexico: Large Residential Washers, A–201–842	2/1/15–1/31/16

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Phillippines: Stainless Steel Butt-Weld Pipe Fittings, A–565–801	2/1/15–1/31/16
Republic of Korea:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/15–1/31/16
Large Residential Washers, A–580–868	2/1/15–1/31/16
Socialist Republic of Vietnam:	
Frozen Warmwater Shrimp, A–552–802	2/1/15–1/31/16
Steel Wire Garment Hangers, A–552–812	2/1/15–1/31/16
Utility Scale Wind Towers, A–552–814	2/1/15–1/31/16
Taiwan: Certain Crystalline Silicon Photovoltaic Products, A–583–853	7/31/14–1/31/16
Thailand: Frozen Warmwater Shrimp, A–549–822	2/1/15–1/31/16
The People's Republic of China:	
Certain Preserved Mushrooms, A–570–851	2/1/15–1/31/16
Certain Crystalline Silicon Photovoltaic Products, A–570–010	7/31/14–1/31/16
Frozen Warmwater Shrimp, A–570–893	2/1/15–1/31/16
Heavy Forged Hand Tools,, With or Without Handles, A–570–803	2/1/15–1/31/16
Small Diameter Graphite Electrodes, A–570–929	2/1/15–1/31/16
Uncovered Innerspring Units, A–570–928	2/1/15–1/31/16
Utility Scale Wind Towers, A–570–981	2/1/15–1/31/16
Countervailing Duty Proceedings	
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, C–533–818	1/1/15–12/31/15
Prestressed Concrete Steel Wire Strand, C–533–829	1/1/15–12/31/15
Indonesia: Certain Cut-to-Length Carbon-Quality Steel Plate, C–560–806	1/1/15 -12/31/15
Republic of Korea:	
Certain Cut-to-Length Carbon-Quality Steel Plate, C–580–837	1/1/15–12/31/15
Large Residential Washers, C–580–869	1/1/15–12/31/15
Socialist Republic of Vietnam: Steel Wire Garment Hangers, C–552–813	1/1/15–12/31/15
The People's Republic of China:	
Certain Crystalline Silicon Photovoltaic Products, C–570–011	6/10/14 -12/31/15
Utility Scale Wind Towers, C–570–982	1/1/15–12/31/15
Suspension Agreements	
None	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS'') on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov*.[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of February 2016. If the Department does not receive, by the last day of February 2016, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Dated: January 28, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–02007 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–DS–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: Interim Capital Constructions Fund Agreement, Family of Forms, Certification and Deposit/Withdrawal Report.

OMB Control Number: 0648–0041.

Form Number(s): NOAA Forms 34–82 and 88–14.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 1,445.

Average Hours per Response: Deposit/withdrawal form, 20 minutes; application for program benefits, 3 hours and 30 minutes; certificate, 1 hour.

Burden Hours: 2,732.

Needs and Uses: This request is for extension of a currently approved information collection.

Respondents will be commercial fishing industry individuals, partnerships, and corporations which entered into Capital Construction Fund (CCF) agreements with the Secretary of Commerce allowing deferral of Federal taxation on fishing vessel income deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The interim Capital Construction Fund Agreement and Certificate Family of Forms is required pursuant to 50 CFR part 259.30 and P.L. 99–514 (The Tax Reform Act, 1986). The deposit/withdrawal information collected from agreement holders is required pursuant to 50 CFR part 259.35 and P.L. 99–514. The information collected from applicants for the Interim CCF Agreement is used to determine their eligibility to participate in the CCF Program. The information collected from agreement holders for the Certificate Family of Forms is used to identify their program eligible vessels, their program projects and to certify the cost of a project at completion. The information collected on the deposit/withdrawal report form is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected on the deposit/withdrawal report must also be reported semi-annually to the Secretary of Treasury in accordance with the Tax Reform Act.

Affected Public: Businesses or other for-profit organizations.

Frequency: One time only, annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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 29, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–01983 Filed 2–2–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Army proposes to delete a system of records, A0351 AMC, ''Student/Faculty Records: AMC Schools Systems'' in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system was used to determine applicant eligibility, monitor individual's progress, maintain record of student/faculty achievements, and to provide

bases for management assessment of curricula and faculty effectiveness and class standing.

Note: Previously on October 3, 2012 (77 FR 60412), the Department of the Army published a deletion notice but later discovered that the records had not been transferred as indicated; a reinstatement notice was published October 30, 2015 (80 FR 66881). Subsequently, it has been confirmed that the training records are now collected in the Army Training Requirements and Resources System and are covered under A0351 DAPE, Army Training Requirements and Resources System (ATRRS) (January 3, 2002, 67 FR 311) system of records notice.

DATES: Comments will be accepted on or before March 4, 2016. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov.*

Follow the instructions for submitting comments.

* Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.* The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351 AMC

STUDENT/FACULTY RECORDS:

AMC Schools Systems (October 30, 2015, 80 FR 66881)

REASON:

The Army organization hosting these training records was relocated from Rock Island, Illinois to McAlester Army Ammunition Plant, Oklahoma in 1995, due to base realignment and new missions. These records are no longer collected from trainees at the ammunition training site. Training sites are no longer available and all ammunition training is done online through the Army Training Requirement and Resources System (ATRRS). Previous training records were transferred to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200, with the soldiers and government civilian personnel records upon separation or retirement from the Army. Faculty and instructor qualification records were destroyed after five years in accordance with the disposition schedule. Training records are now collected in the Army Training Requirements and Resources System and are covered under A0351 DAPE, Army Training Requirements and Resources System (ATRRS) (January 3, 2002, 67 FR 311) system of records notice. Therefore, A0351 AMC, Student/Faculty Records: AMC Schools Systems can be deleted.

[FR Doc. 2016–02001 Filed 2–2–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0008]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is JS006CND, Department of Defense Counternarcotics C4I System (February 22, 1993, 58 FR 10557).

DATES: Comments will be accepted on or before March 4, 2016. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571)372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.* The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

JS006CND

Department of Defense Counternarcotics C4I System (February 22, 1993, 58 FR 10557).

REASON:

Based on a recent review of JS006CND, Department of Defense Counternarcotics C4I System, it has been confirmed that this system of records transferred from the Joint Staff to the Defense Information System Agency (DISA) in 1993. All records that were housed at the JS have been destroyed according to the National Archives and Records Administration 10-year disposition schedule. Since the transfer to DISA, they provide all required reporting in terms of information assurance, programmatic, and budgeting. The remaining applications hosted by the system at DISA do not collect personally identifiable information; therefore, the Department of Defense Counternarcotics C4I System of Records Notice can be deleted.

[FR Doc. 2016–01984 Filed 2–2–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Invitation to Unmanned Aircraft Industry for Review and Comment Period on Edition 1 of NATO Standardization Agreement (STANAG) 4703 Light Unmanned Aircraft Systems (UAS) Airworthiness Requirements (AEP–83)

AGENCY: United States Office of the Secretary of Defense through the United States Department of Defense for North Atlantic Treaty Organization (NATO) STANAG 4703 Custodial Support Team (CST), DoD.

ACTION: Collection of technical comments from Industry on STANAG 4703.

SUMMARY: The NATO STANAG 4703 CST is seeking points of contact (POC) from U.S. UAS Unmanned Aircraft System Industry who are interested in participating in a formal review of STANAG 4703 Edition 1. The STANAG 4703 CST is seeking written comments and/or concerns from industry that will be provided to the CST for review and consideration for incorporation in future editions of the STANAG. NATO STANAG 4703 contains a set of technical airworthiness requirements intended for the airworthiness certification of fixed-wing light military UAS with a maximum take-off weight not greater than 150 kg that intend to regularly operate in non-segregated airspace over all population densities. These requirements represent the minimum acceptable airworthiness requirements for design and construction of military fixed-wing UAS intended to operate in non-segregated airspace. STANAG 4703 is intended to be implemented for airworthiness certification of Light UAS within each nation's national regulatory framework. Interested participant POC information will be forwarded to the STANAG 4703 CST Chairman by the STANAG 4703 U.S. Head of Delegation. A copy of STANAG 4703 will be provided to interested participants once the POC information is received by the U.S. Delegation. The intent of this effort is to collect comments from NATO member Fixed Wing UAS Industries, to disposition the comments, and at a future date hold an Industry Day to discuss industry comments provided in an open forum. Keywords: Fixed Wing, Light, UAS, UAV, Remotely Piloted Vehicle, Unmanned Aircraft, Unmanned Air Vehicle, Unmanned Aircraft Systems, Unmanned Air System, Airworthiness.

DATES: We request POC information be provided to Mrs. Sandra A. Greeley at the email address in the **FOR FURTHER INFORMATION CONTACT** section. We request responses by February 29, 2016. Industry Day is tentatively scheduled for May 2016 in Rome, Italy.

FOR FURTHER INFORMATION CONTACT:

Collection of Technical comments from U.S. Industry on STANAG 4703 Coordinator: Mrs. Sandra A Greeley, Email: *sandra.a.greeley.ctr@navy.mil.,* Telephone: (301) 342–8635.

STANAG 4703 Technical Information and Questions: Mr. Richard Adams, Email: *richard.adams@navy.mil.,* Telephone: (301) 342–8297.

Dated: January 28, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–01943 Filed 2–2–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0013]

Agency Information Collection Activities; Comment Request; 2016–17 Baccalaureate and Beyond Longitudinal Study (B&B:16/17) Field Test Data Collection

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before April 4, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0013. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that

is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2016–17 Baccalaureate and Beyond Longitudinal Study (B&B:16/17) Field Test Data Collection.

OMB Control Number: 1850–0729.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 4,417.

Total Estimated Number of Annual Burden Hours: 977.

Abstract: This request is for the National Center for Education Statistics (NCES) to conduct a field test of the 2016/17 Baccalaureate and Beyond Longitudinal Study (B&B:16/17). The B&B studies of the education, work, financial, and personal experiences of individuals who have completed a bachelor's degree at a given point in time are a series of longitudinal studies. Every 8 years, students are identified as bachelor's degree recipients through the National Postsecondary Student Aid Study (NPSAS). B&B:16/17 is the first follow-up of a panel of baccalaureate degree recipients identified in the 2015–16 NPSAS, and part of the fourth cohort (B&B:16) of the B&B series. The primary purposes of the B&B studies are to describe the post-baccalaureate paths of new college graduates, with a focus on their experiences in the labor market and post-baccalaureate education, and their education-related debt. B&B also focuses on the continuing education paths of science, technology, engineering, and mathematics (STEM) graduates, as well as the experiences of those who have begun careers in education of students through the 12th grade. Since graduating from college in 2014–15 for the field test, and 2015–16 for the full-scale study, members of this B&B:16 cohort will begin moving into and out of the workforce, enrolling in additional undergraduate and graduate education, forming families, and repaying undergraduate education-related debt. Documenting these choices and pathways, along with individual, institutional, and employment characteristics that may be related to those choices, provides critical information on the costs and benefits of a bachelor's degree in today's workforce. B&B studies include both traditional-age and non-traditional-age college graduates, whose education options and choices often diverge considerably, and allow study of the paths taken by these different graduates. The results of this field test will inform the B&B:16/17 full-scale data collection.

Dated: January 28, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2016–01933 Filed 2–2–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; State Personnel Development Grants Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: *Overview Information:* State Personnel Development Grants (SPDG) Program Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.323A.

DATES:

Applications Available: February 3, 2016.

Deadline for Transmittal of Applications: March 21, 2016.

Deadline for Intergovernmental Review: May 18, 2016.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program, authorized by the Individuals with Disabilities Education Act (IDEA), is to assist State educational agencies (SEAs) in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

Priorities: This notice contains two absolute priorities. Absolute Priority 1 is from the notice of final priorities and definitions for this program, published in the **Federal Register** on August 2, 2012 (77 FR 45944) (NFP). In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 2 is from sections 651 through 655 of IDEA.

Absolute Priorities: For FY 2016 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of these priorities.

These priorities are:

Absolute Priority 1—Effective and Efficient Delivery of Professional Development

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority to assist SEAs in reforming and improving their systems for personnel (as that term is defined in section 651(b) of IDEA) preparation and professional development of individuals providing early intervention, educational, and transition services in order to improve results for children with disabilities.

In order to meet this priority, an applicant must demonstrate in the SPDG State Plan it submits as part of its application under section 653(a)(2) of IDEA that its proposed project will—

(1) Use evidence-based (as defined in this notice) professional development practices that will increase implementation of evidence-based practices and result in improved outcomes for children with disabilities;

(2) Provide ongoing assistance to personnel receiving SPDG-supported professional development that supports the implementation of evidence-based practices with fidelity (as defined in this notice); and

(3) Use technology to more efficiently and effectively provide ongoing professional development to personnel, including to personnel in rural areas and to other populations, such as personnel in urban or high-need local educational agencies (LEAs) (as defined in this notice).

Absolute Priority 2—State Personnel Development Grants

Statutory Requirements. To meet this priority, an applicant must meet the following statutory requirements:

1. *State Personnel Development Plan.*

An applicant must submit a State Personnel Development Plan that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct

supplementary aids and services to children with disabilities, and that—

(a) Is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a)(8) and (9) of IDEA;

(b) Is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

(1) Current and anticipated personnel vacancies and shortages; and

(2) The number of preservice and inservice programs;

(c) Is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, as amended (ESEA); the Rehabilitation Act of 1973, as amended; and the Higher Education Act of 1965, as amended (HEA);

(d) Describes a partnership agreement that is in effect for the period of the grant, which agreement must specify—

(1) The nature and extent of the partnership described in accordance with section 652(b) of IDEA and the respective roles of each member of the partnership, including, if applicable, an individual, entity, or agency other than the SEA that has the responsibility under State law for teacher preparation and certification; and

(2) How the SEA will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

(e) Describes how the strategies and activities the SEA uses to address identified professional development and personnel needs will be coordinated with activities supported with other public resources (including funds provided under Part B and Part C of IDEA and retained for use at the State level for personnel and professional development purposes) and private resources;

(f) Describes how the SEA will align its personnel development plan with the plan and application submitted under sections 1111 and 2112, respectively, of the ESEA;

(g) Describes strategies the SEA will use to address the identified professional development and personnel needs and how such strategies will be implemented, including—

(1) A description of the programs and activities that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

(2) How such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662 of IDEA;

(h) Provides an assurance that the SEA will provide technical assistance to LEAs to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

(i) Provides an assurance that the SEA will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving those children;

(j) Describes how the SEA will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

(k) Describes the steps the SEA will take to ensure that economically disadvantaged and minority children are not taught at higher rates by teachers who are not highly qualified; and

(l) Describes how the SEA will assess, on a regular basis, the extent to which the strategies implemented have been effective in meeting the performance goals described in section 612(a)(15) of IDEA.

2. *Partnerships.*

Required Partners.

Applicants must establish a partnership with LEAs and other State agencies involved in, or concerned with, the education of children with disabilities, including—

(a) Not less than one institution of higher education; and

(b) The State agencies responsible for administering Part C of IDEA, early education, child care, and vocational rehabilitation programs.

Other Partners.

An SEA must work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

(a) The Governor;

(b) Parents of children with disabilities ages birth through 26;

(c) Parents of nondisabled children ages birth through 26;

(d) Individuals with disabilities;

(e) Parent training and information centers or community parent resource centers funded under sections 671 and 672 of IDEA, respectively;

(f) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(g) Personnel as defined in section 651(b) of IDEA;

(h) The State advisory panel established under Part B of IDEA;

(i) The State interagency coordinating council established under Part C of IDEA;

(j) Individuals knowledgeable about vocational education;

(k) The State agency for higher education;

(l) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

(m) Other providers of professional development who work with infants, toddlers, preschoolers, and children with disabilities;

(n) Other individuals; and

(o) An individual, entity, or agency as a partner in accordance with section 652(b)(3) of IDEA, if State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the SEA.

3. *Use of Funds.*

(a) Professional Development Activities—Each SEA that receives a grant under this program must use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

(i) Provide teacher mentoring, team teaching, reduced class schedules and caseloads, and intensive professional development;

(ii) Use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 9101 of the ESEA; and

(iii) Encourage collaborative and consultative models of providing early intervention, special education, and related services.

(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

(i) Into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

(ii) To enhance learning by children with disabilities; and

(iii) To effectively communicate with parents.

(3) Providing professional development activities that—

(i) Improve the knowledge of special education and regular education teachers concerning—

(A) The academic and developmental or functional needs of students with disabilities; or

(B) Effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

(ii) Improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, and that—

(A) Provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

(B) Involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

(C) Provide training in methods of—

(I) Positive behavioral interventions and supports to improve student behavior in the classroom;

(II) Scientifically based reading instruction, including early literacy instruction;

(III) Early and appropriate interventions to identify and help children with disabilities;

(IV) Effective instruction for children with low-incidence disabilities;

(V) Successful transitioning to postsecondary opportunities; and

(VI) Classroom-based techniques to assist children prior to referral for special education;

(D) Provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

(E) Provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate individualized education programs (IEPs); and

(F) Provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving those students;

(iii) Train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

(iv) Train early intervention, preschool, and related services providers, and other relevant school personnel in conducting effective individualized family service plan (IFSP) meetings.

(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have proven effective in recruiting and retaining highly qualified teachers, including programs that provide—

(i) Teacher mentoring from exemplary special education teachers, principals, or superintendents;

(ii) Induction and support for special education teachers during their first three years of employment as teachers; or

(iii) Incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

(i) Innovative professional development programs (which may be provided through partnerships with institutions of higher education (IHEs)), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy and that are consistent with the definition of professional development in section 9101 of the ESEA; and

(ii) The development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

(i) Professional development programs to improve the delivery of early intervention services;

(ii) Initiatives to promote the recruitment and retention of early intervention personnel; and

(iii) Interagency activities to ensure that early intervention personnel are adequately prepared and trained.

(b) Other Activities—Each SEA that receives a grant under this program must use the grant funds to support activities in accordance with the State's Personnel Development Plan, including one or more of the following:

(1) Reforming special education and regular education teacher certification (including re-certification) or licensing requirements to ensure that—

(i) Special education and regular education teachers have—

(A) The training and information necessary to address the full range of needs of children with disabilities across disability categories; and

(B) The necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

(ii) Special education and regular education teacher certification (including re-certification) or licensing requirements are aligned with challenging State academic content standards; and

(iii) Special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

(4) Developing and implementing mechanisms to assist LEAs and schools in effectively recruiting and retaining highly qualified special education teachers.

(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensure, consistent with title II of the HEA (20 U.S.C. 1021 *et seq.*).

(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this absolute priority may lead to the weakening of any State teacher certification or licensing requirement.

(7) Assisting LEAs to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily

accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

(8) Developing, or assisting LEAs in developing, merit-based performance systems and strategies that provide differential and bonus pay for special education teachers.

(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

(10) When applicable, coordinating with, and expanding centers established under section 2113(c)(18) of the ESEA to benefit special education teachers.

(c) Contracts and Subgrants—An SEA that receives a grant under this program—

(1) Must award contracts or subgrants to LEAs, IHEs, parent training and information centers, or community parent resource centers, as appropriate, to carry out the State Personnel Development Plan; and

(2) May award contracts and subgrants to other public and private entities, including the lead agency under Part C of IDEA, to carry out the State plan.

(d) Use of Funds for Professional Development—An SEA that receives a grant under this program must use—

(1) Not less than 90 percent of the funds the SEA receives under the grant for any fiscal year for the Professional Development Activities described in paragraph (a); and

(2) Not more than 10 percent of the funds the SEA receives under the grant for any fiscal year for the Other Activities described in paragraph (b).

Additional SPDG Requirements

Projects funded under this program must:

(a) Budget for a three-day project directors' meeting in Washington, DC, during each year of the project;

(b) Budget $4,000 annually for support of the State Personnel Development Grants Program Web site currently administered by the University of Oregon (*www.signetwork.org*); and

(c) If a project receiving assistance under this program authority maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

Definitions.

The following definitions are from the NFP and 34 CFR 77.1, as marked.

For the purposes of this priority, the definition of ''evidence-based'' consists of the following definitions in 34 CFR 77.1:

Evidence of promise means there is empirical evidence to support the theoretical linkage(s) between at least one critical component and at least one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice. Specifically, evidence of promise means the conditions in both paragraphs (i) and (ii) of this definition are met:

(i) There is at least one study that is a—

(A) Correlational study with statistical controls for selection bias;

(B) Quasi-experimental design study that meets the What Works Clearinghouse Evidence Standards with reservations; or

(C) Randomized controlled trial that meets the What Works Clearinghouse Evidence Standards with or without reservations.

(ii) The study referenced in paragraph (i) of this definition found a statistically significant or substantively important (defined as a difference of 0.25 standard deviations or larger) favorable association between at least one critical component and one relevant outcome presented in the logic model for the proposed process, product, strategy, or practice.

Large sample means an analytic sample of 350 or more students (or other single analysis units) who were randomly assigned to a treatment or control group or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units) and that were randomly assigned to a treatment or control group.

Moderate evidence of effectiveness means one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations [What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19*], found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(ii) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations [What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19*] , found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample (**Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

Multi-site sample means more than one site, where site can be defined as an LEA, locality, or State.

Relevant outcome means the student outcome or outcomes (or the ultimate outcome if not related to students) that the proposed process, product, strategy, or practice is designed to improve, consistent with the specific goals of a program.

Strong evidence of effectiveness means that one of the following conditions is met:

(i) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations [What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19*], found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample

and a multi-site sample (**Note:** multiple studies can cumulatively meet the large and multi-site sample requirements as long as each study meets the other requirements in this paragraph).

(ii) There are at least two studies of the effectiveness of the process, product, strategy, or practice being proposed, each of which: Meets the What Works Clearinghouse Evidence Standards with reservations [What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can currently be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19*], found a statistically significant favorable impact on a relevant outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the studies or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a large sample and a multi-site sample.

Strong theory means a rationale for the proposed process, product, strategy, or practice that includes a logic model.

The following definitions are from the NFP:

Fidelity means the delivery of instruction in the way in which it was designed to be delivered.

High-need LEA means, in accordance with section 2102(3) of the ESEA, an LEA—

(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 9101(33) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

Program Authority: 20 U.S.C. 1451–1455.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $8,810,279.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2017 from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000–$1,750,000 (for the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico). In the case of outlying areas (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands), awards will be not less than $80,000.

Note: We will set the amount of each award after considering—

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area;

(3) The types of activities proposed by the State or outlying area;

(4) The alignment of proposed activities with section 612(a)(14) of IDEA;

(5) The alignment of proposed activities with State plans and applications submitted under sections 1111 and 2112, respectively, of the ESEA; and

(6) The use, as appropriate, of scientifically based research and instruction.

Estimated Average Size of Awards: $900,000 excluding the outlying areas.

Estimated Number of Awards: 9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Not less than one year and not more than five years.

III. Eligibility Information

1. *Eligible Applicants:* An SEA of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Note: Public Law 95–134, which permits the consolidation of grants to the outlying areas, does not apply to funds received under this competition.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Eligible Subgrantees:* (a) Under 75.708(b) and (c) a grantee may award subgrants—to directly carry out project activities described in its application—to the following types of entities: LEAs, IHEs, parent training and information centers, community parent resource centers, and other public and private entities.

(b) The grantee may award subgrants to entities it has identified in an approved application.

4. *Other General Requirements:* The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.323A.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to no more than 60 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.

• Use a font that is either 12 point or larger.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit and double-spacing requirements do not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the page limit and double-spacing requirements do apply to all of Part III, the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

We will reject your application if you exceed the page limit in the application narrative section or if you apply standards other than those specified in this notice and the application package.

3. *Submission Dates and Times:*

Applications Available: February 3, 2016.

Deadline for Transmittal of Applications: March 21, 2016.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Other Submission Requirements in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 18, 2016.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the SPDG competition, CFDA number 84.323A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the SPDG competition at *www.Grants.gov.* You must search for the downloadable application package

for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.323, not 84.323A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov*. In addition, for specific guidance and procedures for submitting an application through Grants.gov, please refer to the Grants.gov Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you and email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by Grants.gov, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW., room 4097, Potomac Center Plaza, Washington, DC 20202–2600. FAX: (202) 245–7617.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.323A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.323A), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify

administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The goal of the SPDG Program is to reform and improve State systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities. Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the SPDG Program. These measures assess the extent to which:

- Projects use evidence-based professional development practices to support the attainment of identified competencies.
- Participants in SPDG professional development demonstrate improvement in implementation of SPDG-supported practices over time.
- Projects use SPDG professional development funds to provide activities designed to sustain the use of SPDG-supported practices.
- Highly qualified special education teachers, as defined in section 602(10) of IDEA, that have participated in SPDG-supported special education teacher retention activities remain as special education teachers two years after their initial participation in these activities.

Each grantee funded under this competition must collect and annually report data related to its performance on these measures in the project's annual and final performance report to the Department in accordance with section 653(d) of IDEA and 34 CFR 75.590. Applicants should discuss in the application narrative how they propose to collect performance data for these measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW., Room 4097, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–6673.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5037, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 27, 2016.

Michael K. Yudin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2016–02008 Filed 2–2–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2015–1 of the Defense Nuclear Facilities Safety Board, Emergency Preparedness and Response at the Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: On November 24, 2015, the Defense Nuclear Facilities Safety Board transmitted Recommendation 2015–1, *Emergency Preparedness and Response at the Pantex Plant,* to the Department of Energy. In accordance with section 315(c) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(c), the following represents the Secretary of Energy's response to the Recommendation.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before March 4, 2016.

ADDRESSES: Please send to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Govan, Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Environment, Health, Safety and

Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC on January 27, 2016.

Joe Olencz,

Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Environment, Health, Safety and Security.

January 13, 2016

The Honorable Joyce L. Connery

Chairman

Defense Nuclear Facilities Safety Board

625 Indiana Avenue NW, Suite 700

Washington, DC 20004

Dear Madam Chairman:

The Department of Energy (DOE) acknowledges receipt of Defense Nuclear Facilities Safety Board (Board) Recommendation 2015–1, *Emergency Preparedness and Response at the Pantex Plant,* which was published in the **Federal Register** on December 3, 2015.

The Department shares the Board's view that actions are needed to improve emergency preparedness and response at Pantex. DOE accepts Recommendation 2015–1, which complements improvement actions that the National Nuclear Security Administration (NNSA) has already taken at Pantex as part of the Implementation Plan for Recommendation 2014–1, *Emergency Preparedness and Response.*

We appreciate the Board's perspective and look forward to our continued interaction on preparing the Pantex Implementation Plan. Additionally, we appreciate the Board's consideration and incorporation of the Department's comments into Recommendation 2015–1. I have assigned Geoffrey L. Beausoleil, Manager, NNSA Production Office, to be the Department's Responsible Manager for this Recommendation.

If you have any questions, please contact Mr. Geoffrey L. Beausoleil at (865) 576–0752

Sincerely,

Ernest J. Moniz

[FR Doc. 2016–01981 Filed 2–2–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number EERE–2013–BT–NOC–0005]

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meetings.

SUMMARY: The Department of Energy (DOE) announces public meetings and webinars for the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: DOE will host public meetings on the following dates:

- February 26, 2016 (webinar only); 1:00pm–3:00pm
- April 28, 2016; 9:00 a.m.–3:30pm

ADDRESSES: Unless otherwise stated, the meetings will be held at: The U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585.

To register for the webinars and receive call-in information, please register for the appropriate meeting date at *https://attendee.gotowebinar.com/register/7861562386735908866.*

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC, 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE announces public meetings and webinars for the ASRAC. Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov* . In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes have been made regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on January 27, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–01978 Filed 2–2–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–150–000]

Columbia Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Line Wb2va Integrity Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Line WB2VA Integrity Project, proposed by Columbia Gas Transmission, LLC (Columbia) in the above-referenced docket. The Line WB2VA Integrity Project would include modifications to Columbia's existing facilities at 17 sites in Hardy County, West Virginia, and Shenandoah, Page, Rockingham, and Greene Counties, Virginia. Proposed modifications include installation of pig launchers and receivers;[1] replacement of short sections of existing pipeline, mainline valves, and other appurtenant facilities; and abandonment of two existing 20-inch-diameter pipelines beneath the South Fork of the Shenandoah River that would be replaced with a new 24-inch-diameter pipeline. The purpose of the project is to allow the use of modern inline inspection devices and upgrade pipeline segments in compliance with U.S. Department of Transportation safety standards.

The EA assesses the potential environmental effects of the construction and operation of the Line WB2VA Integrity Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers, West Virginia Department of Natural Resources, and West Virginia Department of Environmental Protection participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before February 27, 2016.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP15–150–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(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 also file your comments electronically 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.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[2] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

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 (*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.,* CP15–150). 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.*

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01952 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–64–000.

Applicants: Southwestern Public Service Company, Xcel Energy Southwest Transmission Company, LLC.

Description: Joint Application for Authorization for Disposition of Jurisdictional Transmission Facilities of Southwestern Public Service Company and Xcel Energy Southwest Transmission Company, LLC.

Filed Date: 1/28/16.

Accession Number: 20160128–5164.

Comments Due: 5 p.m. ET 2/18/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1061–002.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance establish effective date—CSP Project to be effective 2/11/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5156.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–791–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Settlement Revenue Distribution Mechanism to be effective 2/1/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5475.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–800–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: 2016–1–28_JD_SPS–XEST–O&M–679–0.0.0—Filing to be effective 12/31/9998.

Filed Date: 1/28/16.

Accession Number: 20160128–5147.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–801–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2900R5 KMEA NITSA NOA to be effective 1/1/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5197.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–802–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2236R7 Golden Spread Electric Cooperative, Inc. NITSA NOA to be effective 1/1/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5206.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–803–000.

Applicants: Wisconsin Electric Power Company.

Description: Tariff Cancellation: Cancellation of Wisconsin Electric/WPPI FRT Service Agreement No 2 to be effective 1/1/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5239.

Comments Due: 5 p.m. ET 2/18/16.

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 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01951 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–34–000]

Electric Power Supply Association, Retail Energy Supply Association, Dynegy Inc., Eastern Generation, LLC, NRG Power Marketing LLC and GenOn Energy Management, LLC v. FirstEnergy Solutions Corporation, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company; Notice of Complaint

Take notice that on January 27, 2016, pursuant to sections 206, 306 and 309 of the Federal Power Act [1] and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2015), the Electric Power Supply Association, the Retail Energy Supply Association, Dynegy Inc., Eastern Generation, LLC, NRG Power Marketing LLC and GenOn Energy Management, LLC (Complainants) filed a formal complaint against FirstEnergy Corporation's subsidiaries, FirstEnergy Solutions Corporation, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (Respondents), alleging that an abusive affiliate power sales contract involving subsidiaries of FirstEnergy Corporation may evade Commission review, all as more fully explained in the complaint.

Complainants certify that copies of the complaint were served on the contacts for Respondents, as listed on the Commission's list of Corporate Officials.

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 Respondents' answer and all interventions, or protests must be filed on or before the comment date. The Respondents' answer, motions to intervene, and protests must be served on 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 14 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 16, 2016.

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01954 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824e, 825e, 825h (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–33–000]

Electric Power Supply Association, Retail Energy Supply Association, Dynegy Inc., Eastern Generation, LLC, NRG Power Marketing LLC, GenOn Energy Management, LLC v. AEP Generation Resources, Inc., Ohio Power Company; Notice of Complaint

Take notice that on January 27, 2016, pursuant to sections 206, 306 and 309 of the Federal Power Act [1] and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2015), Electric Power Supply Association, the Retail Energy Supply Association, Dynegy Inc., Eastern Generation, LLC, NRG Power Marketing LLC and GenOn Energy Management, LLC (Complainants) filed a formal complaint against American Electric Power Company, Inc.'s (AEP) subsidiaries, AEP Generation Resources, Inc. and Ohio Power Company (collectively, Respondents) alleging that an abusive affiliate power sales contract involving subsidiaries of AEP may evade Commission review, all as more fully explained in the complaint.

Complainants certify that copies of the complaint were served on contacts for Respondents, as listed in on the Commission's list of Corporate Officials.

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.

[1] 16 U.S.C. 824e, 825e and 825h (2012).

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 16, 2016.

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01953 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–775–000]

3 Phases Renewables, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of 3 Phases Renewables, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 17, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01955 Filed 2–2–16; 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 electric corporate filings:

Docket Numbers: EC16–62–000.

Applicants: Wabash Valley Power Association, Inc., Peabody Electricity LLC, Lively Grove Energy Partners, LLC.

Description: Joint Application for Authorization under Section 203 of the Federal Power Act of Wabash Valley Power Association, Inc., et al.

Filed Date: 1/27/16.

Accession Number: 20160127–5239.

Comments Due: 5 p.m. ET 2/17/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–704–007.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: Compliance Filing to Revise CCSF WDT SA Appendices B, C and D (Tariff ID 2000.) to be effective 7/1/2015.

Filed Date: 1/27/16.

Accession Number: 20160127–5242.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER15–704–008.

Applicants: Pacific Gas and Electric Company.

Description: Compliance filing: Compliance Filing to Revise CCSF WDT SA Appendices B, C and D (Tariff ID 2100) to be effective 7/23/2015.

Filed Date: 1/27/16.

Accession Number: 20160127–5277.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–601–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2016–01–27_Revisions to Sec 19.1.1.2—Pre-Cert TSRs Amendment to be effective 2/1/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5267.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–767–000.

Applicants: California Independent System Operator Corporation.

Description: Section 205(d) Rate Filing: 20160127 Competitive Solicitation Enhancements to be effective 3/28/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5250.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–768–000.

Applicants: RE Garland LLC.

Description: Initial rate filing: RE Garland LGIA Co-Tenancy Agreement Filing to be effective 3/28/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5252.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–769–000.

Applicants: RE Garland A LLC.

Description: Initial rate filing: RE Garland A LGIA Co-Tenancy Agreement Filing to be effective 3/28/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5253.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–770–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2016–01–27 Zonal Deliverability Benefits Filing to be effective 3/25/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5262.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–771–000.

Applicants: Midcontinent Independent System Operator, Inc., Consumers Energy Company.

Description: Section 205(d) Rate Filing: 2016–01–27_Consumers Energy Wholesale Distribution Service Agreements to be effective 4/1/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5270.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–772–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 2922, Queue No. W2–090 to be effective 3/21/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5296.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–773–000.

Applicants: Southern California Edison Company.

Description: Section 205(d) Rate Filing: SCE TOT Revision to be effective 1/1/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5300.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–774–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3512, Queue No. X2–038 to be effective 3/14/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5304.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–775–000.

Applicants: 3 Phases Renewables, Inc.

Description: Baseline eTariff Filing: Baseline New to be effective 1/28/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5314.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–776–000.

Applicants: PacifiCorp.

Description: Section 205(d) Rate Filing: Pavant Solar III E&P Agreement to be effective 1/21/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5372.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–777–000.

Applicants: AES Beaver Valley, LLC.

Description: Tariff Cancellation: AES Beaver Valley Cancellation Filing to be effective 1/28/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5377.

Comments Due: 5 p.m. ET 2/17/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01913 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1894–207]

South Carolina Electric & Gas Company; South Carolina Parr Hydroelectric Project; Notice of Proposed Revised Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding concerning non-public information. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Maine Historic Preservation Commission (Maine SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (54 U.S.C. 306108), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the existing Parr Hydroelectric Project.

On November 18, 2014, Commission staff established a restricted service list for the Parr Hydroelectric Project. Since that time, the U.S. Forest Service requested to supplement the restricted service list because of personnel changes. The restricted service list is supplemented as follows:

Replace ''Mike Harmon, U.S. Forest Service'' with ''James F. Bates or Representative, U.S. Forest Service.''

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01957 Filed 2–2–16; 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: EC16–63–000.

Applicants: High Lonesome Mesa, LLC.

Description: Application for authorization for disposition of jurisdictional facilities under Section 203 of the FPA of High Lonesome Mesa, LLC.

Filed Date: 1/27/16.

Accession Number: 20160127–5586.

Comments Due: 5 p.m. ET 2/17/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–41–000.

Applicants: Horse Creek Wind, LLC.

Description: Self-Certification of EWG Status of Horse Creek Wind, LLC.

Filed Date: 1/27/16.

Accession Number: 20160127–5585.

Comments Due: 5 p.m. ET 2/17/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–014.

Applicants: Shell Energy North America (US), L.P.

Description: Notice of Non-Material Change in Status of Shell Energy North America (US), L.P.

Filed Date: 1/27/16.

Accession Number: 20160127–5604.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER10–1946–012; ER11–3861–012; ER13–1485–006; ER10–3253–006; ER14–1777–005; ER10–3237–006; ER10– 3240– 006; ER10–3230–006; ER10–3231–005; ER15–2722–002; ER10–3232–005; ER10–3233–005; ER10–3239–006; ER14–2871–008; ER16–182–003; ER10–3243–009; ER10–3244–010; ER10–3245–008; ER10–3249–008; ER10–3250–008; ER10–3251–008; ER14–2382–008; ER15–621–007; ER11–2639–008; ER15–622–007; ER15–463–007; ER16–72–003; ER15–110–007; ER13–1586–009; ER10–1992–015.

Applicants: Broad River Energy LLC, Empire Generating Co, LLC, Wheelabrator Baltimore, L.P., Wheelabrator Bridgeport, L.P., Wheelabrator Falls Inc., Wheelabrator Frackville Energy Company Inc., Wheelabrator North Andover Inc., Wheelabrator Portsmouth Inc., Wheelabrator Ridge Energy Inc., Wheelabrator Saugus Inc., Wheelabrator Shasta Energy Company Inc., Wheelabrator South Broward Inc., Wheelabrator Westchester, L.P., Cameron Ridge, LLC, Cameron Ridge II, LLC, Chandler Wind Partners, LLC, Coso Geothermal Power Holdings, LLC, Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Oak Creek Wind Power, LLC, ON Wind Energy LLC, Pacific Crest Power, LLC, Ridge Crest Wind Partners, LLC, Ridgetop Energy, LLC, San Gorgonio Westwinds II, LLC, San Gorgonio Westwinds II—Windustries, LLC, Terra-Gen Energy Services, LLC, TGP Energy Management, LLC, Victory Garden Phase IV, LLC.

Description: Notice of Change in Status of the ECP MBR Sellers.

Filed Date: 1/27/16.

Accession Number: 20160127–5606.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER14–1264–000.

Applicants: Entergy Louisiana, LLC.

Description: Report Filing: ELL Refund Report ER14–1264 to be effective N/A.

Filed Date: 1/27/16.

Accession Number: 20160127–5464.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER14–1265–000.

Applicants: Entergy Mississippi, Inc.

Description: Report Filing: EMI Refund Report ER14–1265 to be effective N/A.

Filed Date: 1/27/16.

Accession Number: 20160127–5466.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER14–1266–000.

Applicants: Entergy New Orleans, Inc.

Description: Report Filing: ENOI Refund Report ER14–1266 to be effective N/A.

Filed Date: 1/27/16.

Accession Number: 20160127–5468.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER14–1267–000.

Applicants: Entergy Texas, Inc.

Description: Report Filing: ETI Refund Report ER14–1267 to be effective N/A.

Filed Date: 1/27/16.

Accession Number: 20160127–5472.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER15–2129–001.

Applicants: Slate Creek Wind Project, LLC.

Description: Notice of Non-Material Change in Status of Slate Creek Wind Project, LLC.

Filed Date: 1/27/16.

Accession Number: 20160127–5592.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER15–2676–002; ER15–2477–002; ER16–90–002.

Applicants: Cedar Bluff Wind, LLC, Golden Hills Wind, LLC, Golden Hills Interconnection, LLC.

Description: Notice of Non-material Change in Status of Cedar Bluff Wind, LLC, et. al.

Filed Date: 1/27/16.

Accession Number: 20160127–5594.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER15–2680–003; ER15–1896–005; ER15–1582–006; ER15–1579–005; ER15–1914–007; ER15–2679–003; ER15–760–006; ER15–762–007.

Applicants: Sandstone Solar LLC, Eden Solar, LLC, 65HK 8me LLC, 67RK 8me LLC, 87RL 8me LLC, Latigo Wind Park, LLC, Western Antelope Blue Sky Ranch A LLC, Sierra Solar Greenworks LLC.

Description: Notice of Non-Material Change in Status of Sandstone Solar LLC, et. al.

Filed Date: 1/28/16.

Accession Number: 20160128–5105.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–228–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: 3113 Basin & MDU Attachment AO Compliance Filing to be effective 10/1/2015.

Filed Date: 1/27/16.

Accession Number: 20160127–5431.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–323–002.

Applicants: Ohio Valley Electric Corporation.

Description: Compliance filing: Response to Request for Information and Amendment to Application to be effective 3/28/2016.

Filed Date: 1/27/16

Accession Number: 20160127–5427.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–435–001.

Applicants: Wabash Valley Power Association, Inc.

Description: Tariff Amendment: Wabash Valley Power Association, Inc. Reactive Rate Schedule Volume No. 3 to be effective 2/1/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5044.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–468–001.

Applicants: FTS Master Tenant 1, LLC.

Description: Notice of Non-Material Change in Status of FTS Master Tenant 1, LLC.

Filed Date: 1/28/16.

Accession Number: 20160128–5099.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–474–001.

Applicants: Central Antelope Dry Ranch C LLC.

Description: Notice of Non-Material Change in Status of Central Antelope Dry Ranch C LLC.

Filed Date: 1/28/16.

Accession Number: 20160128–5098.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–792–000.

Applicants: New Harquahala Generating Company, LLC.

Description: § 205(d) Rate Filing: New Harquahala Revised MBR Tariff per 35.13(a)(2)(iii) to be effective 3/28/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5479.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–793–000.

Applicants: Talen Montana, LLC.

Description: § 205(d) Rate Filing: Talen Montana Revised MBR Tariff per 35.13(a)(2)(iii) to be effective 3/28/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5484.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–794–000.

Applicants: Entergy Louisiana, LLC.

Description: § 205(d) Rate Filing: ELL–SRMPA 7th Extension of Interim Agreement to be effective 2/1/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5487.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–795–000.

Applicants: Talen Energy Marketing, LLC.

Description: § 205(d) Rate Filing: Talen Energy Marketing Revised MBR Tariff per 35.13(a)(2)(iii) to be effective 3/28/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5000.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–796–000.

Applicants: Portland General Electric Company.

Description: § 205(d) Rate Filing: Att K Fourth Regional Compliance Filing—Refile to be effective 1/1/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5089.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–797–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 3452, Queue No. Y1–020 due to Assignment to be effective 8/8/2013.

Filed Date: 1/28/16.

Accession Number: 20160128–5132.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–798–000.

Applicants: Wisconsin Electric Power Company.

Description: Tariff Cancellation: Cancellation Wisconsin Electric WPPI FERC Rate Schedule No 90 to be effective 1/1/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5134.

Comments Due: 5 p.m. ET 2/18/16.

Docket Numbers: ER16–799–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–01–28_Schedule 31 Annual Update to be effective 4/1/2016.

Filed Date: 1/28/16.

Accession Number: 20160128–5135.

Comments Due: 5 p.m. ET 2/18/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–21–000.

Applicants: AEP Appalachian Transmission Company, Inc., AEP Indiana Michigan Transmission Company, Inc., AEP Kentucky Transmission Company, Inc, AEP Oklahoma Transmission Company, Inc., AEP Southwestern Transmission Company, Inc., AEP West Virginia Transmission Company, Inc.

Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Appalachian Transmission Company, Inc.

Filed Date: 1/27/16.

Accession Number: 20160127–5605.

Comments Due: 5 p.m. ET 2/17/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01950 Filed 2–2–16; 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: ER10–2527–002; ER10–3168–018; ER10–2960–005; ER15–356–005; ER15–357–005; ER10–2532–006; ER10–1595–005; ER10–2533–002; ER10–1598–005; ER10–2535–002; ER10–1616–005; ER12–2570–011; ER10–1618–005; ER13–618–010.

Applicants: Allegheny Ridge Wind Farm, LLC, ArcLight Energy Marketing, LLC, Astoria Generating Company, L.P., Chief Conemaugh Power, LLC, Chief Keystone Power, LLC, Crescent Ridge LLC, Crete Energy Venture, LLC, GSG, LLC, Lincoln Generating Facility, LLC, Mendota Hills, LLC, New Covert Generating Company, LLC, Panther Creek Power Operating, LLC, Rolling Hills Generating, L.L.C., Westwood Generation, LLC.

Description: Notice of Non-Material Change in Status of Allegheny Ridge Wind Farm, LLC, et. al.

Filed Date: 1/22/16.

Accession Number: 20160122–5092.

Comments Due: 5 p.m. ET 2/12/16.

Docket Numbers: ER10–2984–023.

Applicants: Merrill Lynch Commodities, Inc.

Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.

Filed Date: 1/22/16.

Accession Number: 20160122–5090.

Comments Due: 5 p.m. ET 2/12/16.

Docket Numbers: ER10–2984–024.

Applicants: Merrill Lynch Commodities, Inc.

Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.

Filed Date: 1/27/16.

Accession Number: 20160127–5226.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER15–2130–001; ER15–2131–001.

Applicants: Roosevelt Wind Project, LLC and Milo Wind Project, LLC.

Description: Notice of Non-Material Change in Status of Roosevelt Wind Project, LLC and Milo Wind Project, LLC.

Filed Date: 1/22/16.

Accession Number: 20160122–5094.

Comments Due: 5 p.m. ET 2/12/16.

Docket Numbers: ER15–2616–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–01–27_MISO–PJM JOA M2M FFE

Compliance Filing to be effective 11/3/2015.

Filed Date: 1/27/16.

Accession Number: 20160127–5126.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–202–001.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Response to Deficiency Letter and Amended Service Agreement No. 347 to be effective 1/1/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5189.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–244–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: 3095 Substitute Missouri River Energy Services NITSA NOA—Compliance Filing to be effective 10/1/2015.

Filed Date: 1/27/16.

Accession Number: 20160127–5161.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–762–000.

Applicants: AEP Texas Central Company.

Description: § 205(d) Rate Filing: TCC-La Paloma Energy Center IA Third Amend & Restated to be effective 1/5/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5007.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–763–000.

Applicants: NorthWestern Corporation.

Description: Notice of Termination of Service Agreement No. 602 of NorthWestern Corporation.

Filed Date: 1/22/16.

Accession Number: 20160122–5093.

Comments Due: 5 p.m. ET 2/12/16.

Docket Numbers: ER16–764–000.

Applicants: RE Astoria LLC.

Description: Baseline eTariff Filing: LGIA Co-Tenancy Agreement to be effective 3/27/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5135.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–765–000.

Applicants: RE Astoria LLC.

Description: § 205(d) Rate Filing: Garland Shared Facilities Agreement to be effective 3/27/2016.

Filed Date: 1/27/16.

Accession Number: 20160127–5178.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER16–766–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Request for Waiver of Tariff of Midcontinent Independent System Operator, Inc.

Filed Date: 1/27/16.

Accession Number: 20160127–5227.

Comments Due: 5 p.m. ET 2/17/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01917 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped bydocket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. 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.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP16–21–000	1–19–2016	Citizens of Dracut, Massachusetts.
Exempt:		
1. CP15–504–000	1–14–2016	FERC Staff.[1]
2. CP16–21–000	1–14–2016	Town of Rindge, New Hampshire Office of the Selectmen Chairman Robert Hamilton.
3. CP14–518–000	1–19–2016	U.S. Senator John Cornyn.

Docket No.	File date	Presenter or requester
4. CP13–193–000	1–21–2016	Commonwealth of Puerto Rico Governor Alejandro J. Garcia-Padilla.
5. CP15–554–000, CP16–10–000	1–21–2016	State of Virginia Delegate Sam Rasoul.
6. CP16–9–000	1–21–2016	U.S. Senators.[2]

[1] Memo forwarding email dated December 9, 2015 between contacts of HDR Engineering, Inc. and South Carolina Department of Natural Resources.
[2] Elizabeth Warren and Edward J. Markey.

Dated: January 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01916 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL16–6–001, ER16–121–000]

PJM Interconnection, LLC; Supplemental Notice of Technical Conference

As announced in a Notice issued on January 13, 2016, the Federal Energy Regulatory Commission (Commission) will hold a technical conference on Thursday, February 4, 2016. The technical conference will focus on whether PJM Interconnection, LLC's (PJM) existing Auction Revenue Rights (ARR) and Financial Transmission Rights (FTR) tariff provisions are unjust and unreasonable and whether PJM's proposed revisions to its tariff addressing these matters are just and reasonable. The technical conference will commence at 9:30 a.m. and conclude at 5:00 p.m. and be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This technical conference is free of charge and open to the public. The technical conference will be led by Commission staff, and Commission members may be in attendance and participate.

The agenda and a list of participants/speakers for this technical conference are attached. A schedule for post-technical comments will be established at the technical conference.

Those who plan to attend the technical conference are encouraged to complete the registration form located at: *https://www.ferc.gov/whats-new/registration/02-04-16-form.asp.* There is no registration deadline.

The technical conference will be transcribed. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc.[1] Additionally, there will be a free webcast of the technical conference. The webcast will allow persons to listen to the technical conference but not participate. Anyone with Internet access who wants to listen to the technical conference can do so by navigating to the Calendar of Events at *www.ferc.gov,* locating the technical conference in the Calendar, and clicking on the webcast link. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee.[2]

Commission technical conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For more information about the technical conference, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov*.

Pamela Quinlan (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6179, *Pamela.Quinlan@ferc.gov.*

Kent Carter (Legal Information), Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8604, *Kent.Carter@ferc.gov*.

Daniel Kheloussi (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6391, *Daniel.Kheloussi@ferc.gov*.

[1] The Web site for ACE-Federal Reports, Inc. is *www.acefederal.com* and the phone number is 202–347–3700.

[2] If you have any questions, visit Capitol Connection's Web site at *www.CapitolConnection.org,* or call 703–993–3100.

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01956 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–117–000]

Transcontinental Gas Pipe Line Company, LLC; Supplemental Notice of Intent for the Proposed Dalton Expansion Project, Request for Comments on Environmental Issues Related to New Route Modifications Under Consideration

You are receiving this letter because the staff of the Federal Energy Regulatory Commission (FERC or Commission) is evaluating route modifications to Transcontinental Gas Pipe Line Company, LLC's (Transco) proposed Dalton Expansion Project (Project). The general location of the Project is shown in appendix 1.[1] Since the filing of its March 19, 2015 application, Transco provided two supplemental filings (July 15, 2015 and September 30, 2015) that identified several modifications to its proposed pipeline route. These modifications were incorporated based on the results of ongoing field surveys and to address comments from agencies and other stakeholders. The majority of the landowners potentially affected by these modifications have received notification of the Commission's review of the Project. However, some of the modifications would affect new landowners; therefore, the Commission is issuing this supplemental notice (Notice) to provide these new landowners an opportunity to comment on the Project. You can access detailed mapping of the modifications to the

[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.

proposed pipeline route on the Commission's Web site (*www.ferc.gov*) using eLibrary. For instructions on connecting to eLibrary, refer to the last page of this notice.

The FERC is the lead federal agency responsible for conducting the environmental review of the Project. The Commission's staff is preparing an environmental assessment (EA) that discusses the environmental impacts of the Project. This EA will be used to inform the Commission as it determines whether the Project is in the public convenience and necessity.

This Notice announces the opening of an additional scoping period the Commission will use to gather input from the new landowners potentially affected by the Project. Comments may be submitted in writing as described in the public participation section of this notice. Please note that comments on this Notice should be filed with the Commission by February 29, 2016.

The specific modifications being scoped by this Notice are listed in the table below.

Route modification	Milepost range	County
Route Variation AE	30.4 to 31.8	Paulding
Route Variation AG	41.5 to 42.8	Paulding
Route Variation AH	43.2 to 43.4	Paulding
Route Variation BH	63.0 to 64.1	Bartow
Major Route Alternative H	43.7 to 56.3	Paulding and Bartow
Route Variation BS	91.1 to 91.5	Gordon

Information in this notice was prepared to familiarize you with the new route modifications, the Project as a whole, the Commission's environmental review process, and instruct you on how to submit comments.

A pipeline company representative may have already contacted you or may contact you soon about surveys and/or to acquire an easement to construct, operate, and maintain the pipeline. 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.

To help potentially affected landowners better understand the Commission and its environmental review process, the ''For Citizens'' section of the FERC Web site (*www.ferc.gov*) provides information about getting involved in FERC jurisdictional projects. A citizens' guide entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need to Know?'' is also available in this section of the Commission's Web site. This guide addresses a number of frequently asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Proposed Project

Transco plans to construct and operate about 113 miles of new 16, 20, 24, and 30-inch-diameter natural gas pipeline and associated facilities in Coweta, Carroll, Douglas, Paulding, Bartow, Gordon, and Murray Counties, Georgia and a new compressor station in Carroll County, Georgia. Additionally, Transco plans to modify existing facilities along its mainline transmission system in Maryland, Virginia, and North Carolina to accommodate bidirectional flow. Transco has indicated that the Project would provide 448,000 dekatherms per day of incremental firm transportation service to markets in northwest Georgia.

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 Project under these general headings:

- Geology and soils;
- water resources, fisheries, and wetlands;
- vegetation and wildlife;
- endangered and threatened species;
- land use;
- socioeconomics;
- cultural resources;
- air quality and noise; and
- public safety.

We will also evaluate possible alternatives to the Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

We began our NEPA review under the Commission's pre-filing process on April 25, 2014. The purpose of the pre-filing process was to encourage the early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. On October 21, 2014, FERC staff issued an initial *Notice of Intent to Prepare an Environmental Assessment for the Planned Dalton Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings.* FERC Staff also issued two supplemental NOIs for the Project on November 14, 2014 and February 13, 2015.[3]

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. We will also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make 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 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

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The November 14, 2014 and February 13, 2015 supplemental NOIs can be viewed on the FERC Internet Web site at *www.ferc.gov.* Using the ''eLibrary'' link, select ''Advanced Search'' from the eLibrary menu and enter 20141114–3019 and 20150213–3012, respectively, in the ''Accession Number'' field.

Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s), 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.

Public Participation

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. The more specific your comments, the more useful they will be. 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 29, 2016.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP15–117–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature located 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.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

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 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.[5] We will continue to 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 planned Project.

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 (*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.,* CP15–117). 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 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01918 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1263–000.

Applicants: Entergy Gulf States Louisiana, L.L.C.

Description: Report Filing: EGSL Refund Report ER14–1263 to be effective N/A.

Filed Date: 1/27/16.

Accession Number: 20160127–5463.

Comments Due: 5 p.m. ET 2/17/16.

Docket Numbers: ER14–1268–000.

Applicants: Entergy Arkansas, Inc.

[4] The Advisory Council on Historic Preservation 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.

[5] Because the modifications involve only a subset of the environmental mailing list, this Notice is being provided to only the affected landowners.

Description: Report Filing: EAI Refund Report ER14–1268 to be effective N/A.
Filed Date: 1/27/16.
Accession Number: 20160127–5462.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–778–000.
Applicants: MATL LLP.
Description: Section 205(d) Rate Filing: MATL Tariff update to be effective 3/27/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5400.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–779–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: SCE WDAT Revision to be effective 1/1/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5416.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–780–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 1166R27 Oklahoma Municipal Power Authority NITSA and NOA to be effective 1/1/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5429.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–781–000.
Applicants: Arizona Public Service Company.
Description: Section 205(d) Rate Filing: Rate Schedule No. 274—Planning Participation Agreement to be effective 10/1/2015.
Filed Date: 1/27/16.
Accession Number: 20160127–5430.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–782–000.
Applicants: Kansas City Power & Light Company.
Description: Section 205(d) Rate Filing: KCP&L Rate Schedule 130 Filing to be effective 11/11/2015.
Filed Date: 1/27/16.
Accession Number: 20160127–5433.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–783–000.
Applicants: RE Garland LLC.
Description: Section 205(d) Rate Filing: RE Garland Concurrence Filing to Shared Facilities Agreement to be effective 3/27/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5451.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–784–000.
Applicants: RE Garland A LLC.
Description: Section 205(d) Rate Filing: RE Garland A Concurrence Filing to Shared Facilities Agreement to be effective 3/27/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5452.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–785–000.
Applicants: Arizona Public Service Company.
Description: Section 205(d) Rate Filing: Service Agreement Nos. 353 and 354 to be effective 1/8/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5453.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–786–000.
Applicants: Repsol Energy North America Corporation.
Description: Section 205(d) Rate Filing: Notice of Change in Status and Proposed Revisions to Market-Based Rate Tariff to be effective 3/28/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5454.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–787–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Original Service Agreement No. 4398; Queue Position X2–027 to be effective 12/28/2015.
Filed Date: 1/27/16.
Accession Number: 20160127–5456.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–788–000.
Applicants: Entergy Louisiana, LLC.
Description: Section 205(d) Rate Filing: System Agreement—Compliance Update to be effective 1/28/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5458.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–789–000.
Applicants: Entergy New Orleans, Inc.
Description: Section 205(d) Rate Filing: System Agreement—Compliance Update to be effective 1/28/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5460.
Comments Due: 5 p.m. ET 2/17/16.
Docket Numbers: ER16–790–000.
Applicants: Entergy Texas, Inc.
Description: Section 205(d) Rate Filing: System Agreement—Compliance Update to be effective 1/28/2016.
Filed Date: 1/27/16.
Accession Number: 20160127–5461.
Comments Due: 5 p.m. ET 2/17/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–20–000.
Applicants: Michigan Electric Transmission Company.
Description: Application under FPA Section 204 of Michigan Electric Transmission Company, LLC.
Filed Date: 1/27/16.
Accession Number: 20160127–5419.
Comments Due: 5 p.m. ET 2/17/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01914 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14383–002]

Whitewater Creek Hydroelectric Project; Notice of Cultural Resource Meeting

Project Name and Number: Whitewater Creek Hydroelectric Project No. 14383–002.
Date and Time of Meeting: February 11, 2016; 1:00 p.m. Eastern Standard Time.
Place: Telephone conference with Terracon and the Oregon State Historic Preservation Officer (SHPO).
FERC Contact: Laura Washington, *Laura.Washington@ferc.gov* or (202) 502–6072.
Purpose of Meeting: Cultural resources consultation to discuss Oregon SHPO comments concerning the cultural resources study report with Whitewater Creek and FERC.

A summary of the meeting will be prepared and filed in the Commission's public file for the project.

All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please contact Laura Washington at *Laura.Washington@ferc.gov* or (202) 502–6072 by close of business February 9, 2016, to R.S.V.P. and to receive specific instructions on how to participate.

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01959 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–513–000]

Texas Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Northern Supply Access Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) for the Northern Supply Access Project (Project) proposed by Texas Gas Transmission, LLC (Texas Gas) in the above-referenced docket. Texas Gas requests authorization to construct and operate natural gas facilities in Ohio, Indiana, Kentucky, Tennessee, Mississippi, and Louisiana to provide an additional 384,000 million standard cubic feet per day of natural gas of north to south transportation capacity on Texas Gas's existing system.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Project involves modifications at eight existing compressor stations in Morehouse Parish, Louisiana; Coahoma County, Mississippi; Tipton County, Tennessee; Webster, Breckinridge, and Jefferson Counties, Kentucky; and Lawrence and Dearborn Counties, Indiana. Texas Gas would also construct one new 23,877 horsepower compressor station in Hamilton County, Ohio.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners within 0.5 mile of the above ground facilities; interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. Everyone on our environmental mailing list will receive a CD version of the EA. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this Project, it is important that we receive your comments in Washington, DC on or before **February 25, 2016**.

For your convenience, there are three methods you can use to file your comments with the Commission. In all instances please reference the Project docket number (CP15–513–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature located 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 also file your comments electronically 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.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. **Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered**.

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 (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket numbers excluding the last three digits in the Docket Number field (*i.e.,* CP15–513). 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.*

Dated: January 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01915 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2607–013]

Advantage Investment Group, LLC, Spencer Mountain Hydropower, LLC; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On January 20, 2016, Advantage Investment Group, LLC (transferor) and Spencer Mountain Hydropower, LLC (transferee) filed an application for transfer of license of the Spencer Mountain Hydroelectric Project No. 2607. The project is located on the

Susquehanna River in York, Dauphin, and Lancaster counties, Pennsylvania. The project does not occupy federal lands.

The applicants seek Commission approval to transfer the license for the Spencer Mountain Hydroelectric Project from the transferor to the transferee.

Applicant Contact: For transferor: Mr. Boyce Falls, Manager, Advantage Investment Group, LLC, PO Box 458, Dallas, NC 28034, Phone: 704–363–5911, Email: *bobbiefalls@aol.com* . For transferee: Mr. Kevin Edwards, Manager, Spencer Mountain Hydropower, LLC, 1000 C&N Smith Mill Road, Stoneville, NC 27048, Phone: 336–589–6138, Email: *kevin@pht1.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The first page of any filing should include docket number P–2607–013.

Dated: January 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–01958 Filed 2–2–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

[DOE/EIS–0370]

Record of Decision for the Windy Gap Firming Project

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Interior, Bureau of Reclamation, Eastern Colorado Area Office (Reclamation) prepared an Environmental Impact Statement (EIS) for the proposed Windy Gap Firming Project (Project) in North Central Colorado. The Municipal Subdistrict (Subdistrict), Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firming Project Water Activity Enterprise, on behalf of the Project Participants, obtained approval from Reclamation for additional physical connections to Colorado-Big Thompson Project (C–BT) facilities in order to implement the proposed Project. Western Area Power Administration (Western), an agency within the U.S. Department of Energy (DOE), participated in the development of the EIS as a cooperating agency.

The EIS evaluated a no action alternative, along with four action alternatives each entailing the construction of new reservoirs along with pipelines and operational facilities at different locations. The action alternatives were designed to provide more reliable water deliveries to Front Range and West Slope communities and industry. Reclamation selected Alternative 2—Chimney Hollow Reservoir in its Record of Decision (ROD) dated December 19, 2014. In order to support Reclamation's decision, Western would need to relocate 3.8 miles of its existing Estes-Lyons 115-kilovolt (kV) wood H-frame transmission line away from the proposed Chimney Hollow Reservoir site to avoid its inundation.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Mr. Matt Blevins, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (720) 962–7261, or email: *blevins@wapa.gov.* For general information on DOE's National Environmental Policy Act (NEPA) review process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756, or email: *askNEPA@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Reclamation was the lead federal agency for the EIS (FES 11–19) and Western was a cooperating agency. The Notice of Availability for the Final EIS was published in the **Federal Register** on November 30, 2011 (76 FR 74074). Reclamation signed its ROD on December 19, 2014, and selected Alternative 2—Chimney Hollow Reservoir as its preferred alternative.

Reclamation's selected alternative directly affects a portion of Western's existing Estes-Lyons 115-kV transmission line, which lies within the design footprint of the proposed new Chimney Hollow Reservoir. In order to support Reclamation's decision, Western would need to relocate its transmission line away from the proposed reservoir to an area that preserves system reliability, maintenance accessibility, and safety. Western's relocation of the transmission line at the Chimney Hollow Reservoir site was evaluated in the EIS, including acquiring a 100 foot right-of-way, constructing access roads, and rebuilding approximately 3.8 miles of transmission line to the west of the proposed Chimney Hollow Reservoir. After an independent review of the EIS, Western has concluded that its comments have been satisfied and with this notice is adopting the EIS for its participation in the Project.

Western's Action

Western's action is to support Reclamation's decision in selecting Alternative 2—Chimney Hollow Reservoir and to relocate a 3.8 mile portion of Western's existing Estes-Lyons 115-kV transmission line away from the proposed Chimney Hollow Reservoir site to avoid its inundation. Final transmission line location, pole placement, and spacing will be determined by Western during final design.

Cultural Resources

Reclamation executed a Memorandum of Agreement (MOA) with the Colorado State Historic Preservation Office regarding the Project on April 19, 2012. Reclamation and Western must adhere to the stipulations of that MOA. The MOA stipulates that prior to any construction of the Project, Reclamation's Eastern Colorado Area Office will inventory the remaining 17.2 acres in the Area of Potential Effect and consult with the State Historic Preservation Office on eligibility and effects of the Project pursuant to 36 CFR part 800, including mitigation that will be set forth in an amendment to the MOA.

Endangered Species Act

Western's action would have no effect on federally listed terrestrial wildlife species or plants. However, the Project's Colorado River depletions could adversely impact four endangered Colorado River fish species. Impacts to the endangered species in the Colorado River were originally addressed in the 1981 U.S. Fish and Wildlife Service (Service) Biological Opinion for the original Windy Gap Reservoir based on an estimated average annual diversion of 57,300 acre feet (AF) of water. A

Recovery Implementation Program (RIP) for Endangered Fish Species in the Upper Colorado River Basin was initiated on January 22, 1988.

The RIP was intended to be the reasonable and prudent alternative for individual projects to avoid the likelihood of jeopardy to the endangered fishes from depletions from the Upper Colorado River Basin. A Section 7 agreement was implemented on October 15, 1993, by RIP participants, and on December 20, 1999, the Service issued a Final Programmatic Biological Opinion (PBO), *Operation and Depletions, Other Depletions, and Funding and Implementation of Recovery Program Actions in the Upper Colorado River above the Confluence with the Gunnison River.* The Service determined that the Project fits under the umbrella of the Colorado River RIP and PBO and would avoid the likelihood of jeopardy and/or adverse modification of critical habitat for depletion impacts. Under the PBO, the Subdistrict will make a monetary contribution for the 21,317 AF of Colorado River water depletions to support the recovery efforts for these species in accordance with the RIP Recovery Action Plan.

Alternatives Considered

Reclamation considered in detail five alternatives, including *Alternative 1—the No-action Alternative.* This alternative consisted of continuation of operations under existing water rights and agreements between Reclamation and the Subdistrict for conveyance of the Windy Gap Project water through existing C–BT Project facilities and the reasonably foreseeable enlargement of Ralph Price Reservoir.

Alternative 2—Chimney Hollow Reservoir (Proposed Action). Alternative 2 included construction of a 90,000 AF Chimney Hollow Reservoir on the East Slope, with the ability to store C–BT Project water there. Water would be conveyed to Chimney Hollow Reservoir via a new pipeline connection to existing East Slope C–BT Project facilities but no new West Slope infrastructure would be constructed. This alternative would require Western to move its existing Estes-Lyons 115-kV transmission line away from the proposed Chimney Hollow Reservoir site to avoid inundation.

Alternative 3—Chimney Hollow Reservoir and Jasper East Reservoir. Alternative 3 was a combination of constructing a 70,000 AF Chimney Hollow Reservoir on the East Slope and a 20,000 AF Jasper East Reservoir on the West Slope. A new 1-mile pipeline would connect Jasper East Reservoir to the existing Windy Gap pipeline that delivers water to Granby Reservoir. The existing C–BT Willow Creek Pump Station, forebay, and portions of the canal and pipeline would be relocated. This alternative would require Western to move its existing Estes-Lyons 115-kV transmission line away from the proposed Chimney Hollow Reservoir site to avoid inundation.

Alternative 4—Chimney Hollow Reservoir and Rockwell/Mueller Creek Reservoir. This alternative is a combination of a 70,000 AF Chimney Hollow Reservoir on the East Slope and a 20,000 AF Rockwell/Mueller Creek Reservoir (Rockwell Reservoir) on the West Slope, a new pipeline connection to the existing Windy Gap pump station and a new 3.3-mile pipeline to Rockwell Reservoir. This alternative would require Western to move its existing Estes-Lyons 115-kV transmission line away from the proposed Chimney Hollow Reservoir site to avoid inundation.

Alternative 5—Dry Creek Reservoir and Rockwell/Mueller Creek Reservoir. This alternative is a combination of a 60,000 AF Dry Creek Reservoir on the East Slope, a 30,000 AF Rockwell Reservoir on the West Slope, and a new 3.4-mile pipeline and connection to the existing Windy Gap pump station. This alternative would require no action by Western.

Reclamation considers both the No Action Alternative and Alternative 2—Chimney Hollow Reservoir to be the environmentally preferable alternatives because of each alternative's relative overall effect on natural resources as described in their ROD.

Mitigation

The EIS analysis includes identification of standard construction mitigation measures for transmission line construction. Western will adhere to its standard construction mitigation measures described in the EIS. Long-term operations of the transmission line will follow Western's standard operating procedures and will not be affected by this action. A Mitigation Action Plan is not required for Western's proposed action.

Decision

Western's decision is to modify its transmission system as described above in support of Reclamation's decision to select Alternative 2—Chimney Hollow Reservoir.[1] This ROD was prepared following the requirements of the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR part 1021).

Dated: January 14, 2016.

Mark A. Gabriel,

Administrator.

[FR Doc. 2016–02031 Filed 2–2–16; 8:45 am]

BILLING CODE 6450–01–P

[1] On November 16, 2011, DOE's Acting General Counsel restated the delegations to Western's Administrator of all the authorities of the General Counsel respecting Environmental Impact Statements.

DEPARTMENT OF ENERGY

Western Area Power Administration

Desert Southwest Customer Service Region Network Integration Transmission Service and Ancillary Services—Rate Order No. WAPA–175

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Formula Rates for Network Integration Transmission Service and Ancillary Services.

SUMMARY: The Western Area Power Administration (Western) Parker-Davis (P–DP) and Pacific Northwest-Pacific Southwest Intertie (Intertie) Projects' Network Integration Transmission Service (NITS) formula rates under Rate Schedules PD–NTS3, INT–NTS3 and Western Area Lower Colorado Balancing Authority's (WALC) Ancillary Services formula rates under Rate Schedules DSW–SD3, DSW–RS3, DSW–FR3, DSW–EI3, DSW–GI1, DSW–SPR3, and DSW–SUR3 expire on September 30, 2016. Western is proposing modifications to the existing formula rate schedules and adding two new rate schedules, referred to as Transmission Losses Services (DSW–TL1) and Penalty Rate for Unreserved Use of Transmission Service (DSW–UU1). Western will prepare a brochure that provides detailed information on the proposed formula rates. If adopted, the proposed formula rates, under Rate Schedules PD–NTS4, INT–NTS4, DSW–TL1, DSW–UU1, DSW–SD4, DSW–RS4, DSW–FR4, DSW–EI4, DSW–GI2, DSW–SPR4, and DSW–SUR4 will become effective October 1, 2016, and will remain in effect through September 30, 2021, or until superseded. Publication of this **Federal Register** notice (FRN) begins the formal process for the proposed formula rates.

DATES: The consultation and comment period begins today and will end May 3, 2016. Western will present a detailed explanation of the proposed formula rates and other modifications addressed

in this FRN at a public information forum that will be held on March 30, 2016, from 10 a.m. to no later than 12 p.m. MST. Western will accept oral and written comments at a public comment forum that will be held on March 30, 2016, from 1 p.m. to no later than 3 p.m. MST. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The location for both the public information forum and the public comment forum is the Western Area Power Administration, Desert Southwest Customer Service Regional Office, located at 615 South 43 Avenue, Phoenix, Arizona, 85009. Send written comments to Mr. Ronald E. Moulton, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, email *moulton@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Mr. Scott Lund, Rates Manager. Western will post information about the rate process, as well as comments received via letter, email, and fax, on its Web site at: *http://www.wapa.gov/regions/DSW/Rates/Pages/ancillary-rates-2017.aspx.* Written comments must be received by the end of the consultation and comment period to be considered by Western in its decision process.

As access to Western facilities is controlled, any United States (U.S.) citizen wishing to attend must present an official form of picture identification (ID) such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID prior to signing into Western. Foreign nationals should contact Western via Mr. Scott Lund, Rates Manager, telephone (602) 605–2442 or email *slund@wapa.gov* 30 days in advance of the meeting to obtain the necessary form for admittance to Western's Desert Southwest Office.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Lund, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, telephone (602) 605–2442 or email *slund@wapa.gov.*

SUPPLEMENTARY INFORMATION: Under the existing formula rate schedules approved under Rate Order No. WAPA–151,[1] charges are recalculated annually using updated financial and load information, as applicable. The proposed formula rates continue this approach. If adopted, these proposed formula rates will be in effect October 1, 2016, through September 30, 2021. This FRN describes proposed changes to the services referenced below.

Transmission Services

Network Integration Transmission Service (Rate Schedule PD–NTS4 and INT–NTS4)

Western proposes no changes to the NITS formula rates on the P–DP and Intertie, but proposes to make minor editorial changes to the rate schedule. Those edits would consist of removing the section setting forth the annual revenue requirements as well as moving the transmission losses language to a new rate schedule. In the future, the revenue requirements will be identified in a separate tracking document posted on Western's Web site, as well as posted on Western's Transmission Services Open Access Same Time Information System (OASIS) Web site for WALC.

Transmission Losses Service (Rate Schedule DSW–TL1)

Western proposes no changes to the existing transmission losses language and application; instead, it proposes moving the loss adjustment sections for each project into a single WALC formula rate schedule. This single WALC formula rate schedule will supersede the language in the existing individual schedules. WALC loss rates were developed in 2004 and are applied in three of Western's transmission systems: P–DP, Intertie and Central Arizona Project (CAP). Creating a single WALC formula rate schedule for transmission losses will ensure consistent language across projects.

Penalty Rate for Unreserved Use of Transmission Service (Rate Schedule DSW–UU1)

Western proposes creating a new formula rate schedule for Penalty Rate for Unreserved Use of Transmission Service. Although charges are already assessed in each transmission rate schedule for any unreserved use of the transmission system, creating a new schedule will allow for consistent treatment across projects.

The proposed charge for unreserved use is two times the maximum allowable rate for the service at issue, assessed as follows: The penalty for a single hour of unreserved use is based on the daily short-term transmission rate. The penalty for more than one instance of unreserved use for any given duration (*e.g.,* daily) increases to the next longest duration (*e.g.,* weekly). The penalty for multiple instances of unreserved use (*e.g.,* more than one hour) within a day is based on the daily rate for short-term transmission service. The penalty for multiple instances of unreserved use isolated to one calendar week is based on the weekly short-term rate. The penalty for multiple instances of unreserved use during more than one week in a calendar month is based on the monthly short-term rate.

A customer that exceeds its reserved capacity at any point of receipt or point of delivery, or a customer that uses transmission service at a point of receipt or point of delivery that it has not reserved, is required to pay for all Ancillary Services provided by WALC and associated with the unreserved use. Customers must pay for Ancillary Services based on the amount of transmission service used and not reserved.

Ancillary Services

Scheduling, System Control, and Dispatch Service (Rate Schedule DSW–SD4)

Western proposes no changes to the Scheduling, System Control, and Dispatch formula rate, but plans to make minor editorial changes to the rate schedule. Those edits would consist of minor changes to the language within the ''applicable'' section and removing the section setting forth the annual charge. In the future, the annual charge will be identified in a separate tracking document posted on Western's Web site as well as the WALC OASIS Web site.

Reactive Supply and Voltage Control From Generation or Other Sources Service (Rate Schedule DSW–RS4)

Western proposes no changes to the Reactive Supply and Voltage Control from Generation or Other Sources Service formula rate, but proposes to make minor editorial changes to the rate schedule. Those edits would consist of minor changes to the language within the ''applicable'' section and removing the section setting forth the annual charge. In the future, the annual charge will be identified in a separate tracking document posted on Western's Web site as well as the WALC OASIS Web site.

Regulation and Frequency Response Service (Rate Schedule DSW–FR4)

In order to more accurately allocate costs based on cost causation principles, Western is proposing a change to the current load-based assessment of the Regulation and Frequency Response Service (Regulation Service) formula rate. The current load-based assessment is applicable to (1) all load inside WALC and (2) installed nameplate capacity of all intermittent resources serving load inside WALC.

[1] WAPA–151 was approved by FERC on a final basis on March 5, 2012, in Docket No. EF11–14–000 (138 FERC ¶ 62,198).

Western is not proposing any changes to the application of the load-based assessment for the load inside WALC. The charge will continue to be one-for-one for each megawatt (MW) of load inside WALC. Western is, however, proposing to modify the one-for-one MW load-based assessment for the installed nameplate of intermittent resources serving load inside WALC. It would instead include a ''variable capacity multiplier'' to be applied to the installed capacity for Variable Energy Resources (VER) serving load inside WALC.

The proposed formula rate for Regulation Service is as follows:

$$\text{Regulation Service Formula Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation Service}}{\begin{array}{c}\text{Load inside WALC Requiring Regulation Service (kW)} \\ + \\ (\text{Installed Nameplate Capacity of Wind Generators Serving Load inside WALC} \\ \text{X} \\ \text{Wind Capacity Multiplier) (kW)} \\ + \\ (\text{Installed Nameplate Capacity of Solar Generators Serving Load inside WALC} \\ \text{X} \\ \text{Solar Capacity Multiplier) (kW)}\end{array}}$$

Regulation Service is necessary to provide continuous balancing of resources with obligations and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation Service is accomplished by committing on-line generation whose output is raised or lowered as necessary, predominantly through the use of automatic generation control equipment to follow moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Service Provider (TSP) or the Control Area operator who performs this function for the TSP. The TSP must offer this service when the transmission service is used to serve load within its balancing authority area.

Western markets the maximum amount of power from its Federal projects, leaving little flexibility for additional regulation needs within WALC. Connecting VER to the system would result in a significant increase in regulation needs and costs, and present operational constraints in managing the significant fluctuations normally associated with VER. These costs get spread to all customers taking Regulation Service regardless of their ability or inability to influence the condition.

The Annual Revenue Requirement for Regulation Service will not be affected by the inclusion of the multipliers. The proposed change will result in the denominator increasing because more units of capacity will be charged, which in turn will cause the overall Regulation Service charge to be lower. The lower charge will then be allocated to each unit of capacity, thereby lowering the costs incurred by the load and assigning more of the costs for regulating capacity to those customers predominately contributing to the need for Regulation Service.

In order to determine the ''variable capacity multipliers'', Western has developed a regulation analysis tool that will allow WALC to determine the hourly impacts of both load and variable energy generation on WALC. The regulation analysis tool focuses on 95 percent (%) of the events where WALC's Area Control Error limit was exceeded within the 10 minute duration range.

WALC does not have a significant amount of wind or solar generation impacting its balancing authority area and, therefore, does not have sufficient data to perform a thorough analysis at this time. Therefore, Western proposes to assess a wind and solar capacity multiplier of 1.00 or 100%. This number does not change the current denominator, but it allows the denominator to change if and when VER becomes a resource within WALC.

In addition, Western proposes to make minor editorial changes to the Regulation Service rate schedule. Those edits would consist of minor changes to the language within the ''applicable'' section and removing the section setting forth the annual charge. In the future, the annual charge will be identified in a separate tracking document posted on Western's Web site as well as the WALC OASIS Web site.

Energy and Generator Imbalance Services (Rate Schedules DSW–EI4 and DSW–GI2)

Western is proposing a change to the off-peak penalty bandwidths for Energy and Generator Imbalance Services (Imbalance Services). The off-peak penalty and bandwidth structure will consist of three deviation bands similar to the on-peak structure. This would coincide with FERC Order 890 guidelines with adjustments for WALC operating conditions. The proposed bandwidths are as follows:

(1) Off-Peak Hours +/− 0 percent to 1.5 percent of metered load/generation (0 to 4 MW minimum) with no penalty within bandwidth.

(2) Off-Peak Hours +/− 1.5 percent to 7.5 percent of metered load/generation (4 to 10 MW minimum) with 110 percent return for under-deliveries and 75 percent return for over-deliveries.

(3) Off-Peak Hours > +/− 7.5 percent of metered load/generation (>10 MW minimum) with 125 percent return for under-deliveries and 60 percent for over-deliveries.

In addition, Western proposes to make minor editorial changes to the Imbalance Services rate schedules. Those edits would consist of minor changes to the language within the ''applicable'' section and removing the section setting forth the annual charge. In the future, the annual charge will be identified in a separate tracking document posted on Western's Web site as well as the WALC OASIS Web site.

Operating Reserves Service—Spinning and Supplemental (Rate Schedules DSW–SPR4 and DSW–SUR4)

Western proposes no changes to the Spinning and Supplemental Reserves Service formula rates, but proposes to make minor editorial changes to the rate schedules. Those edits would consist of changes to the language within the ''applicable'' section and removing the section setting forth the annual charge. In the future, the annual charge will be identified in a separate tracking document posted on Western's Web site as well as the WALC OASIS Web site.

Legal Authority

Western will hold both a public information forum and a public comment forum. After review of public comments, Western will take further action on the proposed formula rates and other modifications addressed in this FRN, and follow procedures for public participation consistent with 10 CFR part 903.

Western is establishing P–DP and Intertie NITS and WALC Ancillary Services formula rates under the Department of Energy (DOE) Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts specifically applicable to the projects involved.

By Delegation Order No. 00–037.00A, effective December 25, 2013, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents Western initiates or uses to develop the proposed formula rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, located at 615 South 43rd Avenue, Phoenix, Arizona 85009. Many of these documents and supporting information are available on Western's Web site at: *http://www.wapa.gov/regions/DSW/Rates/Pages/ancillary-rates-2017.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: January 20, 2016.

Mark A. Gabriel,

Administrator.

[FR Doc. 2016–01977 Filed 2–2–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Rocky Mountain Region Transmission, Ancillary Services, and Sale of Surplus Products—Rate Order No. WAPA–174

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Transmission, Ancillary Services, and Sale of Surplus Products Formula Rates.

SUMMARY: The Western Area Power Administration (Western) Loveland Area Projects' (LAP) Transmission and Western Area Colorado Missouri Balancing Authority's (WACM) Ancillary Services formula rates under Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, L–AS7, L–AS9, and L–UU1 expire on September 30, 2016. Western is proposing modifications to the existing formula rate schedules and also is proposing to add a new rate schedule, referred to as ''LAP Marketing Sale of Surplus Products, L–M1.'' Western has prepared a brochure that provides detailed information on the proposed formula rates. If adopted, the proposed formula rates, under Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, L–AS7, L–AS9, L–UU1, and L–M1, will become effective October 1, 2016, and will remain in effect through September 30, 2021, or until superseded. Publication of this **Federal Register** notice (FRN) begins the formal process for consideration of the proposed formula rates.

DATES: The consultation and comment period begins today and will end May 3, 2016. Western will present a detailed explanation of the proposed formula rates and other modifications addressed within this FRN at a public information forum that will be held on March 28, 2016, at noon MDT. Western will accept oral and written comments at a public comment forum that will be held on March 28, 2016, from 2:30 p.m. to no later than 4:00 p.m. MDT. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The location for both the public information forum and the public comment forum is the Western Area Power Administration, Rocky Mountain Region, 5555 East Crossroads Boulevard, Loveland, Colorado. Send written comments to Mr. Bradley S. Warren, Senior Vice President, Rocky Mountain Regional Manager, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, Colorado 80538–8986, or at email *LAPTransAdj@wapa.gov.* Western will post information about the rate process, as well as comments received via letter and email, on its Web site at: *http://www.wapa.gov/regions/RM/rates/Pages/2017-rate-adjustment.aspx.* Written comments must be received by the end of the consultation and comment period to be considered by Western in its decision process.

As access to Western facilities is controlled, any United States (U.S.) citizen wishing to attend must present an official form of picture identification (ID), such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID prior to signing into Western. Foreign nationals should contact Western via Mrs. Sheila D. Cook, Rates Manager, at telephone number (970) 461–7211 or by email at *scook@wapa.gov* 30 days in advance of the meeting to obtain the necessary form for admittance to Western's Rocky Mountain Regional Office.

FOR FURTHER INFORMATION CONTACT: Mrs. Sheila D. Cook, Rates Manager, Rocky Mountain Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, Colorado 80538–8986, at telephone number (970) 461–7211, or by email at *scook@wapa.gov.*

SUPPLEMENTARY INFORMATION: Under the existing formula rate schedules, approved under Rate Order No. WAPA–155,[1]charges are recalculated annually using updated financial and load information, as applicable. The proposed formula rates continue this approach. If adopted, these proposed formula rates will be in effect October 1, 2016, through September 30, 2021.

[1] WAPA–155 was approved by the Deputy Secretary of Energy on September 2, 2011 (76 FR 61184), and confirmed and approved by FERC on a final basis on December 2, 2011, in Docket No. EF11–10–000. *See United States Department of Energy, Western Area Power Administration,* 137 FERC ¶ 62,200.

This FRN describes proposed changes to the services referenced below.

Transmission Services

Formula Rate for Annual Transmission Revenue Requirement

Under this proposal, there will be no change to the existing formula rate for calculating the Annual Transmission Revenue Requirement (ATRR), which is applicable to both Network Integration and Point-to-Point transmission service. The ATRR is the annual cost of the LAP Transmission System, adjusted for Non-Firm Point-to-Point revenue credits, costs that increase the capacity available for transmission, other miscellaneous charges or credits, and the prior year true-up.

Proposed Change to Forward-Looking Transmission Rate Methodology

Western is proposing to shorten the forward-looking transmission rate projection period for this ATRR calculation from sixteen months to four months. In the previous rate adjustment process, Western incorporated a forward-looking transmission rate methodology to calculate the ATRR to recover transmission expenses and investments on a current basis rather than a historical basis. Presently, Western projects transmission costs two years into the future relying on current year actual data for approximately the first eight months of the year and projecting for the remaining four months of the year plus twelve additional months. Western is proposing to remove the last twelve months of projections, thus only having to true-up the projected costs for the four-month period of the current year. This method would allow Western to more accurately match cost recovery with cost incurrence without introducing unnecessary, large true-ups caused by estimating the second year. This proposal would be a change to the inputs for the annual charge, rather than a change to the formula rate.

When actual cost information for a year becomes available, Western will continue to calculate the actual revenue requirement. Revenue collected in excess of Western's actual revenue requirement will be included as a credit in the ATRR in the following year. Similarly, any under-collection of the revenue requirement will be recovered in the following year. This true-up procedure ensures Western recovers no more or no less than the actual transmission costs for the year. For example, as Fiscal Year (FY) 2016 actual financial data becomes available, the under- or over-collection of revenue for FY 2016 can be determined. When the FY 2018 charge is calculated, it would include an adjustment for revenue under- or over-collected in FY 2016.

Formula Rate for Network Integration Transmission Service (Rate Schedule L–NT1)

Western proposes no changes to the Network Integration Transmission Service Formula Rate, but proposes to make minor edits to the rate schedule. Those edits would consist of rearranging the order of the sections and removing the section setting forth the annual ATRR. In the future, each year's ATRR will be identified in a separate tracking document posted on Western's Web site, as well as posted on Western's Transmission Services Open Access Same Time Information System (OASIS) Web site under Loveland Area Projects Transmission (LAPT).

Formula Rates for Firm and Non-Firm Point-to-Point Transmission Service (Rate Schedules L–FPT1 and L–NFPT1)

Western proposes a change in the formula rate for Firm Point-to-Point transmission service to clarify the denominator of the formula includes both Firm Point-to-Point transmission capacity reservations and Network Integration transmission service capacity. Western proposes the denominator read as ''Firm Transmission Capacity Reservations plus Network Integration Transmission Service Capacity'' rather than the current language ''LAP Transmission System Total Load.''

The proposed formula rate for Point-to-Point transmission service would be:

$$\text{P-T-P Formula Rate} = \frac{\text{Annual Transmission Revenue Requirement}}{\text{Firm Transmission Capacity Reservations (kW) plus Network Integration Transmission Service Capacity (kW)}}$$

In addition, Western also proposes to make minor editorial changes to the firm and non-firm rate schedules. Those edits would consist of rearranging the order of the sections and deleting the sections setting forth the annual charges under the formula rates. In the future, the annual charges will be identified in a separate tracking document posted on Western's Web site as well as posted on the LAPT OASIS Web site.

Transmission Losses Service (Rate Schedule L–AS7)

Western proposes no changes to the Transmission Losses formula rate but proposes to make minor editorial changes to the rate schedule. Those edits would consist of rearranging the order of the sections, moving text within the sections, making minor edits to the language within the ''applicable'' section, and deleting the ''rate'' section.

Penalty Rate for Unreserved Use of Transmission Service (Rate Schedule L–UU1)

Western proposes no changes to the Unreserved Use penalty formula rate but plans to make minor editorial changes to the rate schedule. Those edits would consist of rearranging the order of the sections, moving text within the sections, and deleting the ''rate'' section.

Ancillary Services

Scheduling, System Control, and Dispatch Service (Rate Schedule L–AS1)

Western proposes no changes to the Scheduling, System Control, and Dispatch formula rate, but plans to make minor editorial changes to the rate schedule. Those edits would consist of adding LAPT and Colorado River Storage Project Transmission (CRCM) to the title, rearranging the order of the sections, and deleting the section setting forth the annual charge under the formula rate. In the future, the annual charge will be identified in a separate tracking document posted on Western's Web site as well as posted on the LAPT and CRCM OASIS Web sites.

Reactive Supply and Voltage Control From Generation or Other Sources Service (Rate Schedule L–AS2)

Western proposes to eliminate Reactive Supply and Voltage Control from Generation or Other Sources (VAR Support Service) exemptions and begin assessing VAR Support Service charges for all transmission transactions on the

LAPT and CRCM transmission systems, as contract provisions allow. In order to maintain transmission voltages on the transmission system within acceptable limits, generating facilities under the control of the Control Area operator, WACM, are operated to produce or absorb reactive power. Thus, VAR Support Service must be provided for each transaction on the transmission systems within the Control Area either directly by the Transmission Service Provider (TSP) or indirectly by the TSP making arrangements with the Control Area operator. Furthermore, the Transmission Customers are required to purchase this service from the TSP. If the TSP acquires the service from the Control Area, the charges are to reflect only a pass-through of the costs charged to the TSP by the Control Area operator, as stated in the Federal Energy Regulatory Commission's (FERC) pro forma open access transmission tariff language.[2] WACM has both Federal TSPs (LAPT and CRCM) and non-Federal TSPs.

Historically, based on the assumption some LAPT and CRCM transmission customers have non-Federal generation resources inside WACM, and they have agreed to make their non-Federal generation resources inside WACM available to the WACM operator for VAR Support Service, Western has allowed some of these LAPT and CRCM transmission customers to receive an exemption from LAPT and CRCM VAR Support Service charges. As a result of these exemptions, the cost for LAPT and CRCM to provide VAR Support Service on their transmission systems has been shifted to the remaining (non-exempted) transmission customers. WACM, the Control Area operator, has always taken the position the non-Federal TSPs have adequate non-Federal generation resources to provide VAR Support Service on their transmission systems and therefore WACM has never charged any non-Federal TSPs for VAR Support Service. In the future, WACM plans to pursue efforts to verify that this presumption continues to be warranted for all of the non-Federal TSPs.

Western is now proposing to take the same position with the Federal TSPs, *i.e.,* that the Federal generation resources connected to the LAPT and CRCM transmission systems provide adequate VAR Support Service on the LAPT and CRCM transmission systems, without the addition of the non-Federal generation resources. It will be inappropriate, therefore, for LAPT and CRCM TSPs to continue to provide VAR Support Service charge exemptions to its transmission customers. The elimination of the LAPT and CRCM VAR Support Service exemptions will lead to the recovery of the LAPT and CRCM VAR Support Service costs from all LAPT and CRCM transmission customers instead of only a portion of them.

Western is also proposing changes to both the numerator and the denominator of the formula rate for VAR Support Service. The numerator will be changed to include the annual cost of other resources used to provide VAR Support Service in addition to the revenue requirement for Federal generation. The denominator will be changed to state ''Transmission Transactions in WACM Requiring VAR Support Service'' rather than ''Load in WACM requiring VAR Support Service.''

The proposed formula rate for VAR Support Service is as follows:

$$\text{VAR Support Formula Rate} = \frac{\text{Annual Revenue Requirement for VAR Support Service}}{\text{Transmission Transactions in WACM Requiring VAR Support Service (kW)}}, \text{ where}$$

Numerator is: Annual Revenue Requirement for VAR Support Service = (Revenue Requirement for Generation × % of Resource Capacity Used for VAR Support Service (1 Minus Power Factor)) + Other Resources, *e.g.,* energy and transmission costs for condensing Federal generating units.

Denominator is: Transmission Transactions in WACM Requiring VAR Support Service = Transmission Capacity usage on Federal Transmission Systems (Point-to-Point Transmission Service as well as Network Integration Transmission Service on LAPT and CRCM Transmission Systems) + Transmission Capacity usage by other TSPs inside WACM.

In addition, Western also proposes to make edits to the VAR Support Service rate schedule. Those edits would consist of adding LAPT and CRCM to the title, rearranging the order of the sections, removing language regarding exemptions, clarifying the rate is applicable to Federal transmission customers serving load inside WACM and to non-Federal TSPs/owners/operators who request the service from WACM or who do not adequately supply VAR Support Service on their systems, and deleting the section setting forth the annual charge under the formula rate. In the future, the annual charge will be identified in a separate tracking document posted on Western's Web site as well as posted on the LAPT and CRCM OASIS Web sites.

Regulation and Frequency Response Service (Rate Schedule L–AS3)

In order to more accurately allocate costs based on cost causation principles, Western is proposing a change to the current load-based assessment of the Regulation and Frequency Response Service (Regulation Service) formula rate. The current load-based assessment is applicable to (1) all load inside WACM and (2) installed nameplate capacity of all intermittent resources serving load inside WACM.

Western is not proposing any changes to the application of the load-based assessment for the load inside WACM. The charge will continue to be one-for-one for each megawatt (MW) of load inside WACM. Western is, however, proposing to modify the one-for-one MW load-based assessment for the installed nameplate of intermittent resources serving load inside WACM. It would instead include a ''variable capacity multiplier'' to be applied to the installed capacity for Variable Energy Resources (VER) serving load inside WACM.

The proposed formula rate for Regulation Service is as follows:

[2] 75 FERC ¶ 61,080 (FERC Order 888), Appendix D, ''Pro Forma Open Access Transmission Tariff'', Schedule 2, ''Reactive Supply and Voltage Control from Generation Sources Service'' (April 24, 1996).

$$\text{Regulation Service Formula Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation Service}}{\begin{array}{c}\text{Load inside WACM Requiring Regulation Service (kW)} \\ + \\ (\text{Installed Nameplate Capacity of Wind Generators Serving Load inside WACM} \\ \text{X} \\ \text{Wind Capacity Multiplier) (kW)} \\ + \\ (\text{Installed Nameplate Capacity of Solar Generators Serving Load inside WACM} \\ \text{X} \\ \text{Solar Capacity Multiplier) (kW)}\end{array}}$$

Regulation Service is necessary to provide for the continuous balancing of resources with obligations and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation Service is accomplished by committing on-line generation whose output is raised or lowered as necessary, predominantly through the use of automatic generation control (AGC) equipment, to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the TSP (or the Control Area Operator who performs this function for the TSP). The TSP must offer this service when the transmission service is used to serve load within its Control Area.

Western markets the maximum amount of power from its Federal projects, leaving little flexibility for additional regulation needs within WACM. More VER connecting to the system results in a significant increase in regulation needs and costs and presents operational constraints in managing the significant fluctuations normally associated with VER. These costs are allocated to all customers taking Regulation Service regardless of their ability or inability to influence the condition.

The Annual Revenue Requirement for Regulation Service will not be affected by the inclusion of the multipliers. The proposed change will result in the denominator increasing, because more units of capacity will be charged, which in turn will cause the overall Regulation Service charge to be lower. The lower charge will then be allocated to each unit of capacity, thereby lowering the costs incurred by the load and assigning more of the costs for regulating capacity to those customers predominantly contributing to the need for Regulation Service.

In order to determine the ''variable capacity multipliers,'' Western has developed a ''Regulation Analysis'' tool that allows Western to determine the hourly impacts of both load and variable energy generation on WACM. The Regulation Analysis tool focuses on 95 percent (%) of the events where the Control Area's Area Control Error (ACE) limit was exceeded within the 10 minute duration range. Recent analysis using the Regulation Analysis tool has shown wind resources consume a disproportionate amount of regulating capacity. As an example, the results for the July 2014 to June 2015 average indicate a 2.25 or 225% wind capacity multiplier.

WACM does not have a significant amount of solar generation impacting its balancing authority area and, therefore, does not have sufficient solar generation data available to perform a thorough analysis at this time. Therefore, Western proposes to identify a solar capacity multiplier of 1.00 or 100%. This multiplier does not change the current denominator, but allows the denominator to change if and when solar generation becomes more prevalent in the WACM footprint.

The Regulation Analysis will be completed on a monthly basis with an annual average, based on most current data available, typically July to June, used for the annual formula rate updates that go into effect each October 1 of the effective rate period.

In addition, Western proposes to make edits to the Regulation Service rate schedule. Those edits will consist of adding LAPT and CRCM to the title, rearranging the order of the sections, clarifying the rate is applicable to Federal transmission customers and non-Federal TSPs requesting the service that serve load within WACM, and removing the section setting forth the annual charge under the formula rate. In the future, the annual charge will be identified in a separate tracking document posted on Western's Web site as well as posted on the LAPT and CRCM OASIS Web sites.

Energy and Generator Imbalance Services (Rate Schedules L–AS4 and L–AS9)

Western proposes no changes to the Energy Imbalance Service or Generator Imbalance Service formula rates, but plans to make minor editorial changes to the rate schedules. Those edits would consist of adding LAPT to the title, rearranging the order of the sections, and deleting the ''rate'' section.

Rate Schedules for Operating Reserves Service—Spinning and Supplemental (Rate Schedules L–AS5 and L–AS6)

Western proposes no changes to the Spinning and Supplemental Reserves Service formula rates, but proposes to make editorial changes to the rate schedules. Those edits would consist of adding LAPT to the schedule, clarifying the ''applicable'' language, and rearranging the order of the sections.

LAP Marketing Services

LAP Marketing Sale of Surplus Products (L–M1)

Western is proposing to implement a new LAP Marketing rate schedule that would be applicable to the sale of LAP surplus energy and capacity products. At this time, Western proposes to include reserves, regulation, and frequency response. If LAP resources are available, the charge will be determined based on market rates plus administrative costs. In the future, if Western considers offering additional products for sale, a revised or new rate schedule will be proposed via a public rate adjustment process.

Legal Authority

Western will hold both a public information forum and a public comment forum. After review of public comments, Western will take further action on the proposed formula rates and other modifications addressed in this FRN, and follow procedures for public participation consistent with 10 CFR part 903.

Western is establishing formula rates for LAP Transmission, WACM, LAPT, and CRCM Ancillary Services, and LAP Marketing Sales of Surplus Products under the Department of Energy (DOE) Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32

Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts specifically applicable to the projects involved.

By Delegation Order No. 00–037.00A, effective October 25, 2013, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents Western initiates or uses to develop the proposed formula rates are available for inspection and copying at the Rocky Mountain Regional Office, located at 5555 East Crossroads Boulevard, Loveland Colorado 80538–8986. Many of these documents and supporting information are also available on Western's RMR Web site under the 2017 Rate Adjustment—Transmission and Ancillary Services section located at *http://www.wapa.gov/regions/RM/rates/Pages/rates.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: January 20, 2016.

Mark A. Gabriel,

Administrator.

[FR Doc. 2016–02035 Filed 2–2–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2016–0010; FRL–9941–88–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Recordkeeping for Institutional Dual Use Research of Concern (iDURC) Policy Compliance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Recordkeeping for Institutional Dual Use Research of Concern (iDURC) Policy Compliance'' (EPA ICR No. 2530.01, OMB Control No. 2080–NEW) to the Office of Management and Budget (OMB) for emergency processing in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a request for approval of a new collection, for which EPA requests approval by February 29, 2016. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 4, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–ORD–2016–0010, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *ord.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: Brendan Doyle, Office of Research and Development, Mail Code: 8801R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–4584; email address: *doyle.brendan@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: To comply with the U.S. Government *Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (Policy)* (*http://www.phe.gov/s3/dualuse/Pages/default.aspx*), EPA must ensure that the institutions that are subject to the *Policy* train their laboratory personnel and maintain records of that training. This training is specific to ''dual use research of concern,'' and should include information on how to properly identify DURC and appropriate methods for ensuring research that is determined to be DURC is conducted and communicated responsibly.

EPA is requesting emergency clearance of this ICR under 5 CFR 1320.13(a)(2)(i) because the iDURC policy's effective date has passed, but without PRA approval the recordkeeping provisions cannot yet be implemented. Standard processing of this ICR would further delay full implementation of the policy, which seeks to mitigate the risk of public harm from life sciences research being misapplied.

EPA requests that OMB authorize this ICR by February 29, 2016, for the maximum of 180 days.

Form Numbers: None.

Respondents/affected entities: Private sector and the federal-owned/contractor-operated labs.

Respondent's obligation to respond: Mandatory (per EPA Order on Policy and Procedures for Managing Dual Use Research of Concern).

Estimated number of respondents: Eighteen (total).

Frequency of response: Only once and/or as necessary.

Total estimated burden: 72 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,320 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no currently approved burden as this is a new information collection request.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–01971 Filed 2–2–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9941–89–OA]

Farm, Ranch, and Rural Communities Advisory Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) is a necessary committee which is in the public interest. Accordingly, the FRRCC will be renewed for an additional two-year period. The purpose of the FRRCC is to provide advice and recommendations to the EPA Administrator on environmental issues and policies that are of importance to agriculture and rural communities. Inquiries may be directed to Donna Perla, Designated Federal Officer for FRRCC, U.S. EPA (Mail Code 8101R), 1200 Pennsylvania Avenue NW., Washington, DC 20460, or *perla.donna@epa.gov.*

Dated: January 11, 2016.

Ron Carleton,

Agricultural Counselor to the Administrator.

[FR Doc. 2016–01995 Filed 2–2–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0824; FRL–9941–90–OECA]

Proposed Information Collection Request; Comment Request; Application for Registration and Pesticide Report for Pesticide-Producing and Device-Producing Establishments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Application for Registration and Pesticide Report for Pesticide-Producing and Device-Producing Establishments'' (EPA ICR No. 0160.11, OMB Control No. 2070–0078) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is ICR is scheduled to expire on March 31, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 4, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2011–0824, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

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: Michelle Stevenson, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste & Toxics Branch (2225A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4203; email: *stevenson.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(a) requires that any person who produces pesticides, active ingredients or devices subject to the Act must register with the Administrator of EPA the establishment in which the pesticide, active ingredient or device is produced. This section further requires that application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such an establishment. EPA Form 3540–8, Application for Registration of Pesticide-Producing and Device-Producing Establishments, is used to collect the establishment registration information required by this section.

FIFRA Section 7(c) requires that any producer operating an establishment registered under Section 7 report to the Administrator within 30 days after it is registered, and annually thereafter by March 1st for certain pesticide or device production and sales or distribution information. The producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced, were produced during the past year, sold or distributed in the past year. The supporting regulations at 40 CFR part 167 provide the requirements and time schedules for submitting production information. EPA Form 3540–16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, is used to collect the pesticide

production information required by Section 7(c) of FIFRA.

Establishment registration information, collected on EPA Form 3540–8, is a one-time requirement for all pesticide-producing and device-producing establishments. Pesticide and device production information, reported on EPA Form 3540–16, is required to be submitted within 30 days after the company is notified of their pesticide-producing or device-producing establishment number, and annually thereafter on or before March 1st.

Form Numbers: 3540–8 and 3540–16.

Respondents/affected entities: Establishments registering pesticides.

Respondent's obligation to respond: Mandatory (40 CFR part 167).

Estimated number of respondents: 13,830.

Frequency of response: Annually.

Total estimated burden: 19,987 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,545,104 (per year), includes no annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change in hours at present, but we will be revising the estimates in the 2nd FR notice before we submit to OMB.

Dated: January 28, 2016.

Betsy Smidinger,

Acting Director, Office of Compliance.

[FR Doc. 2016–01994 Filed 2–2–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to Office of Management and Budget (OMB) to extend for three years the current PRA clearance for the information collection requirements contained in the Health Breach Notification Rule. That clearance expires on March 31, 2016.

DATES: Comments must be received by March 4, 2016.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Health Breach Notification Rule, PRA Comments, P–125402'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/healthbreachnotificationpra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Cora Tung Han, 202–326–2441, Attorney, Privacy & Identity Protection, Bureau of Consumer Protection, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Health Breach Notification Rule.

OMB Control Number: 3084–0150.

Type of Review: Extension of a currently approved collection.

Abstract: The Health Breach Notification Rule (Rule), 16 CFR part 318, requires vendors of personal health records and PHR related entities [1] to provide: (1) Notice to consumers whose unsecured personally identifiable health information has been breached; and (2) notice to the Commission. The Rule only applies to electronic health records and does not include recordkeeping requirements. The Rule requires third party service providers (*i.e.,* those companies that provide services such as billing or data storage) to vendors of personal health records and PHR related entities to provide notification to such vendors and PHR related entities following the discovery of a breach. To notify the FTC of a breach, the Commission developed a form, which is posted at *www.ftc.gov/healthbreach,* for entities subject to the rule to complete and return to the agency.

On October 16, 2015, the FTC sought comment on the information collection requirements associated with the Rule. 80 FR 62530. The FTC received three comments. None of these however addressed either the burden associated with the Rule or any of the other issues raised by the public comment request. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 80 FR 62530.

Likely Respondents: Vendors of personal health records, PHR related entities and third party service providers.

Estimated Annual Hours Burden: 3,267.

Estimated Frequency: 2 breach incidents per year.

Total Annual Labor Cost: $61,764.

Total Annual Capital or Other Non-Labor Cost: $49,960.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 4, 2016. Write ''Health Breach Notification Rule, PRA Comments, P–125402'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

[1] ''PHR related entity'' means an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that: (1) Offers products or services through the Web site of a vendor of personal health records; (2) offers products or services through the Web sites of HIPAA-covered entities that offer individuals personal health records; or (3) accesses information in a personal health record or sends information to a personal health record. 16 CFR 318.2(f).

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you are required to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/healthbreachnotificationpra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Health Breach Notification Rule, PRA Comments, P–125402'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 4, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

Christian S. White,

Deputy General Counsel.

[FR Doc. 2016–01975 Filed 2–2–16; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152–3104]

Jim Koons Management Company; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 29, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/jimkoonsmgtconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Jim Koons Management Company—Consent Agreement; File No. 152–3104'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/jimkoonsmgtconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Jim Koons Management Company—Consent Agreement; File No. 152–3104'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Evan Zullow (202) 326–2914 or Courtney Estep (202) 326–2788, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 28, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 29, 2016. Write ''Jim Koons Management Company—Consent Agreement; File No. 152–3104'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and

you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/jimkoonsmgtconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Jim Koons Management Company—Consent Agreement; File No. 152–3104'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 29, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Jim Koons Management Company. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a car dealership that sells used motor vehicles. According to the FTC complaint, respondent has represented that the used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose that the used motor vehicles it sells are subject to open recalls for safety issues.

For instance, the respondent has posted advertisements on the Web site *www.koons.com* which prominently featured the ''Koons Used Car Advantage'' and included the representation that ''[b]acked by the Koons Used Car Advantage, each vehicle we carry has been carefully selected and tested. . . .'' The Web site listed among the ''Koons Used Car Advantage Guarantees'' the following representation: ''Every certified Koons Outlet vehicle must pass a rigorous and extensive quality inspection before it can be sold. Our certified mechanics check all major mechanical and electrical systems and every power accessory as part of our rigid quality controls.''

Even though it makes such claims, the respondent has allegedly advertised on its Web sites numerous certified used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised certified used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify every consumer who purchased from it a certified used motor vehicle between July 1, 2013 and June 15, 2015 that some of the used vehicles it sold during this time had been recalled for safety issues which weren't repaired as of the date they were sold. The notice also specifies how consumers can check whether the vehicle is subject to an unrepaired recall at the National Highway Traffic Safety Administration's Web site, *https://vinrcl.safercar.gov/vin/.* This Web site also provides information on how to get a vehicle fixed if it is subject to an open recall.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision that requires the respondent to provide the Order to current and future principals, officers, directors, and managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of the Order. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part VII ''sunsets'' the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–01945 Filed 2–2–16; 8:45 am]

BILLING CODE 6750–01–P

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

FEDERAL TRADE COMMISSION

[File No. 152 3101]

General Motors, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 29, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/generalmotorsconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''General Motors LLC—Consent Agreement; File No. 152–3101'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/generalmotorsconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''General Motors LLC—Consent Agreement; File No. 152–3101'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Evan Zullow (202) 326–2914 or Courtney Estep (202) 326–2788, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 28, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 29, 2016. Write ''General Motors LLC—Consent Agreement; File No. 152–3101'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/generalmotorsconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''General Motors LLC—Consent Agreement; File No. 152–3101'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 29, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from General Motors, LLC. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is an automobile manufacturer that sells the cars it manufactures through local franchise dealerships. According to the FTC complaint, the respondent has represented that the used motor vehicles it markets and advertises have been subject to rigorous inspection, including for safety issues, but has failed to disclose that these used motor vehicles are subject to open recalls for safety issues.

For instance, the respondent has posted advertisements on its Web site

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

that make the following representations about vehicles that purportedly undergo a rigorous 172-point inspection:

We Check It, So You Don't Have to

172-Point Inspection and Reconditioning

* * * * *

Our 172-Point Vehicle Inspection and Reconditioning Process is conducted only by highly trained technicians and adheres to strict, factory-set standards to ensure that every vehicle's engine, chassis, and body are in excellent condition. The technicians ensure that everything from the drivetrain to the windshield wipers is in good working order, or they recondition it to our exacting standards. The vehicles are road-tested, put up on a lift for a complete underbody and frame inspection, and then completely checked for any cosmetic flaws.

And we do check it all. From the engine block to the shocks, right down to the floor mats, no major system is overlooked. If it fails a single point, we completely recondition it—or it won't be Certified.

Even though it makes such claims, the respondent has allegedly advertised on its Web site numerous Certified Pre Owned (''CPO'') vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised CPO vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it markets or advertises are safe, have been repaired for safety issues, or have been subject to a rigorous inspection unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify every consumer who purchased a CPO used motor vehicle from a GM dealership between July 1, 2013 and the date of entry of the Order, and whose vehicle has not had the open recall repaired, that (1) the consumer's vehicle has been recalled for safety issues that have not been repaired, and (2) how to get the vehicle repaired.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision that requires the respondent to provide the Order to certain current and future principals, officers, and directors, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of the Order. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part VII ''sunsets'' the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–01946 Filed 2–2–16; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152–3102]

Lithia Motors, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 29, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/lithiamotorsconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Lithia Motors, Inc.—Consent Agreement; File No. 152–3102'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/lithiamotorsconsent* by following the instructions on the Web-based form. If you prefer to file your comment on paper, write ''Lithia Motors, Inc.—Consent Agreement; File No. 152–3102'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Evan Zullow (202) 326–2914 or Courtney Estep (202) 326–2788, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 28, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 29, 2016. Write ''Lithia Motors, Inc.—Consent Agreement; File No. 152–3102'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does

not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/lithiamotorsconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Lithia Motors, Inc.—Consent Agreement; File No. 152–3102'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 29, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Lithia Motors, Inc. The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the FTC will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

The respondent is a car dealership that sells used motor vehicles. According to the FTC complaint, respondent has represented that the used motor vehicles it sells have been subject to rigorous inspection, including for safety issues, but has failed to disclose that the used motor vehicles it sells are subject to open recalls for safety issues.

For instance, the respondent has posted advertisements on its Web site that make the following representations about vehicles that carry a dealer-backed ''60 Day/3000 Mile'' warranty: ''160-Point Quality Inspection—Lithia 60 Day/3,000 Mile vehicles are put through an exhaustive 160-checkpoint Quality Assurance Inspection. We want the vehicles to look, feel and smell as new as possible. We inspect everything from the tires and the brakes to the suspension, drive train, engine components and even the undercarriage. Only vehicles that pass all 160 checkpoints (as appropriate to vehicle content) can receive our 60 Day/3,000 miles Limited Warranty. See dealer for details.''

Even though it makes such claims, the respondent has allegedly advertised on its Web sites numerous Lithia 60-Day/3,000 Mile used vehicles that were subject to open recalls for safety issues. In numerous instances, when the respondent allegedly advertised Lithia 60-Day/3,000 Mile used vehicles that are subject to open recalls for safety issues, it provided no accompanying clear and conspicuous disclosure of this fact. The proposed complaint alleges that this failure to disclose constitutes a deceptive act or practice under Section 5 of the FTC Act.

The proposed order is designed to prevent the respondent from engaging in similar deceptive practices in the future. Part I prohibits the respondent from representing that used motor vehicles it offers for sale are safe, have been repaired for safety issues, or have been subject to an inspection for issues related to safety unless the used motor vehicles are not subject to any open recalls for safety issues or the respondent discloses, clearly and conspicuously, in close proximity to such representation, any material qualifying information related to open recalls for safety issues. Part II is a provision that orders the respondent to notify every consumer who purchased from it a 60-Day/3,000 Mile used motor vehicle between July 1, 2013 and the date of entry of the Order that some of the used vehicles it sold during this time had been recalled for safety issues which weren't repaired as of the date they were sold, how to determine whether a vehicle is subject to an unrepaired recall, and information on how to get a vehicle fixed if it is subject to an open recall.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires the respondent to maintain for five years, and produce to the Commission upon demand, any relevant ads and associated documentary material. Part IV is an order distribution provision that requires the respondent to provide the Order to current and future principals, officers, directors, and managers, and to all current employees, agents, and representatives having responsibilities with respect to the subject matter of the Order. Part V requires the respondent to notify the Commission of corporate changes that may affect compliance obligations. Part VI requires the respondent to submit a compliance report to the Commission 60 days after entry of the order, and also additional compliance reports within 10 business days of a written request by the Commission. Part VII ''sunsets'' the order after twenty years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–01944 Filed 2–2–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2016–0001]

Availability of Draft Toxicological Profile; Glutaraldehyde

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for comment.

SUMMARY: This notice, prepared by the Agency for Toxic Substances and Disease Registry (ATSDR), announces the availability of the Toxicological Profile for Glutaraldehyde for review and comment. All toxicological profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information or reports on studies about the health effects of glutaraldehyde for review and potential inclusion in the profile.

Comments can include additional information or reports on studies about the health effects of glutaraldehyde. Although ATSDR will consider key studies for this substance during the profile development process, this **Federal Register** notice solicits any relevant, additional studies, particularly unpublished data. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion into the profile. ATSDR is providing a public comment period for this document as a means to best serve public health and our clients.

DATES: Written comments on this draft Toxicological Profile must be received on or before May 3, 2016.

ADDRESSES: You may submit comments, identified by docket number ATSDR–2016–0001, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Toxicology and Human Health Sciences, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd. NE., MS F–57, Atlanta, GA, 30329. Attn: Docket No. ATSDR–2016–0001.

Instructions: All submissions received must include the agency name and docket number for this notice. All relevant comments will be posted without change. Because all public comments regarding ATSDR Toxicological Profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Grant, Division of Toxicology and Human Health Sciences, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd. NE., MS F–57, Atlanta, GA, 30329. Phone: (800) 232–4636 or 770–488–3351.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (U.S. EPA) regarding hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances [also called the Substance Priority List (SPL)]. This list identifies 275 hazardous substances that ATSDR (in cooperation with EPA) has determined pose the most significant potential threat to human health. The 2015 SPL is available online at *www.atsdr.cdc.gov/spl.*

In addition, ATSDR has the authority to prepare toxicological profiles for substances not found at sites on the National Priorities List, in an effort to ''establish and maintain inventory of literature, research, and studies on the health effects of toxic substances'' under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under section 104(i)(4), and as otherwise necessary to support the site-specific response actions conducted by ATSDR.

The public comments and other data submitted in response to the **Federal Register** notices are available for public inspection at ATSDR. Comments are available for public inspection from Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Time, at 4770 Buford Hwy NE., Atlanta, Georgia 30341. Please call ahead to 1–800–232–4636 and ask for a representative in the Division of Toxicology and Human Health Sciences to schedule your visit.

Availability

The Glutaraldehyde Toxicological Profile is available online at *http://www.atsdr.cdc.gov/toxprofiles/index.asp* and *www.regulations.gov*, Docket No. ATSDR–2016–0001.

Donna B. Knutson,

Acting Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health and Agency for Toxic Substances and Disease Registry.

[FR Doc. 2016–01972 Filed 2–2–16; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4599]

List of Highest Priority Devices for Human Factors Review; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''List of Highest Priority Devices for Human Factors Review.'' FDA is issuing this draft guidance document in order to inform medical device manufacturers which device types should have human factors data included in premarket submissions. FDA believes these device types have clear potential for serious harm resulting from use error and that review of human factors data in premarket submissions will help FDA evaluate the safety and effectiveness and substantial equivalence of these 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 May 3, 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–4599 for ''List of Highest Priority Devices for Human Factors Review.'' 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 ''List of Highest Priority Devices for Human Factors Review'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Shannon Hoste, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2531, Silver Spring, MD 20993–0002, 240–402–3747, or *shannon.hoste@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Human factors testing is a valuable component of product development for medical devices. FDA recommends that manufacturers consider human factors testing for medical devices as a part of a robust design control subsystem. This draft guidance, if finalized, will inform medical device manufacturers which device types should have human factors data included in premarket submissions (*i.e.,* for premarket approval 510(k)). FDA believes these device types have clear potential for serious harm resulting from use error and that review of human factors data in premarket submissions will help FDA evaluate the safety and effectiveness and substantial equivalence of these devices.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document, ''Applying Human Factors and Usability Engineering to Medical Devices,'' to assist industry in following appropriate human factors and usability engineering processes to maximize the likelihood that new medical devices will be safe and effective for the intended users, uses, and use environments. Devices that should include human factors data in premarket submissions are listed in this draft guidance. When and if this draft guidance is finalized, FDA recommends that for devices identified in the draft guidance, manufacturers should provide FDA with a report that summarizes the human factors or usability engineering processes they have followed, including any preliminary analyses and evaluations and human factors validation testing, results, and conclusions.

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 the list of highest priority devices for human factors review. 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.regulations.gov.* Persons unable to download an electronic copy of ''List of Highest Priority Devices for Human Factors Review'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500052 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 are approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E are approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E are approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H are approved under OMB control number 0910–0332; the collections of information in 21 CFR parts 801 and 809 are approved under OMB control number 0910–0485; and the collections of information in the guidance document entitled ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' are approved under OMB control number 0910–0756.

Dated: January 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01889 Filed 2–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0429]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Meetings With Industry and Investigators on the Research and Development of Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 4, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0731. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance on Meetings With Industry and Investigators on the Research and Development of Tobacco Products

OMB Control Number 0910–0731—Extension

The Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) offers tobacco product manufacturers several pathways to obtain an order from FDA to authorize the marketing of a new tobacco product before it may be introduced or delivered into interstate commerce. To provide assistance with these pathways to market products, FDA will meet with tobacco product manufacturers, importers, researchers, and investigators (or their representatives) when appropriate. This guidance is intended to assist persons who seek meetings with FDA relating to their research to inform the regulation of tobacco products, or to support the development or marketing of tobacco products. The guidance has been revised to provide clarity.

In the guidance, the Agency discusses, among other things:

- What information FDA recommends persons include in a meeting request;
- How and when to submit a request; and
- What information FDA recommends persons submit prior to a meeting.

This guidance describes two collections of information: (1) The submission of a meeting request containing certain information and (2) the submission of an information package in advance of the meeting. The purpose of this proposed information collection is to allow FDA to conduct meetings with tobacco manufacturers, importers, researchers, and investigators in an effective and efficient manner. FDA issued this guidance as a level 2 guidance consistent with FDA's good guidance practices regulations (21 CFR 10.115).

Meeting Requests: The guidance sets forth FDA's recommendations for materials to be included in a request for a meeting with FDA to discuss the research and development of tobacco products. In the guidance, FDA recommends that the following information be included in the meeting request:

1. Product name and FDA-assigned Submission Tracking Number (if applicable);
2. Product category (*e.g.,* cigarettes, smokeless tobacco) (if applicable);
3. Product use (indicate for consumer use or for further manufacturing);
4. Contact information for the authorized point of contact for the company requesting the meeting;
5. The topic of the meeting being requested (*e.g.,* a new tobacco product application, an application for permission to market an MRTP, or investigational use of a new tobacco product);
6. A brief statement of the purpose of the meeting, which could include a discussion of the types of studies or data to be discussed at the meeting, the general nature of the primary questions to be asked, and where the meeting fits in the overall product development plans;
7. A preliminary list of the specific objectives/outcomes expected from the meeting;

8. A preliminary proposed agenda, including an estimate of the time needed and a designated speaker for each agenda item;
9. A preliminary list of specific questions, grouped by discipline (*e.g.,* chemistry, clinical, nonclinical);
10. A list of all individuals who will attend the meeting on behalf of the tobacco product manufacturer, importer, researcher, or investigator, including titles and responsibilities;
11. The date on which the meeting information package will be received by FDA; and
12. Suggested format of the meeting, *e.g.,* conference call, in-person meeting at FDA offices, video conference, or written response, and suggested dates and times for the meeting. Meetings are usually scheduled for 1 hour.

This information will be used by the Agency to: (1) Determine the utility of the meeting, (2) identify Agency staff necessary to discuss proposed agenda items, and (3) schedule the meeting.

Meeting Information Packages: An individual submitting a meeting information package to FDA in advance of a meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the individual or FDA to be discussed at the meeting. As stated in the guidance, FDA recommends that meeting information packages generally include updates of information that was submitted with the meeting request and, as applicable:

1. Product composition and design data summary;
2. Manufacturing and process control data summary;
3. Nonclinical data summary;
4. Clinical data summary;
5. Behavioral and product use data summary;
6. User and nonuser perception data summary; and
7. Investigational plans for studies and surveillance of the tobacco product, including a summary of proposed study protocols containing the following information (as applicable):
a. Study objective(s);
b. Study hypotheses;
c. Study design;
d. Study population (inclusion/exclusion criteria, comparison group(s);
e. Human subject protection information, including Institutional Review Board information;
f. Primary and secondary endpoints (definition and success criteria);
g. Sample size calculation;
h. Data collection procedures;
i. Duration of follow up and baseline and follow up assessments, and
j. Data analysis plan(s).

The purpose of the information package is to provide Agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. In the Agency's experience, reviewing such information is critical to achieving a productive meeting. For the information that was previously submitted in the meeting request, the information package should provide updated information that reflects the most current and accurate information available.

Description of Respondents: The respondents to this collection of information are manufacturers, importers, researchers, and investigators of tobacco products who seek to meet with FDA to discuss their plans regarding the development or marketing of a tobacco product.

In the **Federal Register** of September 17, 2015 (80 FR 55855), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Meeting Requests					
Combining and Sending Meeting Request Letters for Manufacturers, Importers, and Researchers	67	1	67	10	670
Meeting Information Packages					
Combining and Submitting Meeting Information Packages for Manufacturers, Importers, and Researchers	67	1	67	18	1,206
Total					1,876

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the number of respondents for meeting requests in table 1 of this document is based on the number of meeting requests to be received over the next 3 years.

In the next 3 years of this collection, FDA estimates that 67 preapplication meetings will be requested. The number is not expected to change, as the public is more experienced in submitting applications for substantial equivalence, requests for nonsubstantial equivalence, etc.

Thus, FDA estimates the number of manufacturers, importers, researchers, and investigators who are expected to submit meeting requests in table 1 of this document to be 67 (50 year-1 requests + 100 year-2 requests + 50 year-3 requests ÷ 3). The hours per response, which is the estimated number of hours that a respondent would spend preparing the information recommended by this guidance to be submitted with a meeting request, is estimated to be approximately 10 hours each, and the total burden hours for meeting requests are expected to be 670 hours (10 hours preparation/mailing × 67 average respondents per year). Based on FDA's experience, the Agency expects it will take respondents this amount of time to prepare, gather, copy, and submit brief statements about the product and a description of the purpose and details of the meeting.

FDA's estimate of the number of respondents for compiling meeting information packages in table 1 of this document is based on 67 respondents each preparing copies of their information package and submitting them to FDA, for a total of 1,206 hours annually. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package as recommended by the guidance, is estimated to be approximately 18 hours per information package. Based on FDA's experience, the Agency expects

that it will take respondents 1,206 hours of time (67 respondents × 18 hours) to gather, copy, and submit brief statements about the product, a description of the details of the anticipated meeting, and data and information that generally would already have been generated for the planned research and/or product development.

The total number of burden hours for this collection of information is 1,876 hours (670 hours to prepare and submit meeting requests and 1,206 hours to prepare and submit information packages).

Dated: January 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–02000 Filed 2–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0199]

Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices; Draft Guidance for Industry and Food and Drug Administration Staff; Availability and Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry and FDA staff entitled ''Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices.'' When finalized, this draft document will describe the Agency's intent not to enforce, before September 24, 2021, the prohibition against providing National Health Related Item Code (NHRIC) or National Drug Code (NDC) numbers on device labels and device packages, with respect to certain finished devices manufactured and labeled prior to September 24, 2018. In addition, when finalized, this draft guidance will describe the Agency's intent to continue considering requests for continued use of FDA labeler codes under a system for the issuance of unique device identifiers (UDIs) until September 24, 2018. This draft guidance is not the final version of the guidance 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 comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 4, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–0199 for ''Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to 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 draft 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 ''Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Alternatively, you may submit written

requests for a single copy of the draft guidance to the Office of Communications, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to the office that you are ordering from to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, Rm. 3303, Silver Spring, MD 20993–0002, 301–796–5995, email: *GUDIDSupport@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 226 of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) and Section 614 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) amended the Federal Food, Drug, and Cosmetic Act to add section 519(f) (21 U.S.C. 360i(f)), which directs FDA to issue regulations establishing a unique device identification system for medical devices along with implementation timeframes for certain medical devices. The final rule (UDI Rule), establishing the unique device identification system, was published on September 24, 2013 (78 FR 58786). Among other requirements, the UDI Rule requires that the label and every device package of a medical device distributed in the United States bear a UDI, unless an exception or alternative applies (21 CFR 801.20).

The unique device identification system is being phased in over seven years according to a series of compliance dates, based primarily on device classification. These compliance dates establish the dates after which devices placed into commercial distribution must bear a UDI on their labels and device packages as follows: September 24, 2014, for Class III devices and devices licensed under the Public Health Service Act (PHS Act); September 24, 2015, for implantable, life-supporting, or life-sustaining devices; September 24, 2016, for Class II devices; and September 24, 2018, for Class I and unclassified devices (78 FR 58786 at 58815).

To further the objectives of creating a national device identification system, the UDI Rule includes a provision that rescinds any NHRIC or NDC number, assigned to a medical device (21 CFR 801.57). Under § 801.57(a), on the date a device is required to bear a UDI on its label, any NHRIC or NDC number assigned to that device is rescinded and may no longer be on the device label or on any device package. For a device not required to bear a UDI on its label, any NHRIC or NDC number assigned to that device is rescinded as of September 24, 2018, and may no longer be on the device label or on any device package (§ 801.57(b)).

Currently, medical devices available through a pharmacy and potentially eligible for reimbursement from payers are generally labeled with an 11-digit reimbursement number, typically using an NHRIC or NDC number assigned to the device. The draft guidance, when finalized, would describe the Agency's intent not to enforce before September 24, 2021, the prohibition against providing NHRIC and NDC numbers on device labels and device packages of finished class III devices; devices licensed under the PHS Act; class II devices; and implantable, life-supporting or life-sustaining devices that are manufactured and labeled prior to September 24, 2018. This timeline would coincide with the schedule by which remaining class I and unclassified devices that do not qualify for an exception or alternative must bear a UDI on their labels and device packages. This enforcement policy, when finalized, would apply to the requirements under § 801.57(a) for class III devices; devices licensed under the PHS Act; class II devices; and implantable, life-supporting or life-sustaining devices only; it would not extend to any of the other requirements of the UDI Rule for these devices.

FDA believes that continued implementation of UDI requirements under 21 CFR 801 subpart B and 21 CFR 830 subpart E according to the scheduled compliance dates is important to achieving the objectives of the UDI Rule in a timely manner. However, it is not FDA's intent to cause disruption to existing reimbursement, supply chain, and procurement processes, or to interfere potentially with patient access to treatment. We therefore recognize that additional time is appropriate for stakeholders to make changes to ensure that medical device reimbursement, supply chain, and procurement systems and processes will not depend on NHRIC and NDC numbers.

Additionally, under § 801.57(c) and (d), a labeler may submit a request to FDA for continued use of a previously assigned FDA labeler code under a system for the issuance of UDIs. A labeler who has been assigned an FDA labeler code to facilitate use of NHRIC or NDC numbers may continue to use that labeler code under a system for the issuance of UDIs provided that such use is consistent with the framework of the issuing Agency that operates that system and that the labeler submits, and obtains FDA approval of, a request for continued use of the assigned labeler code (§ 801.57(c)). Under § 801.57(c)(2), the deadline to submit such a request is September 24, 2014.

FDA intends to consider requests submitted to the Agency for continued use of an FDA labeler code under a system for the issuance of UDIs until September 24, 2018. In addition, FDA does not intend to take action against a labeler for incorporating a previously assigned FDA labeler code into its UDI without requesting approval to do so by the deadline set forth in § 801.57(c)(2), if that labeler submits a request that otherwise complies with § 801.57(c) and (d) by September 24, 2018. Labelers who have been granted continued use of an FDA labeler code by FDA should contact their FDA-accredited issuing Agency to incorporate the FDA labeler code into their UDIs.

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 ''Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to 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. Request for Comments

FDA is seeking additional information on this issue. FDA is particularly interested in receiving information relating to the following question:

- Is a time period through September 24, 2018, an appropriate amount of additional time for stakeholders to adopt medical device reimbursement, supply chain, and procurement systems that do not depend on having NHRIC and NDC numbers on the device label? If not, why is this not an appropriate amount of time and how much more time would be reasonable?

IV. 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* or at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of the draft guidance document entitled ''Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices'' may send an email request to *CDRH-Guidance@fda.hhs.gov* or to *ocod@fda.hhs.gov,* or by calling 1–800–835–4709 or 240–402–7800, to receive an electronic copy of the document. Please use the document number GUD1500044 to identify the guidance you are requesting.

V. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information described 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 801 have been approved under OMB control number 0910–0485, and the collections of information in 21 CFR part 830 have been approved under OMB control number 0910–0720.

Dated: January 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01892 Filed 2–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0469]

Applying Human Factors and Usability Engineering to Medical Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Applying Human Factors and Usability Engineering to Medical Devices.'' FDA has developed this guidance document to assist industry in following appropriate human factors and usability engineering processes to maximize the likelihood that new medical devices will be safe and effective for the intended users, uses, and use environments. The recommendations in this guidance document are intended to support manufacturers in improving the design of medical devices to minimize potential use errors and resulting harm. FDA believes that these recommendations will enable manufacturers to assess and reduce risks associated with medical device use.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–D–0469 for ''Applying Human Factors and Usability Engineering to 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 guidance document entitled ''Applying Human Factors and Usability Engineering to 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. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Shannon Hoste, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2531, Silver Spring, MD 20993–0002, 240–402–3747 or *Shannon.hoste@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

To understand use-related hazards, it is necessary to have an accurate and complete understanding of how a device will be used. Understanding and optimizing how people interact with technology is the subject of human factors engineering (HFE) and usability engineering (UE). HFE/UE considerations in the development of medical devices include the three major components of the device user system: (1) Device users; (2) device use environments; and (3) device user interfaces.

For safety-critical technologies such as medical devices, the process of eliminating or reducing design-related use problems that contribute to or cause unsafe or ineffective medical treatment is part of a process for controlling overall risk. For devices where harm could result from ''use errors,'' the dynamics of user interaction should be included in risk analysis and risk management. By incorporating these considerations into the device development process, manufacturers can reduce the overall risk level posed by their devices, thus decreasing adverse events associated with the device and avoiding potential device recalls.

In the **Federal Register** of June 22, 2011 (76 FR 36543), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by September 19, 2011. FDA received over 600 comments, which were generally supportive of the draft guidance document, but requested clarification in a number of areas. The most frequent types of comments requested revisions to the language or structure of the document, or clarification on risk mitigation and human factors testing methods, user populations for testing, training of test participants, determining the appropriate sample size in human factors testing, reporting of testing results in premarket submissions, and collecting human factors data as part of a clinical study. In response to these comments, FDA revised the guidance document to clarify the points identified and restructured the information for better readability and comprehension. This guidance supersedes the guidance entitled ''Medical Device Use-Safety: Incorporating Human Factors Engineering into Risk Management'' dated July 18, 2000, which will be withdrawn.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Applying Human Factors and Usability Engineering to 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 guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. Persons unable to download an electronic copy of ''Applying Human Factors and Usability Engineering to 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 1747 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations and guidance. 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 are approved under OMB control number 0910–0073; the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E are approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A through E are approved under OMB control number 0910–0231; the collections of information in 21 CFR part 814, subpart H are approved under OMB control number 0910–0332; the collections of information in 21 CFR parts 801 and 809 are approved under OMB control number 0910–0485; and the collections of information in the guidance document entitled ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' are approved under OMB control number 0910–0756.

Dated: January 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01887 Filed 2–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0194]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Biosimilar User Fee Cover Sheet; Form FDA 3792

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Biosimilar User Fee Cover Sheet; Form FDA 3792'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On June 23, 2015, the Agency submitted a proposed collection of information entitled ''Biosimilar User Fee Cover Sheet; Form FDA 3792'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0718. The approval expires on December 31, 2018. A copy of the supporting statement for this

information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01883 Filed 2–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0253]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Postmarketing Adverse Drug Experience Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Postmarketing Adverse Drug Experience Reporting'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On July 1, 2015, the Agency submitted a proposed collection of information entitled ''Postmarketing Adverse Drug Experience Reporting'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0230. The approval expires on December 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01884 Filed 2–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0915]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On July 2, 2015, the Agency submitted a proposed collection of information entitled ''Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0636. The approval expires on December 31, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: January 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01885 Filed 2–2–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4848]

Human Factors Studies and Related Clinical Study Considerations in Combination Product Design and Development; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry and FDA staff entitled ''Human Factors Studies and Related Clinical Study Considerations in Combination Product Design and Development.'' This document provides guidance to industry and FDA staff on the underlying principles of human factors (HF) studies during the development of combination products. Combination products are comprised of any combination of a drug and a device; a device and a biological product; a biological product and a drug; or a drug, a device, and a biological product.

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 comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 3, 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–4848 for ''Human Factors Studies and Related Clinical Study Considerations in Combination Product Design and Development.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Office of Combination Products, Food and Drug Administration, Bldg. 32, Rm. 5129, 10903 New Hampshire Ave., Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Patricia Love, Deputy Director, Office of Combination Products, Office of Special Medical Programs, Office of Medical Products and Tobacco, Office of the Commissioner, Food and Drug Administration, at *patricia.love@fda.hhs.gov* or 301–796–8933.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled ''Human Factors Studies and Related Clinical Study Considerations in Combination Product Design and Development.'' This document provides guidance to industry and FDA staff on the underlying principles of HF studies during the development of combination products as defined under 21 CFR part 3. This draft guidance describes Agency recommendations regarding HF information in a combination product investigational or marketing application. It clarifies the different types of HF studies, offers recommendations for timing and sequencing of HF studies, and discusses how HF studies contribute to assuring that combination products are safe and effective for the intended users, uses and environments. The draft guidance also addresses process considerations for HF information in investigational or marketing applications to promote development and timely review of safe and effective combination products. In addition, the draft guidance describes how HF studies relate to other clinical studies.

This draft guidance refers to two existing guidance documents that provide related information on HF considerations. These are Guidance for Industry and FDA Staff, ''Applying Human Factors and Usability Engineering to Optimize Medical Device Design,'' accessible at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM259760.pdf* and Draft Guidance ''Safety Considerations for Product Design to Minimize Medication Errors,'' accessible at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM331810.pdf.*

This draft guidance provides examples of the use of HF studies for different types of combination products in different clinical settings. FDA welcomes comments to the docket on other examples of combination products and why they may or may not need HF studies. Additionally FDA seeks comments on what challenges and development risks may arise depending upon whether HF studies are conducted before, in parallel to, or after major clinical studies.

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 ''Human Factors Studies and Related Clinical Study Considerations in Combination Product Design and Development.'' 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 with access to the Internet may obtain the document at *http://www.fda.gov/RegulatoryInformation/Guidances/ucm122047.htm, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

IV. Paperwork Reduction Act of 1995

This draft guidance refers to currently 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 314 for NDAs and ANDAs have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 for BLAs have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 814, subparts B and E, for PMAs have been approved under OMB control number 0910–0231. The collections of information in 21 CFR part 814, subpart H, for humanitarian device exemption applications have been approved under OMB control number 0910–0332. The collections of information in 21 CFR part 807, subpart E, for 510(k) notifications have been approved under OMB control number 0901–0120. The collections of information in 21 CFR part 312 for INDs have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 812 for IDEs have been approved under OMB control number 0910–0078. The collections of information in 21 CFR part 820 for the quality system regulation have been approved under OMB control number 0910–0073.

Dated: January 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–01888 Filed 2–2–16; 8:45 am]

BILLING CODE 4161–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: Presidential Commission for the Study of Bioethical Issues, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues (the Commission) will conduct its twenty fourth meeting on March 3, 2016. At this teleconference meeting, the Commission will discuss its ongoing development of pedagogical materials to facilitate the integration of bioethics into education in a range of traditional and non-traditional settings.

DATES: The teleconference meeting will take place March 3, 2016, from 2 p.m. to approximately 4 p.m.

ADDRESSES: The public teleconference will be conducted by telephone only. The agenda and call-in number will be posted at least one week in advance at *http://www.bioethics.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa M. Lee, Executive Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *Lisa.Lee@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the twenty fourth meeting of the Commission. The public teleconference will be open to the public with attendance limited to space available.

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an expert panel of not more than 13 members who are drawn from the fields of bioethics, science, medicine, technology, engineering, law, philosophy, theology, or other areas of the humanities or social sciences. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda for the Commission's twenty fourth meeting is to discuss its ongoing development of pedagogical materials to facilitate the integration of bioethics into education in a range of traditional and non-traditional settings. The draft meeting agenda, call-in number, and other information about the Commission will be available at *www.bioethics.gov.*

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful consideration of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted in advance, during, and after the meeting and are especially welcome. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Written comments will be accepted by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection.

Anyone planning to call into the meeting, who needs special assistance or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Dated: January 20, 2016.

Lisa M. Lee,

Executive Director, Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2016–01982 Filed 2–2–16; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS; Correction

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of

the Assistant Secretary for Health.

ACTION: Notice; correction.

SUMMARY: The meeting of the Presidential Advisory Council on HIV/AIDS (PACHA) scheduled for January 28 and 29, 2016, is postponed due to inclement weather. This meeting will be rescheduled at a future date.

FOR FURTHER INFORMATION CONTACT: Caroline Talev, MPA, Committee Manager, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: 202–205–1178. Fax: 202–401–4005. Email: *Caroline.Talev@hhs.gov.*

Correction

In the **Federal Register** of January 5, 2016, Vol. 81, No. 2, on pages 243–244 a meeting of the Presidential Advisory Council on HIV/AIDS was announced. That meeting has been cancelled due to inclement weather.

Dated: January 28, 2016.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS, U.S. Department of Health and Human Services.

[FR Doc. 2016–01936 Filed 2–2–16; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel; Career Development.

Date: February 23, 2016.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yujing Liu, MD, Ph.D., Chief, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 451–5152, *yujing_liu@nih.gov*.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Obesity and Asthma: Awareness and Self-Management.

Date: March 2, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 100, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov*.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Loan Repayment.

Date: March 8, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary A. Kelly, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, (301) 496–0235, *mary.kelly@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 27, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01912 Filed 2–2–16; 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; Musculoskeletal Rehabilitation Science.

Date: February 12, 2016.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Torrance Marriott Redondo Beach, 3635 Fashion Way, Torrance, CA 90503.

Contact Person: Rajiv Kumar, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis 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: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Mechanisms of Neurodegeneration.

Date: February 22, 2016.

Time: 1:00 p.m. to 2:00 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: Carole L Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: February 24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Interventions and Mechanisms for Addictions.

Date: February 24, 2016.

Time: 12:00 p.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: Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300–6541, *boulaymg@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Immunity and Host Defense Study Section.

Date: February 25–26, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: San Diego Marriott Mission Valley, 8757 San Diego Drive, San Diego, CA 92108.

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–435–1506, *jakesse@mail.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: February 25–26, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marines' Memorial Club and Hotel, 609 Sutter Street, San Francisco, CA 94102.

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: February 25–26, 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 Rd. NW, Washington, DC 20015.

Contact Person: Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–CA–15–017: Big Data to Knowledge (BD2K) Development of Software Tools and Methods in Data Privacy, Data Repurposing, and Applying Metadata (U01).

Date: February 25, 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: Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, *pyonkh2@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: February 25–26, 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: Sharon K Gubanich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.

Date: February 25–26, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street NW, Washington, DC 20037.

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Room 6185, Bethesda, MD 20892, (301)451–6319, *rojasr@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Innovative Immunology Research.

Date: February 25, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Tampa Airport Westshore, 2225 N. Lois Avenue, Tampa, FL 33607.

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207 MSC 7812, Bethesda, MD 20892, (301) 435–1238, *hodged@mail.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Intercellular Interactions Study Section.

Date: February 25, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Pere Marquette Hotel, 817 Common Street, New Orleans, LA 70112.

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: February 25, 2016.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Michael L Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: February 25–26, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Vaccines Against Microbial Diseases Study Section.

Date: February 25–26, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: San Diego Marriott Mission Valley, 8757 Rio San Diego Drive, San Diego, CA 92108.

Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: February 25–26, 2016.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn San Diego—Bayside, 4875 N. Harbor Drive, San Diego, CA 92106.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: February 25–26, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: San Diego Marriott Mission Valley, 8757 Rio San Diego Drive, San Diego, CA 92108.

Contact Person: David B Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@mail.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: February 25–26, 2016.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500–5829, *sechu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Dermatology.

Date: February 25, 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: Yanming Bi, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–451–0996, *ybi@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

Date: February 25–26, 2016.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Risk Prevention, Aging and Social Behavior.

Date: February 25, 2016.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immune Mechanisms in Autoimmunity and Allergy.

Date: February 26, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Tampa Airport Westshore, 2225 N. Lois Avenue, Tampa, FL 33607.

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207 MSC 7812, Bethesda, MD 20892, (301) 435–1238, *hodged@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urologic and Urogynecology Applications.

Date: February 26, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Understanding and Promoting Health Literacy.

Date: February 26, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Gabriel B. Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, 301–435–3562, *fosug@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioinformatics in Surgical Sciences, Imaging and Independent Living.

Date: February 26, 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.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: February 26, 2016.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Studies and Tissue Engineering.

Date: February 26, 2016.

Time: 10:00 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.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, 301–435–1222, *nurminskayam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences Biomedical Imaging and Bioengineering.

Date: February 26, 2016.

Time: 10:30 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: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301–402–9607, *Jan.Li@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Adult Psychopathology.

Date: February 26, 2016.

Time: 1:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Atherosclerosis, Inflammation and Aortic Aneurysms.

Date: February 26, 2016.

Time: 2:00 p.m. to 5:30 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: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@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 28, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01909 Filed 2–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel;

BRAIN Initiative: Short Courses in Computational Neurosciences (R25).

Date: February 26, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants; National Institutes of Health, HHS)

Dated: January 28, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01906 Filed 2–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; R13 Conference Grant Applications.

Date: February 16, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Room 1001, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919–541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 28, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01907 Filed 2–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Pre-Vent Review—Clinical Research Center.

Date: February 26, 2016.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Pre-Vent Review—Leadership and Data Coordinating Center February 26, 2016.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 28, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01903 Filed 2–2–16; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR14–274: Pharmacogenetics and Personalized Medicine in Children.

Date: February 10, 2016.

Time: 1:00 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: Baishali Maskeri, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–2864, *maskerib@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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 28, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01908 Filed 2–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Network—Trial Innovation Centers (TICs) (U24).

Date: February 25, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Rahat Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, 6701 Democracy Blvd., Rm. 1078, Bethesda, MD 20892, 301–894–7319, *khanr2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS).

Dated: January 28, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01905 Filed 2–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Clinical and Basic Science Review Committee.

Date: February 25–26, 2016.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–594–7947, *mintzerk@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 28, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01902 Filed 2–2–16; 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; PAR panel: Targeting Temporal Dynamics of the Brain Activity for the Treatment of Cognitive Deficits.

Date: February 4–5, 2016.

Time: 9:00 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: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Societal and Ethical Issues in Research.

Date: February 17, 2016.

Time: 9:00 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 (Virtual Meeting).

Contact Person: Karin F. Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Sciences.

Date: February 23, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6706 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lawrence E. Boerboom, Ph.D., Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Virology—A Study Section.

Date: February 25–26, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.

Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: February 25–26, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Riverwalk Marriott, 207 N. St Mary's Street, San Antonio, TX 78205.

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology A Study Section.

Date: February 25–26, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Disability and Pregnancy.

Date: February 26, 2016.

Time: 1:00 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: Martha L. Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7770, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Postpartum Contraception in California and Texas.

Date: February 26, 2016.

Time: 3:00 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: Martha L. Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7770, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Targets for Cancer Intervention.

Date: February 29–March 1, 2016.

Time: 7:30 a.m. to 6:00 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: Careen K. Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Sciences.

Date: February 29, 2016.

Time: 8:00 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 (Virtual Meeting).

Contact Person: Lawrence E. Boerboom, Ph.D., Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Pulmonary Diseases.

Date: February 29–March 1, 2016.

Time: 9:00 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: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@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 28, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01911 Filed 2–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive 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; Limited Competition for the Continuation of Teen-LABS (Adolescent Longitudinal Assessment of Bariatric Surgery).

Date: March 1, 2016.

Time: 1:30 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: 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; R13 Conference Grant Applications.

Date: March 3, 2016.

Time: 11:00 a.m. to 12:30 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: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; GUDMAP RFA.

Date: March 9, 2016.

Time: 8:00 a.m. to 4:00 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: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies.

Date: March 28, 2016.

Time: 12:00 p.m. to 1:30 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: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 741A, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–496–9010, *hoffertj@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 28, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01910 Filed 2–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 section 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 Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI CLTR SEP Review.

Date: February 23, 2016.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 28, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–01904 Filed 2–2–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0911]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0112

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, with change, of the following collection of information: 1625–0112, Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 4, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2015–0911] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2015–0911], and must be received by March 4, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to

the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0112.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (80 FR 64437, October 23, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

Information Collection Request

Title: Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data.

OMB Control Number: 1625–0112.

SUMMARY: The Coast Guard collects, stores, and analyzes data transmitted by Long Range Identification and Tracking (LRIT) and Automatic Identification System (AIS) to enhance Maritime Domain Awareness (MDA). Awareness and threat knowledge are critical for securing the maritime domain and the key to preventing adverse events. Data is also used for marine safety and environmental protection purposes.

Need: To ensure port safety and security and to ensure the uninterrupted flow of commerce.

Forms: None.

Respondents: Owners or operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 204 hours to 47,245 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: January 26, 2016.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2016–01895 Filed 2–2–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0910]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0001

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0001, Report of Marine Casualty & Chemical Testing of Commercial Vessel Personnel. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 4, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2015–0910] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov*. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov*.

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2015–0910], and must be received by March 4, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this Notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and

the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0001.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day Notice (80 FR 64430, October 23, 2015) required by 44 U.S.C. 3506(c)(2). We received two comment submissions to the 60-day Notice.

The first commenter asked that future versions of the form CG–2692 be ''unlocked'' so that a computer application that the commenter's company uses may auto-fill in the form data elements. We are unable to accommodate this request at this time, as it is Coast Guard policy that public use forms be locked/secured so they may not be modified. However, this concern may be alleviated in the future as the Coast Guard moves to permit the online submission of marine casualty reports.

The second commenter raised five issues. The first issue raised by the commenter stated that the ICR title ''Marine Casualty Information and Periodic Chemical Testing Drug and Alcohol Testing of Commercial Vessel Personnel'' is in error and could lead to erroneous reporting of test results.

We agree with the commenter that the historical use of the term ''Periodic'' may result in some confusion resulting in unnecessary reporting of chemical test results to the Coast Guard. As a result, we revised the title to remove that term and to better reflect the intent of the collection. The revised title is ''Report of Marine Casualty & Chemical Testing of Commercial Vessel Personnel''.

The second issue raised by the commenter addressed the wording found in the ''Need'' section of the 60-day Notice. The commenter questioned the appropriateness of the term ''cured'' noting that the opinion of a majority of substance abuse treatment specialists have determined that substance abuse is never cured, but rather, is a treatable medical condition. The commenter further noted that the Coast Guard regulation, 46 CFR 16.201(f), acknowledges that the individual is not required to be cured. Rather, that the individual is determined to be of sufficiently low-risk for misuse by a Medical Review Officer.

We agree with the commenter that the inclusion of the historical term ''cured'' is inconsistent with existing Coast Guard regulations regarding chemical testing requirements and that current substance-abuse rehabilitative science determines addiction to be a treatable condition that is not curable. For these reasons, we edited our ''Need'' section in this Notice to remove the term ''cured'' and inserted language that is both consistent with existing Coast Guard regulations and current substance-abuse rehabilitative science.

The third issue raised by the commenter was a statement questioning the data found on the form OMB 83–I of the ICR. The commenter stated that it was challenging to understand the quantitative dispersion of annual responses published in the ICR. The commenter asked for greater specificity as to the representative value of the 180,489 annual responses. The commenter requested additional information to include identification information of the responders, a summary of the responses, the timeframe in which the responses were received, a comparison of the 180,489 responses received in other years and finally, analytical data to determine the mean average of responses for the last five years.

We note that the form OMB 83–I information is a summary, and that a detailed breakdown of the responses are found in Appendix A to the Supporting Statement. The Supporting Statement and Appendix A are found in the docket to the Notice (see documents USCG–2015–0910–0004 and USCG–2015–0910–0005 respectively). Further we note that the number of 180,489 annual responses is generally consistent with year-over-year comparisons and represents neither the least or greatest annual response rate in recent years. Therefore, we hold this number to be both accurate and representative of the annual response burden upon industry. We do not agree with the commenter that an exhaustive analytical review of the data is necessary.

The fourth issue raised by the commenter questioned who is going to be responsible for the completion of the proposed new forms [CG–2692C & CG–2692D]? The commenter opined that the stated intent of the ICR, to streamline the reporting process and to reduce the burden upon industry, would not be the outcome of adding two new forms. The commenter further stated that it should be the responsibility of the Coast Guard to complete the new forms themselves.

As explained in the 60-day Notice section entitled ''Why is the Coast Guard Proposing to Add 2 New Forms'', these two new forms do not seek to add any new information to be collected in the request. Instead, they take certain sections of the existing form CG–2692 and move them to these two new forms. Additionally, in the event there are multiple entries required (*e.g.* several injuries, etc.) these new forms easily facilitate multiple entries for the submitter. As with the current forms and consistent with the regulatory requirements found in Title 46 CFR part 4, the owner, agent, master, operator, or person in charge of a vessel are responsible to complete the forms.

The fifth issue raised by the commenter requested greater information concerning the evaluation of comments from the maritime industry and general public identifying the need to revise these forms and to add two new forms. Specifically, the commenter asked if the evaluation was published or if an information request was published to facilitate this evaluation?

The Coast Guard conducted multiple opportunities for marine industry and public participation to the evaluation of the marine casualty reporting process. This effort was made by the Coast Guard to ensure both the marine industry and the public were provided multiple opportunities to provide input to the revision of the marine casualty reporting process. The Coast Guard also conducted a deliberative internal review of process logistics to ensure that only information necessary to evaluating marine casualties was included as required reporting in the proposed new forms.

The Coast Guard engagement with the marine industry and the public was designed to ensure multiple opportunities for participation and to include a broad representative sample of input. In 2013, the Coast Guard's Towing Safety Advisory Committee (TSAC) was consulted in accordance with the Federal Advisory Committee Act. The input received from TSAC, advising revision to the marine casualty reporting process, contributed greatly to this proposal to reformat and restructure the existing form CG–2692.

Again in 2014, the Coast Guard sought-out input from the marine industry and the public when we issued a Notice of Availability and Request for Comments on January 14, 2014 (79 FR 2466) for a draft Navigation and Vessel Inspection Circular (NVIC). This publication provided guidance for the identification and reporting of marine casualties.

The comments received from the marine industry and the public to this NVIC proposal, advising revision to the marine casualty reporting process, contributed greatly to the proposal to reformat and restructure the existing form CG–2692.

Information Collection Request

1. *Title:* Report of Marine Casualty & Chemical Testing of Commercial Vessel Personnel.

OMB Control Number: 1625–0001.

Summary: Marine casualty information is needed for CG investigations of commercial vessel casualties involving death, vessel damage, etc., as mandated by Congress. Chemical testing information is needed to improve CG detection/reduction of drug use by mariners.

Need: Section 6101 of 46 U.S.C. as delegated by the Secretary of Homeland Security to the Commandant, authorizes the Coast Guard to prescribe regulations for the reporting of marine casualties involving death, serious injury, material loss of property, material damage affecting the seaworthiness of a vessel, or significant harm to the environment. It also requires information on the use of alcohol being included in a marine casualty report. Section 7503 of 46 U.S.C. authorizes the Coast Guard to deny the issuance of licenses, certificates of registry, and merchant mariner's documents (seaman's papers) to users of dangerous drugs. Similarly, 46 U.S.C. 7704 requires the Coast Guard to revoke such papers when a holder of the same has been shown to be a drug user unless the holder provides satisfactory proof that the holder has successfully completed a rehabilitation program acceptable to the Coast Guard and is determined to be, by a competent substance abuse professional, free from misuse of chemical substances and that the risk of subsequent misuse of chemical substances is sufficiently low to justify returning to safety-sensitive positions..

Forms: CG–2692, Report of Marine Casualty, Commercial Diving Casualty, or OCS-related Casualty; CG–2692A, Barge Addendum; CG–2692B, Report of Mandatory Chemical Testing Following a Serious Marine Incident Involving Vessels in Commercial Service; CG–2692C, Personnel Casualty Addendum; and CG–2692D, Involved Persons and Witnesses Addendum.

Respondents: Vessels owners and operators.

Frequency: On occasion. This information collection has a requirement for recordkeeping.

Hour Burden Estimate: The estimated burden has increased from 20,986 hours to 23,586 hours a year due to an increase in the estimated number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: January 26, 2016.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2016–01896 Filed 2–2–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0755]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0016

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0016, Welding and Hot Works Permits; Posting of Warning Signs. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 4, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2015–0755] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email*: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax*: 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr Ave SE., Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2015–0755], and must be received by March 4, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this Notice, and all public comments, are in our online docket at

http://www.regulations.gov and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act Notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0016.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day Notice (80 FR 64434, October 23, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

1. *Title:* Welding and Hot Works Permits; Posting of Warning Signs.

OMB Control Number: 1625–0016

Summary: This information collection helps to ensure that waterfront facilities and vessels are in compliance with safety standards. A permit must be issued prior to welding or hot work at certain waterfront facilities; and, the posting of warning signs is required on certain facilities.

Need: The information is needed to ensure safe operations on certain waterfront facilities and vessels.

Forms: CG–4201, Welding and Hot Work.

Respondents: Owners and operators of certain waterfront facilities and vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 546 hours to 593 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: January 26, 2016.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2016–01894 Filed 2–2–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5832–N–12]

60 Day Notice of Proposed Information Collection: Indian Community Capital Initiative: Withdrawal Notice

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice; withdrawal.

SUMMARY: Please be advised that the funds that were recaptured from the RHED program slated to be used for the Indian Community Capital Initiative has been ''rescinded permanently.'' As a result, HUD requested that the PRA for Indian Community Capital Initiative be canceled.

DATES: The notice published on November 28, 2015 at 80 FR 72105 is withdrawn as of February 3, 2016.

FOR FURTHER INFORMATION CONTACT: Thann Young, Office of Rural Housing and Economic Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7240, Washington, DC 20410; email Thann Young at *Thann.Young@hud.gov* or telephone 202–708–2290. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is withdrawing their approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Indian Community Capital Initiative.

OMB Approval Number: 2506–new.

Type of Request: New Collection.

Form Numbers: SF 424; HUD 424CB; HUD 424–CBW; SF–LLL; HUD 2880; HUD 2990; HUD 2991; HUD 2993; HUD 2994A; HUD 27061; and HUD 27300.

Description of the need for the information and proposed use: The Indian Community Capital Initiative (ICCI) is a collaborative effort among three federal agencies—the Department of Housing and Urban Development (HUD), the Department of the Treasury—Community Development Financial Institutions Fund (CDFI Fund), and the Department of Agriculture—Rural Development (USDA–RD). The ICCI's goal is to increase access to capital for business lending and economic development and entrepreneurship for Federally recognized Indian tribes.

Federally recognized Indian tribe means any tribal entity eligible to apply for funding and services from the Bureau of Indian Affairs by virtue of its status as an Indian tribe. The list of Federally recognized Indian tribes can be found in the notice published by the Department of the Interior on January 14, 2015 (**Federal Register**/Vol. 80, No. 9/Wednesday, January 14, 2015/Notices).

Respondents (*i.e.*, affected public): Public.

Estimated Number of Respondents: 566.

Estimated Number of Responses: 566.

Frequency of Response: 1.

Average Hours per Response: 7,211.

Total Estimated Burdens:

	Respondents	Annual responses	Total responses	Burden per response	Total annual hours	Burden cost per instrument
HUD–424CB	566	1	566	3.12	1,766	44,150
HUD–424CBW	566	1	566	3.12	1,766	44,150
HUD–2880	566	1	566	2.0	1,132	28,300
HUD–2990	566	1	566	0	0	0
HUD–2991	566	1	566	0	0	0
HUD–2993	566	1	566	0	0	0
HUD–2994A	566	1	566	.5	283	7,075
HUD–27061	566	1	566	1.0	566	14,150
HUD–27300	566	1	566	3.0	1,698	42,450
	5,094	.....	5,094	.....	7,211	180,275

Date: January 27, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2016–01919 Filed 2–2–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5885–N–03]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2016; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2016 Fair Market Rents (FMRs), Update.

SUMMARY: Today's notice updates the FY 2016 FMRs for Portland-Vancouver-Hillsboro, OR–WA, HUD MSA, based on surveys conducted in November 2015 by the area public housing agencies (PHAs). The FY 2016 FMRs for these areas reflect the estimated 40th percentile rent levels trended to April 1, 2016.

DATES: *Effective Date:* The FMRs published in this notice are effective on February 3, 2016.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site: *http://www.huduser.gov/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2015 FMR documentation system at *http://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html?data=fmr16* and 50th percentile rents for all FMR areas are published *http://www.huduser.gov/portal/datasets/50per.html.*

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–402–2409. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The FMRs appearing in the following table supersede the values found in Schedule B that became effective on December 11, 2015, and were printed in the December 11, 2015 **Federal Register** (80 FR 77124) (available from HUD at: *http://www.huduser.gov/portal/datasets/fmr.html.*

The FMRs for the affected area are revised as follows:

	FMR by number of bedrooms in unit				
2016 Fair Market Rent Area	0 BR	1 BR	2 BR	3 BR	4 BR
Portland-Vancouver-Hillsboro, OR–WA MSA	886	1021	1208	1757	2109

Dated: January 14, 2016.

Katherine M. O'Regan,

Assistant Secretary for Policy, Development & Research.

[FR Doc. 2016–01920 Filed 2–2–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0008]; [FXIA16710900000–156–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before March 4, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–0008.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–0008; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). *Viewing Comments:* Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice,

and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Endangered Species

Applicant: Exoticos Salvajes, Inc., San Antonio, TX; PRT–81318B

The applicant requests a permit to export 10 male and 20 female captive-bred Arabian oryx (*Oryx leucoryx*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Denver Zoological Foundation, Denver, CO; PRT–78822B

The applicant requests a permit to import one captive-bred Sumatran orangutan (*Pongo abelii*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–78584B

The applicant requests a permit to export one male captive-bred giant panda (*Ailuropoda melanoleuca*) born at the zoo in 2012 and owned by the Government of China, to the China Conservation and Research Center for the Giant Panda Dujiangyan Base, Sichuan Province, China, under the terms of Zoological Society of San Diego loan agreement with the China Wildlife Conservation Association. This export is part of the approved loan program for the purpose of enhancement of the survival of the species through scientific research as outlined in the Zoological Society of San Diego's original permit.

Applicant: Toledo Zoological Gardens, Toledo, OH; PRT–81711B

The applicant requests a permit to export 10,000, captive-bred Kisansi spray toads (*Nectophrynoidesi asperginis*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Santa Barbara Zoo, Santa Barbara, CA; PRT–82246B

The applicant requests a permit to import one, captive-bred, Amur leopard (*Panthera pardus orientalis*) for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Texas A&M University, College Station, TX; PRT–77243B

The applicant requests a permit to import biological samples from wild olive Ridley sea turtles (*Lepidochelys olivacea*) and green sea turtles (*Chelonia mydas*) for the purpose of scientific research.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Scott Linter, Zionsville, IN; PRT–85776B

Applicant: William Parks, Scottsboro, AL; PRT–81613B

Applicant: Kinsey Robinson, Upper Marlboro, MD; PRT–79093B

Applicant: William Perrine, Sharon, PA; PRT–82278B

Applicant: Leon Munyan, Phoenix, AZ; PRT–81689B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–02011 Filed 2–2–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX16LC00BM6BB00]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of revision of a currently approved information collection, (1028–0082).

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. This collection is scheduled to expire on January 31, 2016.

DATE: To ensure that your comments on this ICR are considered, OMB must receive them on or before March 4, 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 1028–0082, Bird Banding and Recovery Reports'. 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 1028–1028–0082: Bird Banding and Recovery Reports' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Bruce Peterjohn, Patuxent Wildlife Research Center, U.S. Geological Survey, 12100 Beech Forest Rd., Laurel, MD 20708 (mail); 301–497–5646 (phone); or *bpeterjohn@usgs.gov* (email).You may also find information about this ICR at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS Bird Banding Laboratory is responsible for monitoring the trapping and marking of wild migratory birds by persons holding Federal permits. The Bird Banding Laboratory collects information using three forms: (1) The Application for Federal Bird Marking and Salvage Permit, (2) The Permit Renewal Form, and (3) The Bird Banding Recovery Report.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and it's implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked.

II. Data

OMB Control Number: 1028–0082.

Form Number: Various (12 forms).

Title: Bird Banding and Recovery Reports.

Type of Request: Revision of a currently approved information collection.

Respondent Obligation: None. Participation is voluntary.

Frequency of Collection: On occasion.

Description of Respondents: General Public.

Estimated Total Number of Annual Responses: 46,990 from the individuals and households and 1610 from state/local/tribal governments.

Estimated Time per Response: 3 to 30 minutes, depending on form used. The band recovery form receives approximately 42,900 responses from individuals and households and 1,000 responses from state/local/tribal governments annually. The permit application form receives approximately 90 responses from individuals and households and 10 responses from the state/local/tribal governments. The permit renewal form receives approximately 500 responses from individuals and households and 100 responses from state/local/tribal governments annually. Bandit receives approximately 3500 responses from individuals and households and 500 responses from state/local/tribal governments annually.

Estimated Annual Burden Hours: 19,533 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:

We have not identified any ''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 and current expiration date.

Comments: On 9/29/2015 we published a **Federal Register** notice (80 FR 58499) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on [December 1, 2015]. We received one comment. The comment did not directly relate to this collection, but rather is a negative response to the capture and marking of birds in general and other actions related to bird management. There were no direct comments about any of the data collection forms so the comment appears to be irrelevant to this process.

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 us and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Elizabeth Cahoon,

Administrative Officer, USGS Patuxent Wildlife Research Center.

[FR Doc. 2016–01938 Filed 2–2–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X; LLIDB00100.LF1000000.HT0000. LXSS024D0000.241A00]

Notice of Public Meeting, Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) a Boise, Idaho District Resource Advisory Council (RAC) subcommittee for the Proposed Tri-State Fuels Breaks Project will meet as indicated below.

DATES: On Wednesday, March 2, 2016, a Boise, Idaho District Resource Advisory Council (RAC) subcommittee for the Proposed Tri-State Fuels Breaks Project will meet at the Boise District Office, 3948 S. Development Avenue, Boise, Idaho, 83705. The meeting will begin at 9:00 a.m. and end no later than 3:00 p.m. The public comment period during the RAC subcommittee meeting will take place from 11:00 a.m. to 11:15 a.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Boise District RAC Coordinator, 3948 S. Development Avenue, Boise, Idaho, 83705, (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. During the meeting on Feb. 2, 2016, RAC subcommittee members will be provided with an overview of the Proposed Tri-State Fuels Breaks Project by staff and managers from the Boise District BLM Office, and an overview of the literature research for the project. This will be the first meeting of the subcommittee, so the agenda includes discussion about the purpose for

forming the subcommittee, the organization, roles and responsibilities, future coordination with the Southeast Oregon RAC, and anticipated outcomes. A timeline for future subcommittee meetings will be established and the development of recommendations and other products from future meetings for submittal to the BLM will be discussed. Additional information about the RACs is available at *http://www.blm.gov/id/st/en/get_involved/resource_advisory/boise.html.* RAC meetings are open to the public.

Dated: January 28, 2016.

Lara Douglas,

District Manager.

[FR Doc. 2016–01964 Filed 2–2–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X LLAK980600.L1820000.XX0000. LXSIARAC0000]

Notice of Public Meeting, BLM Alaska Resource Advisory Council

AGENCY: Alaska State Office, Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 as amended (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held March 10, 2016, at the BLM Alaska Fairbanks District Office, 1150 University Avenue, Fairbanks, Alaska 99709–3844. The meeting starts at 9:00 a.m. in the Kobuk Conference Room. The council will accept comments from the public from 1:30–2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Thom Jennings, RAC Coordinator, BLM Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513; *tjenning@blm.gov;* 907–271–3335. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Alaska. At this meeting, the council will discuss the Regional Mitigation Strategy for the Northeast National Petroleum Reserve in Alaska (NPR–A) and other topics of interest to the RAC. An agenda will be posted to the BLM Alaska RAC Web site (*www.blm.gov/ak/rac*) by March 1, 2016. All meetings are open to the public. During the public comment period, depending upon the number of people wishing to comment, time for individual oral comments may be limited. Please be prepared to submit written 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. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM RAC Coordinator listed above.

Dated: January 22, 2016.

Ted A. Murphy,

Acting State Director.

[FR Doc. 2016–01963 Filed 2–2–16; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–REGS–20188, PPWOVPAU0, PPMPSPD1Y.M0000 (166)]

Proposed Information Collection; Special Park Use Applications

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on August 31, 2016. We 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: To ensure we are able to consider your comments, we must receive them on or before April 4, 2016.

ADDRESSES: Please send your comments on the ICR to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Room 2C114—Mail Stop 242, Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please reference ''OMB Control Number 1024–0026, Special Park Use Applications'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Uses National Manager, 1849 C St. NW. (2465), Washington, DC 20240; via fax at (202) 208–4178; or via email at *lee_dickinson@nps.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 54 U.S.C. 100101 (National Park Service Act Organic Act), we must preserve America's natural wonders unimpaired for future generations, while also making them available for the enjoyment of the visitor. Meeting this mandate requires that we balance preservation with use. Maintaining a good balance requires both information and limits. In accordance with regulations at 36 CFR parts 1 through 7, 13, 20, and 34, we issue permits for special park uses. Special park uses cover a wide range of activities including, but not limited to, special events, First Amendment activities, grazing and agricultural use, commercial filming, still photography, construction, and vehicle access.

We currently use the below listed forms to collect information for special use permits.

- 10–930 (Application for Special Use Permit),
- 10–930S (Application for Special Use Permit (short form)). The short form will reduce the burden on applicants for smaller, less complicated activities, such as small picnics, gatherings, weddings, etc.
- 10–931 (Application for Commercial Filming/Still Photography Permit (short form)),
- 10–932 (Application for Commercial Filming/Still Photography Permit (long form)) to collect information for special use permits.
- Form 10–933 (Application for Vehicle Use). This new form applies specifically to vehicle access such as off-road, over-sand, or commercial vehicle access, as well as snow mobile and watercraft. We will only request

information specific to the activity eliminating unneeded information.

The information we collect in the special use applications allows park managers to determine if the requested use is consistent with the laws and NPS regulations referenced above and with the public interest. The park manager must also determine that the requested activity will not cause unacceptable impacts to park resources and values.

II. Data

OMB Control Number: 1024–0026.

Title: Special Park Use Applications (Portions of 36 CFR 1 through 7, 13, 20, 34).

Form Numbers: NPS Forms 10–930, 10–930S, 10–931, 10–932, and 10–933.

Type of Request: Extension of a currently approved collection of information.

Description of Respondents: Individuals or households; not-for-profit entities; businesses or other for-profit entities; and Federal, State, local and tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours
Form 10–930:				
Individuals	5,000	5,000	.5	2,500
Private Sector	4,000	4,000	.5	2,000
Government	500	500	.5	250
Form 10–930s:				
Individuals	4,000	4,000	.25	1,000
Private Sector	1,000	1,000	.25	250
Government	200	200	.25	50
Form 10–931:				
Individuals	600	600	.25	150
Private Sector	2,000	2,000	.25	500
Government	55	55	.25	14
Form 10–932:				
Individuals	50	50	.5	25
Private Sector	660	660	.5	330
Government	50	50	.5	25
Form 10–933:				
Individuals	20,000	20,000	.25	5,000
Private Sector	300	300	.25	75
Government	50	50	.25	13
Totals	38,465	38,465	.....	12,182

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 it will be done.

Dated: January 28, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–02056 Filed 2–2–16; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–984]

Certain Computing or Graphics Systems, Components Thereof, and Vehicles Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 28, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Advanced Silicon Technologies LLC of Portsmouth, New Hampshire. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computing or graphics systems, components thereof, and vehicles containing same by reason of infringement of certain claims of U.S. Patent No. 6,339,428 (''the '428 patent''); U.S. Patent No. 6,546,439 (''the '439 patent''); U.S. Patent No. 6,630,935 (''the '935 patent''); and U.S. Patent No. 8,933,945 (''the '945 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone

(202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 27, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain computing or graphics systems, components thereof, and vehicles containing same by reason of infringement of one or more of claims 1–6, 8, 9, 10–14, 16, 17, and 25–29 of the '428 patent; claims 1–11 and 14–16 of the '439 patent; claims 1, 2, and 4–8 of the '935 patent; and claims 1–11 and 21 of the '945 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Advanced Silicon Technologies LLC, 118 Maplewood Avenue, Unit C–2/Box 8, Portsmouth, NH 03801.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Bayerische Motoren Werke AG, Petuelring 130, D–80788, Munich, Germany.

BMW of North America, LLC, 300 Chestnut Ridge Road, Woodcliff Lake, NJ 07677.

BMW Manufacturing Co., LLC, 1400 Highway 101 South, Greer, SC 29651.

Fujitsu Ten Limited, 1–2–28, Gosho-dori, 1-chome, Hyogo-ku, Kobe-shi, Hyogo-ken 652–8510, Japan.

Fujitsu Ten Corp. of America, Inc., 30155 Hudson Drive, Novi, MI 48377.

Harman International Industries, Inc., 400 Atlantic Street, Stamford, CT 06901.

Harman Becker Automotive Systems, Inc., 39001 West Twelve Mile Road, Farmington Hills, MI 48331.

Harman Becker Automotive Systems GmbH, Becker-Goring-Strasse 16, Karlsbad 76307, Germany.

Honda Motor Co., Ltd., 2–1–1, Minami-Aoyama, Minato-Ku, Tokyo 107–8556, Japan.

Honda North America, Inc., 700 Van Ness Avenue, Torrance, CA 90501.

American Honda Motor Co., Inc., 1919 Torrance Boulevard, Torrance, CA 90501.

Honda Engineering North America, Inc., 24000 Honda Parkway, Marysville, OH 43040.

Honda of America Mfg., Inc., 24000 Honda Parkway, Marysville, OH 43040.

Honda Manufacturing of Alabama, LLC, 1800 Honda Drive, Lincoln, AL 35096.

Honda Manufacturing of Indiana, LLC, 2755 North Michigan Avenue, Greensburg, IN 47240.

Honda R&D Americas, Inc., 1900 Harpers Way, Torrance, CA 90501.

NVIDIA Corporation, 2701 San Tomas Expressway, Santa Clara, CA 95050.

Renesas Electronics Corporation, Toyosu Foresia, 3–2–24 Toyosu, Koto-ku, Tokyo 135–0061, Japan.

Renesas Electronics America, Inc., 2801 Scott Boulevard, Santa Clara, CA 95050.

Texas Instruments Inc., 12500 TI Boulevard, Dallas, TX 75243.

Toyota Motor Corporation, 1 Toyota-cho, Toyota-shi, Aichi-ken 471–8571, Japan.

Toyota Motor North America, Inc., 601 Lexington Avenue, 49th Floor, New York, NY 10022.

Toyota Motor Sales, U.S.A., Inc., 19001 South Western Avenue, Torrance, CA 90501.

Toyota Motor Engineering & Manufacturing North America, Inc., 25 Atlantic Avenue, Erlanger, KY 41018.

Toyota Motor Manufacturing, Indiana, Inc., 4000 Tulip Tree Drive, Princeton, IN 47670.

Toyota Motor Manufacturing, Kentucky, Inc., 1001 Cherry Blossom Way, Georgetown, KY 40324.

Toyota Motor Manufacturing, Mississippi, Inc., 1200 Magnolia Way, Blue Springs, MS 38828.

Volkswagen AG, Brieffach 1849, D–38436 Wolfsburg, Germany.

Volkswagen Group of America, Inc., 2200 Ferdinand Porsche Drive, Herndon, VA 20171.

Volkswagen Group of America Chattanooga Operations, LLC, 8001 Volkswagen Drive, Chattanooga, TN 37416.

Audi AG, Ettinger Strasse, D–85045, Ingolstadt, Germany.

Audi of America, LLC, 2200 Ferdinand Porsche Drive, Herndon, VA 20171.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this

notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–01961 Filed 2–2–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–531–533 and 731–TA–1270–1273 (Final)]

Polyethylene Terephthalate (PET) Resin From Canada, China, India, and Oman; Revised Schedule for Hearing in Final Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: *Effective Date:* January 21, 2016.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On October 15, 2015, the Commission established a schedule for conducting the final phase of investigations on polyethylene terephthalate (PET) resin from Canada, China, India, and Oman (80 FR 68563, November 5, 2015). The Commission is revising its schedule by changing the time of the hearing.

The Commission's new schedule for the hearing in these investigations is as follows: The hearing will be held at the U.S. International Trade Commission Building at 10:30 a.m. on March 1, 2016. All other aspects of the schedule remain unchanged.

For further information concerning these investigations see the Commission's notice cited above.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 28, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–01901 Filed 2–2–16; 8:45 am]

BILLING CODE 7020–02–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting and Hearing Notice No. 2–16]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Thursday, February 11, 2016:

10:00 a.m.—Oral hearings on Objection to Commission's Proposed Decisions in Claim Nos. LIB–III–017 and LIB–III–014.

12:30 p.m.—Issuance of Proposed Decisions in claims against Libya.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2016–02155 Filed 2–1–16; 4:15 pm]

BILLING CODE 6770–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0243]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Renewal of a Currently Approved Collection: Office of Justice Programs' Community Partnership Grants Management System (GMS)

AGENCY: Office of Justice Programs, U.S. Department of Justice

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for sixty days (60) until April 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Maria Swineford, (202) 616–0109, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or *maria.swineford@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—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

(1) *Type of Information Collection:* Renewal of a currently approved collection (1121–0243).

(2) *The Title of the Form/Collection:* Community Partnership Grants Management System (GMS).

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:*

Form Number: None.

Component: Office of Justice Programs, Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:*

Primary: State, Local or Tribal Governments, Organizations, and Institutes of Higher Education, and other applicants, applying for grants.

Other: None.

Abstract: GMS is the OJP web-based grants applications and award management system. GMS provides automated support throughout the award lifecycle. GMS facilitates reporting to Congress and other interested agencies. The system provides essential information required to comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA). GMS has also been designated the OJP official system of record for grants activities by the National Archives and Records Administration (NARA).

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* An estimated 6,402 organizations will respond to GMS and on average it will take each of them up to 10 hours to complete various award lifecycle processes within the system varying from application submission, award management and reporting, and award closeout.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 64,020 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: January 28, 2016.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2016–01875 Filed 2–2–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *December 14, 2015 through January 8, 2016.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Under section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(e) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,976	Bonney Forge Corporation	Mount Union, PA	March 26, 2014.
90,016	GrafTech USA LLC	Saint Marys, PA	August 18, 2014.
90,330	Outokumpu Stainless Pipe Inc	Wildwood, FL	January 1, 2014.
91,105	Startek, USA Inc	Grand Junction, CO	October 20, 2014.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,066	SunEdison, Inc., STP Manufacturing Plant, MEMC Electronic Materials, Adecco.	St. Peters, MO	April 20, 2013.
85,154	Xerox Imager Delivery Center, Global Technology Development Group Division, Imager Delivery Group, etc.	El Segundo, CA	March 14, 2013.
85,254	Sony Electronics, Inc., REMX/Select/NGroup	Carson, CA	April 21, 2013.
85,254A	Sony Electronics, Inc., Staffmark	Los Angeles, CA	April 21, 2013.
85,254B	Sony Electronics, Inc	Los Angeles, CA	April 21, 2013.
85,254C	Sony Electronics, Inc., REMX/Select and Staffmark	San Diego, CA	June 21, 2014.
85,254D	Sony Electronics, Inc., REMX/Select and Staffmark	San Jose, CA	June 21, 2014.
85,254E	Sony Electronics, Inc	Fort Myers, FL	June 21, 2014.
85,254F	Sony Electronics, Inc., Staffmark	Honolulu, HI	April 21, 2013.
85,254G	Sony Electronics, Inc., REMX/Select and Staffmark	Itasca, IL	June 21, 2014.
85,254H	Sony Electronics, Inc	Bloomington, MN	April 21, 2013.
85,254I	Sony Electronics, Inc., REMX/Select and Staffmark	Park Ridge, NJ	June 21, 2014.
85,254J	Sony Electronics, Inc., Kelly OCG, Manpower, and Staff AMIGO	Laredo, TX	April 21, 2013.
85,254K	Sony Electronics, Inc., Kelly OCG, Manpower, and Staff AMIGO	Laredo, TX	April 21, 2013.
85,254L	Sony Electronics, Inc	Redmond, WA	April 21, 2013.
85,254M	Sony Electronics, Inc., Staffmark	Middleton, WI	April 21, 2013.
85,254N	YOH/DAY Zimmerman, Sony Electronics, Inc	San Diego, CA	April 21, 2013.
85,254O	YOH/DAY Zimmerman, Sony Electronics, Inc	San Jose, CA	April 21, 2013.
85,254P	YOH/DAY Zimmerman, Sony Electronics, Inc	Park Ridge, NJ	April 21, 2013.
85,381	Gamestop Texas, Ltd., Customer Service Department	Grapevine, TX	June 18, 2013.
85,420	Swank, Inc., Int'l Export Sales Documentation, Randa Accessories Leather Goods LLC.	Taunton, MA	July 9, 2013.
85,545	Rural/Metro Corporation, Indiana Billing Office, WP Rocket Holdings	Indianapolis, IN	September 22, 2013.
85,594	SuperValu, Inc., Tier 1 Helpdesk Call Center, Corporate Technologies	Boise, ID	October 13, 2013.
85,637	Cincinnati Bell Telephone Company, LLC	Norwood, OH	November 7, 2013.
85,747	JP Morgan Chase and Company, Consumer Banking Operations	Akron, OH	December 5, 2013.
85,834	Mondelez International, Customer Service Operations Division, Kelly Services.	Wilkes Barre, PA	February 18, 2014.
85,915	Pfizer Inc., Global Reference Standards, Pfizer Global Supply, Artech Information, etc.	Groton, CT	March 27, 2014.
86,125	Verizon Business Network Services, Inc., Order Management	Tulsa, OK	June 23, 2014.
86,137	Dex Media, Advantage Technical Resourcing, TAC	Williamsville, NY	June 26, 2014.
86,138	Verizon Business Network Services, Inc., Order Management	Richardson, TX	June 25, 2014.
90,010	Honeywell International, Inc., Automation and Control Solutions Business Group, Honeywell Scanning, etc.	Lynnwood, WA	January 1, 2014.
90,025	Alorica, West Corp	Tulsa, OK	February 1, 2015.
90,051	World Wide Imports Inc	Kent, WA	January 1, 2014.
90,085	Sprint United Management Company, BCOM Group	Irving, TX	January 1, 2014.
90,108	Parker Hannifin Corporation, Instrumentation Group—Sporlan Division, Pro Resources Staffing Services.	New Haven, IN	September 29, 2014.
90,108A	Leaders Staffing, Parker Hannifin Corporation, Instrumentation Group—Sporlan Division.	New Haven, IN	January 1, 2014.

TA–W No.	Subject firm	Location	Impact date
90,146	Reynolds Metals Company, Alcoa Global Primary Products, Alcoa, Inc	Lake Charles, LA	January 1, 2014.
90,155	Donaldson Company, Inc	Cresco, IA	January 1, 2014.
90,174	Hallmark Cards, Incorporated, Technology and Business Enablement, Tata Consultancy Services.	Kansas City, MO	January 1, 2014.
90,174A	Hallmark Cards, Incorporated and Hallmark Marketing Company, LLC, Consumer Solutions, Tata Consultancy Services.	Kansas City, MO	January 1, 2014.
90,177	Lufkin Industries LLC, Lufkin—Foundry, GE Oil & Gas, Double S, Weisinger Electric.	Lufkin, TX	January 1, 2014.
90,187	International Paper Company, Procure-To-Pay Group	Memphis, TN	January 1, 2014.
90,190	Arrow International, Inc., Vascular Division, Teleflex Inc	Reading, PA	March 27, 2015.
90,190A	Office Team and Aerotek, Arrow International, Inc., Vascular Division, Teleflex Inc.	Reading, PA	January 1, 2014.
90,200	Commerzbank Aktiengesellschaft, New York Branch, Information Technology Department, Linium Resources, LLC.	New York, NY	January 1, 2014.
90,227	ResMed Motor Technologies Inc., Triad Systems International, Two Roads Professional Resources, etc.	Chatsworth, CA	January 1, 2014.
90,230	Energizer Holdings, Inc., Adecco	Westlake, OH	July 26, 2015.
90,244	Tech Mahindra (Americas), Inc., Tech Mahindra Limited	Piscataway, NJ	January 1, 2014.
90,257	Honeywell Sensing and Productivity Solutions, Adecco Staffing	Skaneateles Falls, NY	January 1, 2014.
90,263	Annie's Baking, LLC, General Mills, Inc., Express Employment Professionals, etc.	Joplin, MO	January 1, 2014.
90,273	Allscripts Healthcare Solutions, Sutherland Healthcare Solutions, formerly Apollo Health Street Limited, etc.	South Burlington, VT	January 1, 2014.
90,291	Honeywell International, Inc., Corporate Information Technology, Enterprise Services.	Tempe, AZ	January 1, 2014.
90,318	International Business Machines Corporation (IBM), Global Technology Services (GTS), Dubuque Service Delivery Center, etc.	Dubuque, IA	January 1, 2014.
91,054	McDavid, Inc	Woodridge, IL	September 21, 2014.
91,071	SKF Sealing Solutions, SKF USA, Inc., Express Employment Professionals.	Hobart, OK	October 23, 2014.
91,082	Anodex Anodizing, Inc., Kathrein Holding USA, Inc., Express Employment Professionals.	Medford, OR	October 26, 2014.
91,086	NSC Global Managed Resources LLC, Logistics and Call Coordinators	Mason, OH	October 28, 2014.
91,088	TerraSource Global	Cuyahoga Falls, OH	October 28, 2014.
91,099	Frontier Airlines, Inc., Milwaukee Reservations Department, Ajilon Professional Staffing.	Milwaukee, WI	November 2, 2014.
91,101	Safety Syringes, Inc., Becton, Dickinson and Company, Aerotek Commercial Staffing, etc.	Carlsbad, CA	November 2, 2014.
91,110	Triangle Brass Manufacturing Co. Inc., ILM Employment Group, Inc	Los Angeles, CA	November 4, 2014.
91,112	ATSCO, Division of BBB Industries, LLC, Allegiance Staffing Phoenix	Phoenix, AZ	November 5, 2014.
91,131	Aero Precision Products, LLC	Summerville, SC	November 11, 2014.
91,188	NN, Inc. Autocam Precision Components Group, Industrial Quality Temps Inc.	Wheeling, IL	December 2, 2014.
91,196	Federal-Mogul MotorParts, Braking Division, Federal-Mogul Corp., SMX/Staffing Management, etc.	Orangeburg, SC	February 6, 2016.
91,207	LG NanoH2O, Inc., LG Chem Ltd, Kelly Temporary Services	Hawthorne, CA	December 9, 2014.
91,207A	LG NanoH2O, Inc., LG Chem Ltd, Kelly Temporary Services	El Segundo, CA	December 9, 2014.
91,260	Vishay Siliconix, Siliconix Mosfets Division	Santa Clara, CA	December 23, 2014.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
86,135	Harrington Machine & Tool Co. Inc	Franklin, PA	June 26, 2014.
91,198	Chester Forest Products, LLC, W. T. Gardner & Sons, Inc	Chester, ME	December 4, 2014.
91,226	Vani Quality Quest, Inc., Sentech Skilled Trade Services Inc	Dearborn, MI	December 14, 2014.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1) or (b)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
85,285	Wave Accounting Inc. (Delaware), Including Workers whose UI Wages Reported thru Wave Accounting Inc.	Wilmington, DE.	

TA–W No.	Subject firm	Location	Impact date
85,285A	Wave Accounting Inc. (Delaware), Including Workers whose UI Wages Reported thru Wave Accounting Inc.	Webster, NY.	
85,603	Eighth Floor Promotions	Celina, OH.	
85,612	CA Technologies	Plano, TX.	
85,645	Cardinal Health	McDonough, GA.	
85,814	Grape Solar, Inc	Eugene, OR.	
90,118	RR Donnelley, Financial Business Unit	Philadelphia, PA.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
85,351	Gold Inc. D/B/A Goldbug, Inc., Sourcing Division	Aurora, CO.	
85,806	Premier Tech Chronos, VonGal Division, Premier Tech Inc., Workforce and Career Personnel.	Montgomery, AL.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
85,263	SC&H Group, Real Tax Department	Sparks, MD.	
85,420A	Swank, Inc., Accounting and Finance, Credit Collections, Chargeback Resolution, etc.	Taunton, MA.	
85,609	RNYK LLC D.B.A. J & R Music World	New York, NY.	
85,788	Engineered Polymer Solutions, (aka EPS, DBA Valspar Coatings), Architectural/Consumer, Aerotek, etc.	Garland, TX.	
85,797	Revett Mining Company, Inc., Troy Mine, Inc., Revett Silver Company	Troy, MT.	
85,937	Advanced Supply Chain International, LLC, BP Explorations (Alaska) Inc., Procurement Division.	Anchorage, AK.	
85,937A	Advanced Supply Chain International, LLC, BP Explorations (Alaska) Inc., Prudhoe Bay (North Slope) Division.	Prudhoe Bay, AK.	
85,977	Sanguine Gas Exploration, LLC	Tulsa, OK.	
86,005	DCP Midstream, A Joint Venture Between Spectra Energy and Phillips 66.	Tulsa, OK.	
86,031	Oil States Industries, Inc., American Staffcorp	Tulsa, OK.	
86,055	Aztec Well Servicing, Aztec Drilling, Triple S Trucking Company, Double M Sales, etc.	Aztec, NM.	
86,055A	Aztec Well Servicing, Aztec Drilling, Triple S Trucking Company	Hobbs, NM.	
86,072	ConocoPhillips, Bartlesville Shared Services, Associated Resources, Primary Services, etc.	Bartlesville, OK.	
86,117	ConocoPhillips San Juan Business Unit, Ayan Tech Solutions, Baker Petrolite, Baker Hughes Oilfield, etc.	Farmington, NM.	
90,021	Digitec, Inc., Lindsay Corporation, Elecsys Corp., Betty's Bunch Temporaries.	Milford, NE.	
90,164	Bay Side Recycling Company, LLC	Duluth, MN.	
90,165	Retro Systems LLC, Labormax and Choson Resource	Valley Center, KS.	
90,169	Bradford Supply Company	Robinson, IL.	
90,186	Grays Harbor Community Hospital (East Campus), Health Information Management Department.	Aberdeen, WA.	
90,256	Phoenix Technology Services USA Inc., Superior Talent Resources, Automation Personnel Services, etc.	Houston, TX.	
91,043	QEP Energy Company	Tulsa, OK.	

Determinations Terminating Investigations Of Petitions For Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
86,077	HARMAN	Northridge, CA.	
90,254	Leggett & Platt Springs Manufacturing, LLC, Leggett & Platt, Inc	Delano, PA.	
91,024	Applied Leverage Technology	Sanford, ME.	

TA–W No.	Subject firm	Location	Impact date
91,206	TGI Fridays	Carrollton, TX.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
90,116	Riverside Veneer Company, Inc	Heuvelton, NY.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
85,694	Tyco Fire Protection Products, Technical Services Division	Westminster, MA.	
91,026	Advanced Micro Devices, Inc., Volt and HCL America, Inc	Austin, TX.	
91,066	Sony Electronics, Inc	Park Ridge, NJ.	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
91,202	Covidien	Mansfield, MA.	

I hereby certify that the aforementioned determinations were issued during the period of *November 9, 2015 through December 11, 2015.* These determinations are available on the Department's Web site *www.tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 12th day of January 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–01868 Filed 2–2–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than February 16, 2016.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 2016.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of January, 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

97 TAA PETITIONS INSTITUTED BETWEEN 12/14/15 AND 1/8/16

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91218	Mesabi Radial Tire Company (State/One-Stop)	Hibbing, MN	12/14/15	12/11/15
91219	AVX Corporation (State/One-Stop)	Conway, SC	12/14/15	12/11/15
91220	Crisp Manufacturing Co., Inc. (Company)	Rural Retreat, VA	12/14/15	12/14/15
91221	Rockwood Lithium (Workers)	New Johnsonville, TN	12/14/15	12/11/15
91222	Meggitt Aircraft Braking Systems (Union)	Akron, OH	12/14/15	12/14/15
91223	Maquet Cardiovascular—Getinge Group (State/One-Stop)	Wayne, NJ	12/15/15	12/14/15
91224	GM Subsystems, LLC (State/One-Stop)	Lake Orion, MI	12/15/15	12/14/15
91225	XALT Energy, LLC (State/One-Stop)	Midland, MI	12/15/15	12/14/15
91226	Vani Quality Quest, Inc. (State/One-Stop)	Dearborn, MI	12/15/15	12/14/15
91227	Oakland Stamping—Orion LLC (State/One-Stop)	Lake Orion, MI	12/15/15	12/14/15
91228	Johnson Controls (Company)	Nampa, ID	12/15/15	12/14/15
91229	American Process Inc.—Alpena Biorefinery (Company)	Alpena, MI	12/15/15	12/14/15
91230	BAE Systems RO Defense Inc. (Workers)	Hattiesburg, MS	12/15/15	12/14/15
91231	Sodecia (State/One-Stop)	Lake Orion, MI	12/15/15	12/14/15
91232	Alcoa (Union)	Massena, NY	12/16/15	12/15/15
91233	ThermoFisher Scientific (State/One-Stop)	Austin, TX	12/16/15	12/15/15
91234	Cyclone Drilling (State/One-Stop)	Gillette, WY	12/16/15	12/14/15
91235	Chart Energy and Chemicals (Union)	La Crosse, WI	12/16/15	12/14/15
91236	IAC Acoustics, formerly Maxim Silencers ()	Stafford, TX	12/17/15	12/16/15
91237	Siemens Industry, Inc. (Union)	Norwood, OH	12/17/15	10/09/15
91238	Somerset Regional Water Resources (Workers)	Somerset, PA	12/18/15	12/15/15
91239	Umicore Optical Materials USA Inc. (Company)	Quapaw, OK	12/18/15	12/17/15
91240	Static Control Components, Inc. (Workers)	Sanford, NC	12/18/15	12/18/15
91241	Ensign US Drilling (Workers)	Denver, CO	12/18/15	12/17/15
91242	HCL America—(Alcatel-Lucent offices) (Workers)	Naperville, IL	12/18/15	12/17/15
91243	Motorola Mobility LLC (Workers)	Chicago, IL	12/21/15	12/21/15
91244	Amphenol Corporation (Union)	Sidney, NY	12/21/15	12/18/15
91245	Concentrix (Workers)	Greenville, SC	12/21/15	12/18/15
91246	Carlisle Industrial Brake & Friction (Workers)	Bloomington, IN	12/22/15	12/01/15
91247	ESCO Corporation (State/One-Stop)	Portland, OR	12/22/15	12/16/15
91248	Exal Corporation (State/One-Stop)	Youngstown, OH	12/22/15	12/21/15
91249	Richland Center Foundry (Workers)	Richland Center, WI	12/22/15	12/17/15
91250	Koppers Inc. Follansbee Location (Company)	Follansbee, WV	12/22/15	12/18/15
91251	ATI Flat-rolled Products (Union)	BrackenRidge, PA	12/22/15	12/19/15
91252	Joy Global (State/One-Stop)	Virginia, MN	12/22/15	12/21/15
91253	Cast Corporation (State/One-Stop)	Hibbing, MN	12/23/15	12/21/15
91254	Idea Drilling LLC (State/One-Stop)	Virginia, MN	12/23/15	12/21/15
91255	DMI International, Inc. and Dieco Manufacturing, Inc. (Company).	Tulsa, OK	12/23/15	12/21/15
91256	Electrofilm Manufacturing Company (State/One-Stop)	Valencia, CA	12/23/15	12/21/15
91257	NRG Energy, Inc. (Union)	Tonawanda, NY	12/23/15	12/22/15
91258	IBM Office—Work from home (State/One-Stop)	Denver, CO	12/23/15	12/22/15
91259	Seagate Technology LLC (State/One-Stop)	Shrewsbury, MA	12/23/15	12/22/15
91260	Vishay Siliconix (Company)	Santa Clara, CA	12/24/15	12/23/15
91261	NY Life Insurance Company (State/One-Stop)	Sleepy Hollow, NY	12/24/15	12/11/15
91262	Wyndham Hotel Group (Workers)	Aberdeen, SD	12/24/15	12/22/15
91263	Halliburton Energy Services (Workers)	Montgomery, PA	12/28/15	12/24/15
91264	Shenango Incorporated (Company)	Pittsburgh, PA	12/28/15	12/28/15
91265	Rosebud Mining Company (Company)	Kittanning, PA	12/30/15	12/30/15
91266	QBE Americas, Inc. (State/One-Stop)	Weatogue, CT	12/30/15	12/30/15
91267	Stone Transport (State/One-Stop)	Saginaw, MI	12/30/15	12/29/15
91268	Canadian National-Dock Headquarters (State/One-Stop)	Duluth, MN	12/30/15	12/29/15
91269	Dom-Ex Inc.—Crown Parts (State/One-Stop)	Hibbing, MN	12/31/15	12/30/15
91270	Eaton Corporation—Pewaukee (Company)	Pewaukee, WI	12/31/15	12/28/15
91271	AVX Corporation (Company)	Conway, SC	12/31/15	11/12/15
91272	L–3 Communication LS ISR (State/One-Stop)	Beale Air Force Base, CA	12/31/15	12/09/15
91273	Boeing Vertical Lift (State/One-Stop)	Ridley Park, PA	12/31/15	12/22/15
91274	Cummins Northwest/Cummins Inc. (State/One-Stop)	Portland, OR	12/31/15	12/30/15
91275	TTM Technologies (Company)	Milpitas, CA	01/04/16	12/30/15
91276	Trimble Navigation (State/One-Stop)	Broomfield, CO	01/04/16	12/31/15
91277	Hammerlund Construction Inc. (State/One-Stop)	Grand Rapids, MN	01/04/16	12/31/15
91278	Allegheny Technologies Incorporated (Union)	Midland, PA	01/05/16	01/04/16
91279	Allegheny Technologies Incorporated (Union)	Bagdad, PA	01/05/16	01/04/16
91280	Cengage Learning (Workers)	Mason, OH	01/05/16	01/04/16
91281	CareFusion (State/One-Stop)	Ehglewood, CO	01/05/16	01/04/16
91282	ALM Media (Workers)	Erlanger, KY	01/05/16	01/05/16
91283	Rapid Process Equipment (State/One-Stop)	Cohasset, MN	01/06/16	01/05/16
91284	Ferus (State/One-Stop)	Jenkins, KY	01/06/16	01/05/16
91285	Gildan (State/One-Stop)	Hamer, SC	01/06/16	01/05/16
91286	Zodiac American Pools (State/One-Stop)	Vista, CA	01/06/16	01/05/16
91287	Viking Explosives & Supply Inc. (State/One-Stop)	Hibbing, MN	01/06/16	01/05/16

97 TAA PETITIONS INSTITUTED BETWEEN 12/14/15 AND 1/8/16—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91288	ShopKo Stores (State/One-Stop)	Omaha, NE	01/06/16	12/24/15
91289	CommScope, Inc. (State/One-Stop)	Sidney, NE	01/06/16	12/24/15
91290	ConAgra (State/One-Stop)	Omaha, NE	01/06/16	12/24/15
91291	Alorica (State/One-Stop)	Omaha, NE	01/06/16	12/24/15
91292	Catholic Health Initiative (State/One-Stop)	Omaha, NE	01/06/16	12/24/15
91293	AK Steel Ashland Works (Workers)	Ashland, KY	01/06/16	12/30/15
91294	AK Steel (Ashland Works) (Workers)	Ashland, KY	01/06/16	01/05/16
91295	Allegheny Technologies Incorporated (Union)	Midland, PA	01/06/16	01/05/16
91296	Tritec of Minnesota Inc. (State/One-Stop)	Virginia, MN	01/07/16	01/06/16
91297	Magnetation (State/One-Stop)	Grand Rapids, MN	01/07/16	01/06/16
91298	Furin & Shea Welding (State/One-Stop)	Hibbing, MN	01/07/16	01/06/16
91299	Mekra Lang (State/One-Stop)	Ridgeway, SC	01/07/16	01/06/15
91300	QBE North America (State/One-Stop)	Greenwood Village, CO	01/07/16	01/06/16
91301	Con-Way Freight (State/One-Stop)	Pittsburgh, PA	01/07/16	01/06/16
91302	Pacific Recycling, Inc. (State/One-Stop)	Eugene, OR	01/08/16	01/07/16
91303	Master Halco, Inc. (State/One-Stop)	Scranton, PA	01/08/16	01/07/16
91304	Sun Edison Inc. (State/One-Stop)	Portland, OR	01/08/16	01/07/16
91305	Newberg Waste Management (State/One-Stop)	Newberg, OR	01/08/16	01/07/16
91306	MicroPower Electronics Inc. (State/One-Stop)	Beaverton, OR	01/08/16	01/07/16
91307	LaCie USA (State/One-Stop)	Tigard, OR	01/08/16	01/07/16
91308	Seagate Technology, LLC (Company)	Shrewsbury, MA	01/08/16	01/07/16
91309	Minnesota Rubber & Plastics (Quadion LLC) (State/One-Stop).	Watertown, SD	01/08/16	01/07/15
91310	Malton Electric (State/One-Stop)	Virginia, MN	01/08/16	01/07/15
91311	Lakehead Constructors Inc. (State/One-Stop)	Virginia, MN	01/08/16	01/07/16
91312	Evraz Stractor (State/One-Stop)	Hot Springs, AR	01/08/16	01/07/16
91313	American Tube and Paper Co. (Union)	Totowa, NJ	01/08/16	01/07/16
91314	Exterran Energy Solutions (Workers)	Youngstown, OH	01/08/16	01/07/16

[FR Doc. 2016–01867 Filed 2–2–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Placement Verification and Follow Up of Job Corps Participants; Correction

ACTION: Notice; correction.

SUMMARY: The Department of Labor published a document in the **Federal Register** of December 24, 2015, inviting public comments on the Placement Verification and Follow Up of Job Corps Participants Information Collection Request (80 FR 80389). 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 24, 2015, in FR Doc. 2015–32377, on page 80389, (80 FR 80389) 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. 2016–01899 Filed 2–2–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Guard Youth ChalleNGe Job ChalleNGe Evaluation; Correction

ACTION: Notice; correction.

SUMMARY: The Department of Labor published a document in the **Federal Register** of December 28, 2015, inviting public comments on the National Guard Youth ChalleNGe Job ChalleNGe Evaluation Information Collection Request (80 FR 80816). 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 28, 2015, in FR Doc. 2015–32623, on page 80816, (80 FR 80816) in the third column, correct the **DATES** caption to read:

DATES: The OMB will consider all written comments that agency receives on or before February 11, 2016.

Dated: January 22, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–01900 Filed 2–2–16; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Institutional Analysis of American Job Centers Study; Correction

ACTION: Notice; Correction.

SUMMARY: The Department of Labor published a document in the **Federal Register** of December 28, 2015, inviting public comments on the Institutional Analysis of American Job Centers Study Information Collection Request (80 FR 80814). 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 28, 2015, in FR Doc. 2015–32625, on page 80814, (80 FR 80814) in the first column, correct the **DATES** caption to read:

DATES: The OMB will consider all written comments that agency receives on or before February 11, 2016.

Dated: January 21, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–01898 Filed 2–2–16; 8:45 am]

BILLING CODE 4510–04–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Visual Arts (review of nominations): This meeting will be closed.

Date and time: February 19, 2016; 1:00 p.m. to 2:00 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: January 28, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016–01882 Filed 2–2–16; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; 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 Environmental Research and Education (9487).

Date/Time: March 30, 2016; 9:00 a.m.–5:30 p.m. March 31, 2016; 9:00 a.m.–3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Stephen Meacham, Senior Staff Associate, Office of Integrative Activities/Office of the Director/National Science Foundation (Email: *smeacham@nsf.gov*/Telephone: (703) 292–8040).

Minutes: May be obtained from *http://www.nsf.gov/geo/ere/ereweb/minutes.cfm.*

Purpose Of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda: (Tentative) Approval of minutes from past meetings. Updates on agency support for environmental research and activities. Discussion with NSF Director and Assistant Directors. Discussion of emerging research topics in environmental science, engineering and education. Updated agenda will be available at *http://www.nsf.gov/geo/ere/ereweb/minutes.cfm.*

Dated: January 28, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–01869 Filed 2–2–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456 and 50–457; NRC–2013–0169]

Exelon Generation Company, LLC, Braidwood Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued renewed facility operating license Nos. NPF–72 and NPF–77 to Exelon Generation Company, LLC (Exelon or the licensee), the operator of Braidwood Station, Units 1 and 2 (Braidwood), respectively. Renewed facility operating license Nos. NPF–72 and NPF–77 authorize the operation of Braidwood Units 1 and 2 at reactor core power levels not in excess of 3645 megawatts thermal each, in accordance with the provisions of the renewed licenses and technical specifications. In addition, the NRC has prepared a record of decision (ROD) that supports the NRC's decision to renew facility operating license Nos. NPF–72 and NPF–77.

DATES: The license renewal of facility operating license Nos. NPF–72 and NPF–77 were effective on January 27, 2016.

ADDRESSES: Please refer to Docket ID NRC–2013–0169 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site*: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0169. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Lois James, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001, telephone: 301–415–3306; email: *Lois.James@nrc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the NRC has issued renewed facility operating license Nos. NPF–72 and NPF–77 to Exelon Generation Company, LLC, the operator of Braidwood Station. Renewed facility operating license Nos. NPF–72 and NPF–77 authorizes the operation of Braidwood Units 1 and 2 at reactor core power levels not in excess of 3645 megawatts thermal each, in accordance with the provisions of the Braidwood, Units 1 and 2 renewed licenses and technical specifications. The NRC's ROD that supports the decision to renew facility operating license Nos. NPF–72 and NPF–77 is available in ADAMS under Accession No. ML15322A317.

As discussed in the ROD and the final supplemental environmental impact statement (FSEIS) for Braidwood Station, Supplement 55 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Braidwood Station, Units 1 and 2,'' issued in November 2015 (ADAMS Accession No. ML15314A814), the NRC considered a range of reasonable alternatives that included new nuclear generation, coal-integrated gasification combined cycle, natural gas combined-cycle (NGCC), combination (NGCC, wind, and solar generation), replacement power, and the no-action alternative. The ROD and FSEIS document the NRC's determination that the adverse environmental impacts of license renewal for Braidwood are not so great that preserving the option of license renewal for energy planning decision makers would be unreasonable.

Braidwood Station, Units 1 and 2, has two pressurized water reactors and is located in Will County, Illinois. The application for the renewed licenses, ''License Renewal Application, Byron and Braidwood Stations, Units 1 and 2,'' dated May 29, 2013 (ADAMS Accession Nos. ML13155A420 and ML13155A421), as supplemented by letters dated through April 13, 2015, with respect to Braidwood Station, complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (AEA) and the NRC's regulations in Chapter I of title 10 of the *Code of Federal Regulations.* The NRC has made appropriate findings, which are set forth in each of the licenses, as required by the AEA and its regulations. A public notice of the proposed issuance of the renewed licenses and an opportunity for a hearing was published in the **Federal Register** on July 24, 2013 (78 FR 44603).

For further details with respect to this action, see: (1) Exelon Generation Company, LLC's (Exelon) license renewal application for Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, dated May 29, 2013, as supplemented by letters dated through April 13, 2015; (2) the NRC's safety evaluation report dated July 2015 (ADAMS Accession No. ML15182A051); (3) the NRC's final environmental impact statement (NUREG–1437, Supplement 55), for Braidwood, Units 1 and 2, published in November 2015; and (4) the NRC's ROD.

Dated at Rockville, Maryland, this 27 day of January 2016.

For the Nuclear Regulatory Commission,

Christopher G. Miller,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–02070 Filed 2–2–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76982; File No. SR–NYSEMKT–2015–80]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving a Proposed Rule Change Deleting Rule 410B—Equities Governing Reporting Requirements for Off-Exchange Transactions

January 28, 2016.

I. Introduction

On October 16, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to delete Rule 410B—Equities governing reporting requirements for off-Exchange transactions. The proposed rule change was published for comment in the **Federal Register** on November 2, 2015.[3] The Commission received no comment letters on the proposed rule change. On December 16, 2015, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] The Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to delete Rule 410B—Equities (''Rule 410B''), which sets forth certain regulatory reporting requirements for member or member organizations effecting off-Exchange transactions in Exchange listed securities that are not reported to the Consolidated Tape, and to make conforming amendments to Rule 476A to delete a reference to Rule 410B. The Exchange represents that Rule 410B is no longer necessary in light of changes in trade reporting and regulatory requirements that have been put in place since the Exchange adopted Rule 410B.

Changes to Regulatory Landscape

On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD''), New York Stock Exchange LLC (''NYSE''), and NYSE Regulation, Inc. (''NYSE Regulation'') consolidated their member-firm regulation operations to create the Financial Industry Regulatory Authority, Inc. (''FINRA'') and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members (''17d–2 Agreement'').[5] The Exchange was added as a party to the 17d-2 Agreement in 2009.[6]

In 2008, the Exchange, NASD, NYSE, and NYSE Regulation also entered into a plan to allocate to FINRA regulatory responsibility, over exchange members that are also FINRA members, for surveillance, investigation, and enforcement of insider trading with respect to NYSE- and MKT-listed stocks, among others, irrespective of where the relevant trading occurred (the ''Insider Trading Plan'').[7] On June 14, 2010, FINRA was retained to perform the residual market surveillance and enforcement functions that had, up to that point, been performed by NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76276 (October 27, 2015), 80 FR 67454.

[4] *See* Securities Exchange Act Release No. 76669, 80 FR 79640 (December 22, 2015).

[5] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4–544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). In 2007, the NASD, NYSE, the Exchange and NYSE Regulation also entered into a Regulatory Services Agreement (''RSA''), whereby FINRA was retained to perform certain regulatory services for non-common rules.

[6] *See* Securities Exchange Act Release No. 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (File No. 4–587).

[7] *See* Securities Exchange Act Release No. 54646 (September 12, 2008), 73 FR 54646 (September 22, 2008) (File No. 4–566). *See also* Securities Exchange Act Release No. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008) (File No. 4–566).

Regulation.[8] In January 2011, the SEC approved an amendment to the Insider Trading Plan whereby FINRA also assumed responsibility for performing the insider-trading-related market surveillance and enforcement functions previously conducted by NYSE Regulation for its U.S. equities and options markets.[9]

Changes in Trade Reporting and Regulatory Reporting

In 1998, FINRA (then the NASD) established the Order Audit Trail System (OATS), as an integrated audit trail of order, quote, and trade information for OTC equity securities and equity securities listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq'').[10] In 2010, FINRA Rules 7410 through 7470 (the ''OATS Rules'') were amended to extend the recording and reporting requirements to all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,[11] including NYSE- and MKT-listed securities. The Exchange adopted the OATS Rules in 2011.[12] The Exchange states that FINRA may use the information it collects pursuant to the OATS Rules to perform its regulatory functions.

According to the Exchange, Rule 410B also predates the establishment of a FINRA Trade Reporting Facility (''TRF''). FINRA Rule 6110 requires FINRA members to report transactions in NMS stocks [13] effected ''otherwise than on or through a national securities exchange.'' [14] Pursuant to FINRA Rules 6310A and 6310B, FINRA members may use either the FINRA/NYSE TRF or FINRA/Nasdaq TRF to report such off-Exchange transactions.[15] FINRA members using these TRFs to report off-Exchange transactions are in turn subject to FINRA Rule 7230B, which, the Exchange states, imposes transaction-information reporting requirements similar to Rule 410B.[16] As a result, the Exchange represents that dual members of both the Exchange and FINRA must report off-Exchange transactions to a TRF and submit substantially similar reports to the Exchange and FINRA.

Proposed Rule Change

The Exchange proposes to delete Rule 410B in its entirety. The Exchange represents that, since 2010, surveillance and enforcement responsibilities across markets have been consolidated at FINRA, which conducts cross-market surveillances on the Exchange's behalf utilizing various data sources, including extensive trade and other information that FINRA collects pursuant to its rules. This trade information includes reports of off-exchange transactions.

The Exchange represents that all of its member organizations, with only nine exceptions, are members of FINRA and, as such, must report all off-exchange transactions to FINRA, including transactions away from the Exchange that are not reported to the Consolidated Tape. The Exchange further represents that this information is essentially duplicative of the Rule 410B reports the Exchange currently supplies to FINRA. The Exchange notes that one exception would be transactions in dually listed securities executed on and reported to a foreign securities exchange, which are not required to be reported because such trades are executed ''on or through an exchange.'' [17] The Exchange represents that it believes such trades pose little regulatory risk and, given that no other exchange has a rule comparable to Rule 410B, notes that such trades are also not being reported to other equities exchanges. Finally, the Exchange represents that only a handful of firms currently account for all of the Rule 410B activity, all of whom are also FINRA members.[18] The Exchange believes that Rule 410B is thus no longer necessary, and deleting it would eliminate essentially duplicative reporting of off-Exchange transactions by dual members.

The Exchange does not believe that eliminating the Rule 410B reporting requirement for the small number of NYSE MKT-only members[19] would pose any significant regulatory risk. The Exchange represents that none of these firms has ever submitted a Rule 410B report. The Exchange also notes that NYSE MKT-only members would remain subject to federal and Exchange books and records requirements.[20]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act [21] and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Based on the Exchange's representations, the Commission believes that eliminating the Rule 410B reporting requirement will not reduce the amount of publicly available information about securities transactions and that it is not likely to hamper the ability of the Exchange to conduct regulatory oversight of its members. The Commission notes that Rule 410B does not currently provide for real-time, publicly disseminated reporting of transactions, but instead requires non-public, electronic reporting of trade data to the Exchange on a next-day basis for regulatory purposes only. The Commission further notes that the Exchange represents that its members would remain subject to federal and

[8] *See* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR–NYSE–2010–46); Securities Exchange Act Release No. 62354 (June 22, 2010), 75 FR 36730 (June 28, 2010) (SR–NYSEAmex–2010–57). NYSE Regulation performed the regulatory functions of NYSE MKT pursuant to an intercompany RSA.

[9] *See* Securities Exchange Act Release No. 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011) (File No. 4–566).

[10] *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (SR–NASD–97–56).

[11] *See* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044). *See also* 17 CFR 242.600(b)(47).

[12] *See* Securities Exchange Act Release No. 65524 (October 7, 2011), 76 FR 64151 (October 17, 2011) (SR–NYSEAmex–2011–74).

[13] As defined in Rule 600(b)(47) of Regulation NMS, 17 CFR 242.600(b)(47).

[14] *See* FINRA Rule 6110. *See generally* FINRA Rule 6300A and 7200A Series (FINRA/Nasdaq TRF) and 6300B and 7200B Series (FINRA/NYSE TRF).

[15] *See* FINRA Rules 6300A & 6300B.

[16] *See* Rule 7230B.

[17] *See* Trade Reporting Frequently Asked Questions, Section 701, Q/A701.1, available at *http://www.finra.org/industry/trade-reporting-faq*.

[18] According to the Exchange, Rule 410B Weekly Reports submitted to the SEC in July and August 2015 reveal that only five firms, all also FINRA members, accounted for all of the Rule 410B trading activity. The Exchange further represents that the list of firms that have in the past submitted Rule 410B reports does not include any non-FINRA members.

[19] The Exchange represents that these nine non-FINRA member firms do not have any public customers and are also members of Nasdaq as well as NYSE.

[20] *See* 17 CFR 240.17a–3, 17 CFR 240.17a–4 & Rule 440—Equities.

[21] 15 U.S.C. 78f.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

Exchange books-and-records requirements [24] and that Exchange members would still be required to provide such trade data to the Exchange upon the Exchange's request. For these reasons, the Commission believes that the proposal should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NYSEMKT–2015–80) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01923 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76995; File No. SR–C2–2016–001]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

January 28, 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 14, 2016, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to decrease the Options Regulatory Fee (''ORF'') from $.0051 to $.0015 per contract in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The proposed fee change would be operative on February 1, 2016.

The ORF is assessed by the Exchange to each Permit Holder for all options transactions executed or cleared by the Permit Holder that are cleared by The Options Clearing Corporation (''OCC'') in the customer range (*i.e.*, transactions that clear in a customer account at OCC) regardless of the exchange on which the transaction occurs. In other words, the Exchange imposes the ORF on all customer-range transactions executed by a Permit Holder, even if the transactions do not take place on the Exchange. The ORF also is charged for transactions that are not executed by a Permit Holder but are ultimately cleared by a Permit Holder. In the case where a Permit Holder executes a transaction and a different Permit Holder clears the transaction, the ORF is assessed to the Permit Holder who executed the transaction. In the case where a non-Permit Holder executes a transaction and a Permit Holder clears the transaction, the ORF is assessed to the Permit Holder who clears the transaction. The ORF is collected indirectly from Permit Holders through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Permit Holder customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Permit Holder compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement.[3] The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Permit Holders of adjustments to the ORF via regulatory circular. The Exchange endeavors to provide Permit Holders with such notice at least 30 calendar days prior to the effective date of the change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the

[24] *See* 17 CFR 240.17a–3, 17 CFR 240.17a–4 & Rule 440—Equities.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

equitable allocation of reasonable dues, fees, and other charges among its Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help the Exchange offset increased regulatory costs but would not result in total regulatory revenue exceeding total regulatory costs. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those Permit Holders that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.*, Permit Holder proprietary transactions) of its regulatory program.[7] The Exchange believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Permit Holders on all their transactions that clear in the customer range at the OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it applies to all Permit Holders. The proposed ORF is comparable to fees charged by other options exchanges for the same or similar service. The Exchange believes any burden on competition imposed by the proposed rule change is outweighed by the need to help the Exchange adequately fund its regulatory activities to ensure compliance with the Exchange Act.

[6] 15 U.S.C. 78f(b)(5).

[7] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Permit Holder proprietary transactions if the Exchange deems it advisable.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2016–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2016–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–001 and should be submitted on or before February 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01931 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76984; File No. SR–Phlx–2016–07]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Minor Changes to Rule 1064, Crossing, Facilitation and Solicited Orders

January 28, 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 14, 2016, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 Exchange proposes to make minor changes to Rule 1064, Crossing, Facilitation and Solicited Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to improve the readability of Rule 1064 with a few minor changes. Rule 1064 is lengthy and covers several complicated, related topics.

First, the Exchange proposes to add headings to certain paragraphs to make it easier to locate each of the following topics: Crossing,[3] Anticipatory Hedging[4] and Floor Qualified Contingent Cross.[5] Paragraph (b), Facilitation Orders and paragraph (c), Solicited Orders, already have headings so headings would now run consistently throughout the rule.

Second, the Exchange also proposes to move the language from two commentaries into the body of the rule, also to improve readability. Specifically, the language in Commentary .03 is being moved to become the new Rule 1064(a)(iv), because it relates to crossing orders, which is covered in paragraph (a). Also, the language in Commentary .04 is being moved to become the new Rule 1064(d)(iii), which is related to the anticipatory hedging provisions currently in paragraph (d).

[3] Rule 1064(a).

[4] Rule 1064(d).

[5] Rule 1064(e).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to protect investors and the public interest by improving the readability of a lengthy and complicated rule. The Exchange believes that the proposed headings and merging of commentary language into the main body of the rule should prevent confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Because the proposal merely reorganizes a rule, it has no impact on either inter-market or intra-market competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–Phlx–2016–07 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–Phlx–2016–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–Phlx–2016–07, and should be submitted on or before February 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01925 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76981; File No. SR–NYSEArca–2016–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect Changes to the Investment Strategy for the PowerShares S&P 500® Downside Hedged Portfolio

January 28, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 26, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to reflect changes to the investment strategy for the PowerShares S&P 500® Downside Hedged Portfolio (the ''Fund''). The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously approved listing and trading on the Exchange of shares (''Shares'') of the Fund, a series of the PowerShares Actively Managed Exchange-Traded Fund Trust (the ''Trust''),[4] under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. Shares of the Fund have commenced listing and trading on the Exchange.

The Shares are offered by the Trust, a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment advisor to the Fund is Invesco PowerShares Capital Management LLC (the ''Adviser'').

In this proposed rule change, the Exchange proposes to reflect changes to the investment strategy that the Adviser utilizes in seeking to achieve the Fund's investment objective, as described below.[6]

The Prior Release stated that, according to the Registration Statement, the Fund is an actively managed exchange-traded fund that will seek to achieve positive total returns in rising or falling markets that are not directly correlated to broad equity or fixed income market returns. According to the Registration Statement, the Fund seeks to achieve its investment objective by using a quantitative, rules-based investment strategy designed to provide returns that correspond to the performance of the S&P 500 Dynamic VEQTOR Index (the ''Benchmark''). The Registration Statement also stated that the allocation among the Fund's investments generally will approximate the allocation among the components of the Benchmark.

The Adviser now represents that, rather than employing a quantitative, rules-based strategy designed to provide returns that correspond to the performance of the Benchmark, the Fund will use a quantitative, rules-based strategy that is designed to outperform the Benchmark rather than match it.

The Adviser will continue to invest the Fund in the same instruments as are contained in the Benchmark, as discussed in the Prior Release. However, the Adviser now represents that the Fund will use portfolio management strategies in seeking to achieve its investment objective that allocate the Fund's assets in a manner that may not correspond to the Benchmark. The Adviser also now represents that, going forward, the Fund will seek to outperform the Benchmark rather than match it.

The Exchange notes that the Prior Release stated that, according to the Registration Statement, the Fund may invest a portion of its assets in high-quality money market instruments, cash, and cash equivalents to provide liquidity, to collateralize its futures contracts investments, or to track the Benchmark during times when the Benchmark moves its entire allocation to cash. The Exchange also proposes to change this representation to state that the Fund may invest a portion of its assets in high-quality money market instruments, cash, and cash equivalents to provide liquidity, to collateralize its futures contracts investments, or during periods of heightened volatility when the Adviser believes that it is in the best interest of the Fund to do so. Because the Fund, going forward, would seek to outperform rather than match the Benchmark, the Fund would no longer utilize high quality money market instruments, cash and cash equivalents for the purpose of tracking the Benchmark.

The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to invest in the securities and financial instruments identified in the Prior

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 68158 (Nov. 5, 2012), 77 FR 67412 (Nov. 9, 2012) (SR–NYSEArca–2012–101) (''Prior Order''). *See also* Securities Exchange Act Release No. 67881 (Sept. 18, 2012), 77 FR 58889 (Sept. 24, 2012) (SR–NYSEArca–2012–101) (''Prior Notice,'' and together with the Prior Order, the ''Prior Release'').

[5] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). The Trust intends to file a prospectus supplement with the Commission or a post-effective amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Fund (File Nos. 333–147622 and 811–22148) (''Registration Statement'') to reflect the changes requested in the proposed rule change upon effectiveness of the rule change. The description of the operation of the Trust and the Fund herein will be reflected in any such filing. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 28171 (Feb. 27, 2008) (File No. 812–13386) (''Exemptive Order'').

[6] The changes described herein will be effective contingent upon filing of a prospectus supplement or upon effectiveness of the Trust's most recent post-effective amendment to its Registration Statement. *See* note 5, *supra.* The Adviser represents that the Adviser will not implement the changes described herein until the instant proposed rule change is operative.

Release and will remain subject to the allocation limitations identified in the Prior Release.

Except for the changes noted above, all other facts presented and representations made in the Prior Release are unchanged.

The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. The proposed changes to the representations contained in the Prior Release are limited in scope. The Adviser is changing the representation in the Prior Release that the Fund will employ a quantitative, rules-based strategy designed to provide returns that correspond to the performance of the Benchmark, to a representation that the Fund will use a quantitative, rules-based strategy that is designed to outperform the Benchmark rather than seek returns comparable to it.

The Adviser represents that there is no change to the Fund's investment objective or to the securities and financial instruments identified in the Prior Release that the Fund utilizes in seeking to achieve its investment objective. The Fund's use of such securities and financial instruments will remain subject to the applicable allocation limitations identified in the Prior Release. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Adviser represents that the allocation of the Fund's portfolio will remain consistent with the allocation limitations discussed in the Prior Release, and that the Fund may invest in the same instruments as are contained in the Benchmark, as discussed in the Prior Release. However, the Adviser now represents that the Fund will use portfolio management strategies in seeking to achieve its investment objective that allocate the Fund's assets in a manner that may not correspond to the Benchmark. The Adviser also now represents that, going forward, the Fund will seek to outperform the Benchmark rather than match it.

As noted above, the Prior Release stated that, according to the Registration Statement, the Fund may invest a portion of its assets in high-quality money market instruments, cash, and cash equivalents to provide liquidity, to collateralize its futures contracts investments, or to track the Benchmark during times when the Benchmark moves its entire allocation to cash. The Exchange also proposes to change this representation to state that the Fund may invest a portion of its assets in high-quality money market instruments, cash, and cash equivalents to provide liquidity, to collateralize its futures contracts investments, or during periods of heightened volatility when the Adviser believes that it is in the best interest of the Fund to do so.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The proposed rule change will permit the Fund to operate in a manner similar to other issues of Managed Fund Shares that seek to outperform an index and will permit continued listing on the Exchange of the Fund after it begins to utilize the quantitative, rules-based strategy designed to outperform the Benchmark, which will enhance competition among issues of Managed Fund Shares currently trading on the Exchange. Except for the changes noted above, all other representations made in the Prior Release are unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will permit the Fund to operate in a manner similar to other issues of Managed Fund Shares that seek to outperform an index and will permit continued listing on the Exchange of the Fund after it begins to utilize the quantitative, rules-based strategy designed to outperform the Benchmark, which will enhance competition among issues of Managed Fund Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission 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

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–20 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–NYSEArca–2016–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–20 and should be submitted on or before February 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01922 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76993; File No. SR–CBOE–2016–004]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

January 28, 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 14, 2016, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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

Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') proposes to amend the Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the Options Regulatory Fee (''ORF'') from $.0064 to $.0081 per contract in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, meets the Exchange's total regulatory costs. The proposed fee change would be operative on February 1, 2016.

The ORF is assessed by the Exchange to each Trading Permit Holder for all options transactions executed or cleared by the Trading Permit Holder that are cleared by The Options Clearing Corporation (''OCC'') in the customer range (*i.e.,* transactions that clear in a customer account at OCC) regardless of the exchange on which the transaction occurs.[3] In other words, the Exchange imposes the ORF on all customer-range transactions executed by a Trading Permit Holder, even if the transactions do not take place on the Exchange. The ORF also is charged for transactions that are not executed by a Trading Permit Holder but are ultimately cleared by a Trading Permit Holder. In the case where a Trading Permit Holder executes a transaction and a different Trading Permit Holder clears the transaction, the ORF is assessed to the Trading Permit Holder who executed the transaction. In the case where a non-Trading Permit Holder executes a transaction and a Trading Permit Holder clears the transaction, the ORF is assessed to the Trading Permit Holder who clears the transaction. The ORF is collected indirectly from Trading Permit Holders through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Trading Permit Holder customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Trading Permit Holder compliance

[3] The ORF also applies to customer-range transactions executed during Extended Trading Hours.

with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement.[4] The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Trading Permit Holders of adjustments to the ORF via regulatory circular. The Exchange endeavors to provide Trading Permit Holders with such notice at least 30 calendar days prior to the effective date of the change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those Trading Permit Holders that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Trading Permit Holder proprietary transactions) of its regulatory program.[8] The Exchange believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Trading Permit Holders on all their transactions that clear in the customer range at the OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it applies to all Trading Permit Holders. The proposed ORF is comparable to fees charged by other options exchanges for the same or similar service. The Exchange believes any burden on competition imposed by the proposed rule change is outweighed by the need to help the Exchange adequately fund its regulatory activities to ensure compliance with the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–CBOE–2016–004.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–004 and should be submitted on or before February 24, 2016.

[4] *See* Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Trading Permit Holder proprietary transactions if the Exchange deems it advisable.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01929 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76992; File No. SR–NYSEMKT–2016–10]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Modifying the NYSE Amex Options Fee Schedule To Add an Early Adopter Specialist Credit

January 28, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 20, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the 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 February 1, 2016. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to implement a monthly credit available to Specialists to promote trading in Binary Return Derivatives (''ByRDs''),[4] which is a new product that the Exchange anticipates launching in February 2016.

To encourage trading of ByRDs, the Exchange proposes to offer an incentive to Specialists appointed to trade ByRDs.[5] Specialists that are appointed in ByRDs and eligible for the incentive payment would be known on the Exchange's Fee Schedule as ''Early Adopter Specialists.'' Specifically, effective February 1, 2016, the Exchange proposes to offer each ''Early Adopter Specialist'' a monthly credit of $335 for each class of ByRDs for which that Specialist is appointed, which the Exchange believes would provide a competitive incentive to Specialists based on market conditions and competing interests for technology.[6] The Exchange believes the proposed incentive payment would further the Exchange's goal of introducing new products to the marketplace by encouraging Specialists to make a market for these products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] 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 that the proposed monthly credit is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the proposed credit would generate additional order flow to the Exchange by creating incentives to quote and trade ByRDs options, which would benefit all market participants even those not eligible to receive the credit. The Exchange believes it is appropriate to offer the credit to Specialists (and not to other types of Market Makers) as the Specialists are subject to heightened continuous quoting obligations, which exceed those imposed on other Market Makers.[9] The Exchange believes the proposed credit would recognize the contributions of each Early Adopter Specialist to the trading environment on the Exchange and is designed to attract Specialists willing to seek appointments in and, thus provide continuous quotes in, ByRDs options, which increase in the availability of ByRDs options would benefit all market participants.

In addition, the Exchange has evaluated the market conditions, including the technology needs of Specialists appointed to options on ByRDs and believes the proposed monthly credit of $335 is reasonable, equitable and not unfairly discriminatory.[10] The Exchange notes that offering market participants incentives to trade in certain newly offered products is not new of novel.[11]

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,[12] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed incentive is pro-competitive as it would further the Exchange's goal of

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR–Amex–2004–27) (Order approving listing of Fixed Return Options (''FROs'')); *see also* Securities Exchange Act Release No. 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR–NYSEMKT–2014–06) (Order approving name change from FROs to Binary Return Derivatives (ByRDs) and re-launch of these products, with certain modification, and amending Obvious Errors rules to include ByRDs). ByRDs are European-style option contracts on individual stocks, exchange-traded funds and Index-Linked Securities that have a fixed return in cash based on a set strike price; satisfy specified listing criteria; and may only be exercised at expiration pursuant to the Rules of the Options Clearing Corporation. *See, e.g.,* NYSE MKT Rule 900ByRDs.

[5] Each Specialist must be registered with the Exchange as a Market Maker and is thus subject to the quoting requirements imposed on Market Makers. *See, e.g.,* Rules 920NY, 925.1NY(b) and 927NY.

[6] *See* proposed Section I.H. of the Fee Schedule, which was previously Reserved.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See supra* n. 5.

[10] In determining the $335 fee, the Exchange considered factors such as systems upgrades and additional data feeds that may be necessary to act as a Specialist in ByRDS.

[11] *See* Exchange Act Release No. 34–60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR–ISE–2009–59).

[12] 15 U.S.C. 78f(b)(8).

introducing new products to the marketplace and encouraging Specialists to make a market in these products, which would in turn, benefit market participants.

To the extent that there is an additional competitive burden on market participants that are not eligible for the credit (*i.e.,* non-Specialists), the Exchange believes that this is appropriate because the proposal would incent Specialists to quote and trade in options on ByRDs which would enhance the quality of the Exchange's markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. Moreover, the Exchange believes it is appropriate to offer the credit to Specialists (and not to other types of Market Makers) as Specialists are subject to heightened continuous quoting obligations that exceed those required of other Market Makers.[13]

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)[14] of the Act and subparagraph (f)(2) of Rule 19b–4[15] 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)[16] 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–2016–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–10, and should be submitted on or before February 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01928 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

[13] *See supra* n. 5.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76996; File No. SR–NYSEMKT–2016–12]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the NYSE MKT Company Guide To Create a New Section 146 Under Which a Certain Category of Newly Listed Issuers Would Be Entitled To Receive Complimentary Products and Services From the Exchange

January 28, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 14, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE MKT Company Guide (the ''Company Guide'') to create a new Section 146 under which a certain category of newly listed issuers would be entitled to receive complimentary products and services from the Exchange. 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,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Company Guide to create a new Section 146 under which a certain category of newly listed issuers would be entitled to receive complimentary products and services from the Exchange. The Exchange proposes to offer such complimentary products and services for a period of 24 calendar months from the date of initial listing to (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security [4] on the Exchange under Section 101 or 110 of the Company Guide for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering, (ii) any U.S. or non-U.S. company that transfers its listing of common stock or equity securities, respectively, to the Exchange from another national securities exchange or (iii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering) (each, an ''Eligible New Listing'').

Historically, the Exchange has served as an alternative listing venue to the New York Stock Exchange (the ''NYSE'') for small capitalization companies unable to meet the NYSE's heightened initial listing standards. In this respect, the Exchange regularly competes with the Nasdaq Capital Market tier of the Nasdaq Stock Market and, in some cases, with the Nasdaq Global Market tier of the Nasdaq Stock Market. Like the Exchange, Nasdaq Capital Market and Nasdaq Global Market each have initial listing standards that can more readily accommodate small capitalization companies than the NYSE. The Exchange hopes in the future to compete for new listings to a greater degree with the Nasdaq Global Market. One way that the exchanges compete with each other is to offer companies services that aid their transition to being public or listed on a new exchange. For example, the Nasdaq Global Market currently offers newly listed companies the following services for a period of 24 calendar months following their listing: whistleblower hotline, investor relations Web site, press releases, interactive webcasting and market analytic tools.[5] The total retail value of these services is approximately $70,000 per year.

To enable it to compete for listings with the Nasdaq Global Market, the Exchange proposes to offer Eligible New Listings Web-hosting products and services (with a commercial value of approximately $16,000 annually), web-casting services (with a commercial value of approximately $6,500 annually), whistleblower hotline services (with a commercial value of approximately $4,000 annually), news distribution products and services (with a commercial value of approximately $20,000 annually) and corporate governance tools (with a commercial value of approximately $15,000 annually) for a period of 24 calendar months from the date of initial listing on the Exchange.

The Exchange believes that each of the services it proposes to offer to Eligible New Listings on the Exchange may be valuable to companies that are listing publicly for the first time or transferring their listing to the Exchange. Web-hosting products and services assist Eligible New Listings in engaging with their shareholders by providing them with a Web site that contains business content that can be viewed by investors. Similarly, web-casting services are an important tool utilized by listed companies to communicate with shareholders in connection with their quarterly earnings release process. A whistleblower hotline assists Eligible New Listings in complying with, among other things, the requirements of the Sarbanes-Oxley Act, Foreign Corrupt Practices Act and UK Bribery Act. News distribution products and services assist Eligible New Listings in complying with Exchange disclosure requirements. Lastly, corporate governance tools will help educate the board of directors of each Eligible New Listing about corporate governance best practices.

The Exchange proposes to codify in the new Section 146 of the Company Guide that all companies listed on the Exchange are entitled to certain complimentary products and services via the Exchange's Market Access Center. The Market Access Center is a market information analytics platform that is a combination of technology-enabled market intelligence insight and a team of highly skilled market professionals. The platform was created to provide issuers with better market insight and information across all exchanges and trading venues. The Market Access Center includes products and services that were (i) developed by the Exchange using proprietary data and/or intellectual property or (ii) built by a third-party expressly for the Exchange's listed companies. Within this platform all issuers have access to tools and information related to market intelligence, education, investor outreach, media visibility, corporate governance, and advocacy initiatives. For example, the Market Access Center offers daily trading summaries; a trading alert system highlighting user-defined trading or market events; a Web site featuring timely content for Exchange-listed senior executives featuring trading information, market data, and institutional ownership. All issuers listed on the Exchange have access to the Exchange's Market Access Center on the same basis. The products and services currently available through the Exchange's Market Access Center have a commercial value of approximately $50,000.

The specific tools and services offered by the products discussed herein will be developed by the Exchange or by third-party vendors. NYSE Governance Services [6] will offer and develop the corporate governance tools discussed herein, but will not provide any other service discussed herein. NYSE Governance Services is an entity that is owned by the Exchange's parent

[4] For purposes of the proposed rule, ''equity securities'' means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depository Receipts, or Global Depository Receipts.

[5] *See* Nasdaq Stock Market Rule IM–5900–7(b).

[6] The Exchange believes that NYSE Governance Services is not a ''facility'' of the Exchange. 15 U.S.C. 78c(a)(2). The Act defines ''facility'' to include an exchange's ''premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system or communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' NYSE Governance Services is a distinct entity that is separate from the Exchange and engages in a discrete line of business that is not ''for the purpose of effecting or reporting a transaction'' on an exchange. While this proposal is being filed with the Commission under Section 19(b)(2) of the Act because it relates to services offered in connection with a listing on the Exchange, the Exchange does not believe it is required to file NYSE Governance Services' price schedule or changes that do not relate to services offered in connection with a listing on the Exchange.

company and is a leading provider of corporate governance, risk and compliance services to a diverse set of customers, including, among others, companies listed on the Exchange. Companies that are offered these products are under no obligation to accept them and a company's listing on the Exchange is not conditioned upon acceptance of any product or service. The Exchange notes that, from time to time, companies elect to purchase products and services from other vendors at their own expense rather than accepting comparable products and services offered by the Exchange.

The Exchange believes that companies listing on the Exchange for the first time often require a period of time after listing to complete the contracting and training process with vendors providing the complimentary products and services. Therefore, many companies are not able to begin using the suite of products offered to them immediately on the date of listing. To address this issue, the Exchange proposes to specify in Section 146 that if an Eligible New Listing begins using a particular service within 30 days after the date of listing, the complimentary period begins on such date of first use. In all other instances, the complimentary period will begin on the listing date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4)[8] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)[9] of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to offer complimentary products and services to attract new listings and respond to competitive pressures. The Exchange faces competition in the market for listing services and it competes, in part, by improving the quality of the services that it offers to listed companies. By offering products and services on a complimentary basis and ensuring that it is offering the services most valued by its listed issuers, the Exchange will improve the quality of the services that listed companies receive.

The Exchange believes it is appropriate to offer a package of complimentary products and services to Eligible New Listings because such services will ease the transition of companies that are becoming public for the first time or transferring their listing to a new exchange. Further, Nasdaq offers a comparable suite of complimentary products and services to new listings and transfers and the proposed rule change will enable the Exchange to more effectively compete for listings.

Allowing companies up to 30 days after their listing to start using the complimentary products and services is a reflection of the Exchange's experience that it can take companies a period of time to review and complete necessary contracts and training for services following their listing. Allowing this modest 30 day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thus giving companies the full intended benefit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change enables the Exchange to compete for listings by offering Eligible New Listings a package of complimentary products and services that assist their transition to being publicly listed for the first time or transferring their listing to the Exchange. All similarly situated companies are eligible for the same package of services. Further, the Exchange notes that the Nasdaq Global Market already offers a similar suite of complimentary products and services to companies initially listing or transferring their listing from the New York Stock Exchange to its market. Therefore, the proposed creation of Section 146 of the Company Guide will increase competition by enabling the Exchange to more effectively compete for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–12. 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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

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–2016–12 and should be submitted on or before February 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01932 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76990; File No. SR–ISE–2016–04]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 28, 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 19, 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 and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend the Schedule of Fees to rename its Payment for Order Flow program. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange administers a payment for order flow (''PFOF'') program that helps Market Makers [3] establish PFOF arrangements with Electronic Access Members (''EAMs'') in exchange for those EAMs routing some or all of their order flow to the Market Maker. This PFOF program is funded through a fee of $0.70 per contract,[4] which is paid by ISE Market Makers for each regular Priority Customer [5] contract executed in Non-Select Symbols.[6] The Exchange now proposes to rename the PFOF fee to ''marketing fee'' to keep the name of this program consistent with usage on other options markets that have adopted this terminology. The Exchange is not proposing any substantive changes to this program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[8] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change makes a non-substantive change to the name of the PFOF program operated by the Exchange. The Exchange believes that this change will be beneficial for members and investors who already use this term with respect to trading on other options markets that have already adopted this terminology. The Exchange further notes that the marketing fee program will continue to operate exactly as it does today.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is a non-substantive name change and is therefore not designed to have any competitive impact.

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 proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Rule 100(a)(25).

[4] The fee is waived in FX Options, Flash Orders, and for Complex Orders in all symbols. The PFOF fee is rebated proportionately to the members that paid the fee such that on a monthly basis the PFOF fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed $100,000 and the PFOF fund balance administered by a preferenced Competitive Market Maker for such a Group does not exceed $100,000. A preferenced Competitive Market Maker that elects not to administer a fund will not be charged the PFOF fee.

The Exchange assesses an administrative fee of 0.45% on the total amount of the funds collected each month.

[5] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Rule 100(a)(37A).

[6] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols. The Schedule of Fees currently states that PFOF is applicable to ''Non-Penny Pilot Symbols,'' which is an outdated term. The Exchange therefore proposes to update the Schedule of Fees to refer instead to ''Non-Select Symbols.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(8).

become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change modifies the name of the PFOF program operated by the Exchange in a manner that is consistent with terminology used on other options markets.[14] Because the proposal does not raise any new or novel issues and only involves a non-material change in terminology, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See e.g.,* Chicago Board Options Exchange Fee Schedule, available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–ISE–2016–04 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–2016–04. 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–ISE–2016–04, and should be submitted on or before February 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01927 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76983; File No. SR–NYSE–2015–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Deleting Rule 410B Governing Reporting Requirements for Off-Exchange Transactions

January 28, 2016.

I. Introduction

On October 16, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete Rule 410B governing reporting requirements for off-Exchange transactions. The proposed rule change was published for comment in the **Federal Register** on November 2, 2015.[3] The Commission received no comment letters on the proposed rule change. On December 16, 2015, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] The Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to delete Rule 410B, which sets forth certain regulatory reporting requirements for member or member organizations effecting off-Exchange transactions in Exchange listed securities that are not reported to the Consolidated Tape, and to make conforming amendments to Rule 476A to delete a reference to Rule 410B. The Exchange represents that Rule 410B is no longer necessary in light of changes in trade reporting and regulatory requirements that have been put in place since the Exchange adopted Rule 410B.

Changes to Regulatory Landscape

On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD''), NYSE, and NYSE Regulation, Inc. (''NYSE Regulation'') consolidated their member firm

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76277 (October 27, 2015), 80 FR 67443.

[4] *See* Securities Exchange Act Release No. 76666, 80 FR 79644 (December 22, 2015).

regulation operations to create the Financial Industry Regulatory Authority, Inc. (''FINRA''), and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members (''17d–2 Agreement'').[5]

In 2008, the Exchange, NASD, NYSE MKT LLC (''NYSE MKT''), and NYSE Regulation also entered into a plan to allocate to FINRA regulatory responsibility, over exchange members that are also FINRA members, for surveillance, investigation, and enforcement of insider trading with respect to NYSE- and MKT-listed stocks, among others, irrespective of where the relevant trading occurred (the ''Insider Trading Plan'').[6] On June 14, 2010, FINRA was retained to perform the residual market surveillance and enforcement functions that had, up to that point, been performed by NYSE Regulation.[7] In January 2011, the SEC approved an amendment to the Insider Trading Plan whereby FINRA also assumed responsibility for performing the insider-trading-related market surveillance and enforcement functions previously conducted by NYSE Regulation for its U.S. equities and options markets.[8]

Changes in Trade Reporting and Regulatory Reporting

In 1998, FINRA (then the NASD) established the Order Audit Trail System (OATS), as an integrated audit trail of order, quote, and trade information for OTC equity securities and equity securities listed and traded on The Nasdaq Stock Market, Inc. (''Nasdaq'').[9] In 2010, FINRA Rules 7410 through 7470 (the ''OATS Rules'') were amended to extend the recording and reporting requirements to all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,[10] including NYSE- and MKT-listed securities. The Exchange adopted the OATS Rules in 2011.[11] The Exchange states that FINRA may use the information it collects pursuant to the OATS Rules to perform its regulatory functions.

According to the Exchange, Rule 410B also predates the establishment of a FINRA Trade Reporting Facility (''TRF''). FINRA Rule 6110 requires FINRA members to report transactions in NMS stocks [12] effected ''otherwise than on or through a national securities exchange.'' [13] Pursuant to FINRA Rules 6310A and 6310B, FINRA members may use either the FINRA/NYSE TRF or FINRA/Nasdaq TRF to report such off-Exchange transactions.[14] FINRA members using these TRFs to report off-Exchange transactions are in turn subject to FINRA Rule 7230B, which, the Exchange states, imposes transaction-information reporting requirements similar to Rule 410B.[15] As a result, the Exchange represents that dual members of both the Exchange and FINRA must report off-Exchange transactions to a TRF and submit substantially similar reports to the Exchange and FINRA.

Proposed Rule Change

The Exchange proposes to delete Rule 410B in its entirety. The Exchange represents that, since 2010, surveillance and enforcement responsibilities across markets have been consolidated at FINRA, which conducts cross-market surveillances on the Exchange's behalf utilizing various data sources, including extensive trade and other information that FINRA collects pursuant to its rules. This trade information includes reports of off-exchange transactions.

The Exchange represents that all of its member organizations, with only nine exceptions, are members of FINRA and, as such, must report all off-exchange transactions to FINRA, including transactions away from the Exchange that are not reported to the Consolidated Tape. The Exchange further represents that this information is essentially duplicative of the Rule 410B reports the Exchange currently supplies to FINRA. The Exchange notes that one exception would be transactions in dually listed securities executed on and reported to a foreign securities exchange, which are not required to be reported because such trades are executed ''on or through an exchange.'' [16] The Exchange represents that it believes such trades pose little regulatory risk and, given that no other exchange has a rule comparable to Rule 410B, notes that such trades are also not being reported to other equities exchanges. Finally, the Exchange represents that only a handful of firms currently account for all of the Rule 410B activity, all of whom are also FINRA members.[17] The Exchange believes that Rule 410B is thus no longer necessary, and deleting it would eliminate essentially duplicative reporting of off-Exchange transactions by dual members.

The Exchange does not believe that eliminating the Rule 410B reporting requirement for the small number of NYSE-only members [18] would pose any significant regulatory risk. The Exchange represents that none of these firms has ever submitted a Rule 410B report. The Exchange also notes that NYSE-only members would remain subject to federal and Exchange books and records requirements.[19]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act [20] and the rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[22] which requires, among other things, that the rules of a national securities exchange be

[5] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4–544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). In 2007, the NASD, NYSE, the Exchange and NYSE Regulation also entered into a Regulatory Services Agreement (''RSA''), whereby FINRA was retained to perform certain regulatory services for non-common rules.

[6] *See* Securities Exchange Act Release No. 54646 (September 12, 2008), 73 FR 54646 (September 22, 2008) (File No. 4–566). *See also* Securities Exchange Act Release No. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008) (File No. 4–566).

[7] *See* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR–NYSE–2010–46); Securities Exchange Act Release No. 62354 (June 22, 2010), 75 FR 36730 (June 28, 2010) (SR–NYSEAmex–2010–57). NYSE Regulation performed the regulatory functions of NYSE MKT pursuant to an intercompany RSA.

[8] *See* Securities Exchange Act Release No. 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011) (File No. 4–566).

[9] *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (SR–NASD–97–56).

[10] *See* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044). *See also* 17 CFR 242.600(b)(47).

[11] *See* Securities Exchange Act Release No. 65524 (October 7, 2011), 76 FR 64151 (October 17, 2011) (SR–NYSEAmex–2011–74).

[12] As defined in Rule 600(b)(47) of Regulation NMS, 17 CFR 242.600(b)(47).

[13] *See* FINRA Rule 6110. *See generally* FINRA Rule 6300A and 7200A Series (FINRA/Nasdaq TRF) and 6300B and 7200B Series (FINRA/NYSE TRF).

[14] *See* FINRA Rules 6300A & 6300B.

[15] *See* Rule 7230B.

[16] *See* Trade Reporting Frequently Asked Questions, Section 701, Q/A701.1, available at *http://www.finra.org/industry/trade-reporting-faq*.

[17] According to the Exchange, Rule 410B Weekly Reports submitted to the SEC in July and August 2015 reveal that only five firms, all also FINRA members, accounted for all of the Rule 410B trading activity. The Exchange further represents that the list of firms that have in the past submitted Rule 410B reports does not include any non-FINRA members.

[18] The Exchange represents that these nine non-FINRA member firms do not have any public customers and are also members of Nasdaq as well as NYSE.

[19] *See* 17 CFR 240.17a–3, 17 CFR 240.17a–4 & Rule 440—Equities.

[20] 15 U.S.C. 78f.

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Based on the Exchange's representations, the Commission believes that eliminating the Rule 410B reporting requirement will not reduce the amount of publicly available information about securities transactions and that it is not likely to hamper the ability of the Exchange to conduct regulatory oversight of its members. The Commission notes that Rule 410B does not currently provide for real-time, publicly disseminated reporting of transactions, but instead requires non-public, electronic reporting of trade data to the Exchange on a next-day basis for regulatory purposes only. The Commission further notes that the Exchange represents that its members would remain subject to federal and Exchange books-and-records requirements [23] and that Exchange members would still be required to provide such trade data to the Exchange upon the Exchange's request. For these reasons, the Commission believes that the proposal should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSE–2015–48) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01924 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

[23] *See* 17 CFR 240.17a–3, 17 CFR 240.17a–4 & Rule 440—Equities.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

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:

Form N–8F, OMB Control No. 3235–0157, SEC File No. 270–136.

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 (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–8F (17 CFR 274.218) is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests information about: (i) The investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of the investment company's business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

The Form takes approximately 5.2 hours on average to complete. It is estimated that approximately 150 investment companies file Form N–8F annually, so the total annual burden for the form is estimated to be approximately 780 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study.

The collection of information on Form N–8F is not mandatory. The information provided on Form N–8F is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

The 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 29, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01960 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76994; File No. SR–NYSEArca–2015–121]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Provide for Price Collar Thresholds for Trading Halt Auctions

January 28, 2016.

I. Introduction

On December 7, 2015, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 1.1(s) to provide for price collar thresholds for Trading Halt Auctions. The proposed rule change was published for comment in the **Federal Register** on December 24, 2015.[3] The Commission received three comment letters on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange currently conducts Trading Halt Auctions under Exchange Rule 7.35(f).[5] To respond to market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76690 (December 18, 2015), 80 FR 80430 (''Notice'').

[4] *See* letters from David LaValle, US Head of SPDR ETF Capital Markets, State Street Global Advisors, dated January 14, 2016 (''SSGA Letter''); Joanne Medero, US Head of Government Relations & Public Policy, Samara Cohen, US Head of iShares Capital Markets, Hubert De Jesus, Co-Head of Market Structure and Electronic Trading, BlackRock, Inc., dated January 14, 2016 (''BlackRock Letter''); and Eric Swanson, General Counsel & Secretary, BATS Global Markets, Inc., dated January 22, 2016 (''BATS Letter'').

[5] *See* Exchange Rule 7.35(f); *see also* Notice, *supra* note 3, at 80431.

events on August 24, 2015, the Exchange proposes to adopt specified price collar thresholds for Trading Halt Auctions.[6]

According to the Exchange, on August 24, 2015, it applied price collar thresholds to Trading Halt Auctions that were 5% for securities with a consolidated last sale price of $25.00 or less, 2% for securities with a consolidated last sale price greater than $25.00 but less than or equal to $50.00, and 1% for securities with a consolidated last sale price greater than $50.00.[7] The Exchange states its belief that these thresholds were too narrow, but that it is appropriate to have protections in place for Trading Halt Auctions to ensure that a re-opening trade will not deviate significantly from prior prices, even taking into consideration natural price movements for a security.[8]

Proposed new Rule 1.1(s)(B) would provide that, when the Trading Halt Auction Price is established by Rule 7.35(f)(4)(A), the Limit Orders eligible for determining the Indicative Match Price would be limited by specified price collar thresholds away from the last consolidated sale price before the Trading Halt Auction.[9] As proposed, the specified percentage for the price collar thresholds for Trading Halt Auctions would be 10% for securities with a consolidated last sale price of $25.00 or less, 5% for securities with a consolidated last sale price greater than $25.00 but less than or equal to $50.00, and 3% for securities with a consolidated last sale price greater than $50.00.[10] These proposed price collar thresholds would be in effect until six months after the operative date of the proposed rule change.[11]

In the proposal, the Exchange represents that it will be conducting an analysis to identify what changes, if any, would be appropriate to balance the need to allow for natural price movement in a Trading Halt Auction, while at the same time avoiding significant price deviations that would not be in line with the fair value of securities listed on the Exchange, which are all Exchange Traded Products.[12] The Exchange states that, following this analysis, it will propose to make the price collar thresholds in this proposal permanent or propose other or additional changes to its re-opening auction process.[13]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the Commission received three comment letters on the proposed rule change.[16] One commenter supports the proposed rule change and states its belief that price collars are an important investor protection, which will help avoid potentially clearly erroneous trades and strengthen market participants' confidence.[17] This commenter also states its belief that the proposed rule change will help rebuild investor confidence in the efficient functioning of the marketplace in the wake of the volatility experienced in August 2015.[18] Another commenter also supports the proposed rule change and states its belief that the proposed change will mitigate the recurrence of some of the pricing disruption witnessed on August 24, 2015.[19] One commenter is broadly supportive of the proposed rule change and its proactive response toward improving market resiliency, and states that this proposed rule change is a step in the right direction.[20]

The Commission believes that the proposed rule change, which would widen the Exchange's price collar thresholds for Trading Halt Auctions, is appropriate as an interim measure to protect investors and the public interest.[21] As noted above, the Exchange will conduct an analysis to determine whether to make the proposed price collar thresholds permanent or to propose other or additional changes to its re-opening process.[22] In addition, the Commission believes that the proposed rule change will provide transparency with respect to the Exchange's Trading Halt Auction process and enhance investors' understanding of the operation of price collars during Trading Halt Auctions. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSEArca–2015–121) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01930 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Notice, *supra* note 3, at 80431. Currently, the Exchange's rules do not provide for price collar thresholds for Trading Halt Auctions. *See* Exchange Rules 1.1(s) and 7.35(f); *see also* Notice, *supra* note 3, at 80430–31.

[7] *See* Notice, *supra* note 3, at 80431.

[8] *See id.*

[9] *See* proposed Rule 1.1(s)(B).

[10] *See id.* The Exchange states that these proposed percentages are based on the ''numerical guideline'' percentages set forth in the Exchange's Clearly Erroneous Executions rule for the Core Trading Session. *See* Notice, *supra* note 3, at 80431 and Exchange Rule 7.10(c)(1). The Exchange further states that its proposal is similar in certain respects to how BATS Exchange, Inc. prices its Halt Auctions for ETPs. *See* Notice, *supra* note 3, at 80431–32.

[11] *See* proposed Rule 1.1(s)(B).

[12] *See* Notice, *supra* note 3, at 80431.

[13] *See id.* For a more detailed description of the proposed rule change, *see* Notice, *supra* note 3.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra* note 4.

[17] *See* SSGA Letter.

[18] *See id.*

[19] *See* BATS Letter, at 1. At the same time, this commenter notes that there are additional related measures that the Commission and all of the exchanges should implement to prevent the recurrence of the disruptions of August 24, 2015. *See id.,* at 1–2.

[20] *See* BlackRock Letter. This commenter also states that the events of August 24, 2015 have demonstrated that there is a need to enhance and revise the trading mechanisms that aim to protect the market from extraordinary volatility. *See id.* This commenter urges the Commission to accelerate the adoption of holistic measures to improve the resiliency of the U.S. equity market. *See id.*

[21] As noted above, the proposed price collar thresholds would sunset six months after the operative date of this proposed rule change. *See* proposed Rule 1.1(s)(B).

[22] *See* Notice, *supra* note 3, at 80431.

[23] 15 U.S.C. 78s(b)(2)

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76989; File No. SR–Phlx–2015–94]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Make Permanent the Pilot Program Eliminating Minimum Value Sizes for Opening Transactions in New Series of FLEX Options

January 28, 2016.

On November 25, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent its pilot program (''Pilot Program'') eliminating minimum value sizes for opening transactions in new series of flexible exchange options (''FLEX Options'' or ''FLEX''). The proposed rule change was published for comment in the **Federal Register** on December 14, 2015.[3] The Commission received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 28, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change as well as the report of pilot data submitted by the Exchange in support of its proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 13, 2016 as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–Phlx–2015–94).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–01926 Filed 2–2–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76593 (December 8, 2015), 80 FR 77399 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

DEPARTMENT OF STATE

[Public Notice: 9431]

Defense Trade Advisory Group; Notice of Membership

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Department of State's Bureau of Political-Military Affairs' Defense Trade Advisory Group (DTAG) is accepting membership applications. The Bureau of Political-Military Affairs is interested in applications from subject matter experts from the United States defense industry, relevant trade and labor associations, academic, and foundation personnel.

The DTAG was established as an advisory committee under the authority of 22 U.S.C. 2651a and 2656 and the Federal Advisory Committee Act, 5 U.S.C. App. (''FACA''). The purpose of the DTAG is to provide the Bureau of Political-Military Affairs with a formal channel for regular consultation and coordination with U.S. private sector defense exporters and defense trade organizations on issues involving U.S. laws, policies, and regulations for munitions exports. The DTAG advises the Bureau on its support for and regulation of defense trade to help ensure that impediments to legitimate exports are reduced while the foreign policy and national security interests of the United States continue to be protected and advanced in accordance with the Arms Export Control Act (AECA), as amended. Major topics addressed by the DTAG include (a) policy issues on commercial defense trade and technology transfer; (b) regulatory and licensing procedures applicable to defense articles, services, and technical data; (c) technical issues involving the U.S. Munitions List (USML); and (d) questions relating to actions designed to carry out the AECA and International Traffic in Arms Regulations (ITAR).

Members are appointed by the Assistant Secretary of State for Political-Military Affairs on the basis of individual substantive and technical expertise and qualifications, and must be representatives of United States defense industry, relevant trade and labor associations, academic, and foundation personnel. In accordance with the DTAG Charter, all DTAG members must be U.S. citizens, and DTAG members will represent the views of their organizations. All DTAG members shall be aware of the Department of State's mandate that arms transfers must further U.S. national security and foreign policy interests. DTAG members also shall be versed in the complexity of commercial defense trade and industrial competitiveness, and all members must be able to advise the Bureau on these matters. While members are expected to use their expertise and provide candid advice, national security and foreign policy interests of the United States, as well as the interests of the entities they represent, shall be the bases for all policy and technical recommendations.

DTAG members' responsibilities include:

- Service for a consecutive two-year term which may be renewed or terminated at the discretion of the Assistant Secretary of State for Political-Military Affairs (membership shall automatically terminate for members who fail to attend two consecutive DTAG plenary meetings).
- Making recommendations in accordance with the DTAG Charter and the FACA.
- Making policy and technical recommendations within the scope of the U.S. commercial export control regime as mandated in the AECA, the ITAR, and appropriate directives.

Please note that DTAG members may not be reimbursed for travel, per diem, and other expenses incurred in connection with their duties as DTAG members. How to apply: Applications in response to this notice must contain the following information: (1) Name of applicant; (2) affirmation of U.S. citizenship; (3) organizational affiliation and title, as appropriate; (4) mailing address; (5) work telephone number; (6) email address; (7) résumé; and (8) summary of qualifications for DTAG membership.

This information may be provided via two methods:

- Emailed to the following address: *DTAG@State.Gov.* In the subject field, please write, ''DTAG Application.''
- Send in hardcopy to the following address: Mr. Glenn Smith, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political

Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

All applications must be postmarked by March 7, 2016.

Dated: January 22, 2016.

Brian H. Nilsson,

Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. 2016–01998 Filed 2–2–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 9429]

30-Day Notice of Proposed Information Collection: Special Immigrant Visa Biodata Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to March 4, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sumitra Siram, Sumitra Siram, Program Officer, Department of State, Bureau of Population, Refugees and Migration, Office of Admissions, 2025 E Street NW., Washington, DC 20522 who may be reached on 202–453–9250 or at *SiramS@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Special Immigrant Visa Biodata Form.
- *OMB Control Number:* 1405–0203.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Office of Admissions, Bureau of Population, Refugees and Migration (PRM/A).
- *Form Number:* DS–0234.
- *Respondents:* Iraqi and Afghan Special Immigrant Visa applicants.
- *Estimated Number of Respondents:* 12,000.
- *Estimated Number of Responses:* 12,000.
- *Average Time per Response:* 20 minutes.
- *Total Estimated Burden Time:* 4000 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

Form DS–234 is being added to this collection to elicit information used to determine the eligibility of Iraqis and Afghan nationals applying for special immigrant visas.

Methodology:

The SIV Biodata information form (DS–234) is submitted electronically by the applicant to the National Visa Center, which will forward the forms to the Refugee Processing Center of the Bureau of Population, Refugees and Migration.

Dated: January 27, 2016.

Simon Henshaw

Principal Deputy Assistant Secretary, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 2016–01996 Filed 2–2–16; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice: 9430]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 until 5 p.m., on Wednesday, February 17, in Washington, DC at the State Department, 320 21st Street NW. in conference room 4477. The meeting will be hosted by the Assistant Secretary of State for Economic and Business Affairs, Charles H. Rivkin and Committee Chair Paul R. Charron. The ACIEP serves the U.S. government in a solely advisory capacity, and provides advice concerning topics in international economic policy. It is expected that the ACIEP subcommittees will provide updates on their work.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled. To obtain pre-clearance for entry, members of the public planning to attend should no later than Friday, February 12, provide their full name and professional affiliation to Alan Krill by email: *KrillA@state.gov.* Requests for reasonable accommodation should be made to Alan Krill before Friday, February 12. Requests made after that date will be considered, but might not be possible to fulfill.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance for such publication. Processing this **Federal Register** notice was delayed by a weather emergency in Washington, DC that closed the federal government on Friday, January 22, and Monday and Tuesday, January 25 and 26; and curtailed operations on Wednesday, January 27. The Department is providing as much notice to the public as possible given the emergency.

For additional information, contact Alan Krill, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic and Business Affairs, at (202) 647–0812, or *KrillA@state.gov*.

Dated: January 28, 2016.

Alan Krill,

Designated Federal Official, U.S. Department of State.

[FR Doc. 2016–01997 Filed 2–2–16; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[4910–RY]

Notice of Statute of Limitations on Claims; Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, widening of White Rock Road in the City of Rancho Cordova, County of Sacramento, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 5, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Sue Bauer, Branch Chief, Caltrans Office of Environmental Management, M–1, California Department of Transportation, 703 B Street, Marysville, CA 95901, Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, Telephone (530) 741–7113, Email: *sue.bauer@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California.

The City of Rancho Cordova, in cooperation with the California Department of Transportation, proposes to widen and construct improvements to White Rock Road from Sunrise Boulevard to Grant Line Road. Improvements to the existing six-lane portion of White Rock Road from Sunrise Boulevard to Luyung Drive include restriping and additional pavement for the addition of a second westbound through lane on the east leg of the Fitzgerald Road/Sunrise Park Drive intersection with White Rock Road. White Rock Road will be reconstructed and widened from two lanes to four lanes from Luyung Drive to Grant Line Road. The Federal ID number for the roadway widening project is STPLCM 5482 (013).

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA)/Finding of No Significant Impact (FONSI) for the project, approved on January 26, 2016, and in other documents in the FHWA project records. The FEA, FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEA, FONSI and other project records can be viewed and downloaded from the project Web site at *http://www.ci.rancho-cordova.ca.us/Index.aspx?page=184.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]
2. Section 7 of the Endangered Species Act of 1973 (ESA) [16 U.S.C. 1531–1544 and Section 1536]
3. National Historic Preservation Act of 1966, as amended (16 U.S.C. 470(f) *et seq.*)
4. Clean Air Act [42 U.S.C. 7401–7671 (q)]
5. Clean Water Act [Section 404, Section 401, Section 319]
6. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]
7. Section 6(f)—Land and Water Conservation Fund [LWCF] Act of 1964 as amended [16 U.S.C. 4601–4604]
8. Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended
9. Migratory Bird Treaty Act (MBTA) of 1918, as amended
10. Invasive Species, Executive Order 13112
11. Floodplain Management, Executive Order 12898

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: January 28, 2016.

Cesar E. Perez,

Senior Transportation Engineer, Federal Highway Administration.

[FR Doc. 2016–01970 Filed 2–2–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California; Statute of Limitations on Claims

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, on State Route 94 and State Route 125 in the City of La Mesa, in the County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 5, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: David Nagy, Chief, Environmental Branch B, California Department of Transportation—District 11, 4050 Taylor Street, San Diego, CA 92110, 8 a.m. to 5 p.m., 619–688–0224, *david.l.nagy@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to construct a direct freeway-to-freeway connection from southbound State Route 125 (SR–125), to eastbound State

Route 94 (SR–94) in the City of La Mesa. The connector would pass under existing SR–125, and join eastbound SR–94 between Bancroft Drive and Kenwood Drive. A single auxiliary lane would be constructed along southbound SR–125 extending from the Lemon Avenue on-ramp to the exit for the proposed connector. In addition, a single auxiliary lane would be constructed extending from the end of the proposed connector to the eastbound Kenwood Drive Off-ramp. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) for the project, approved on December 16, 2015, and in other documents in the FHWA project records. The EA/FONSI and other project records are available by contacting Caltrans at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality regulations;
2. National Environmental Policy Act (NEPA);
3. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU);
4. Department of Transportation Act of 1966;
5. Federal Aid Highway Act of 1970;
6. Clean Air Act Amendments of 1990;
7. Noise Control Act of 1970;
8. 23 CFR part 772 FHWA Noise Standards, Policies and Procedures;
9. Department of Transportation Act of 1966, Section 4(f);
10. Clean Water Act of 1977 and 1987;
11. Endangered Species Act of 1973;
12. Migratory Bird Treaty Act;
13. Uniform Relocation Assistance and Real Property Acquisition Act of 1970;
14. National Historic Preservation Act of 1966, as amended;
15. Historic Sites Act of 1935;
16. Executive Order 11990, Protection of Wetlands
17. Executive Order 13112, Invasive Species; and,
18. Executive Order 11988, Floodplain Management.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: January 28, 2016.

Gary Sweeten,

North Team Leader, Project Delivery, Federal Highway Administration, California Division.

[FR Doc. 2016–01965 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0003]

Petition for Waiver of Compliance

In accordance with part 211 of title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 22, 2015, Amtrak has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238—Passenger Equipment Safety Standards. FRA assigned the petition Docket Number FRA–2016–0003.

Amtrak seeks a temporary waiver of compliance from the requirements of 49 CFR 238.125—*Marking and instructions for emergency egress and rescue access,* referencing American Public Transportation Association (APTA) Standard PR–PS–S_002–98, Rev.3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment;'' and 49 CFR 238.127—*Low-location emergency exit path marking,* referencing APTA Standard PR–PS–S–004–99, Rev.2 ''Standard for Low-location Exit Path Marking'' for a period of 4 years. Amtrak has strived to meet the deadline to comply with these regulations, but is now seeking this temporary relief because the materials that its current vendor has been installing are not fully compliant. This relief will provide Amtrak the proper time to produce internally and purchase from outside vendors the new compliant decals sufficient for over 1,250 rail cars.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 21, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–01966 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0005]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 of the Code of Federal Regulations (CFR) and Title 49 U.S.C. 20502(a), this

document provides the public notice that by a document dated December 17, 2015, Union Pacific Railroad (UP) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2016–0005.

Applicant: Union Pacific Railroad, Mr. John J. Hovanec, AVP Engineering—Design, 1400 Douglas Street, Mail Stop 0910, Omaha, NE 68179.

UP seeks approval of the discontinuance of Hold Signal Y077 at Milepost (MP) 77.50 and the removal of the coded track in Yard Lead 202 on the Geneva Subdivision in the State of Illinois.

The reason given for the proposed discontinuance is to allow and facilitate yard switching operations on the affected trackage, which are necessary to maintain fluid operation.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 21, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–01969 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0004]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated October 22, 2015, Union Pacific Railroad (UP) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2016–0004.

Applicant: Union Pacific Railroad, Mr. John J. Hovanec, AVP Engineering—Design, 1400 Douglas Street, Mail Stop 0910, Omaha, NE 68179.

UP seeks approval to modify Control Point (CP) B002 on the Omaha Subdivision in the State of Iowa by dividing it into two CP's, CP B902 and CP B002. The reason given for the proposed modification is to accommodate a U.S. Department of Transportation (DOT) project to widen Interstate 29, as well as to facilitate yard operations and expedite train movements in the area. The modification will involve the relocation of most signals and some changes in signal aspects currently in service.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by March 21, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://*

www.regulations.gov/#!privacyNotice for the privacy notice of regulations.gov.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–01968 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0009]

Notice of Request for Comments on Update to the Uniform System of Accounts (USOA) and Changes to the National Transit Database (NTD) Reporting Requirements

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments on updates to the USOA and changes to the NTD reporting requirements.

SUMMARY: The Federal Transit Administration is updating the Uniform System of Accounts (USOA). The proposed updates are prompted by the outdated nature of the 1995 USOA. FTA is seeking public comment on these proposed changes before releasing the updated USOA and implementing the associated changes to 49 U.S.C. 5335, National Transit Database.

DATES: Comments must be received by April 4, 2016. Any comments filed after this deadline will be considered to the extent practicable.

ADDRESSES: Please submit your comments by only one of the following methods, identifying your submission by Docket Number FTA–2016–0009

- *Federal eRulemaking Portal:* Submit electronic comments and other data to *http://www.regulations.gov.*
- *U.S. Mail:* Send comments to Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building, Ground Floor, at 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations, U.S. Department of Transportation, at (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket Number (FTA–2016–0009) for this notice, at the beginning of your comments. If sent by mail, submit two copies of your comments. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure their prompt filing of any submissions not filed electronically or by hand. If you wish to get confirmation that FTA received your comments, you must include a self-addressed stamped postcard. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may review U.S. DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19476 or *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret Schilling, National Transit Database Program Manager, Office of Budget and Policy, (202) 366–2054, or email: *margaret.schilling@dot.gov.* Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Introduction

The National Transit Database (NTD) is the Federal Transit Administration's (FTA) primary database for statistics on the transit industry. Congress established the NTD to ''help meet the needs of . . . the public for information on which to base public transportation service planning . . .'' (49 U.S.C 5335). Currently, 821 transit providers in urbanized areas report to the NTD through its online reporting system. Each year, performance data from these submissions are used to apportion over $7 billion of FTA funds for Urbanized Area Formula (section 5307) grants, Rural Area Formula (section 5311) grants, Tribal Transit Formula grants, Bus and Bus Facilities Formula (section 5339) grants, and State of Good Repair (section 5337) grants. The data is made available on the NTD Web site at *www.ntdprogram.gov* for the benefit of the public, transit systems, and all levels of government. The data is also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, and in meeting FTA's obligations under the Government Performance and Results Act. Reporting requirements are governed by a Uniform System of Accounts (USOA) and Reporting Manuals that are issued each year. The USOA is the chart of accounts and accounting manual that describes how transit agencies are to report to the NTD. The USOA was originally published in 1977 when NTD reporting began. While the NTD has undergone numerous and substantial changes in the past 38 years, the USOA was last updated for minor changes in 1995. This notice proposes updates to the USOA to better align with today's NTD and accounting practices and to address FTA data needs and common questions among NTD reporters.

II. Background

This notice proposes changes to the USOA that impact NTD reporting requirements. FTA proposes that changes A–J below take effect starting with the FY17 data reporting cycle. Change K below, the revised APC certification policy, would take effect when changes are proposed in the **Federal Register**. Following is a summary of proposed changes:

A. Separation of ''Passenger-Paid Fares'' and ''Organization-Paid Fares''
B. Separation of ''Paid Absences'' From ''Fringe Benefits''
C. Consolidation of ''Casualty and Liability Costs'' Under General Administration Function
D. Expansion of Assets and Liabilities Object Classes (F–60)
E. Addition of ''Voluntary Non-Exchange Transactions''
F. Addition of ''Sales and Disposals of Assets''
G. Simplification of State Fund Reporting
H. Reorganization of B–30 Contractual Relationship

Additionally, this notice proposes the following changes to the NTD reporting requirements that are not directly addressed in the updated USOA:

I. Separation of Operators' and Non-Operators' Work Hours and Counts
J. Enhanced Auditor's Review
K. Revised APC Certification Policy

Finally, FTA seeks comments on the decision to not require a separate non-add item for police force expenses.

III. Proposed Changes to the National Transit Database Reporting Requirements

A. Separation of ''Passenger-Paid Fares'' and ''Organization-Paid Fares''

Currently, the NTD category ''Passenger Fares'' includes both directly paid fares collected via standard methods such as a farebox or purchase of monthly passes and less direct fares—for example, where a university pays the transit agency to provide fare-free service to students. This combination of revenue sources has been confusing to some reporters.

There are examples where guidance is ambiguous, including when another entity pays the transit agency for service but does not pay the full cost of the service.

In order to address these issues and clarify reporting requirements, FTA proposes the separation of Passenger Fares into two categories: ''Passenger-Paid Fares'' and ''Organization-Paid Fares.'' Traditional fare revenue would be captured as ''Passenger-Paid Fares'', while other ''farelike'' revenue would be ''Organization-Paid Fares.'' This proposed update provides additional insight into the sources of revenues and helps the reporters identify peers with similar operating models.

B. Separation of ''Paid Absences'' From ''Fringe Benefits''

Currently the NTD includes employees' paid absences, *e.g.,* vacation time, holidays, and sick leave, as ''Fringe Benefits.'' However, this differs from many reporters' internal accounts; many reporters classify these expenses as salaries and wages.

In order to resolve this discrepancy, FTA proposes the creation of a new category ''Paid Absences.'' This category would be further divided between operators and non-operators, to align with the way salaries and wages are reported in NTD. FTA considered simply moving paid absences from ''Fringe Benefits'' to ''Salaries and Wages,'' but did not propose this change because it would produce a discontinuity in the data over time.

C. Consolidation of ''Casualty and Liability Costs'' Under General Administration Function

Currently the NTD captures ''Casualty and Liability Costs'' expenses under three functions: Vehicle Maintenance, Non-Vehicle Maintenance, and General Administration. However, these expenses are reported under these functions inconsistently across reporters. Some reporters divide the expenses among the three functions according to the type of expense, while others report all ''Casualty and Liability Costs'' under General Administration.

Due to the intricacy and variety of expenses classified as ''Casualty and Liability Costs,'' it may be impractical to provide classifications for all possible ''Casualty and Liability Costs'' by function. Therefore, FTA proposes that reporters consolidate all ''Casualty and Liability Costs'' under the General Administration function. While this would produce a one-time discontinuity in the data for some reporters, it would improve comparability of data across reporters in the future and reduce reporting burden.

D. Expansion of Assets and Liabilities Object Classes (F–60)

The current F–60 Statement of Finances form was instituted with the purpose of providing a transit agency's financial status at a glance. However the required fields in the current form do not provide a comprehensive insight into the agency's financial status. Its limited nature makes it only marginally useful for this purpose while creating confusion for reporters in determining what information to report.

FTA proposes expanding the form to resemble an agency's published balance sheet at the summary level. FTA initially considered requiring agencies to upload their published balanced sheets to NTD but decided against this because it would not provide uniform categories with which to facilitate fair peer comparisons and calculation of financial metrics. FTA proposes the following categories:

- Assets
  - Current Assets
    - Cash and Cash Equivalents
    - Accounts Receivable
    - Inventory
    - Prepaid Expenses
    - Current Investments and Current Portions of Long-Term Investments
    - Other Current Assets
  - Noncurrent Assets
    - Capital Assets
    - Intangible Assets
    - Capital Leases Receivable
    - Pension Funds
    - Special Funds
    - Work in Process
    - Investments
- Liabilities
  - Current Liabilities
    - Current Accounts Payable
    - Short-Term Debt and Current Portions of Long-Term Debt
    - Accrued Liabilities
    - Other Current Liabilities
  - Noncurrent Liabilities
    - Long-Term Debt
    - Noncurrent Accounts Payable
    - Capital Lease Obligations
    - Long-Term Pension Liabilities
    - Estimated Liabilities
    - Other Noncurrent Liabilities

E. Addition of ''Voluntary Non-Exchange Transactions''

The existing USOA did not provide guidance on how agencies should report transaction in which an entity does not receive equal return for what it provides. For example, if one agency constructs a new fixed rail line and transfers ownership to another agency, this transaction is called a ''Voluntary Non-Exchange Transaction.''

FTA proposes the addition of revenue and expense fields for ''Voluntary Non-Exchange Transactions'' on the F–10 Sources of Funds: Non-Added Revenue and F–40 Operating Expenses Summary and Reconciling Items forms. The reporter providing the asset or service would record the value of the asset as a reconciling item expense, while the receiving reporter would record its value as non-added revenue, which means it would not be included in the reporter's revenue total alongside cash revenues like fares, local funds, and federal grants. This would provide explanation for the sudden decrease/increase in assets.

F. Addition of Sales and Disposals of Assets

Currently, the USOA includes funds received from selling or disposing capital assets in directly generated funds. In most cases this activity is not considered a revenue, since the agency is simply converting an asset from one form to another (*e.g.,* capital asset to cash) rather than increasing its total assets. FTA proposes to add an object class called ''Sales and Disposals of Assets'' under the category Non-Added Revenues on the F–10 Sources of Funds to capture funds earned from sales and disposals of capital assets. When the agency recognizes a gain on such a sale by selling the asset for more than its book value, the gain would be reported as revenue.

G. Simplification of State Fund Reporting

All State funding comes either from the General Fund or the Transportation Fund. Currently, the NTD requires transit agencies to report the Transportation Fund at the original dedicated sources of funds level such as fuel taxes, income taxes, and vehicle registration fees. However, it has proved impractical for reporters to separate their Transportation Funds into these categories, since the proportion of the Transportation Funds provided by each funding source changes from year to year, and in many cases, occurs before the funding ever reaches the transit agency.

FTA proposes to consolidate all Dedicated Funds and Other Funds under the State section on the F–10 Sources of Funds form into a single category called ''State Transportation Funds.'' Rather than gathering inaccurate or inconsistent data, NTD will simply collect whether state funding comes from the General Fund or the Transportation Fund.

H. Reorganization of B–30 Contractual Relationship

At present, the B–30 Contractual Relationship form requires agencies to perform counterintuitive calculations and report data in fields with names that are difficult to understand. As a result, agencies may report inaccurate and inconsistent data into the NTD and data users have difficulty interpreting NTD data.

FTA proposes to have three different versions of this form, customized based on whether the fare revenues are retained by the contractor or by the reporter, and whether the purchased transportation mode is Vanpool. The customized forms will reduce confusion regarding the calculation that must be performed to report data into the form.

In the new scheme, there would be separate versions of the form for the case where the contractor retains the fare revenue, and the case where the agency retains the fare revenue. The reporter would complete fields called ''Purchased Transportation Fare Revenue,'' ''Direct Payment,'' ''Capital Leasing,'' ''Other Operating Expenses Incurred by the Buyer,'' and ''Other Reconciling Item Expenses Incurred by the Buyer.''

In addition, FTA proposes that Vanpool mode should have its own version of the B–30 form. This will reflect the ways Vanpool contracts usually differ from other purchased transportation contracts. Vanpool reporters would complete fields called ''Passenger Fees,'' ''Passenger Out-of-Pocket Expenses,'' ''Agency Subsidy,'' ''Capital Leasing,'' ''Other Operating Expenses Incurred by the Buyer,'' and ''Other Reconciling Item Expenses Incurred by the Buyer.''

I. Separation of Operators' and Non-Operators' Work Hours and Counts

On the F–30 Operating Expenses form, NTD collects data on salaries and wages for operators and non-operators separately. However, on the R–10 Employees form, NTD currently collects data on hours worked and employee counts for these categories combined.

FTA proposes that NTD collect data on hours worked and employee counts for operators and non-operators separately. This would allow calculation of separate wage rates and hours per employee for these two categories, which would be useful data to any user interested in labor costs. The data should be readily available in most agencies' payroll systems and thus a marginal increase in burden.

J. Enhanced Auditor's Review

Currently FTA requires NTD reporters to undergo a one-time auditor's review at the commencement of reporting. The agency must file an Independent Auditor's Statement for Financial Data. The purpose of this review is to ensure that the reporter is equipped to report to the NTD according to FTA's requirements, using accrual accounting and the USOA. There is currently little guidance on when, if ever, an agency must obtain a new Auditor's Statement. In addition, Reduced Reporters (Small Systems) are not required to perform this review.

FTA proposes that Reduced Reporters be required to undergo this review, and further, that all NTD reporters be required to undergo a new review once every ten years. This would provide additional confidence that all reporters are conforming to FTA's reporting requirements. Due to the limited nature and infrequency of this review, this new requirement should not be overly burdensome to reporters.

K. Revised APC Certification Policy

The NTD requires the reporting of ridership data, both unlinked passenger trips (UPT) and passenger miles traveled (PMT), by mode and type of service. These two data items are important measures of service consumed and are used by many analysts to assess the effectiveness of transit services. PMT is also used in the annual formula allocation of federal transit funds for the Urbanized Area Formula Program (§ 5307) and the Bus and Bus Facilities Grants (§ 5339).

Some transit agencies use automatic passenger counters (APCs) for collecting UPT and PMT. This requires prior FTA approval. If a transit agency fails to obtain FTA approval in advance, the NTD will not accept the reported APC-derived data.

In the current certification process FTA requires agencies to submit the following plans:

- An APC benchmarking plan for the first year and,
- AN APC maintenance plan for subsequent years.

The APC benchmarking plan must include a validation of the APC measuring process for UPT and PMT data against a separate manual sample covering a full year. The maintenance plan includes an annual checkup to insure that the APC system continues to function correctly.

We propose to revise the certification requirements for new APC systems and for maintenance testing of all APC systems. FTA believes that APC technologies have advanced to the point where they produce better data than sampling with manual counts and, as such, we no longer need the extensive comparisons we have required in the past. The goal of the new certification procedures proposed here is to insure that APC data collection systems are implemented correctly while reducing the time and effort required for reporters to demonstrate this.

We propose to revise the benchmarking test by eliminating the full year comparison of manual and APC counts on randomly-selected trips and replacing it with a more comprehensive comparison of a much smaller number of trips. Reporters with fewer than 30 APC-equipped vehicles would need to evaluate fifteen trips. Reporters with more than 30 APC-equipped vehicles would need to evaluate a number of trips equivalent to half their number of APC-equipped vehicles, up to a maximum of 50 trips. The trips selected for evaluation must meet the following requirements:

- The trips must include some of the reporter's heaviest passenger loads,
- The trips must be distributed over as much of the agency's fleet of APC-equipped vehicles as possible, and
- Manual and APC data sets must be collected for each trip.

Trips do not have to be selected randomly. They can be spread over any convenient period of time. They no longer need to be distributed over an entire year.

Manual counts can be made using data collection staff or on-board cameras. To insure accurate counts we recommend using a data collector at each door on heavily-loaded trips. APC data should be processed to correct for anomalies as it would be in the reporter's normal data collection process. The objective is to compare manually-collected data with processed APC data and demonstrate that they are equivalent or that any differences are justifiable.

Reporters would be required to analyze the manual and APC data on a side-by-side basis to identify and explain inconsistencies. APC and manual counts of passengers getting on and off at each stop should be compared for each trip. FTA may ask to see this data as part of our certification review. A report on the results of the analysis must be submitted to FTA with the certification request. This report would include:

- Description of the APC system(s) used,
- Description of the benchmarking procedure,

• Description of trips that were eliminated due to APC data that failed diagnostic tests,
• Comparison of distances between stops used by the two methods,
• Passenger count comparison (% difference),
• Passenger miles comparison (% difference), and
• Calculation of *unbalanced error* over all trips (sum of magnitude of differences in on and off counts at each stop as a percentage of the sum of manually counted on and offs).

FTA would certify APC systems where the passenger count comparison, passenger mile comparison, and unbalanced error over all benchmark trips are each less than five percent (5%). Reporters that file a reduced report (formerly called a small systems waiver) do not need to meet the standards for passenger miles or unbalanced error.

We propose to eliminate the maintenance plan requirement and replace it with a repetition of the benchmarking test in every fiscal year that is evenly divisible by three. APC systems already approved for NTD reporting would need to be retested in the next fiscal year that is evenly divisible by three.

Transit agencies that collect this ridership data on all (>98 percent) of their vehicle trips may correct for missing trips using average values. However, if the vehicle trips with missing data exceed two percent (2%) of all trips, agencies would need to have a qualified statistician approve the correction (or expansion) method. This is consistent with our treatment of manual counting methods and does not represent a change in policy. Thus an agency that does not have a fleet that is fully-equipped with APCs could use APC data in any NTD-approved sampling plan.

IV. Additional Comment Request

Additionally, FTA considered requiring transit systems to report their police force expense as a separate non-add item in the F–30 Operating Expenses form in addition to reporting it in the appropriate operating expense object classes (*e.g.,* Salaries and Wages and Fringe Benefits). This change would have enabled a transit system with its own independent police force to subtract the police force expense from total operating expenses in order to perform a fair peer evaluation against another entity without its own police force. However, FTA decided against this change, as there are other types of police or security force arrangements that are not included in this consideration (*e.g.,* municipal police force). Additionally, employing an independent police force is an operational decision and the related expenses are justifiable operating cost. FTA suggests that data users consider security arrangements when selecting peer groups for comparison in order to control for differences in operating cost. FTA seeks comment from transit systems on this decision.

FTA thanks our stakeholders in advance for providing comment on the above proposed changes to the NTD reporting requirement.

Therese W. McMillan,

Acting Administrator.

[FR Doc. 2016–01941 Filed 2–2–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2016–0007]

Notice of Request for Clearance of a Revision of a Currently Approved Information Collection: National Census of Ferry Operators

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for an information collection related to the nation's ferry operations. The information collected will be used to produce a descriptive database of existing ferry operations. A summary report of survey findings will also be published by BTS on the BTS Web page.

DATES: Comments must be submitted on or before April 4, 2016.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2016–0007 to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No., U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building, Room W12–140, Washington, DC 20590. Comments should identify the docket number as indicated above.

Paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket DOT–OST–2016–0007.''

The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251. Comments can also be viewed and/or submitted via the Federal Rulemaking Portal: *http://www.regulations.gov.*

Please note that anyone is able to electronically search all comments received into our docket management system 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 (Volume 65, Number 70; pages 19475–19570) or you may review the Privacy Act Statement at *http://www.gpoaccess.gov/fr/.*

FOR FURTHER INFORMATION CONTACT: Janine L. Bonner, (202) 366–2468, NCFO Project Manager, BTS, OST–R, Department of Transportation, 1200 New Jersey Ave. SE., Room E34–411, Washington, DC 20590. Office hours are from 8:00 a.m. to 5:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Census of Ferry Operators (NCFO).

Background: The Transportation Equity Act for the 21st Century (TEA–21) (P.L. 105–178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 ferry operators to identify: (1) Existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions; and (4) potential for use of high speed ferry services and alternative-fueled ferry

services. The Safe, Accountable, Flexible Efficient Transportation Equity Act-A Legacy for Users (SAFETEA–LU) Public Law 109–59, Section 1801(e)) required that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful. MAP–21 legislation [Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141)], continued the BTS mandate to conduct the NCFO and also required that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds. The funding allocations were based on a percentage of the number of passenger boardings, vehicle boardings, and route miles served.

BTS conducted the first Census of Ferry Operators in 2006. The Census was conducted again in 2008, 2010, 2014, and will be again in spring 2016. These information collections were originally approved by OMB under Control Number 2139–0009. The recently enacted FAST Act legislation [Fixing America's Surface Transportation Act (Pub. L. 114–94, sec. 1112)] continues the BTS mandate to conduct the NCFO on a biennial basis, and extended the requirement that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds based on a percentage of the number of passenger boardings, vehicle boardings, and route miles served. The overall length of the revised questionnaire for the 2018 NCFO will remain consistent with that of previous years. The survey will be administered to the entire population of ferry operators (estimate 260 or less). The survey will request the respondents to provide information such as: the points served; the type of ownership; the number of passengers and vehicles carried in the past 12 months; vessel descriptions (including type of fuel), federal, state and local funding sources, and intermodal connectivity. All data collected in 2018 will be added to the existing NCFO database.

Respondents: The target population for the survey will be all of the approximately 260 operators of existing ferry services in the United States.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 30 minutes. This average is based on an estimate of 20 minutes to answer new questions and an additional 10 minutes to review.

Estimated Total Annual Burden: The total annual burden (in the year that the survey is conducted) is estimated to be just under 130 hours (that is 30 minutes per respondent for 260 respondents equals 7,800 minutes).

Frequency: This survey will be updated every other year.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, clarity and content of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Authority: The Transportation Equity Act for the 21st Century, (Pub. L. 105–178), section 1207(c), The Safe, Accountable, Flexible Efficient Transportation Equity Act–A Legacy for Users (SAFETEA–LU) Pub. L. 109–59, Moving Ahead for Progress in the 21st Century Act (MAP–21) Pub. L. 112–141, 49 CFR 1.46, and Fixing America's Surface Transportation Act (Pub. L. 114–94, sec. 1112).

Issued in Washington, DC, on the 21st of January, 2016.

Patricia Hu,

Director, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2016–01831 Filed 2–2–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on Risk-Sharing Mechanisms

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the Department of the Treasury's Advisory Committee on Risk-Sharing Mechanisms (''Committee'') will convene a meeting on Tuesday, February 16, 2016, in Room 4121, 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 1–4:30 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Tuesday, February 16, 2016, from 1–4:30 p.m. Eastern Time.

ADDRESSES: The Advisory Committee on Risk-Sharing Mechanisms meeting will be held in Room 4121, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/vfq8ms?ct=6128d144-9ad5-45f5-910c-c7b44560aae0&RefID=TRIA+General+Registration* and fill out a secure online registration form. A valid email address will be required to complete online registration.

(**Note:** Online registration will close at 5 p.m. Eastern Time on Thursday, February 11, 2016.)

2. Contact the Federal Insurance Office (FIO), at (202) 622–5892, by 5 p.m. Eastern Time on Thursday, February 11, 2016, and provide registration information.

Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Marcia Wilson, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–8177, or *marcia.wilson@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Brett D. Hewitt, Policy Advisor, FIO, Room 1410, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–5892 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Advisory Committee on Risk-Sharing Mechanisms are invited to submit written statements by any of the following methods:

Electronic Statements

- Send electronic comments to *ACRSM@treasury.gov.*

Paper Statements

- Send paper statements in triplicate to the Advisory Committee on Risk-Sharing Mechanisms, Room 1410, Department of the Treasury, 1500

Pennsylvania Avenue NW., Washington, DC 20220.

In general, the Department of the Treasury will post all statements on its Web site *http://www.treasury.gov/about/organizational-structure/offices/Pages/Federal-Insurance.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is the first periodic meeting of the Advisory Committee on Risk-Sharing Mechanisms. In this meeting, the Committee will: receive a presentation on the ethics guidelines for Committee Members, discuss the Members' goals for the Committee, and hear about the current status of the implementation of the Terrorism Risk Insurance Program Reauthorization Act of 2015. Due to the inclement weather, this meeting is being announced with less than 15 days notice (see 41 CFR 102–3.150(b)).

Michael T. McRaith.

Director, Federal Insurance Office.

[FR Doc. 2016–01990 Filed 2–2–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee Meeting

ACTION: Notification of Citizens Coinage Advisory Committee February 16, 2016, public meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for February 16, 2016.

Date: February 16, 2016.

Time: 1:00 p.m. to 2:00 p.m. EDT.

Location: This meeting will occur *via teleconference.* Interested members of the public may dial in to listen to the meeting at (866) 564–9287/Access Code: 62956028.

Subject: Review and consideration of additional candidate designs for the 2017 America the Beautiful Quarters® Program honoring Ellis Island (Statue of Liberty National Monument) in New Jersey and Effigy Mounds National Monument in Iowa.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: January 28, 2016.

Richard A. Peterson,

Deputy Director for Manufacturing and Quality, United States Mint.

[FR Doc. 2016–02042 Filed 2–2–16; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

Vol. 81 Wednesday,

No. 22 February 3, 2016

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 425

Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations—Revised Benchmark Rebasing Methodology, Facilitating Transition to Performance-Based Risk, and Administrative Finality of Financial Calculations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 425

[CMS–1644–P]

RIN 0938–AS67

Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations—Revised Benchmark Rebasing Methodology, Facilitating Transition to Performance-Based Risk, and Administrative Finality of Financial Calculations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: Under the Medicare Shared Savings Program (Shared Savings Program), providers of services and suppliers that participate in an Accountable Care Organization (ACO) continue to receive traditional Medicare fee-for-service (FFS) payments under Parts A and B, but the ACO may be eligible to receive a shared savings payment if it meets specified quality and savings requirements. This proposed rule addresses changes to the Shared Savings Program that would modify the program's benchmark rebasing methodology to encourage ACOs' continued investment in care coordination and quality improvement, and identifies publicly available data to support modeling and analysis of these proposed changes. In addition, it would streamline the methodology used to adjust an ACO's historical benchmark for changes in its ACO participant composition, offer an alternative participation option to encourage ACOs to enter performance-based risk arrangements earlier in their participation under the program, and establish policies for reopening of payment determinations to make corrections after financial calculations have been performed and ACO shared savings and shared losses for a performance year have been determined.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 28, 2016.

ADDRESSES: In commenting, please refer to file code CMS–1644–P. 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: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1644–P, P.O. Box 8013, Baltimore, MD 21244–8013.

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 following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1644–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Elizabeth November, (410) 786–8084. Email address: *aco@cms.hhs.gov*.

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 received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Acronyms

ACO Accountable Care Organization
BY Benchmark Year
CBSA Core Based Statistical Area
CMS Centers for Medicare & Medicaid Services
CSA Combined Statistical Area
CY Calendar Year
DSH Disproportionate Share Hospital
ESRD End Stage Renal Disease
FFS Fee-for-service
GAO Government Accountability Office
HCC Hierarchical Condition Category
IME Indirect Medical Education
MA Medicare Advantage
MACRA Medicare Access and CHIP Reauthorization Act of 2015
MedPAC Medicare Payment Advisory Commission
MLR Minimum Loss Rate
MSA Metropolitan Statistical Area
MSR Minimum Savings Rate
NPI National Provider Identifier
OACT Office of the Actuary
PGP Physician Group Practice
PUF Public Use File
PY Performance Year
RIA Regulatory Impact Analysis
TIN Taxpayer Identification Number

I. Executive Summary and Background

A. Executive Summary

1. Purpose

Section 1899 of the Social Security Act (the Act) established the Medicare Shared Savings Program, which promotes accountability for a patient population, fosters coordination of items and services under Medicare Parts A and B, and encourages investment in infrastructure and redesigned care processes for high quality and efficient health care service delivery. This

proposed rule would make changes to the regulations for the Shared Savings Program that were promulgated in November 2011 and June 2015, and codified at 42 CFR part 425. The goal is to address concerns raised by stakeholders regarding the financial benchmarking methodology, and establish additional options for ACOs to enter performance-based risk arrangements. This proposed rule also seeks to address policies for reopening of payment determinations to make corrections after financial calculations have been performed and ACO shared savings and shared losses for a performance year have been determined. Unless otherwise noted, these changes would be effective 60 days after publication of the final rule. Applicability or implementation dates may vary, depending on the nature of the policy. Table 1 lists the anticipated applicability date of key changes in this proposed rule. By indicating that a provision is applicable to a performance year (PY) or agreement period, activities related to implementation of the policy may precede the start of the performance year or agreement period.

TABLE 1—APPLICABILITY DATES OF SELECT PROVISIONS OF THE PROPOSED RULE

Preamble section	Section title/description	Applicability date
II.A.2, II.A.3	Integrating regional factors in resetting ACO benchmarks.	Second or subsequent agreement period beginning January 1, 2017 and all subsequent years.
II.A.2.e.3	Use of assignable beneficiaries in calculations based on National FFS expenditures.	PY 2017 and subsequent performance years.
II.B	Modification to the methodology for adjusting benchmarks for changes in ACO participant composition.	PY 2017 and subsequent performance years.
II.C	An additional participation option that would allow eligible Track 1 ACOs to defer by 1 year their entrance into a performance-based risk model (Track 2 or 3) for their second agreement period.	Second agreement period beginning January 1, 2017 and all subsequent years.
II.D	Definitions of circumstances for reopening determinations of ACO shared savings or shared losses to correct financial reconciliation calculations.	60 days from publication of the final rule.

2. Summary of the Major Provisions

This proposed rule is designed to improve program function and transparency. To achieve these goals, we propose to make the following modifications to the current program:

- Modifying the methodology for rebasing and updating ACO historical benchmarks when an ACO renews its participation agreement for a second or subsequent agreement period to incorporate regional expenditures, thereby making the ACO's cost target more independent of its historical expenditures and more reflective of FFS spending in its region.
- Modifying the methodology for risk adjustment to account for the health status of the ACO's assigned population in relation to FFS beneficiaries in the ACO's regional service area, and to apply this approach in determining the regional adjustment that is applied to the ACO's rebased historical benchmark.
- Revising the methodology for adjusting ACO benchmarks to account for changes in ACO participant (TIN) composition.
- Adding a participation agreement renewal option to encourage ACOs to enter performance-based risk arrangements earlier in their participation in the Shared Savings Program.
- Defining circumstances under which we would reopen payment determinations to make corrections after the financial calculations have been performed and ACO shared savings and shared losses for a performance year have been determined.

3. Summary of Costs and Benefits

As a result of this proposed rule, the median estimate of the financial impact of the Shared Savings Program for CYs 2017 through 2019 would be net federal savings of $120 million greater than what would have been saved if no changes were made. Although this is the best estimate of the financial impact of the Shared Savings Program during CYs 2017 through 2019, a relatively wide range of possible outcomes exists. While approximately two-thirds of the stochastic trials resulted in an increase in net program savings, the 10th and 90th percentiles of the estimated distribution show a net increase in costs of $230 million to net savings of $490 million, respectively.

Overall, our analysis projects that improvements in the accuracy of benchmark calculations, including through the introduction of a regional adjustment to the ACO's rebased historical benchmark, are expected to result in increased overall participation in the program. The proposed changes are also expected to improve the incentive for ACOs to invest in effective care management efforts, increase the attractiveness of participation under performance-based risk in Track 2 or 3 for certain ACOs with lower beneficiary expenditures, and result in overall greater gains in savings on FFS benefit claims costs than the associated increase in expected shared savings payments to ACOs. We intend to monitor emerging results for ACO effects on claims costs, changing participation (including risk for cost due to selective changes in participation), and unforeseen biased benchmark adjustments due to diagnosis coding intensity shifts. Such monitoring will inform future rulemaking, such as if the Secretary determines that a lower weight should be used in calculating the regional adjustment amount for ACOs' third and subsequent agreement periods.

B. Background

On March 23, 2010, the Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted, followed by enactment of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) on March 30, 2010, which amended certain provisions of Public Law 111–148. Collectively known as the Affordable Care Act, these public laws include a number of provisions designed to improve the quality of Medicare services, support innovation and the establishment of new payment models, better align Medicare payments with provider costs, strengthen Medicare program integrity, and put Medicare on a firmer financial footing.

Section 3022 of the Affordable Care Act amended Title XVIII of the Act (42 U.S.C. 1395 *et seq.*) by adding section 1899 to the Act to establish a Shared Savings Program. This program is a key component of the Medicare delivery system reform initiatives included in

the Affordable Care Act and is a new approach to the delivery of health care. The purpose of the Shared Savings Program is to promote accountability for a population of Medicare beneficiaries, improve the coordination of FFS items and services, encourage investment in infrastructure and redesigned care processes for high quality and efficient service delivery, and promote higher value care. ACOs that successfully meet quality and savings requirements share a percentage of the achieved savings with Medicare. Consistent with the purpose of the Shared Savings Program, in establishing the program, we focused on developing policies aimed at achieving the three-part aim consisting of: (1) Better care for individuals; (2) better health for populations; and (3) lower growth in expenditures.

We published the final rule entitled ''Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations'' (November 2011 final rule), which appeared in the November 2, 2011 **Federal Register** (76 FR 67802). We viewed this final rule as a starting point for the program, and because of the scope and scale of the program and our limited experience with shared savings initiatives under FFS Medicare, we built a great deal of flexibility into the program rules. We anticipated that subsequent rulemaking for the Shared Savings Program would be informed by lessons learned from our experience with the program as well as from testing through the Pioneer ACO Model and other initiatives conducted by the Center for Medicare and Medicaid Innovation (Innovation Center) under section 1115A of the Act.

As of January 1, 2016, over 400 ACOs were participating in the Shared Savings Program. This includes 147 ACOs with 2012 and 2013 agreement start dates that entered into a new 3-year agreement effective January 1, 2016, to continue their participation in the program. We continue to see strong interest in the program, for instance, as indicated by the 100 ACOs that entered the program for a first agreement period beginning January 1, 2016. See Fact Sheet: CMS Welcomes New Medicare Shared Savings Program (Shared Savings Program) Participants, (January 11, 2016) available online at *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-01-11-2.html*. We are gratified by stakeholder interest in this program. In the November 2011 final rule (76 FR 67805), we stated that we intended to assess the policies for the Shared Savings Program and models being tested by the Innovation Center to determine how well they were working and if there were any modifications that would enhance them.

As evidenced by the high degree of interest in participation in the Shared Savings Program, we believe that the policies adopted in the November 2011 final rule are generally well-accepted. However, we identified several policy areas that should be revisited in light of the additional experience we gained during the first two years of program implementation. Therefore, we published a subsequent final rule entitled ''Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations'' (June 2015 final rule), which appeared in the June 9, 2015 **Federal Register** (80 FR 32692). In that rule, we adopted policies designed to codify existing guidance, reduce administrative burden, and improve program function and transparency in a number of areas, such as eligibility for program participation and data sharing. Additionally, we modified policies related to the financial model, in response to stakeholder feedback, to encourage greater and continued ACO participation, for example, by offering ACOs the opportunity to continue participating under the one-sided model for a second agreement period, modifying the existing two-sided performance-based risk track (Track 2), and offering an alternative two-sided performance-based risk track (Track 3). Track 3 includes prospective beneficiary assignment and a higher sharing rate for shared savings as well as the potential for greater liability for shared losses. We finalized new policies for resetting an ACO's financial benchmark in a second or subsequent agreement period, by integrating the ACO's previous financial performance and equal weighting the historical benchmark years, to encourage ACOs to seek to continue their participation in the program and to address stakeholder concerns about the current benchmark rebasing methodology. We also stated our intention to address other modifications to program rules in future rulemaking in the near term including modifying the methodology for resetting benchmarks by incorporating regional trends and costs.

II. Provisions of the Proposed Regulations

The purpose of this proposed rule is to propose revisions to some key policies of the Shared Savings Program adopted in the November 2011 final rule (76 FR 67802) and modified by the June 2015 final rule (80 FR 32692) including: (1) Proposing regulatory changes to the benchmarking methodology that will apply when resetting and updating the benchmark for an ACO's second or subsequent agreement period; (2) proposing a change to the methodology for adjusting an ACO's historical benchmark for changes to the ACO's certified ACO Participant List; (3) proposing a regulatory change to facilitate ACOs' transition to performance-based risk models; and (4) proposing a policy on administrative finality to address the circumstances under which payment determinations would be reopened to correct financial reconciliation calculations. We seek stakeholders' input regarding these proposed policies, which we believe are important to the continued success of the Shared Savings Program.

A. Integrating Regional Factors When Resetting ACOs' Benchmarks

1. Background on Establishing, Updating, and Resetting the Benchmark

Section 1899(d)(1)(B)(ii) of the Act addresses how ACO benchmarks are to be established and updated. This provision specifies that the Secretary shall estimate a benchmark for each agreement period for each ACO using the most recent available 3 years of per beneficiary expenditures for Parts A and B services for Medicare FFS beneficiaries assigned to the ACO. Such benchmark shall be adjusted for beneficiary characteristics and such other factors as the Secretary determines appropriate and updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program, as estimated by the Secretary. Such benchmark shall be reset at the start of each agreement period. In addition to the statutory benchmarking methodology established in section 1899(d) of the Act, section 1899(i)(3) of the Act grants the Secretary the authority to use other payment models, including payment models that would use alternative benchmarking methodologies, if the Secretary determines that doing so would improve the quality and efficiency of items and services furnished under this title and the alternative methodology would result in program expenditures equal to or lower than those that would result under the statutory payment model.

In the November 2011 final rule, establishing the Shared Savings Program, we adopted policies for establishing, updating and resetting ACO benchmarks at § 425.602. Under this methodology, we use national FFS spending and trends as part of establishing, updating and resetting ACO-specific benchmarks. Specifically,

we currently calculate a benchmark for each ACO using a risk-adjusted average of per capita Parts A and B expenditures for original Medicare FFS beneficiaries who would have been assigned to the ACO in each of the 3 calendar years prior to the start of the agreement period. We trend forward each of the first 2 benchmark years' per capita risk adjusted expenditures to third benchmark year (BY3) dollars based on the national average growth rate in Parts A and B per capita FFS expenditures verified by the CMS Office of the Actuary (OACT). In establishing the benchmark for an ACO's first agreement period, the first benchmark year is weighted 10 percent, the second benchmark year is weighted 30 percent, and the third benchmark year is weighted 60 percent. This weighting creates a benchmark that more accurately reflects the latest expenditures and health status of the ACO's assigned beneficiary population. For each performance year, we adjust for changes in beneficiary characteristics and update the benchmark by the OACT-verified projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original FFS program. In trending forward the historical benchmark, adjusting for changes in beneficiary characteristics, and annually updating the benchmark by growth in national per capita Medicare FFS expenditures, we make calculations for populations of beneficiaries in each of the following Medicare enrollment types: ESRD, disabled, aged/dual eligible, and aged/non-dual eligible. Further, to minimize variation from catastrophically large claims, we truncate an assigned beneficiary's total annual Parts A and B FFS per capita expenditures at a threshold of the 99th percentile of national Medicare FFS expenditures for the applicable Medicare enrollment type (ESRD, disabled, aged/dual eligible, or aged/non-dual eligible).

Under section 1899(d)(1)(B)(ii) of the Act and § 425.602(c) of the Shared Savings Program regulations, an ACO's benchmark must be reset at the start of each new agreement period. In the June 2015 final rule, we established a policy for resetting ACO benchmarks that accounts for factors relevant to ACOs that have participated in the program for at least one agreement period. This policy is intended to help ensure that the Shared Savings Program remains attractive to ACOs and continues to encourage ACOs to participate in additional agreement periods and to continue to improve their performance, particularly those ACOs that have achieved shared savings. Specifically, we revised § 425.602(c) to specify that in resetting the historical benchmark for ACOs in their second or subsequent agreement period we: (1) Weight each benchmark year equally; and (2) make an adjustment to reflect the average per capita amount of savings earned by the ACO in its prior agreement period, reflecting the ACO's financial and quality performance, during that prior agreement period. The additional per capita amount is applied as an adjustment to the ACO's rebased historical benchmark for a number of assigned beneficiaries (expressed as person years) not to exceed the average number of assigned beneficiaries (expressed as person years) under the ACO's prior agreement period. If an ACO was not determined to have generated net savings in its prior agreement period, we do not make any adjustment to the ACO's rebased historical benchmark. We use performance data from each of the ACO's performance years under its prior agreement period in resetting the ACO's benchmark for its second or subsequent agreement period.

We adjust the ACO's historical benchmark for changes during the performance period in the health status and demographic factors of the ACO's assigned beneficiaries (§ 425.604(a), § 425.606(a), § 425.610(a)), as described in section II.A.3. of this proposed rule. Consistent with section 1899(d)(1)(B)(ii) of the Act, we update the ACO's benchmark annually, based on the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original FFS program, as described further in section II.A.2.d. of this proposed rule. Additionally, as described further in section II.B. of this proposed rule, we also adjust ACO historical benchmarks annually based on changes to the ACO's certified ACO Participant List.

2. Alternative Approaches To Reset the ACO's Benchmark

a. Overview

In the December 2014 proposed rule, we sought comment on three approaches to account for regional FFS expenditures in ACO benchmarks: (1) Use of regional FFS expenditures, instead of national FFS expenditures, to trend forward the most recent 3 years of per beneficiary expenditures for Parts A and B services in order to establish the historical benchmark for each ACO and to update the benchmark during the agreement period; (2) adjusting the ACO's benchmark from its prior agreement period to reflect trends in FFS costs in the ACO's region, effectively holding a portion of the ACO's reset benchmark constant relative to its region; and (3) transitioning ACOs from benchmarks based on their historical costs toward benchmarks based only on regional FFS costs. Under this approach, an ACO's benchmark would gradually become more independent of the ACO's historical expenditures and gradually more reflective of FFS trends in its region. We also sought comment on a number of technical issues specific to these alternatives, including: How to define an ACO's region, and specifically, the ACO's regional reference population; how to account for changes in ACO participants from year-to-year and across agreement periods; and considerations related to risk adjusting benchmarks based on regional factors. We also discussed and sought comment on how broadly or narrowly to apply these alternative benchmarking approaches to the program's financial tracks, and the timing for implementing any changes.

Many commenters indicated their support for revising the program's benchmarking methodology to reflect regional cost variation. (See June 2015 final rule (80 FR 32791 through 32796) for a discussion of comments received on and considerations for use of regional factors in establishing, updating and resetting benchmarks.) Of the options to incorporate regional FFS costs in ACO benchmarks, the approach that would transition ACOs to regionally based benchmarks over time seemed to garner the greatest support from commenters. Commenters suggested CMS consider a variety of additional methodologies for revising the program's benchmarks, sometimes offering opposing alternatives. For example, some commenters supported blended approaches, whereby benchmarks would reflect a combination of the ACO's historical costs and regional, national or a combination of regional/national costs. MedPAC offered a vision for both the near and long term evolution of the program's benchmarking methodology. (See letter from Glenn M. Hackbarth, J.D., Chairman, Medicare Payment Advisory Commission to Ms. Marilyn Tavenner, Administrator, Centers for Medicare and Medicaid Services, regarding File code CMS–1461–P (February 2, 2015) (available through *www.regulations.gov,* comment tracking number 1jz–8gz6–jbt1).) In the short term, we would keep the existing

rebasing methodology, but would not rebase an ACO that met a two-part test,[1] which would leave benchmarks for lower-spending ACOs unchanged. In the longer term, CMS would move ACOs from a benchmark based on the ACO's historical cost experience to a common (equitable), local FFS-based benchmark, where FFS spending is defined to include spending on beneficiaries assigned to ACOs as well as on other beneficiaries in traditional FFS. MedPAC indicated this longer term approach should initially be implemented under the two-sided payment models, phased in over the course of the ACO's second agreement period, but that all ACOs should be transitioned to regional FFS benchmarks by year 2021. On the topic of the pace for transitioning ACOs to regional benchmarks, commenters' suggestions ranged from rapid transition (within the first agreement period) to a slower pace (for example, over the course of 2, 3, 4 or even 5 agreement periods). Several commenters suggested a different pace of transition depending on the ACO's historical costs relative to its market, or the level of experience of the ACO, or an approach under which an ACO could determine its own pace of transitioning to a regional benchmark. One commenter recommended that the changes become effective for all ACOs beginning with the first full performance year after the final rule is published.

Many commenters pointed to the importance of the details of the chosen methodology, for example, the definition of the ACO's region. Some commenters indicated there were insufficient details in the December 2014 proposed rule on the alternative benchmarking approaches or cited their lack of data to analyze the alternatives discussed in order to make an informed and effective recommendation about the options. These commenters indicated the need for CMS to perform additional modeling and analytic work on the alternatives discussed in the December 2014 proposed rule, and to share the results of this analysis and put forward detailed proposals on revisions to the benchmarking methodology through additional notice and comment rulemaking. More generally, other commenters requested that CMS provide detailed documentation regarding program calculations and greater access to the underlying data.

In response, we acknowledged the importance of quickly moving to a benchmark rebasing approach that accounts for regional FFS costs and trends in addition to the ACO's historical costs and trends. In the June 2015 final rule, we committed to engaging in additional rulemaking to propose modifications to the Shared Savings Program's methodology for resetting ACO benchmarks. We signaled our anticipated policy direction by outlining an approach to rebasing that would account for regional expenditures and identified additional issues we would need to address in implementing this approach. We discussed a rebasing approach based on a blend of: (1) A regionally trended component, reflecting ACO historical costs for the 3 years preceding its first agreement period that starts in 2017 or a subsequent year, adjusted by a regional trend factor based on changes in regional expenditures for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) for the most recent year prior to the start of the ACO's new agreement period, and adjusted for changes in the health status and demographic factors of the ACO's assigned beneficiary population in each benchmark year relative to its region; and (2) a rebased component calculated using the current rebasing methodology (based on historical costs from the 3 most recent years prior to the start of the ACO's new agreement period), including equally weighting the benchmark years but excluding the addition of a portion of savings generated over the same 3 most recent years.

In the June 2015 final rule (80 FR 32796), we specified that the forthcoming proposed rule would provide a detailed discussion of key methodological issues, including: Weight of the two benchmark components, risk adjustment, defining an ACO's region, and accounting for changes in ACO participant composition. We indicated that in developing the proposed rule we would take into account broader considerations for the program, including: Whether to change the methodology for updating the benchmark; whether to make adjustments to account for ACOs whose costs are relatively high or low in relation to FFS trends in their region or the nation; and how to safeguard against ACOs that may increase their spending to lock in higher benchmarks for future agreement periods.

In the June 2015 final rule we explained that the revised rebasing approach would require tradeoffs among several criteria:

- Strong incentives for ACOs to improve efficiency and to continue participation in the program over the long term.
- Benchmarks which are sufficiently high to encourage ACOs to continue to meet the three-part aim, while also safeguarding the Medicare Trust Funds against the possibility that ACOs' reset benchmarks become overly inflated to the point where ACOs need to do little to maintain or change their care practices to generate savings.
- Generating benchmarks that reflect ACOs' actual costs in order to avoid potential selective participation by (and excessive shared payments to) ACOs with high benchmarks.

In further considering modifications to the benchmarking methodology for this proposed rule, we added the following set of guiding principles:

- *Transparency:* Developed based on identifiable sources of data, and where possible publicly available data and data sets, in order to allow stakeholders to understand and model impacts.
- *Predictability:* Enable ACOs to anticipate their updated benchmark targets and their likely performance under the program.
- *Simplicity:* Methodology can be explained in relatively simple terms and in sufficient detail to be readily understood by ACOs and stakeholders.
- *Accuracy:* Methodology generates benchmarks that are an accurate reflection of the ACOs' expenditures and relevant regional expenditures, and can be accurately implemented and calculated, validated and disseminated in a timely manner.
- Maintain program momentum and market stability by providing sufficient notice of methodological changes and phase-in of these changes.

b. Proposals for Regional Definition

(1) Background

The June 2015 final rule indicated that in defining an ACO's region we would consider using Metropolitan Statistical Areas (MSAs) and non-MSA portions of a state, Combined Statistical Areas (CSAs), or another definition of regionally-based statistical areas, or the ACO's county-level service area.

For purposes of this proposed rule, we consider an ACO's region to be synonymous with its service area from which it derives its assigned beneficiaries. Further, as discussed in this section of the proposed rule, issues related to the definition of an ACO's regional service area include: (1) The selection of the geographic unit of

[1] MedPAC explained the two-part test: ''First, per-capita spending for the ACO (after that spending is adjusted for health care risk and input prices) must be below the national average per-capita FFS spending. Second, per-capita spending for the ACO (risk adjusted) must be below the average FFS spending (risk adjusted) in the ACO's market.''

measure to define this area; (2) identification of the population of beneficiaries to include in this area; and (3) calculation of the FFS expenditures for this area. A fundamental concept underlying our consideration of these issues is that the definition of an ACO's regional service area bear a relationship to the area of residence of the ACO's assigned beneficiaries. In some cases, an ACO's assigned beneficiary population may span multiple geographic boundaries, for example in cases where an ACO provides services to beneficiaries residing in multiple counties within a single state and/or multiple states.

(2) Proposals for Defining the ACO's Regional Service Area

We considered the geographic unit of measure to use in defining an ACO's regional service area for the purpose of determining the corresponding regional FFS expenditures to be used in calculations based on regional spending in the modified approach to establishing, adjusting and updating the ACO's rebased historical benchmark, discussed in this proposed rule. These regional FFS expenditures will be used in determining a regional adjustment to an ACO's rebased historical benchmark and in calculating growth rates of regional spending used in establishing and updating the ACO's rebased historical benchmark, which are described later in this proposed rule. We considered the stability of the definition of the geographic unit of measure, specifically: Whether it is a legal or statistical area defined according to uniform national criteria by the U.S. government (for example, by the U.S. Bureau of the Census); whether the area has boundaries that do not change frequently; and CMS' use of the area in other Medicare operations. Core Based Statistical Areas (CBSAs), MSAs, and CSAs are delineated by OMB and are the result of the application of published standards to Census Bureau data. Other options for defining regional service areas, for example, Hospital Referral Regions as defined by the Dartmouth Institute, may have certain advantages in terms of linking markets together by utilization patterns as opposed to, for example, commuting patterns used by the Census Bureau to define CSAs. However, such definitions are not governmentally maintained, may change over time, and are not otherwise directly utilized for FFS Medicare payment. Of the options considered, definitions of counties, states and territories are the most stable.

We also considered whether the geographic unit is used in other CMS operations. MSAs and rest of state areas are used by CMS for the hospital wage index. Geographic practice cost indices (GPCIs) used to adjust payments for physicians' services are based on 89 Medicare localities, which are either state-wide or combination MSA and rest-of-state areas. There is precedent in the Medicare program for using county-level data to set cost targets for value based purchasing initiatives. CMS used counties to define the service areas of Physician Group Practice (PGP) demonstration sites (a predecessor of CMS' ACO initiatives) and used Parts A and B spending by county as part of setting benchmarks for these organizations. CMS also uses county-level FFS expenditure data, in combination with other adjustments, to establish the benchmarks used for setting local Medicare Advantage (MA) rates. However, under the MA program, special payment areas apply to ESRD enrollees. ESRD payments are determined using State capitation rates for enrollees in dialysis and transplant status (See Medicare Managed Care Manual, Chapter 8—Payments To Medicare Advantage Organizations, available at *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/mc86c08.pdf*). Currently, CMS produces quarterly and annual reports for Shared Savings Program ACOs that include aggregate data on distribution of assigned beneficiary residence by county.

We believe county-level data offer a number of advantages over the other options (CBSA, MSA, CSA, State/territory). Counties tend to be stable regional units compared to some alternatives, as the definition of county borders tends not to change. Further, the agency has experience with identifying populations of beneficiaries by county of residence and calculating county-level rates based on their costs. In terms of determining regional costs, smaller areas (such as counties) better capture regional variation in Medicare expenditures, and allow for more customized regional definitions for each ACO, but risk being dominated by expenditures from a single ACO or group of ACOs, which could potentially reduce ACO benchmarks in clustered markets. We can guard against the potential bias from this effect by using a sufficiently large county-based population, as discussed in section II.A.2.b.3. of this proposed rule.

Therefore, we considered developing county FFS rates based on Parts A and B spending by county. We considered the fact that some commenters responding to the December 2014 proposed rule urged CMS to more closely align the Shared Savings Program with MA when adopting a benchmarking approach that accounts for regional costs. For instance, MedPAC's longer term vision for the program's benchmarking methodology included achieving equity among ACOs in a geographic market and rewarding efficiency across payment models, including FFS Medicare, the Shared Savings Program, and MA. Use of county-level FFS data in calculating expenditures for an ACO's regional service area would permit ACOs to be viewed as being on the spectrum between traditional FFS Medicare and MA, a concept some commenters and stakeholders have urged CMS to articulate. Use of county FFS expenditure data, which are publicly available, would allow for increased transparency in ACO benchmark calculations and would ease ACOs' and stakeholders' access to data for use in modeling and predictive analyses. We would make adjustments to county FFS expenditure data to assure parity between the calculation of these expenditures and calculations of ACO benchmark and performance year expenditures as currently specified under the Shared Savings Program regulations by excluding indirect medical education (IME) payments, disproportionate share hospital (DSH) payments and uncompensated care payments, and by including beneficiary-identifiable payments under a demonstration, pilot or time limited program as discussed in section II.A.2.e. of this proposed rule.

Additionally, consistent with the approach used in MA, we believe the use of state-wide values for the ESRD population is appropriate given the small numbers of ESRD beneficiaries residing in many U.S. counties. Use of values for ESRD beneficiaries at the county level, based on very small numbers, would likely lead to greater instability of county-level expenditures for the ESRD population than for the other larger populations (disabled, aged/dual eligible and aged/non-dual eligible beneficiaries) considered in the program. This concern is particularly acute for ACOs operating in rural areas that tend to be more sparsely populated. We believe use of statewide values, for all ESRD beneficiaries residing in any county within the state, will be more statistically stable.

We propose to determine an ACO's regional service area by the counties of residence of the ACO's assigned beneficiary population. Furthermore, we propose to define regional costs as county FFS expenditures as determined according to the discussion later in this

section of the proposed rule and adjusted to assure parity with the calculation of ACO benchmark and performance year expenditures as specified under the Shared Savings Program regulations (as discussed in greater detail in section II.A.2.e. of this proposed rule). These calculations will be undertaken separately according to the following populations of beneficiaries (identified by Medicare enrollment type): ESRD, disabled, aged/dual-eligible, aged/non-dual eligible. Further, we propose to determine expenditures for ESRD beneficiaries statewide, and apply these amounts consistently to each county within a state. We seek comment on these proposals and on the alternatives for defining the ACO's regional service area, specifically use of CBSA, MSA, CSA or State/territory designations. These proposals are reflected in our proposed addition of a new definition of ''ACO's regional service area'' to § 425.20 and in a proposed new regulation at § 425.603 describing the calculations that would be used in resetting an ACO's historical benchmark for a second or subsequent agreement period.

(3) Proposals for Establishing the Beneficiary Population Used To Determine Expenditures for an ACO's Regional Service Area

The population that is the basis for calculating regional FFS costs must be sufficiently large to produce statistically stable mean expenditure estimates (avoiding biases that result from small numbers), and must be representative of the demographic mix, health status and cost trends of the beneficiary population within the ACO's regional service area. Therefore, we considered whether the calculation of regional FFS costs for an ACO's regional service area should include or exclude the costs for the ACO's assigned beneficiary population. While including these ACO-assigned beneficiaries results in a larger reference population for calculating regional costs, some stakeholders have expressed concern that doing so will capture the impact of the ACO's efforts to coordinate care and reduce expenditures for the FFS population it treats and result in relatively lower regional expenditures being used for setting its benchmark.

The following points informed our consideration of this issue:

- Most individual ACO assigned beneficiary populations only make up a small fraction of the FFS beneficiaries in an ACO's regional service area. For example, we found that the rate at which an ACO's assigned population comprised its regional FFS population [2] ranged from 0.5 percent (minimum) to 57 percent (maximum), with a median of 12 percent.
- In cases where an ACO's assigned population makes up a large portion of the population of its region, removal of the ACO's assigned beneficiaries from the regional FFS population would limit the comparison population and may bias results.
- Removing an ACO's assigned population would add both complexity and volatility to calculations particularly in circumstances where it results in small numbers of beneficiaries remaining in the regional FFS population.
- Including beneficiaries who are not eligible to be assigned to an ACO in the regional FFS population could bias calculations of regional expenditures. For example, including Medicare FFS beneficiaries who have not utilized services (''non-utilizers'') in these calculations would result in relatively lower per capita expenditures for the regional FFS population.

Based on this analysis, we concluded that attempting to identify regional FFS expenditures for only non-ACO beneficiaries (or customizing the calculation of regional FFS expenditures for each ACO by excluding its own beneficiaries) would add significant complexity and create potential bias. Furthermore, excluding the ACO's assigned beneficiaries from the population used to determine regional FFS expenditures may also produce biased results where an ACO tends to serve beneficiaries of a particular Medicare enrollment type, demographic or socio-economic status (for example, ACOs serving largely dual-eligible populations) and when an ACO tends to dominate (serve a large proportion of FFS beneficiaries) in a region. In order to address the latter situation, we considered expanding the scope of an ACO's region (for example, by including adjoining counties) to allow the ACO's regional service area to include a greater mix of beneficiaries who are not assigned to the ACO. However, we believe that this approach may be challenging to apply consistently and accurately given the potential for variation of populations across and within regional areas, and a potentially cumbersome policy to maintain as ACOs continue to develop across the country. In addition, this type of policy would require that we establish a threshold to determine whether an ACO is sufficiently dominant in its region to warrant an expansion of its regional service area. We are concerned that application of such a threshold may encourage ACO decision making based on the ACO's relationship to the threshold (for instance decisions related to an ACO's structure or operations, particularly with respect to its composition of ACO participants and the beneficiaries it serves), either to remain below or exceed the threshold to yield a more favorable benchmark.

Several elements of Shared Savings Program financial calculations are based on expenditures for all Medicare FFS beneficiaries as opposed to the expenditures only for the ACO's assigned beneficiary population, as discussed further in section II.A.2.e. of this proposed rule. For example, we use all FFS beneficiaries in calculating the following: The growth rates used to trend forward expenditures during the benchmark period; the projected absolute amount of growth in national per capita expenditures for Parts A and B services used to update the benchmark; the completion factors applied to benchmark and performance year expenditures; and the truncation thresholds set at the 99th percentile of national Medicare FFS expenditures. To maintain consistency across program calculations, we considered using all FFS beneficiaries in determining expenditures for the ACO's regional service area. However, we believe that continuing to include expenditures for all FFS beneficiaries would introduce bias into the calculations of the ACO's regional service area expenditures. For one, the overall FFS population will include beneficiaries who are not eligible for assignment to ACOs. In current calculations, we believe this bias is mitigated to some extent by the large size of the national Medicare FFS population. Regional FFS expenditures, calculated based on relatively smaller populations, may be more susceptible to the influence of this bias. For example, in counties where the health status of the overall beneficiary population leads more beneficiaries to be non-utilizers of services a bias in the direction of relatively lower regional expenditures may be more pronounced. On the other hand, a bias in the direction of relatively higher regional expenditures may be more pronounced in counties where there are established patterns of accessing primary care services through specialists who are not the basis for assignment. (We note that recent changes in the assignment algorithm have narrowed the use of services

[2] The product of the ACO's proportion of total assigned beneficiaries in a county (in relation to all other counties where its beneficiaries reside), and the percent of the ACO's assigned population comprising the county's FFS population.

furnished by specialty physicians in the assignment methodology (see 80 FR 32749 through 32754).) Ultimately, such differences could factor more prominently in certain counties that are used to compute an ACO's regional service area expenditures. Secondly, we believe that these biases may also be more pronounced when calculating the amount of per capita regional FFS expenditures in a particular year as opposed to a factor reflecting change in growth in expenditures across periods in time.

To address this concern, we considered limiting the beneficiary population included for purposes of calculating expenditures for an ACO's regional service area to Medicare FFS beneficiaries who could be considered for assignment to ACOs. As described in greater detail in section II.A.2.e. of this proposed rule, we identify the pool of beneficiaries who are eligible to be assigned to an ACO as those beneficiaries that have received at least one primary care service from a physician in the ACO who is a primary care physician or who has as primary specialty designation included in § 425.402(c) that is utilized in the assignment methodology. We will then use this population of eligible beneficiaries to determine the beneficiaries who will be assigned to an ACO based on the two-step assignment process under § 425.402(b). We considered applying a similar logic to identifying the population of FFS beneficiaries that should be considered in determining expenditures for an ACO's regional service area. That is: If a beneficiary gets at least one primary care service from any Medicare-enrolled physician who is a primary care physician or who has one of the primary specialty designations that are used for purposes of assignment under the Shared Savings Program, the beneficiary would be included in the calculation of expenditures for the ACO's regional service area. We refer to this population as ''assignable beneficiaries.''

We also considered how to weight the ACO's regional costs in cases where an ACO's assigned population spans multiple counties. ACOs often serve beneficiaries in multiple counties within a state or across several states, with some ACOs being an aggregation of providers located in different parts of the country. We currently provide ACOs with a quarterly report showing the distribution of the ACO's assigned beneficiary residence by county where the ACO's service area is defined as counties with at least 1 percent of assigned beneficiaries. Based on assignment data from Quarter 1 2015 for all active ACOs in the Shared Savings Program, ACOs served beneficiaries residing in between 2 and 32 counties, with a median of 8 counties served. Given the geographic spread of some ACOs' assigned populations, we believe it will be important to weight an ACO's regional expenditures relative to the proportion of its assigned beneficiaries in each county. Absent this weighting, we could overstate or understate the influence of the expenditures for a county where relatively few or many of an ACO's assigned beneficiaries reside.

Taking these considerations into account, we propose using all assignable beneficiaries, including ACO-assigned beneficiaries, in determining expenditures for the ACO's regional service area in order to ensure sufficiently stable regional mean expenditures. We propose to define the ACO's regional service area to include any county where one or more assigned beneficiaries reside. We also propose to include the expenditures for all assignable FFS beneficiaries residing in those counties in calculating county FFS expenditures by enrollment type that will be used in the ACO's regional cost calculations (discussed in detail in sections II.A.2.c. and II.A.2.d. of this proposed rule). Further, we propose to weight county-level FFS expenditures by the ACO's proportion of assigned beneficiaries in the county, determined by the number of the ACO's assigned beneficiaries residing in the county in relation to the ACO's total number of assigned beneficiaries. These proposals are reflected in the proposed addition of new definitions for ''assignable beneficiary'' and ''ACO's regional service area'' to § 425.20, and in the proposed new regulation at § 425.603.

We believe this proposed approach will result in the most accurate and predictable regional expenditure factor for each ACO. However, we would monitor for cases where an ACO tends to serve a large proportion of FFS beneficiaries in its region, and consider the effect of these circumstances on ACO benchmarks. If warranted, we would explore developing adjustments to the definition of an ACO's regional service area to account for this circumstance in future rulemaking. We also seek comment on alternatives to proposed use of assignable beneficiaries in establishing the expenditures for an ACO's regional service area, including use of all Medicare FFS beneficiaries in determining these expenditures.

(4) Proposals for Determining County FFS Expenditures

We considered how to calculate county FFS expenditures for use in factors based on regional FFS expenditures described in this proposed rule. Consistent with proposals described in other sections of this proposed rule, we are proposing the following approach to calculating county FFS expenditures:

- Determine county FFS expenditures based on the expenditures of the assignable population of beneficiaries in each county, where assignable beneficiaries are identified for the 12-month period corresponding to the applicable calendar year (see sections II.A.2.b.3. and II.A.2.e. of this proposed rule). We will make separate expenditure calculations according to the following populations of beneficiaries (identified by Medicare enrollment type): ESRD, disabled, aged/dual-eligible, aged/non-dual eligible.
- Calculate assignable beneficiary expenditures using the payment amounts included in Part A and B FFS claims with dates of service in the 12-month calendar year for the relevant benchmark or performance year, allowing for a 3-month claims run out and applying a completion factor (see section II.A.2.e.2. of this proposed rule). The completion factor will be calculated based on national FFS assignable beneficiary expenditures (see section II.A.2.e. of this proposed rule).

++ These calculations will exclude IME, DSH, and uncompensated care payments (see section II.A.2.e.2. of this proposed rule).

++ These calculations will take into consideration individually beneficiary identifiable payments made under a demonstration, pilot or time limited program (see section II.A.2.e.2. of this proposed rule).

- Truncate a beneficiary's total annual Parts A and B FFS per capita expenditures at the 99th percentile of national Medicare FFS assignable beneficiary expenditures as determined for the relevant year, in order to minimize variation from catastrophically large claims (see section II.A.2.e. of this proposed rule). We would determine truncation thresholds separately for each of the four Medicare enrollment types (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).
- Adjust county FFS expenditures for severity and case mix of assignable beneficiaries in the county using prospective CMS—Hierarchical Condition Category (HCC) risk scores (see section II.A.2.e.2. of this proposed rule). We would determine average risk scores separately for each of the four Medicare enrollment types (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).

Consistent with the discussion in section II.A.2.b.2. of this proposed rule, we propose to compute state-level per capita expenditures and average risk scores for the ESRD population in each state and to apply those state-level values to all counties in a state. We believe this approach addresses issues associated with small numbers of ESRD beneficiaries in certain counties that can lead to statistical instability in expenditures for this complex population.

We anticipate making county level data used in Shared Savings Program calculations publicly available annually. For example, a publicly available data file would indicate for each county: Average per capita FFS assignable beneficiary expenditures and average risk scores for all assignable beneficiaries by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). In addition, as described in the regulatory impact analysis section of this proposed rule, we are making publicly available a data file with county-level expenditure and risk score data to support modeling of the proposed changes to the benchmark rebasing methodology.

We propose to include this approach for determining county FFS expenditures in a new regulation at § 425.603. We seek comment on these proposals as well as any additional factors we would need to consider in calculating risk adjusted county FFS expenditures.

c. Proposals for Applying Regional Expenditures to the ACO's Rebased Benchmark

(1) Background

The discussion of benchmark alternatives in the recent rulemaking underscores the array of options for incorporating regional expenditures in ACO benchmarks (see the December 2014 proposed rule at 79 FR 72839 through 72843; see the June 2015 final rule at 80 FR 32791 through 32796). While we agree with commenters on the benefits of incorporating regional expenditures in rebased benchmarks, we are interested in moving to an alternative rebasing approach that builds on the program's existing benchmarking methodology established under the authority of section 1899(d)(1)(B)(ii) of the Act and codified in the Shared Savings Program regulations at § 425.602. Over 400 ACOs have voluntarily entered the Shared Savings Program under the financial models (Track 1 and Track 2) established in the November 2011 final rule and as modified by the June 2015 final rule (adding a choice of Track 3 for agreement periods beginning January 1, 2016). Further, 147 ACOs with 2012 and 2013 agreement start dates elected to continue their participation in the program for a second 3-year agreement effective January 1, 2016 to which the current methodology for resetting the ACO's benchmark applies (including the rebasing modifications finalized with the June 2015 final rule). The value proposition of the program's financial models, which is largely determined by the methodology used to establish ACO benchmarks, is an important consideration for organizations deciding whether to engage (or continue to engage) in this new approach to the delivery of health care. Therefore, in considering how to incorporate regional expenditures into the benchmarking methodology, we believe that building from the existing benchmarking methodology will help maintain the stability of the program and ultimately result in revised policies that are more easily understood by ACOs and program stakeholders, and more readily implemented by CMS.

Principally, we considered using the Secretary's discretion under section 1899(d)(1)(B)(ii) of the Act to adjust the historical benchmark by ''such other factors as the Secretary determines appropriate'' in order to incorporate regional FFS expenditures into the rebased historical benchmark. In this proposed rule we discuss two approaches to calculating an adjustment to an ACO's rebased historical benchmark to account for regional FFS expenditures for the ACO's regional service area, and describe how the adjustment would be applied to the rebased historical benchmark.

We believe the plain language of section 1899(d)(1)(B)(ii) of the Act demonstrates Congress' intent that the benchmark established for a Shared Savings Program ACO would reflect the ACO's historical expenditures in the 3 most recent years prior to the start of the ACO's agreement period. Congress also recognized that this historical benchmark should be adjusted ''for beneficiary characteristics and such other factors as the Secretary determines appropriate.'' Therefore, to the extent an ACO's rebased benchmark continues to be based on the ACO's historical expenditures in the 3 years preceding the start of the new agreement period, we believe adjusting those historical expenditures to account for regional FFS expenditures for the ACO's regional service area falls within the Secretary's discretion to make adjustments to the historical benchmark for ''other factors'' under section 1899(d)(1)(B)(ii) of the Act.

Currently, CMS makes several adjustments to an ACO's historical benchmark under the Secretary's discretion under section 1899(d)(1)(B)(ii) of the Act, including to: (1) Adjust benchmark year expenditures to exclude IME and DSH payments (§ 425.602(a)(1)(i)); (2) adjust the historical benchmark for the addition and removal of ACO participants (§ 425.602(a)(8)); (3) adjust the rebased historical benchmark to account for the average per capita amount of savings generated during the ACO's previous agreement period (§ 425.602(c)(2)(ii)); and (4) adjust the historical benchmark for changes in demographics and health status of the ACO's performance year assigned beneficiary population (§§ 425.604(a)(1) through (3), 425.606(a)(1) through (3), 425.610(a)(1) through (3)). For the reasons discussed in the June 2015 final rule, we believe it is appropriate to further adjust ACO historical benchmarks to reflect regional FFS expenditures (see 80 FR 32791 through 32796). Further, in relation to use of regional FFS expenditures in developing the ACO's rebased benchmark, for the reasons discussed in section II.A.2.c.2. of this proposed rule we believe it appropriate to forgo making an additional adjustment to account for savings generated by the ACO in its prior agreement period (see 80 FR 32796).

Table 2 summarizes the proposals discussed in this section of the proposed rule, including the percentage (weight) to be used in calculating the amount of the adjustment for regional FFS expenditures to be applied to the ACO's rebased historical benchmark, using regional (instead of national) trend factors in establishing an ACO's rebased historical benchmark, using regional (instead of national) FFS expenditures to update the ACO's benchmark for each performance year, and the timing of the applicability of the proposed new rebasing methodology.

(2) Proposals for Adjusting the Reset ACO Historical Benchmark To Reflect Regional FFS Expenditures

Our proposal for adjusting an ACO's rebased historical benchmark to reflect regional FFS expenditures for the ACO's regional service area expands on the approaches initially outlined in the June 2015 final rule (see 80 FR 32795 through 32796). The discussion elsewhere in this proposed rule describes two options for calculating the regional FFS adjustment, as well as the calculation of the ACO's rebased historical benchmark. The first option would be to

calculate the adjustment based on a regionally-trended version of the ACO's prior historical benchmark. The second option describes an alternative approach, based on a regional average determined using county FFS expenditures.

Under both options, we would calculate the ACO's rebased historical benchmark using the current rebasing methodology established in the June 2015 final rule under which an ACO's rebased benchmark is calculated based on the 3 years prior to the start of its current agreement period. Consistent with the current policy we would equally weight the 3 benchmark years. However, in trending forward benchmark year (BY) 1 and BY2 expenditures to BY3 dollars, we would use regional growth rates (instead of national growth rates) for Parts A and B FFS expenditures, as discussed in section II.A.2.d. of this proposed rule.

Furthermore, in calculating the ACO's rebased historical benchmark, we would not apply the current adjustment to account for savings generated by the ACO under its prior agreement period. We have observed that for ACOs generating savings, an alternative rebasing methodology that accounts for regional FFS expenditures would generally leave a similar or slightly greater share of measured savings in an ACO's rebased benchmark for its ensuing agreement period. By contrast, for ACOs generating losses, an alternative rebasing methodology that accounts for regional FFS expenditures would tend to carry forward a significant portion of measured losses into their rebased benchmarks and push benchmarks lower than the current rebasing policy. Therefore, in transitioning to a benchmark rebasing methodology that incorporates an adjustment for regional FFS expenditures, we believe it is important to forgo the current adjustment to account for shared savings generated by the ACO under its prior agreement period. (For further information, see section IV.E. of this proposed rule.)

We considered two options for calculating regional expenditures as an input into an adjustment that we would apply to the ACO's rebased historical benchmark. First, we considered calculating a regionally-trended amount developed using the ACO's historical benchmark from an earlier agreement period adjusted by a regional trend factor based on changes in regional expenditures for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) for the most recent year prior to the start of the ACO's current agreement period and for changes in health status and demographic factors of the assigned patient population. The calculation of the regionally-trended amount would generally involve the following steps:

- Use the ACO's historical benchmark from a prior agreement period, adjusted to account for ACO Participant List changes. We would use an expenditure ratio to adjust the benchmark for changes in ACO participant (TIN) composition, as described in section II.B. of this proposed rule.
- Risk adjust to reflect changes in the health status of the ACO's assigned beneficiaries from that prior agreement period to the most recent year prior to the start of the new agreement period.
- Trend the historical benchmark to the most recent year prior to the start of the new agreement period based on risk adjusted county FFS expenditures for the ACO's regional service area. As discussed in section II.A.2.b. of this proposed rule, we would determine regional FFS expenditures for an ACO's regional service area, using an approach that weights county expenditures according to the proportion of the ACO's assigned beneficiaries residing in each county.
- Use weighting to reflect changes in the proportion of each of the four Medicare enrollment types from the prior agreement period to the most recent year prior to the start of the new agreement period. Specifically, we would weight the regionally-trended expenditures by the proportions of the ACO's assigned beneficiaries in each Medicare enrollment type for benchmark year 3 of the ACO's new agreement period.

In the June 2015 final rule (80 FR 32796), we also indicated that we were considering an alternative approach based on regional average spending to transition ACOs to benchmarks based on regional FFS costs. Under this approach, we would calculate a regional FFS adjustment to the ACO's rebased historical benchmark using regional average expenditures. Calculation of regional average expenditures would generally involve the following key steps:

- Calculate risk adjusted regional per capita FFS expenditures using county level Parts A and B expenditures for the ACO's regional service area for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible); weighted based on the proportion of ACO assigned beneficiaries residing in each county for the most recent benchmark year. We describe the risk adjustment approach that would be used in these calculations to adjust for differences in health status between an ACO and its regional service area in section II.A.3. of this proposed rule.
- Weight the resulting regional expenditures by the proportion of assigned beneficiaries for the most recent benchmark year for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).

In comparing the features of the two options, the regionally-trended amount and regional average expenditures, we believe using regional average expenditures offers a preferred approach. While we believe both options would avoid penalizing ACOs that improve their spending relative to that of their region, the approach of using regional average expenditures would not depend on older historical data in calculations as would be required under the alternative involving calculation of a regionally-trended amount. In general, from an operational standpoint, using a regional average as part of calculating regional FFS expenditures for an ACO's regional service area is anticipated to be easier for ACOs and stakeholders to understand as well as for CMS to implement in comparison to the alternative considered, and would more closely align with the MA rate-setting methodology.

We also considered how the adjustment based on regional FFS expenditures should be applied to the ACO's rebased historical benchmark. Our preferred approach is to use the following steps to adjust the ACO's rebased historical benchmark:

- Calculations of the ACO's rebased historical benchmark and regional average expenditures, as described previously in this section of the proposed rule, would result in average per capita values of expenditures for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).
- For each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) we would determine the difference between the per capita regional average amount and the average per capita amount of the ACO's rebased historical benchmark. These values may be positive or negative. For example, for a particular Medicare enrollment type, if the value of the ACO's rebased historical benchmark is greater than the regional average amount, the difference between these values will be expressed as a negative number.
- Multiply the resulting difference, for each Medicare enrollment type by a percentage determined for the relevant

agreement period. The value of this percentage is described in detail later in this section of the proposed rule. The products (one for each Medicare enrollment type) resulting from this step are the amounts of the regional adjustments that will be applied to the ACO's historical benchmark.

- Add the adjustment to the ACO's rebased historical benchmark, adding the adjustment amount for the Medicare enrollment type to the truncated, trended and risk adjusted average per capita value of ACO's rebased historical benchmark for the same Medicare enrollment type.
- Multiply the adjusted value of the ACO's rebased historical benchmark for each Medicare enrollment type by the proportion of the ACO's assigned beneficiary population for that Medicare enrollment type, based on the ACO's assigned beneficiary population for benchmark year 3 of the rebased historical benchmark.
- Sum expenditures across the four Medicare enrollment types to determine the ACO's adjusted rebased historical benchmark.

Therefore, we are proposing to calculate the ACO's rebased benchmark using historical expenditures for the beneficiaries assigned to the ACO in the 3 years prior to the start of its current agreement period, applying equal weights to the benchmark years, but not accounting for shared savings generated by the ACO in its prior agreement period. We propose to adjust the ACO's rebased historical benchmark to reflect risk adjusted regional average expenditures, based on county FFS expenditures determined for the ACO's regional service area. We propose to revise section § 425.602 in order to limit the scope of the provision to establishing, adjusting, and updating the benchmark for an ACO's first agreement period. We propose to specify in a new regulation at § 425.603 how the benchmark would be reset for a subsequent agreement period, including the proposed methodology for adjusting an ACO's rebased historical benchmark to reflect FFS expenditures in the ACO's regional service area in the ACO's second or subsequent agreement period starting on or after January 1, 2017. Further, we propose to make conforming and clarifying revisions to the provisions of § 425.602, including to: Revise the title of the section; remove paragraph (c) from § 425.602 and incorporate this paragraph in the new regulation at § 425.603; and to add a paragraph that describes the adjustments made to the ACO's historical benchmark during an ACO's first agreement period to account for changes in severity and case mix for newly and continuously assigned beneficiaries as presently specified under § 425.604, § 425.606, and § 425.610. We also propose to make a clarifying change to § 425.20, to specify that the acronym ''BY'' stands for benchmark year.

We seek comment on our proposals and on the alternative approach of using a regionally-trended amount developed from the ACO's historical benchmark for a prior agreement period instead of regional average expenditures to adjust the ACO's rebased historical benchmark. We are particularly interested in comments on the design of the approaches for calculating the regional adjustment to the ACO's rebased historical benchmark described in this section of the proposed rule, as well as any concerns about implementing the proposed regional adjustment.

(3) Proposals for Transitioning to a Higher Weight in Calculating the Adjustment for Regional FFS Expenditures

As discussed in the June 2015 final rule, we considered applying a weight of 70 percent on the regionally-trended component of the rebased benchmark. We explained our initial belief that this weight would serve the goal of providing strong incentives for ACOs to achieve savings and to continue to participate in the Shared Savings Program (see 80 FR 32796). In developing the policies for this proposed rule, we considered both the potential positive and negative consequences of quickly transitioning to use of a greater weight in calculating the regional adjustment to ACOs' rebased historical benchmarks.

We believe placing a greater weight on regional expenditures in adjusting an ACO's historical benchmark will encourage existing low spending ACOs in higher spending and/or higher growth regions to enter and continue their participation in the Shared Savings Program. Stakeholders have expressed concerns that the original rebasing methodology promulgated in the November 2011 final rule, in which an ACO's benchmark is rebased using the ACO's historical expenditures for the most recent 3 years corresponding to its prior agreement period, absent additional adjustment, penalizes an ACO for past achievement of savings by reducing its benchmark for the following agreement period (see 80 FR 32786). In the June 2015 final rule, we expressed our view that the benchmarking methodology should be revised to help ensure that an ACO that has previously achieved success in the program will be rebased under a methodology that encourages its continued participation in the program (see 80 FR 32788). Further, we have noted the importance of quickly moving to a benchmark rebasing approach that accounts for regional FFS expenditures and trends in addition to the ACO's historical expenditures and trends (see 80 FR 32795 through 32796).

We are also concerned that existing low spending ACOs operating in regions with relatively higher spending and/or higher growth in expenditures may be positioned to generate savings under the proposed methodology because of the regional adjustment to their rebased historical expenditures rather than as a result of actual gains in efficiency, creating an opportunity for arbitrage. In particular, we are concerned about the potential for ACOs to alter their healthcare provider and beneficiary compositions or take other such actions in order to achieve more favorable performance relative to their region without actually changing their efficiency. We anticipate these effects to be more pronounced, the larger the percentage that is applied to the difference between the regional average expenditures for the ACO's regional service area and the ACO's rebased historical expenditures when calculating the regional adjustment. However, we believe there is uncertainty around the magnitude of these possible negative consequences of adjusting the ACO's rebased benchmark based on regional expenditures in the ACO's regional service area which have yet to be observed. We believe these concerns are likely to be outweighed by the benefits of encouraging more efficient care through a benchmark rebasing methodology that encourages continued participation by ACOs that are efficient relative to their regional service area by placing greater weight on regional expenditures when resetting the ACO's benchmark over subsequent agreement periods. The use of a higher percentage in calculating the regional adjustment would create strong incentives for higher spending ACOs to be more efficient relative to their regional service areas while also improving the quality of care provided to their beneficiaries. Furthermore, this approach will also ensure that ACOs' rebased benchmarks continue to reflect in part their historical spending.

To balance these concerns, we considered a phased approach to transitioning to greater weights in calculating the adjustment amount, expressed as a percentage of the difference between regional average

expenditures for the ACO's regional service area and the ACO's rebased historical expenditures. We considered how quickly or slowly to phase-in the maximum weight. Taking the suggestions of some stakeholders, including commenters on the December 2014 proposed rule, such as MedPAC (describing phase-in to a regional benchmark to be completed by 2021, if implemented in 2016) (see 80 FR 32792; see also letter from Glenn M. Hackbarth, J.D., Chairman, Medicare Payment Advisory Commission to Ms. Marilyn Tavenner, Administrator, Centers for Medicare and Medicaid Services, regarding File code CMS–1461–P (February 2, 2015) (available through *www.regulations.gov,* comment tracking number 1jz–8gz6–jbt1)), we considered increasing the weight used in calculating the adjustment over time, making an ACO's benchmark gradually more reflective of expenditures in its region and less reflective of the ACO's own historical expenditures. We considered a phase-in approach that includes the following features:

- Maintain the current methodology for establishing the benchmark for an ACO's first agreement period in the Shared Savings Program based on the historical expenditures for beneficiaries assigned to the ACO with no adjustment for expenditures in the ACO's regional service area in order to provide continued stability to the program and the momentum for attracting new organizations. As over 400 ACOs have voluntarily entered the program under this methodology we believe the current methodology is an important part of facilitating entry into the program by organizations located throughout the nation that have differing degrees of experience with accountable care models and have varying provider compositions.
- Increase the percentage used in calculating the regional adjustment amount, applied to the ACO's rebased historical benchmark (determined as specified in this proposed rule), over subsequent agreement periods. For ACOs entering their second agreement period, in calculating the regional adjustment we would take 35 percent of the difference between the ACO's regional service area expenditures and the ACO's rebased historical benchmark expenditures. For ACOs entering their third or subsequent agreement period, the percentage used in this calculation would be set at 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking.

In making a determination of whether a lower weight should be used in calculating the adjustment, the Secretary would assess what effects the regional adjustment (and other modifications to the program made under this rule) are having on the Shared Savings Program, considering factors such as but not limited to: The effects on net program costs; the extent of participation in the Shared Savings Program; and the efficiency and quality of care received by beneficiaries. As part of this determination, the Secretary may also take into account other factors, such as the effect of implementation of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) on the Shared Savings Program by incentivizing physicians and certain other practitioners to participate more broadly in alternative payment models.

Such a determination could potentially occur in advance of the first application of this higher percentage. For example, the determination could be made in advance of the agreement period beginning January 1, 2020, which is the start of the third agreement period for ACOs that entered the program in January 2014 and the first group of ACOs to which the revised rebasing methodology discussed in this proposed rule would apply. Any necessary modifications to program policies as a result of the Secretary's determination, such as reducing the long-term weight used in calculating the regional adjustment below 70 percent or making other program changes (for example, refinements to the risk adjustment methodology as described in section II.A.2.e.3. of this proposed rule) would be proposed in future rulemaking, such as through the calendar year (CY) 2020 Physician Fee Schedule rule. Subsequently, we would periodically assess the effects of the regional adjustment over time and address any needed modifications to program policies in future rulemaking.

- As discussed in section II.A.2.f. of this proposed rule, for ACOs that started in the program in 2012 and 2013 and started their second agreement period on January 1, 2016, we would apply this phased approach when rebasing for their third and fourth agreement periods.

We believe this phased approach to moving to a higher percentage in calculating the adjustment for regional expenditures would give ACOs sufficient notice of the transition to benchmarks that reflect regional expenditures. Further, we believe this approach to phasing in the use of a greater percentage to calculate the regional adjustment provides a smoother transition for ACOs to benchmarks reflective of regional FFS expenditures, giving ACOs more time to prepare for this change and therefore ultimately maintaining the stability of ACOs, the Shared Savings Program and the markets where ACOs operate.

Alternatively, we considered using a percentage set at 50 percent in calculating the regional adjustment amount for ACOs entering their third and subsequent agreement periods (under the phased approach previously described in this section of the proposed rule). We also considered taking a more gradual approach to transitioning to the use of a higher percentage in calculating the adjustment. For instance, in the ACO's second agreement period the percentage used in calculating the regional adjustment would be set at 35 percent; in the ACO's third agreement period the percentage would be set at 50 percent; and in the ACO's fourth and subsequent agreement periods, the percentage would be set at 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking. However, we prefer an approach which more quickly transitions to the use of a higher percentage in calculating the adjustment, as previously described, over the course of two rebasing periods (for example, the ACO's second and third agreement periods). We believe this faster transition to use of a higher percentage in calculating the adjustment would more quickly create incentives to drive the most meaningful change for ACOs under the Shared Savings Program, including ensuring the program more immediately encourages continued participation by ACOs that are efficient relative to their regional service area.

We also considered an approach that would be similar to the approach to phasing in regional costs described previously, except that we would begin to incorporate some information on an ACO's regional costs during an ACO's initial agreement period, for agreement periods beginning on or after January 1, 2017. In particular, rather than using national trends in FFS expenditures to trend benchmark year expenditures when establishing the benchmark and to update the benchmark annually during the agreement period, we considered using regional FFS expenditures for both of these purposes for an ACO's first agreement period, similar to the approach we are proposing to use for subsequent agreement periods. We describe and seek comment on related considerations in sections II.A.2.d.2. and II.A.2.d.3. of this proposed rule. Under this alternative, the modified first agreement period benchmarking methodology would apply prospectively

to new ACOs entering the program for their first agreement period on or after January 1, 2017. Such an approach has the advantage that it would generate benchmarks that would better measure the factors driving costs for any particular ACO based on the dynamics specific to its regional service area. This approach would also reduce the differences between the benchmarking methodology used in an ACO's first agreement period and the methodology used in subsequent agreement periods, potentially easing the transition between agreement periods. This approach has the potential disadvantage that it would represent a departure from the methodology used for earlier cohorts of ACOs.

Therefore, we are proposing a phased approach to moving to a higher weight in calculating the regional adjustment, ultimately reaching 70 percent, subject to assessment by the Secretary as discussed previously. We propose to incorporate the following proposed policies regarding the weight to be applied in determining the regional adjustment in a new regulation at § 425.603:

- Calculate the regional adjustment in the ACO's second agreement period by applying a weight of 35 percent to the difference between regional average expenditures for the ACO's regional service area and the ACO's rebased historical benchmark expenditures.
- In the ACO's third and subsequent agreement periods, the percentage used in this calculation would be set at 70 percent unless the Secretary determines a lower weight should be applied as specified through future rulemaking.

We seek comment on our proposed approach to phase in the weight used in calculating the regional adjustment. We are particularly interested in understanding commenters' thoughts and suggestions about the percentage that should be used in calculating the adjustment for regional FFS expenditures. We also seek comment on the alternatives we considered including: (1) Limiting the weight used in the calculation of the adjustment to 50 percent (instead of 70 percent) in the ACO's third and subsequent agreement period; (2) a more gradual transition to use of a higher percentage in calculating the adjustment (such as 35 percent in the second agreement period, 50 percent in the third agreement period, and 70 percent in the fourth and subsequent agreement period); and (3) a phase-in approach that uses regional (instead of national) FFS expenditures to trend benchmark year expenditures when establishing and updating the benchmark during an ACO's first agreement period (for agreement periods beginning on or after January 1, 2017). We also seek comment on alternative approaches to address our concerns about selective program participation and arbitrage opportunities that would facilitate our use of a higher percentage in calculating the amount of the adjustment.

d. Proposals for Parity Between Establishing and Updating the Rebased Historical Benchmark

(1) Background

In the initial rulemaking to establish the Shared Savings Program, we identified the need to trend forward the expenditures in each of the 3 years making up the historical benchmark. As explained in earlier rulemaking, because the statute requires the use of the most recent 3 years of per-beneficiary expenditures for Parts A and B services for FFS beneficiaries assigned to the ACO to estimate the benchmark for each ACO, the per capita expenditures for each year must be trended forward to current year dollars before they are averaged using the applicable weights to obtain the benchmark (see 76 FR 19609). In the November 2011 final rule, we finalized an approach under § 425.602(a)(5) for trending forward benchmark expenditures based on national FFS Medicare growth rates for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible (76 FR 67924 through 67925). We also explained that making separate calculations for specific groups of beneficiaries—specifically the aged/dual eligible, aged/non-dual eligible, disabled, and ESRD populations—accounts for variation in costs of these groups of beneficiaries, resulting in more accurate calculations (76 FR 67924). We considered using national, State or local growth factors to trend forward historical benchmark expenditures (76 FR 19609 through 19610, 76 FR 67924 through 67925). However, we concluded that using the national growth rate for Parts A and B FFS expenditures as a trend factor for establishing the historical benchmark offered a number of advantages over the alternatives considered, including the following:

- More consistent with the statutory methodology for updating an ACO's benchmark (see 76 FR 19610 and 76 FR 67924).
- Applies a single growth factor to all ACOs, regardless of their size or geographic area; allowing us to move toward establishing a national standard to calculate and measure ACO financial performance (see 76 FR 19610 and 76 FR 67925).
- Appropriately balanced concerns that benchmark trending should encourage participation among providers that are already efficient or operating in low cost regions without unduly rewarding ACOs in high-cost areas (see 76 FR 67925).

We discussed this last point in detail, considering the likely incentives for developing organizations to participate in the program that would result from a policy of using national growth rates to trend forward benchmark expenditures. We explained that the anticipated net effect of using the same trending factor for all ACOs would be to provide a relatively higher expenditure benchmark for low growth/low spending ACOs and a relatively lower benchmark for high growth/high spending ACOs. ACOs in high cost, high growth areas would therefore have an incentive to reduce their rate of growth more to bring their costs more in line with the national average; while ACOs in low cost, low growth areas would have an incentive to continue to maintain or improve their overall lower spending levels (see 76 FR 67925). We also explained that use of the national growth rate could also disproportionately encourage the development of ACOs in areas with historical growth rates below the national average (see 76 FR 19610). These ACOs would benefit from having a relatively higher benchmark, which would increase the chances for shared savings. On the other hand, ACOs in areas with historically higher growth rates above the national average would have a relatively lower benchmark, and might be discouraged from participating in the program (see 76 FR 19610).

In contrast, as we explained in the initial rulemaking to establish the Shared Savings Program, trending expenditures based on State or local area growth rates in Medicare Parts A and B expenditures may more accurately reflect the experience in an ACO's area and mitigate differential incentives for participation based on location (see 76 FR 19610). We considered, but did not finalize, an option to trend the benchmark by the lower of the national projected growth rate or the State or the local growth rate (see 76 FR 19610 and 76 FR 67925). This option balanced providing a more accurate reflection of local experience with not rewarding historical growth higher than the national average. We believed this method would instill stronger saving incentives for ACOs in both high growth and low growth areas (see 76 FR 19610).

Section 1899(d)(1)(B)(ii) of the Act states that the benchmark shall be updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program, as estimated by the Secretary. Further, the Secretary's authority under section 1899(i)(3) of the Act, for implementing other payment models, allows for alternatives to using national expenditures for updating the benchmark, as long as the Secretary determines the approach improves the quality and efficiency of items and services furnished under Medicare and does not to result in additional program expenditures.

In the initial rulemaking, we considered using the flat dollar amount equivalent to the absolute amount of growth in the national FFS expenditures to update the benchmark during an agreement period as specified under section 1899(d)(1)(B)(ii) of the Act. We also considered using our authority under section 1899(i)(3) of the Act to update the benchmark by the lower of the national projected absolute amount of growth in national per capita expenditures and the local/state projected absolute amount of growth in per capita expenditures (see 76 FR 19610 through 19611).

We explained our belief that use of a national update factor was the most appropriate option in light of the following considerations:

- Congress demonstrated an interest in mitigating some of the regional differences in Medicare spending among ACOs by requiring the use of the flat dollar amount equivalent to the absolute amount of growth in national FFS expenditures to update the benchmark during the agreement period (76 FR 19610).
- ACOs in both high spending, high growth and low spending, low growth areas would have appropriate incentives to participate in the program (76 FR 19611).

In particular, we explained that using a flat dollar increase, which would be the same for all ACOs, provides a relatively higher expenditure benchmark for low growth, low spending ACOs and a relatively lower benchmark for high growth, high spending ACOs. Therefore, ACOs in high spending, high growth areas must reduce their rate of growth more (compared to ACOs in low spending, low growth areas) to bring their costs more in line with the national average (see 76 FR 19610). We also indicated that these circumstances could contribute to selective program participation by ACOs favored by the national flat-dollar update, and ultimately result in Medicare costs from shared savings payments that result from higher benchmarks rather than an ACO's care coordination activities (see 76 FR 19610 through 19611 and 19635).

In contrast, updating the benchmark by the lower of the national projected absolute amount of growth in national per capita expenditures and the local/state projected absolute amount of growth in per capita expenditures could instill strong saving incentives for ACOs in low-growth areas, as well as for ACOs in high-growth areas. Incorporating more localized growth factors reflects the expenditure and growth patterns within the geographic area served by ACO participants, potentially providing a more accurate estimate of the updated benchmark based on the area from which the ACO derives its patient population (76 FR 19610).

Ultimately, we finalized our policy under § 425.602(b) to update the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program. Further, consistent with the final policies for calculating the historical benchmark (among other aspects of the Shared Savings Program's financial models) the calculations for updating the benchmark are made for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible (76 FR 67926 through 67927).

In the December 2014 proposed rule, we sought comment on a benchmark rebasing alternative that would use regional FFS expenditures, instead of national FFS expenditures, to develop the historical benchmark trend factors and to update the benchmark during the agreement period (79 FR 72839). We sought comment on using this approach in combination with other alternatives for incorporating regional expenditures into ACO benchmarks, including transitioning ACOs from benchmarks based on their historical expenditures toward benchmarks based on regional FFS expenditures over the course of several agreement periods (79 FR 72841 through 72843). Some commenters were supportive of using a combination of approaches to incorporate regional expenditures into benchmarks. On the issue of which FFS expenditures should be the basis for trending the historical benchmark and updating the benchmark, some commenters expressed support for maintaining the current approach of using only national FFS expenditures, while others suggested using only regional FFS expenditures, or a combination of factors based on regional and national FFS expenditures (see 80 FR 32794).

More specifically, some commenters encouraged CMS to reflect location-specific changes in Medicare payment rates in the benchmarks by using regional factors (based on regional FFS costs) in establishing and updating ACO-specific benchmarks. Other commenters supporting this approach explained that regional expenditures more accurately reflect the health status of populations (for risk adjustment), differences between rural and urban areas or market/regional differences more generally, and differences in beneficiaries' socioeconomic status. A commenter who supported use of regional costs in updating benchmarks indicated this would better address the effects of churn in the ACO's assigned population, which the commenter explained leads the ACO's population to become less reflective of its historical population and more reflective of its regional population. On the other hand, some commenters encouraged CMS to continue using factors based on national FFS costs to trend and update benchmarks. For example, a commenter expressed concern that using regional FFS expenditures instead of national FFS expenditures in establishing and updating the benchmark may further disadvantage existing low-cost ACOs. Others supported allowing ACOs a choice of either regional and national trends, applying the higher of regional or national trends, or applying regional trends to ACOs in existing high-cost regions and national trends to ACOs in existing low-cost regions. Several commenters offered conflicting views on whether moving to use of regional FFS costs in establishing historical and updated benchmarks would advantage or disadvantage existing low cost providers (80 FR 32792).

In the June 2015 final rule (80 FR 32796), we indicated that we needed to consider further what additional adjustments should be made to the benchmarking methodology when moving to a rebasing approach that accounts for regional FFS trends. These considerations included whether to incorporate regional FFS expenditures in updating an ACO's historical benchmark each performance year or to maintain the current policy under which we update an ACO's benchmark based on the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original FFS program. For instance, the update factor could be

based on either regional expenditures or a blend of regional/national FFS expenditures. We also indicated the need to continue to adjust the ACO's historical benchmark for changes in health status and demographic factors of the ACO's assigned beneficiaries during the performance period (as described in section II.A.3 of this proposed rule).

(2) Proposals for Regional Growth Rate as a Benchmark Trending Factor

In considering how to compute an ACO's rebased historical benchmark, we considered replacing the national trend factor that is currently used in trending an ACO's BY1 and BY2 expenditures forward to BY3 with a regional trend factor based on regional FFS expenditures corresponding to the ACO's regional service area. To align with the proposed calculation of the regional FFS expenditures for an ACO's regional service area, we considered the following approach for calculating regional FFS trend factors:

- For each benchmark year, calculate risk adjusted county FFS expenditures for the ACO's regional service area, as described under sections II.A.2.b and II.A.2.e.2 of this proposed rule. As described in section II.A.2.b.4 of this proposed rule, county FFS expenditures would be determined using total county-level FFS Parts A and B expenditures for assignable beneficiaries, excluding IME, DSH, and uncompensated care payments, but including beneficiary identifiable payments made under a demonstration, pilot or time limited program; regional expenditures would be calculated for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible);
- For each benchmark year, compute a weighted average of risk adjusted county-level FFS expenditures with weights based on the ACO's regional service area, that is the proportion of an ACO's assigned beneficiaries residing in each county within the ACO's regional service area. Calculations would be done by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) based on the ACO's benchmark year assigned population.
- Compute the average growth rates from BY1 to BY3, and from BY2 to BY3, using the weighted average risk-adjusted county level FFS expenditures for the respective benchmark years, for each Medicare enrollment type.

We would apply these regional trend factors to the ACO's historical benchmark expenditures, which are also adjusted based on the CMS–HCC model, to account for the severity and case mix of the ACO's assigned beneficiaries in each benchmark year.

Using regional trend factors, instead of national trend factors to trend forward expenditures in the benchmark period, would further incorporate regional FFS spending and population dynamics specific to the ACO's regional service area in the ACO's rebased benchmark. We believe there are number of relevant considerations for moving to use of regional trend factors, including the following:

- Regional trend factors would more accurately reflect the cost experience in an ACO's regional service area compared to use of national trend factors.
- Regional trend factors would reflect the health status of the FFS population that makes up the ACO's regional service area, the region's geographic composition (such as rural versus urban areas), and socio-economic differences that may be regionally related.
- Regional trend factors could better capture location-specific changes in Medicare payments (for example, the area wage index) compared to use of national trend factors.

We also considered how use of regional trend factors in resetting ACO benchmarks could affect participation by relatively high- and low-growth ACOs operating in regions with high and low growth in Medicare FFS expenditures. We anticipate using regional trend factors would result in relatively higher benchmarks for ACOs that are low growth in relation to their region compared to benchmarks for ACOs that are high growth relative to their region. Therefore, use of regional FFS trends could disproportionately encourage the development of and continued participation by ACOs with rates of growth below that of their region. These ACOs would benefit from having a relatively higher benchmark, which would increase their chances for shared savings. On the other hand, ACOs with historically higher rates of growth above the regional average would have a relatively lower benchmark and may be discouraged from participating if they are not confident of their ability to bring their costs in line with costs in their region.

In using regional growth rates specific to an ACO's regional service area and composition (by Medicare enrollment type) we expect to see significant variation in the growth rates between health care markets in different regions of the country and even between ACOs operating in the same markets. This approach would be a departure from the current methodology that applies a single set of national growth factors calculated for each benchmark year by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). However, ACOs familiar with the composition of their assigned population and cost trends in their regional service area may find they can more readily anticipate what these trend factors may be. Additionally, stakeholders may find it helpful to observe differences in county FFS expenditures using the data files made publicly available in conjunction with this proposed rule, as described in detail in the regulatory impact analysis section.

Accordingly, we are proposing to replace the national trend factors used for trending an ACO's BY1 and BY2 expenditures to BY3 in calculating an ACO's rebased historical benchmark with regional trend factors derived from a weighted average of risk adjusted FFS expenditures in the counties where the ACO's assigned beneficiaries reside. Further, we propose to calculate and apply these trend factors for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible. We propose to incorporate this proposal in a new regulation at § 425.603. We seek comment on this proposed change.

We also considered whether it would be sufficient to incorporate regional FFS expenditures into rebased benchmarks by applying regional trend factors (instead of national trend factors) in establishing the rebased benchmark under the existing rebasing methodology. Therefore, we specifically seek comment on the use of regional trend factors for trending forward an ACO's BY1 and BY2 expenditures to BY3 in establishing and resetting historical benchmarks under the current approach to resetting ACO benchmarks in § 425.602(c) as an alternative to adopting the proposed approach to adjusting rebased benchmarks to reflect FFS expenditures in the ACO's regional service area, as discussed in section II.A.2.c of this proposed rule. Further, we considered and seek comment on an alternative under which we would apply regional trend factors for trending forward BY1 and BY2 expenditures to BY3 in establishing the benchmark for an ACO's first agreement period under § 425.602(a), allowing this policy to be applied consistently program-wide beginning with an ACO's first agreement period.

(3) Proposals for Updating the Reset Benchmark During the Agreement Period

Section 1899(d)(1)(B)(ii) of the Act states the benchmark shall be updated

by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program, as estimated by the Secretary. Accordingly, we currently update the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program.

We considered using an update factor based on the regional FFS expenditures for the ACO's regional service area to update an ACO's rebased historical benchmark during the ACO's second or subsequent agreement period. This approach would align with our proposal to use regional FFS expenditures in developing the trend factors for the rebased historical benchmark (to trend BY1 and BY2 expenditures to BY3) and our proposal to adjust the ACO's rebased historical benchmark to reflect regional FFS expenditures. Updating the benchmark based on regional FFS expenditures annually, during the course of the agreement period, would result in a benchmark used to determine shared savings and losses for a performance year that reflects trends in regional FFS growth for the ACO's regional service area for the corresponding year. As with use of regional trend factors instead of national trend factors (discussed in section II.A.2.d.2. of this proposed rule), we believe calculating the update factor using regional FFS expenditures would better capture the cost experience in the ACO's region, the health status and socio-economic dynamics of the regional population, and location-specific Medicare payments, when compared to using national FFS expenditures. Adopting this approach would require our use of authority under section 1899(i)(3) of the Act as it is a departure from the methodology for annually updating the benchmark specified under section 1899(d)(1)(B)(ii) of the Act.

We considered using the following approach to calculate the regional update amount for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible):

- For each calendar year corresponding to a performance year, calculate risk adjusted county FFS expenditures for the ACO's regional service area, as described under sections II.A.2.b. and II.A.2.e.2. of this proposed rule. As described in section II.A.2.b.4. of this proposed rule, county FFS expenditures would be determined using total county-level FFS Parts A and B expenditures for assignable beneficiaries, excluding IME, DSH, and uncompensated care payments, but including beneficiary identifiable payments made under a demonstration, pilot or time limited program, truncated and risk adjusted for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). The ACO's regional service area would be defined based on the ACO's assigned beneficiary population used to perform financial reconciliation for the relevant performance year.
- Compute a weighted average of risk adjusted county-level FFS expenditures with weights based on the proportion of an ACO's assigned beneficiaries residing in each county of the ACO's regional service area. Calculations would be done by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) based on the ACO's assigned population used to perform financial reconciliation for the relevant performance year. This would result in an update factor for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).

We considered whether to calculate a flat dollar equivalent of the projected absolute amount of growth in regional per capita expenditures for Parts A and B FFS services, or whether to calculate the percentage change in growth in regional FFS expenditures for the ACO's regional service area. We discussed issues related to use of a growth rate or a flat dollar amount in the initial rulemaking to establish the Shared Savings Program, including our view that a growth rate would more accurately reflect each ACO's historical experience, but could also perpetuate current regional differences in medical expenditures (see 76 FR 19609 through 19610 and 76 FR 67924). For the reasons discussed in the earlier rulemaking, we believe that using growth rates to determine the annual update would more effectively capture changes in the ACO's regional service area expenditures and changes in the health status of the ACO's population in comparison to the health status of the population of the ACO's regional service area over time. Using a growth rate to update ACOs' benchmarks would also result in proportionately larger updates for higher spending ACOs in the region and lower updates for lower spending ACOs in the region and would strike a balance with the flat-dollar average regional expenditures used to adjust the ACOs historical benchmark.

We also considered how to apply the update to the ACO's rebased historical benchmark adjusted for expenditures in the ACO's regional service area. To maintain the overall structure of the program's current methodology, and to align with the other proposed revisions to the methodology used to calculate an ACO's rebased historical benchmark described in this proposed rule, the update would be applied after all adjustments are made to the ACO's rebased benchmark. For example, for an ACO in its second or subsequent agreement period, the sequence for adjustments and the application of the update would be as follows:

- Calculate the ACO's rebased historical benchmark using historical expenditures for the beneficiaries assigned to the ACO in the 3 years prior to the start of its current agreement period, using trend factors based on regional FFS expenditures to trend the ACO's BY1 and BY2 expenditures to BY3, and applying equal weights to the benchmark years (as described in sections II.A.2.c. and II.A.2.d.2. of this proposed rule).
- Adjust the ACO's rebased historical benchmark to reflect risk adjusted regional average expenditures based on county FFS expenditures determined for the ACO's regional service area, as described in section II.A.2.c. of this proposed rule.
- As needed, adjust the ACO's rebased historical benchmark to account for changes in ACO participants for the performance year, as described in section II.B. of this proposed rule.
- Adjust the ACO's rebased historical benchmark according to the health status and demographic factors of the ACO's performance year assigned beneficiary population. We would continue to apply the current newly and continuously assigned risk adjustment methodology, described in detail in section II.A.3. of this proposed rule.
- Update the adjusted rebased historical benchmark using the growth rates in risk adjusted FFS expenditures for the ACO's regional service area for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).

The use of an update factor based on regional FFS spending offers different incentives compared to an update factor reflecting only growth in national FFS spending. For instance, accounting for national FFS spending in an ACO's benchmark update, similar to the current methodology for updating ACO benchmarks, would continue to incorporate a national standard in the calculation and measurement of ACO financial performance. This approach would provide a relatively higher expenditure benchmark for low spending ACOs in low growth areas and

a relatively lower benchmark for high spending ACOs in high growth areas. In contrast, accounting for changes in regional FFS spending between the benchmark and the performance year by updating the benchmark according to changes in regional FFS expenditures, would ensure that the benchmark continues to reflect recent trends in FFS spending growth in the ACO's region throughout the duration of the ACO's agreement period.

However, we anticipate there being significant variation in annual benchmark updates for individual ACOs, reflecting the cost experience in each ACO's individualized regional service area along with changes in the health status of the population of patients served by the ACO as well as changes in the types of Medicare entitlement status in the ACO's assigned beneficiary population. The update factors are used to account for change in FFS growth. The degree of year-to-year change in expenditures will likely vary in both existing low- and high-growth regions and could also vary significantly from expectations. In particular, we note our early experience in the program, where the 2012 national FFS growth factors (as used for interim reconciliation for the 2012 starters) showed an overall decrease in expenditures totaling −0.5 percent, and decreases in expenditures for three of four Medicare eligibility types (ESRD, aged/dual eligible, aged/non-dual eligible). Only disabled beneficiaries experienced a growth in expenditures in this timeframe. The resulting negative updates (and corresponding decreases in benchmark values) were surprising to many stakeholders who presumed that the updates would result in benchmark increases.

As discussed previously in this section, it would be necessary to use the discretionary authority in section 1899(i)(3) of the Act to adopt a policy under which we would calculate the benchmark update using regional FFS expenditures. Section 1899(i)(3) of the Act authorizes the Secretary to use other payment models in place of the payment model outlined in section 1899(d) of the Act as long as the Secretary determines these other payment models will improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without additional program expenditures. We believe that updating an ACO's rebased historical benchmark based on regional FFS spending, rather than national FFS spending (as is done currently) would have positive effects for the Shared Savings Program and Medicare beneficiaries. As described in the regulatory impact analysis of this proposed rule, the proposed changes to the payment model used in the Shared Savings Program, including updating the ACO's rebased historical benchmark based on regional FFS spending, are anticipated to increase overall participation in the program, improve incentives for ACOs to invest in effective care management efforts, and increase the accuracy of benchmarks in capturing the experience in an ACO's regional service area compared to the use of national FFS expenditures. Therefore, we believe these changes would result in improved quality of care furnished to Medicare beneficiaries, and greater efficiency of items and services furnished to these beneficiaries, as more ACOs enter and remain in the Shared Savings Program and continue to work to meet the program's three-part aim of better care for individuals, better health for populations and lower growth in expenditures.

We note that section 1899(i)(3)(B) of the Act provides that the requirement that the other payment model not result in additional program expenditures ''shall apply . . . in a similar manner as [subparagraph (b) of paragraph (2) of section 1899(i)] applies to the payment model under [section 1899(i)(2)].'' Section 1899(i)(2) of the Act provides discretion for the Secretary to use a partial capitation model rather than the payment model described in section 1899(d) of the Act. Section 1899(i)(2)(B) of the Act provides that—

> [p]ayments to an ACO for items and services under this title for beneficiaries for a year under the partial capitation model shall be established in a manner that does not result in spending more for such ACO for such beneficiaries than would otherwise be expended for such ACO for such beneficiaries for such year if the model were not implemented, as estimated by the Secretary.

We have not previously addressed this provision in rulemaking. We believe we could use a number of approaches to address this statutory requirement, for example: Through an initial estimation that the model does not result in additional expenditures and that spans multiple years of implementation; by a periodic assessment that the model does not result in additional program expenditures; or by structuring the model in a way such that CMS could not spend more for an ACO for such beneficiaries than would otherwise be expended for such ACO for such beneficiaries for such year if the model were not implemented. However, because section 1899(i)(3)(B) of the Act states only that the requirement that the payment model not result in additional program expenditures must be applied in ''a similar manner'' to the requirement under section 1899(i)(2)(B) of the Act, we believe we have some discretion to tailor this requirement to the payment framework that is being adopted under the other payment model.

Section 1899(i)(3)(B) of the Act also specifies that the other payment model must not result in additional program expenditures. Section IV.E. of this proposed rule discusses our analysis of this requirement, and our initial assessment of the costs associated with a payment model that includes changes to the manner in which we update the benchmark during an ACO's agreement period. We compared all current policies and proposed policies to policies that could be implemented under section 1899(d)(1)(B)(ii) of the Act, and assessed that for the period spanning 2017 through 2019 there would be net federal savings. Therefore, we believe that the proposed alternative payment model under section 1899(i)(3) of the Act, which includes using regional FFS expenditures to update an ACO's rebased historical benchmark and using FFS expenditures of assignable beneficiaries to calculate the national benchmark update for ACOs in their first agreement period and for ACOs that started a second agreement period on January 1, 2016, as discussed in section II.A.2.d.3. of this proposed rule, as well as current policies established using the authority of section 1899(i)(3) of the Act, meets the requirements under section 1899(i)(3)(B) of the Act. We anticipate that the costs of this alternative payment model will be periodically reassessed as part of the impact analysis for subsequent rulemaking regarding the payment models used under the Shared Savings Program. However, in the event we do not undertake additional rulemaking, we intend to periodically reassess whether a payment model established under authority of section 1899(i)(3) of the Act continues to improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without resulting in additional program expenditures. If we determine the payment model no longer satisfies the requirements of section 1899(i)(3) of the Act, for example if the alternative payment model results in net program costs, we would undertake additional notice and comment rulemaking to make adjustments to our payment methodology to assure continued compliance with the statutory requirements.

To summarize, we are proposing to include a provision in the proposed new regulation at § 425.603 to specify that for ACOs in their second or subsequent agreement period whose rebased historical benchmark incorporates an adjustment to reflect regional expenditures, the annual update to the benchmark will be calculated as a growth rate that reflects risk adjusted growth in regional per beneficiary FFS spending for the ACO's regional service area. Further, we propose to calculate and apply separate update factors based on risk adjusted regional FFS expenditures for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, and aged/non-dual eligible. We seek comment on this proposal. We also seek comment on the alternatives considered, including calculating the update factor as the flat dollar equivalent of the projected absolute amount of growth in regional per capita expenditures for Parts A and B FFS services for the ACO's regional service area.

We want to clarify that the current methodology for calculating the annual update will continue to apply in updating an ACO's historical benchmark during its first agreement period, as well as in updating the rebased historical benchmark for the second agreement period for ACOs that started in the program in 2012 or 2013, and entered their second agreement period on January 1, 2016. That is, for these ACOs, we would continue to update the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program. We believe the continued application of an update based on national FFS spending is consistent with the methodology used to establish the benchmarks for these ACOs, particularly the use of trend factors based on national FFS spending to trend an ACO's BY1 and BY2 expenditures to BY3. However, as discussed earlier in this section of this proposed rule, we are seeking comment on the use of trend factors based on regional FFS expenditures, instead of national FFS expenditures, in establishing the benchmark for an ACO's first agreement period (see section II.A.2.d.2. of this proposed rule). Likewise, we considered and seek comment on using regional FFS expenditures, instead of national FFS expenditures, to update an ACO's historical benchmark beginning with its first agreement period.

e. Proposals for Parity Between Calculation of ACO, Regional and National FFS Expenditures

(1) Background

In the November 2011 final rule, we established a methodology for determining ACO benchmark and performance year expenditures for Medicare FFS beneficiaries assigned to the ACO. Under that methodology, we take into account payments made from the Medicare Trust Funds for Parts A and B services for assigned Medicare FFS beneficiaries, including individually beneficiary identifiable payments made under a demonstration, pilot or time limited program, when computing average per capita Medicare expenditures under the ACO. We exclude IME payments and DSH and uncompensated care payments from both benchmark and performance year expenditures. This adjustment to benchmark expenditures falls under the Secretary's discretion established by section 1899(d)(1)(B)(ii) of the Act to adjust the benchmark for beneficiary characteristics and such other factors as the Secretary determines appropriate. However, section 1899(d)(1)(B)(i) of the Act only provides authority to adjust expenditures in the performance period for beneficiary characteristics and does not provide authority to adjust for ''other factors.'' Therefore, to remove IME and DSH payments from performance year expenditures, we used our authority under section 1899(i)(3) of the Act, which authorizes use of other payment models, in order to make this adjustment (see 76 FR 67920 through 67922). We allow for a 3-month run out of claims data and apply a claims completion factor (percentage), to more accurately determine an ACO's benchmark and performance year expenditures (76 FR 67837 through 67838). To minimize variation from catastrophically large claims we truncate an assigned beneficiary's total annual Parts A and B FFS per capita expenditures at the 99th percentile of national Medicare FFS expenditures as determined for each benchmark year and performance year (76 FR 67914 through 67916).

We perform many of these calculations separately for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, and aged/non-dual eligible. For example, we calculate benchmark and performance year expenditures, determine truncation thresholds, and risk adjust ACO expenditures separately for each of these four Medicare enrollment types. As part of this methodology, we account for circumstances where a beneficiary is enrolled in a Medicare enrollment type for only a fraction of a year, through a process that results in a calculation of ''person years'' for a given year. We calculate the number of months that each beneficiary is enrolled in Medicare in each Medicare enrollment type, and divide by 12. When we sum the fraction of the year enrolled in Medicare for all the beneficiaries in each Medicare enrollment type, the result is total person years for the beneficiaries assigned to the ACO.

We apply these policies consistently across the program, as specified in the provisions for establishing, updating and resetting the benchmark under § 425.602, and for determining performance year expenditures under § 425.604 for Track 1 ACOs and under § 425.606 for Track 2 ACOs. Further, in developing Track 3, we determined that it would be appropriate to calculate expenditures consistently program-wide (see 80 FR 32776 through 32777). Accordingly, the provisions in § 425.602 governing establishing, updating, and resetting the benchmark also apply to ACOs under Track 3, and we adopted the same approach for determining performance year expenditures as is used in Track 1 and Track 2 in § 425.610 for Track 3 ACOs.

(2) Proposals for Calculation of Regional FFS Expenditures

As part of our proposal to adjust the historical benchmark to reflect regional FFS expenditures, we believe it is important to calculate FFS expenditures for an ACO's region in a manner consistent with the methodology used to calculate an ACO's benchmark and performance year expenditures. Consistent application of program methodology in calculating FFS expenditures will result in more predictable and stable calculations across the program over time, for example as ACOs transition from a benchmarking methodology that incorporates factors based on national FFS expenditures to one that incorporates factors based on regional FFS expenditures. In addition, use of an alternative approach to calculating regional FFS expenditures could introduce bias because different types of payments could be included in or excluded from these expenditures, as compared to historical benchmark expenditures and performance year expenditures.

To increase predictability and stability, and avoid this bias, we believe we should follow the same approach in calculating regional FFS expenditures as is used in calculating benchmark and performance year expenditures, for

instance by including total Parts A and B FFS claims for the assignable beneficiary population for each county that will be used as the basis for determining expenditures for the ACO's regional service area and using a 3-month claims run out with a completion factor. As explained in previous rulemakings for the Shared Savings Program, we apply a 3-month claims run out and completion factor (expressed as a percentage) so that our calculation of ACO expenditures for a given calendar year reflects the full costs of care furnished to assigned beneficiaries during that year. The decision to use a 3-month claims run out and a completion factor was based on our experience with the submission and processing of Parts A and B claims for services and the inherent lag between when a service is performed and when a claim is submitted for payment (see 76 FR 67837 through 67838; see also 80 FR 32776 through 32777). Currently we use a completion factor that takes into account our experience with the submission of FFS claims nationwide. For instance, since the start of the program (as part of determining ACO benchmarks and the expenditure calculations for the performance years ending December 31, 2013, and December 31, 2014) we have consistently used the same completion factor as a multiplier applied to total Parts A and B expenditures for an ACO's assigned beneficiaries. We anticipate continuing to use completion factors based on national FFS claims to determine FFS expenditures for an ACO's regional service area, as opposed to calculating county-level claims completion factors. We believe claims completion factors based on national FFS data will continue to accurately reflect the full cost of care furnished to ACO assigned beneficiaries, because these factors are calculated based on a broad population of Medicare FFS beneficiaries and therefore comprehensively reflect billing practices of Medicare providers and suppliers nationally. Applying completion factors based on national FFS claims to regional FFS expenditures also allows us to consistently apply a single set of completion factors across program calculations, further ensuring the comparability of these calculations across the program over time. We are concerned that an alternative approach to calculating completion factors, such as county level completion factors, would add additional complexity without providing additional accuracy. Further, applying region or county-specific completion factors in some calculations and nationally-based completion factors in other calculations, could result in lack of comparability of resulting expenditures.

In the initial rulemaking establishing the Shared Savings Program, we finalized an approach to determining which payments are included in expenditures used in program calculations. Consistent with section 1899(d)(1) of the Act, we take into account payments made from the Medicare Trust Funds for Parts A and B services for assigned Medicare FFS beneficiaries, including individual beneficiary identifiable payments made under a demonstration, pilot or time limited program when computing average per capita Medicare expenditures under the ACO (see 76 FR 67919 through 67920). We also believe that the calculation of Parts A and B county FFS expenditures used as the basis for calculating the ACO's regional service area expenditures should include individually beneficiary identifiable payments made under a demonstration, pilot or time limited program. Unless these payments are included in the calculation of regional FFS expenditures, these expenditures will be understated compared to ACO benchmark and performance year expenditures. In the November 2011 final rule, we also finalized an approach whereby we exclude IME and DSH payments from program calculations, so as not to create an incentive for ACOs to avoid referrals to hospitals that receive IME and/or DSH payments in an effort to demonstrate savings (see 76 FR 67920 through 67922). Similarly, we believe IME payments and DSH and uncompensated care payments should be excluded from regional FFS expenditures. Absent this adjustment, regional expenditures will overstate payments to providers receiving IME payments and/or DSH and uncompensated care payments, as compared to benchmark and performance year expenditures.

In prior rulemaking for the Shared Savings Program we established policies for truncating an assigned beneficiary's total annual Parts A and B FFS per capita expenditures at the 99th percentile of national Medicare FFS expenditures when calculating benchmark and performance year expenditures (see 76 FR 67915 through 67916; see also 80 FR 32776 through 32777). This truncation minimizes variation from catastrophically large claims. To prevent overstatement of the regional FFS expenditures that will be used to adjust an ACO's rebased historical benchmark, we believe it is necessary to apply the same approach to truncating beneficiary expenditures when calculating county FFS expenditures that are used as the basis for determining expenditures for an ACO's regional service area.

We also risk adjust benchmark expenditures in the Shared Savings Program, to take into account the severity of health status and case mix of assigned beneficiaries, as described in greater detail in section II.A.3.a. of this proposed rule. For example, we use the prospective CMS–HCC model for adjusting benchmark expenditures in establishing the ACO's historical benchmark (see 76 FR 67916 through 67919, and § 425.602(a)(3)). Similarly, we would risk adjust county FFS expenditures for severity and case mix of assignable beneficiaries using the prospective CMS–HCC model.

In financial calculations under the Shared Savings Program, we make separate expenditure calculations for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, and aged/non-dual eligible (see §§ 425.602, 425.604, 425.606, and 425.610). For instance, we use this approach in calculating and truncating benchmark and performance year expenditures, trending historical benchmark expenditures and updating the historical benchmark, and in risk adjusting expenditures. Consistent with this approach, we believe it is important to calculate expenditures for each county used to determine the expenditures for an ACO's regional service area separately for each of these populations of beneficiaries. As described previously in the background for this section of this proposed rule, we use beneficiary person years in calculating expenditures for each Medicare enrollment type. Consistent with this approach, we would also calculate beneficiary person years when determining county FFS expenditures for each Medicare enrollment type.

Taking these considerations into account, we propose to take the following steps in calculating county FFS expenditures used to determine expenditures for an ACO's regional service area:

- Calculate the payment amounts included in Parts A and B FFS claims using a 3-month claims run out with a completion factor. Exclude IME, DSH, and uncompensated care payments. Include individually beneficiary identifiable payments made under a demonstration, pilot or time-limited program.
- Truncate a beneficiary's total annual Parts A and B FFS per capita expenditures at the 99th percentile of

national Medicare FFS expenditures as determined for the relevant benchmark or performance year in order to minimize variation from catastrophically large claims.

• Adjust expenditures for severity and case mix using prospective CMS–HCC risk scores.

• Make separate expenditure calculations for each of the following populations of beneficiaries, stated as beneficiary person years: ESRD, disabled, aged/dual eligible, and aged/non-dual eligible.

We propose to incorporate this proposed methodology for calculating county FFS expenditures in a new section of the Shared Savings Program regulations at § 425.603. We seek comment on this proposed methodology and on any additional factors that should be considered in calculating the expenditures for an ACO's regional service area.

(3) Proposals for Modifying the Calculation of National FFS Expenditures, Completion Factors, and Truncation Thresholds Based on Assignable Beneficiaries

Several elements of the existing Shared Savings Program financial calculations are based on expenditures for all Medicare FFS beneficiaries regardless of whether they are eligible to be assigned to an ACO, including: The growth rates used to trend forward expenditures during the benchmark period; the projected absolute amount of growth in national per capita expenditures for Parts A and B services used to update the benchmark; the completion factors applied to benchmark and performance year expenditures; and the truncation thresholds set at the 99th percentile of national Medicare FFS expenditures. In calculating these factors based on national FFS expenditures, we take into account Parts A and B expenditures for all Medicare FFS beneficiaries, and exclude IME payments and DSH and uncompensated care payments to align with our methodology for calculating benchmark and performance year expenditures.

Generally, beneficiaries eligible for assignment to Shared Savings Program ACOs are a subset of the larger population of Medicare FFS beneficiaries. In identifying the pool of beneficiaries who can be assigned to an ACO, as a ''pre-step'' to the two-step assignment process under § 425.402, we determine if a beneficiary received at least one primary care service from a physician within the ACO whose services are used in assignment:

• For performance year 2016 and subsequent performance years, the beneficiary must have received a primary care service, as defined under § 425.20, with a date of service during the 12-month assignment window, as defined under § 425.20.

• The service must have been furnished by a primary care physician as defined under § 425.20 or by a physician with one of the primary specialty designations included in § 425.402(c). Therefore, beneficiaries who have not received any primary care service, or who have only received primary care services from physicians with a primary specialty code not specified in § 425.402(c) (see 80 FR 32753 through 32754, Table 5-Physician Specialty Codes Excluded From Assignment Step 2), or from non-physician practitioners are excluded from assignment to an ACO.

This pre-step is designed to satisfy the statutory requirement under section 1899(c) of the Act that beneficiaries be assigned to an ACO based on their use of primary care services furnished by physicians (80 FR 32756; § 425.402(a), § 425.402(b)(1)). We use the beneficiary population resulting from the pre-step, referred to as ''assignable beneficiaries,'' to determine the beneficiaries who will be assigned to an ACO based on the two-step assignment process under § 425.402.

Including beneficiaries ineligible for assignment in calculating factors that are based on the expenditures of the broader FFS population can bias those calculations. There may be differences in the health status and health care cost experience of Medicare beneficiaries excluded from the pre-step compared to those who are eligible for assignment, based on their health conditions and the providers from whom they receive care. Thus, including the expenditures for non-assignable beneficiaries, such as non-utilizers of health care services, can result in lower overall per capita expenditures. These biases may have a more pronounced effect in calculations of regional FFS expenditures, which are based on relatively smaller populations of beneficiaries, as compared to calculations based on the national FFS population. As a result, we are concerned that using expenditures for all Medicare FFS beneficiaries, as opposed to a narrower population of FFS beneficiaries, in calculating certain program elements may introduce a degree of bias in these calculations, particularly for elements based on regional FFS expenditures (as discussed in section II.A.2.b. of this proposed rule).

Therefore, we believe it is timely to reconsider the population that should be used in program calculations for both national and regional FFS populations. Our preferred approach would be to apply a similar logic as is used to identify the population of FFS beneficiaries eligible for assignment as part of the assignment pre-step under § 425.402(b)(1). We would limit the Medicare FFS population used in these program calculations to ''assignable'' Medicare beneficiaries who meet the following requirements: (1) Received at least one primary care service, as defined under § 425.20, with a date of service during the 12-month assignment window; and (2) this primary care service was provided by a primary care physician, as defined under § 425.20, or by a physician with one of the primary specialty designations included in § 425.402(c).

One factor related to calculating expenditures for assignable beneficiaries is the assignment window used to identify this population, with options including: The 12-month period used to assign beneficiaries to Track 1 and 2 ACOs based on a calendar year, and an off-set 12-month period used to assign beneficiaries prospectively to an ACO in Track 3. (See definition of assignment window under § 425.20 and related discussion in the June 2015 final rule at 80 FR 32699.) We believe it is important to calculate regional and national FFS expenditures consistently across the three tracks of the program, so as not to advantage or disadvantage an organization simply on this basis. This consistency would help to ensure a level playing field in markets where multiple ACOs are present, and would also simplify program operations. Accordingly, we are proposing to calculate county FFS expenditures and average risk scores, as well as factors based on national FFS expenditures, using the assignable beneficiary population identified using the assignment window for the 12-month calendar year corresponding to the benchmark or performance year. This is the same assignment window that is currently used to assign beneficiaries under Track 1 and Track 2. We plan to monitor for observable differences in the health status (for example, as identified by HCC risk scores) and expenditures of the assignable beneficiaries identified using the 12-month calendar year assignment window, as compared to assignable beneficiaries identified using an assignment window that is the off-set 12-month period prior to the benchmark or performance year (for example October through September preceding

the calendar year). In the event that we conclude that additional adjustments (for instance as part of risk adjusting county FFS expenditures) are necessary to account for the use of assignable beneficiaries identified using an assignment window that is different from the assignment window used to assign beneficiaries to the ACO, we would address this issue through future rulemaking.

This proposed rule primarily focuses on modifying the methodology for resetting the ACO's historical benchmark for an ACO's second or subsequent agreement period beginning on or after January 1, 2017. As we have indicated elsewhere in this proposed rule (see section II.A.2.d.3. of this proposed rule), while we are proposing to modify the annual update to the ACO's rebased historical benchmark to reflect a regional update, we are not proposing to extend this modification to the benchmark update for ACOs in their first agreement period or for ACOs that started their second agreement period January 1, 2016. We will continue to apply an update based on national FFS expenditures to these ACOs. However, to the extent that we are proposing to change our methodology in order to use only assignable beneficiaries instead of all Medicare FFS beneficiaries in calculating the benchmark update based on national FFS expenditures, we believe we would need to use the authority under section 1899(i)(3) of the Act to adopt other payment models to implement this proposed change.

Section 1899(d)(1)(B)(ii) of the Act states the benchmark shall be updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program, as estimated by the Secretary. The plain language of section 1899(d)(1)(B)(ii) of the Act demonstrates Congress' intent that the benchmark update be calculated based on growth in expenditures for the national FFS population, as opposed to a subset of this population. Therefore, in order to allow us to use only assignable beneficiaries in determining the amount of growth in per capita expenditures for Parts A and B services for purposes of determining the benchmark update for ACOs in their first agreement period and those ACOs that started a second agreement period on January 1, 2016, it is necessary to rely upon our authority under section 1899(i)(3) of the Act. Section 1899(i)(3) of the Act authorizes the Secretary to use other payment models in place of the payment model outlined in section 1899(d) of the Act as long as the Secretary determines these other payment models will improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without additional program expenditures.

For the reasons explained in section II.A.2.d.3 of this proposed rule, we believe using our authority under section 1899(i)(3) of the Act to adopt a payment model that includes calculating the benchmark update for ACOs in their first agreement period and for ACOs that started a second agreement period on January 1, 2016, using national FFS expenditures for assignable beneficiaries, rather than for all FFS beneficiaries, would improve the quality and efficiency of items and services furnished to Medicare beneficiaries. We believe this approach would increase the accuracy of benchmarks, by determining the national update using a population that more closely resembles the population that could be assigned to ACOs. Further, we believe using assignable beneficiaries across program calculations based on national and regional FFS expenditures will result in factors that are generally more comparable. As a result, these calculations will be more predictable and stable across the program over time, for example as ACOs transition from a benchmarking methodology that incorporates national FFS expenditures to one that incorporates factors based on regional FFS expenditures. Ultimately, we believe this policy could increase overall participation in the program, thereby resulting in more organizations working to meet the program's three-part aim of better care for individuals, better health for populations and lower growth in expenditures.

As explained in section II.A.2.d.3. of this proposed rule, section 1899(i)(3)(B) of the Act also specifies that the other payment model must not result in additional program expenditures. Section IV.E. of this proposed rule discusses our analysis of this requirement, and our initial assessment that for the period spanning 2017 through 2019 there would be net federal savings associated with a payment model under section 1899(i)(3) that includes the proposed changes to the manner in which we update the benchmark during an ACO's agreement period.

Taking these considerations into account, we believe applying a payment methodology that includes calculating the benchmark update consistently based on assignable FFS beneficiaries, instead of all FFS beneficiaries, would meet the requirements under section 1899(i)(3) of the Act that the payment model would improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without additional program expenditures. However, as discussed in section II.A.2.d.3. of this proposed rule, we intend to revisit this determination periodically. If we determine the payment model no longer satisfies the requirements of section 1899(i)(3) of the Act, for example if the model results in net program costs, we would undertake additional notice and comment rulemaking to make adjustments to the model to assure continued compliance with the statutory requirements. After considering these issues, we are proposing to use the authority under section 1899(i)(3) of the Act to revise the regulation at § 425.602(b)(1) to specify that the annual update to the benchmark will be based on the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program for assignable beneficiaries. We further propose to specify in this provision of the regulations that we will identify assignable beneficiaries for the purpose of calculating the update based on national FFS expenditures using the 12-month calendar year corresponding to the year for which the update is being calculated. We seek comment on these proposals.

We also propose to make conforming changes to the regulations to specify that assignable Medicare FFS beneficiaries, identified based on the 12-month period corresponding to the calendar year for which the calculations are being made, will be used to perform the following calculations: (1) Truncation thresholds for limiting the impact of catastrophically large claims on ACO expenditures under § 425.602(a)(4), § 425.604(a)(4), § 425.606(a)(4), § 425.610(a)(4); and (2) growth rates used to trend forward expenditures during the benchmark period under § 425.602(a)(5). We will provide additional information through subregulatory guidance regarding the process for using assignable beneficiaries to perform these calculations, as well as calculation of the claims completion factor applied under § 425.602(a)(1), § 425.604(a)(5), § 425.606(a)(5), § 425.610(a)(5).

In addition, we propose to specify in a new provision of the Shared Savings Program regulations at § 425.603 that would govern the methodology for resetting, adjusting, and updating an ACO's benchmark for a second or subsequent agreement period that county FFS expenditures will be based on assignable Medicare FFS beneficiaries determined using the 12-

month period corresponding to the calendar year for which the calculations are being made.

We propose that regulatory changes regarding use of assignable beneficiaries in calculations based on national FFS expenditures would apply for the 2017 performance year and all subsequent performance years. Under this proposal, these changes would apply to ACOs that are in the middle of an agreement period, specifically ACOs that started their first agreement period in 2015 or 2016 and ACOs that started their second agreement period on January 1, 2016. We would adjust the benchmarks for these ACOs at the start of the first performance year in which these proposed changes apply so that the benchmark for the ACO reflects the use of the same methodology that would apply in expenditure calculations for the corresponding performance year.

We seek comment on these proposals. We also seek comment on whether expenditures for all Medicare FFS beneficiaries should be used to calculate these elements for ACOs in their first agreement period or a second agreement period that started on January 1, 2016, while expenditures for assignable Medicare FFS beneficiaries are used to calculate these elements for the ACO's second and subsequent agreement period in combination with the use of the assignable beneficiary population to determine expenditures for the ACO's regional service area.

f. Proposed Timing of Applicability of Revised Rebasing and Updating Methodology

In the June 2015 final rule we indicated that the revised rebasing methodology would ''apply to ACOs beginning new agreement periods in 2017 or later. ACOs beginning a new agreement period in 2016 would convert to the revised methodology at the start of their third agreement period in 2019'' (80 FR 32795). This description did not differentiate between ACOs that started their first agreement period under the Shared Savings Program on January 1, 2016, and ACOs that started in the program in 2012 and 2013 (2012 and 2013 starters) that entered their second agreement period on January 1, 2016.

We considered the following approach, under which the revised rebasing methodology could be applied to new agreement periods beginning on or after January 1, 2017, in a manner that allows for a phase-in to a greater percentage in calculating the regional adjustment (as described in section II.A.2.c.3. of this proposed rule) for all ACOs:

- All ACOs would have the benchmark for their first agreement period set and updated under the methodology under § 425.602(a) and (b).
- The 2014, 2015, 2016 starters and subsequent cohorts entering their second agreement periods on or after January 1, 2017, would be rebased under the proposed new methodology for adjusting an ACO's rebased historical benchmark to reflect expenditures in the ACO's regional service area, and the ACO's rebased benchmark would be updated during the agreement period by growth in regional FFS expenditures. In calculating the regional adjustment to the rebased historical benchmark for an ACO's second agreement period, the percentage applied to the difference between the ACO's regional service area expenditures and ACO's rebased historical benchmark expenditures would be set at 35 percent. In an ACO's third or subsequent agreement period this percentage would be set at 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking.
- With respect to the 2012 and 2013 starters, who have renewed their agreements for 2016, we would apply the current rebasing methodology, under which we equally weight the benchmark years and account for savings generated during the ACO's prior agreement period, in rebasing their historical benchmark for their second agreement period (beginning in 2016). We would apply the methodology currently specified under § 425.602(b) for updating the benchmark annually for each year of their second agreement period. We would apply the proposed new rebasing policies, including the phase in of the percentage used in calculating the regional adjustment, to these ACOs for the first time in calculating their rebased historical benchmark for their third agreement period (beginning in 2019), as if the ACOs were entering their second agreement period. Accordingly, the 2012 and 2013 starters would have the same transition to the use of a higher percentage in calculating the regional adjustment as all other ACOs.

This approach to phasing in the application of the new methodology for adjusting an ACO's rebased historical benchmark to reflect regional FFS expenditures would give ACOs and other stakeholders greater opportunity to prepare for, understand the effects of and adjust to the application of benchmarks that incorporate regional expenditures.

We are proposing to make these changes applicable to ACOs starting a second or subsequent agreement period on or after January 1, 2017. Therefore, they would initially apply in resetting benchmarks for the second agreement period for all ACOs other than 2012 and 2013 starters (who entered their second agreement period on January 1, 2016). Further we are proposing that 2012 and 2013 starters would have the same transition to regional adjustments to their rebased historical benchmarks as all other ACOs: In calculating the regional adjustment to the ACO's rebased historical benchmark for its third agreement period (in 2019), the percentage applied to the difference between the ACO's regional service area expenditures and ACO's rebased historical benchmark expenditures would be set at 35 percent; in its fourth or subsequent agreement period this percentage would be set at 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking. We request comment on this proposed approach to phasing in the application of the revised rebasing and updating methodology.

TABLE 2—CHARACTERISTICS OF CURRENT AND PROPOSED BENCHMARKING APPROACHES

Source of methodology	Agreement period	Historical benchmark trend factors (Trend BY1, BY2 to BY3)	Adjustment to the historical benchmark for regional FFS expenditures (percentage applied in calculating adjustment)	Adjustment to the historical benchmark for savings in prior agreement period?	Adjustment to the historical benchmark for ACO Participant List changes	Adjustment to historical benchmark for health status and demographic factors of performance year assigned beneficiaries	Update to historical benchmark for growth in FFS spending
Current Methodology	First	National	N/A	N/A	Calculated using benchmark year assignment based on the ACO's certified ACO Participant List for the performance year.	Newly assigned beneficiaries adjusted using CMS–HCC model; continuously assigned beneficiaries adjusted using demographic factors alone unless CMS–HCC risk scores result in a lower risk score.	National.
	Second and subsequent.	National	N/A	Yes	Same as methodology for first agreement period.	Same as methodology for first agreement period.	National.
Proposed Rebasing Methodology.	Second (third for 2012/2013 starters).	Regional	Yes (35 percent)	No	ACO's rebased benchmark adjusted by expenditure ratio*.	No change	Regional.
	Third and subsequent (fourth and subsequent for 2012/2013 starters).	Regional	Yes (70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking).	No	Same as proposed methodology for second agreement period.	No change	Regional.

*Proposed adjustment to the historical benchmark for ACO Participant List changes using an expenditure ratio would be a program-wide change applicable to all ACOs including ACOs in their first agreement period. As part of the proposed rebasing methodology, the regional adjustment to the ACO's rebased historical benchmark would be recalculated based on the new ACO Participant List.

3. Risk Adjustment and Coding Intensity Adjustment

a. Overview

In earlier rulemaking for the Shared Savings Program, we identified several risk adjustment considerations related to use of regional expenditures in resetting ACO benchmarks. In the June 2015 final rule, we specified that the subsequent proposed rule on benchmark rebasing would address the following issues related to risk adjustment: (i) How to refine the program's risk adjustment methodology to account for differences in the mix of beneficiaries assigned to the ACO and in the ACO's region; and (ii) how we might guard against excessive payments as ACOs improve documentation and coding of beneficiary conditions, such as by adjusting ACOs' risk scores for coding intensity or imposing limits on the extent to which an ACO's risk score can rise relative to its region (80 FR 32796). In the December 2014 proposed rule, we acknowledged considerations around the need for normalization of the ACO's assigned beneficiary risk scores among other considerations for additional risk adjustment in developing a rebasing methodology to account for regional expenditures (79 FR 72842).

The Shared Savings Program benchmarking methodology uses the CMS–HCC prospective risk score methodology used by the MA program to adjust expenditures for changes in health status of the population assigned to the ACO. Currently we use CMS–HCC risk scores for an ACO's assigned beneficiary population in risk adjusting the ACO's historical benchmark at the start of its first agreement period, adjusted historical benchmark (based on annual participant list changes during the agreement period) and in rebasing the ACO's benchmark for its second or subsequent agreement period (§ 425.602(a)(3)). Each performance year, we adjust the historical benchmark for changes during the performance period in the health status and demographic factors of assigned beneficiaries (§ 425.604(a), § 425.606(a), § 425.610(a)). We use CMS–HCC prospective risk scores to adjust the benchmark to take into account changes in severity and case mix for newly-assigned beneficiaries and demographic factors to adjust for changes for beneficiaries continuously assigned to the ACO. However, if the continuously assigned population shows a decline in its CMS–HCC prospective risk scores, we adjust the benchmark to reflect the lower risk score for this population. The risk adjustment methodology applied in determining the updated benchmark each performance year limits the impact of changes in health status, including limiting the impact of ACO coding initiatives undertaken during the agreement period.

We anticipate that using CMS–HCC risk scores for an ACO's assigned beneficiary population in resetting the ACO's benchmark has the potential to benefit ACOs that have systematically engaged in coding initiatives during their prior agreement period. This effect would have been limited in the corresponding performance years due to the application of our current approach to risk adjusting during the agreement period according to the ACO's newly and continuously assigned beneficiary populations. Although initial financial performance results (for the performance years ending December 31, 2013 and 2014) do not show strong evidence that concerns about systematic coding practices by ACOs have materialized, complete data are not yet available to analyze the effect of coding initiatives in the initial rebasing of ACO benchmarks, as initial program entrants (ACOs with 2012 and 2013 agreement

start dates) only began their second agreement periods on January 1, 2016.

We received various suggestions for risk adjustment approaches, including through comments submitted in response to Shared Savings Program proposed rules (see 76 FR 67917 through 67919; 80 FR 32793). For instance, some commenters responding to the December 2014 proposed rule raised the need to revise the program's risk adjustment methodology when moving to an alternative benchmarking methodology that incorporates regional costs. Commenters suggested, for instance: Using a regional HCC growth rate or accounting for regional variation in updating the HCC formulas; using a concurrent risk adjustment methodology, and doing so in combination with a demographically adjusted regional FFS cost baseline; creating a risk adjustment factor by comparing the HCC coding between the ACO's assigned beneficiaries and the regional comparison population; following the MA methodology for risk adjustment; and readjusting the risk determination of a population after removing beneficiaries determined ineligible for assignment. Some commenters suggested that CMS not be overly restrictive in applying regional normalization and coding intensity adjustments. Others suggested CMS specifically account for other factors in regional adjustments such as changes in access to care for low-cost populations, and the socio-economic risk profile of beneficiaries. One commenter requested that risk adjustment be based on the ACO's historical performance and not the market's historical performance.

In addition, although the December 2014 proposed rule did not explicitly request comment on the program's existing risk adjustment methodology, many commenters took the opportunity to criticize this aspect of the calculation of ACO benchmarks. Almost all commenters addressing the program's existing risk adjustment methodology suggested that it inadequately captures the risk and cost associated with assigned beneficiaries. Of the alternatives to the current risk adjustment methodology presented by commenters, many urged CMS to incorporate the full change in HCC risk scores across each performance year (upward and downward adjustment). Some suggested use of regionally-based risk factors. Others suggested that CMS' concerns about upcoding could be addressed through vigilant monitoring or placing a cap on upward risk adjustment growth (for example, relative to a national or regional growth rate). Some urged CMS to continue researching alternative risk adjustment models and consider additional changes to increase the accuracy of the risk adjustment methodology (see 80 FR 32793).

b. Proposals for Risk Adjusting in Determining the Regional Adjustment to the ACO's Rebased Historical Benchmark and Seeking Comment on Approaches for Risk Adjusting Rebased Benchmarks

To balance CMS' concerns regarding ACO coding practices with the recommendations of commenters, we considered an approach whereby we would perform risk adjustment to account for the health status of the ACO's assigned population in relation to FFS beneficiaries in the ACO's regional service area when determining the regional adjustment to the ACO's rebased historical benchmark described in section II.A.2.c. of this proposed rule. Additionally, we considered rigorously monitoring for the impact of coding initiatives on ACO benchmarks and modifying the risk adjustment methodology used in resetting ACO benchmarks as warranted through future rulemaking.

We propose to adjust for differences in health status between an ACO and its regional service area in a given year, in determining the regional adjustment to the ACO's rebased historical benchmark. For example, we would compute for each Medicare enrollment type a measure of risk-adjusted regional expenditures that would account for differences in HCC risk scores of the ACO's assigned beneficiaries and the average HCC risk scores in the ACO's regional service area. We believe this approach would account for differences in health status between the ACO's assigned population and the broader FFS population in the ACO's regional service area. It would also capture differences in coding intensity efforts applied to the ACO's assigned population and the FFS population in the ACO's regional service area. We propose to include this risk adjustment approach in the revised benchmark rebasing methodology under a new provision of the Shared Savings Program regulations at § 425.603.

While we anticipate the proposed approach would serve as a partial coding intensity adjustment, it may not fully adjust for differential coding intensity by the ACO relative to its region. In other words, this would not adjust for intensive coding practices of the ACO that are above and beyond the coding practices occurring generally in the ACO's region. For this reason, we plan to rigorously monitor for the impact of coding initiatives on ACO benchmarks and, if warranted, would undertake further rulemaking to modify the risk adjustment methodology to further limit ACOs from generating higher benchmarks simply through systematic coding practices. The combined approach of adjusting for an ACO's risk relative to its region while engaging in further rigorous monitoring is also in alignment with certain comments received in response to the December 2014 proposed rule, including comments recommending that CMS compare an ACO's HCC coding with that of a regional comparison population and avoid being overly restrictive in applying coding intensity adjustments (see 80 FR 32793).

We believe the combined approach of proposing to adjust for an ACO's risk relative to that of its region in determining the regional adjustment to the ACO's rebased historical benchmark, while engaging in further rigorous monitoring, is reasonable given the lack of strong evidence to date that ACOs are engaging in more intensive coding practices and given a number of factors that we believe would mitigate the potential impact of coding intensity on ACO financial calculations, including the following:

- The program's current policy for performance year reconciliation under which the ACO's benchmark is risk adjusted using HCC scores for the newly assigned population, but any upward adjustment for the continuously assigned population is limited to demographics, appears to mitigate the impact of ACO coding initiatives.
- CMS is fully transitioning in 2016 to a new HCC model that markedly reduces the model's sensitivity to subjectively coded severity levels for key chronic conditions.
- ACOs are less susceptible to coding practices, for instance, compared to MA plans, for several reasons including the following: (1) ACOs can be comprised of entities with little influence over the coding practices at other facilities or settings (a point made by commenters responding to the December 2014 proposed rule (see 80 FR 32793)); and (2) unlike MA plans, ACOs cannot submit supplemental diagnosis codes.
- Routine changes in the assignment of beneficiaries to the ACO would tend to reduce the potential disparity in coding intensity between the ACO and its region. As a result of normal changes in beneficiary assignment from year to year, beneficiaries whose risk scores were subject to ACO coding initiatives in one year may no longer be assigned to the ACO in the next year. These changes in the ACO's assigned

population may serve to mitigate the effect of coding initiatives by preventing the ACO from being able to systematically apply coding intensity efforts across a static population year after year. In addition, under the proposals described in section II.A.2. of this proposed rule, regional FFS expenditures would reflect the coding intensity efforts (or lack thereof) within the ACO's regional service area, including the ACO's own coding intensity initiatives.

• Many ACOs tend to be clustered in similar regions, meaning coding intensity efforts in such regions would also be felt by the region's wider population as a whole, further reducing the potential impact of coding intensity for ACOs relative to their region. Similarly, ACOs serve a wider population than just their assigned beneficiaries which leads to spillover of any coding shifts to the wider region; when many ACOs are clumped together geographically these spillover effects can be further amplified.

However, we considered several alternatives that might be employed in the future to limit the impacts of intensive coding while still accounting for changes in health status within an ACO's assigned beneficiary population.

One alternative we considered would be to apply the methodology currently used to adjust the ACO's benchmark annually to account for the health status and demographic factors of the ACO's performance year assigned beneficiaries (according to newly and continuously assigned populations) when rebasing the ACO's historical benchmark. Under this approach, newly assigned beneficiaries would always receive full HCC risk adjustment, whereas continuously assigned beneficiaries would receive either HCC or demographic risk adjustment, depending on whether average HCC risk scores were rising or falling. We believe this approach would more significantly limit ACOs from generating higher benchmarks simply through systematic coding practices, compared to the current risk adjustment methodology that accounts for the CMS–HCC scores of all assigned beneficiaries in rebasing, or the approaches proposed in this section. An advantage of this alternative is that it is already part of the current benchmarking methodology and is familiar to ACOs and stakeholders, and would be relatively easy for CMS to implement.

We have also considered ultimately moving to a coding intensity adjustment similar to the methodology used in the MA program which relies on an analysis of populations of beneficiaries who remained in MA for two consecutive reference years, and whose diagnoses all came from MA, referred to as stayers. For a full description of the MA approach see ''Advance Notice of Methodological Changes for Calendar Year (CY) 2010 for Medicare Advantage (MA) Capitation Rates and Part C and Part D Payment Policies,'' February 20, 2009, available online at *https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/downloads/Advance2010.pdf*. Under this approach we would develop a coding intensity adjustment by looking at risk score changes over time for beneficiaries assigned to the ACO for at least two consecutive prospective risk adjustment data years (similar to the population referred to as stayers under the MA methodology) relative to the greater FFS population. One advantage of this approach is that CMS has several years of experience with the methodology used under the MA program. Further, this approach would measure the degree of coding intensity and adjust accordingly. However, before implementing an approach similar to the one used in the MA program, we would need to conduct additional analyses, using Shared Savings Program data spanning several program years, including future years.

We seek comment on the proposals to risk adjust to account for the health status of the ACO's assigned population in relation to FFS beneficiaries in the ACO's regional service area as part of the methodology for adjusting the ACO's rebased historical benchmark to reflect regional FFS expenditures, and to specify this approach under a new provision of the Shared Savings Program regulations at § 425.603. If this approach is finalized, we would rigorously monitor for the impact of coding initiatives on ACO benchmarks and make necessary refinements to the program's risk adjustment methodology through future rulemaking if program results show adverse impacts due to increased coding intensity. We also seek comment on alternatives considered that might be employed in the future to limit the impacts of intensive coding while still accounting for changes in health status within an ACO's assigned beneficiary population, including: (1) Apply the methodology currently used to adjust the ACO's benchmark annually to account for the health status and demographic factors of the ACO's performance year assigned beneficiaries (according to newly and continuously assigned populations) when rebasing the ACO's historical benchmark; or (2) develop a coding intensity adjustment by looking at risk score changes over time for beneficiaries assigned to the ACO for at least two consecutive prospective risk adjustment data years (similar to the population referred to as stayers under the MA methodology) relative to the greater FFS population.

We note that these proposed changes would not apply in calculating the benchmarks for ACOs in their first agreement period, or in establishing and updating the rebased historical benchmark for the second agreement period for ACOs that started in the program in 2012 and 2013 and started a new agreement period on January 1, 2016. Rather, we will continue to use CMS–HCC risk scores for the ACO's assigned beneficiary population in risk adjusting the ACO's historical benchmark at the start of the agreement period.

Further, for all ACOs, we will continue to use the current methodology to adjust the ACO's benchmark annually to account for the health status and demographic factors of the ACO's performance year assigned beneficiaries (according to the newly and continuously assigned populations).

B. Adjusting Benchmarks for Changes in ACO Participant (TIN) Composition

1. Overview

In the initial rulemaking establishing the Shared Savings Program, we acknowledged that the addition or removal of ACO participants or ACO providers/suppliers (identified by TINs and NPIs, respectively) during the term of an ACO's participation agreement could affect a number of different aspects of the ACO's participation in the Shared Savings Program. In the November 2011 final rule, we included the regulation at § 425.214(a)(3), which specified that the ACO's benchmark, risk scores, and preliminary prospective assignment may be adjusted to reflect changes in ACO participants or ACO providers/suppliers at CMS' discretion. Following the issuance of the November 2011 final rule, we issued subregulatory guidance further describing how the agency would use this discretion to make adjustments to reflect changes in ACO participants. See ''Changes in ACO participants and ACO providers/suppliers during the Agreement Period'' available online at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Updating-ACO-Participant-List.html* (last modified November 16, 2015). This guidance explains:

> After acceptance into the program and upon execution of the participation agreement with CMS, the ACO must certify

the completeness and accuracy of its list of ACO participants. We set the ACO's historical benchmark at the start of the agreement period based on the assigned population in each of the three benchmark years by using the ACO Participant List certified by the ACO. The ACO must submit a new certified ACO Participant List at the start of each new performance year.

CMS will adjust the ACO's historical benchmark at the start of a performance year if the ACO Participant List that the ACO certified at the start of that performance year differs from the one it certified at the start of the prior performance year. We will use the updated certified ACO Participant List to assign beneficiaries to the ACO in the benchmark period (the 3 years prior to the start of the ACO's agreement period) in order to determine the ACO's adjusted historical benchmark. As a result of changes to the ACO's certified ACO Participant List, we may adjust the historical benchmark upward or downward. We'll use the new certified list of ACO participants and the adjusted benchmark for the new performance year's assignment, quality measurement and sampling, reports for the new performance year, and financial reconciliation. We will provide ACOs with the adjusted Historical Benchmark Report.

In the June 2015 final rule we amended the Shared Savings Program regulations to incorporate portions of the subregulatory guidance (80 FR 32707 through 32712) at § 425.118(b)(3)(i). This provision specifies that CMS annually adjusts an ACO's assignment, historical benchmark, the quality reporting sample, and the obligation of the ACO to report on behalf of eligible professionals that bill under the TIN of an ACO participant for certain CMS quality initiatives to reflect the addition or deletion of entities from the list of ACO participants that is submitted to CMS before the start of a performance year in accordance with § 425.118(a). Further, § 425.118(b)(3)(ii) specifies that absent unusual circumstances, CMS does not make adjustments during the performance year to the ACO's assignment, historical benchmark, performance year financial calculations, the quality reporting sample, or the obligation of the ACO to report on behalf of eligible professionals that bill under the TIN of an ACO participant for certain CMS quality initiatives to reflect the addition or deletion of entities from the ACO Participant List that become effective during the performance year. CMS has sole discretion to determine whether unusual circumstances exist that would warrant such adjustments. Because we added a new provision at § 425.118 that addresses the adjustments that CMS will make to reflect changes in an ACO's list of ACO participants, we removed the reference to CMS' discretion to adjust the benchmark under § 425.214(a)(3). The June 2015 final rule also codified the subregulatory policies allowing for consideration of claims billed under merged and acquired Medicare-enrolled TINs for purposes of beneficiary assignment and establishing the ACO's benchmark (§§ 425.204(g), 425.118(a)(2)).

During the program's initial performance years, we experienced a high volume of change requests from ACOs, both adding and removing ACO participants. With each new performance year an ACO has the opportunity to request the addition of new ACO participants and to make other changes to its ACO Participant List resulting in a new certified ACO Participant List as required under § 425.118(a). Prospective additions must be vetted through CMS' screening process which reviews the TINs for program integrity concerns, Medicare enrollment requirements, and participation in other Medicare shared savings initiatives. ACOs may delete ACO participants from their ACO Participant List at any time during the performance year and are required to notify CMS within 30 days after the termination of an ACO participant agreement (§ 425.118(b)(2)).

When we adjust historical benchmarks during the agreement period to account for changes in beneficiary assignment arising from ACO Participant List changes, the benchmark period (the 3 years prior to the start of the ACO's agreement period) remains the same. For instance, if an ACO with an agreement start date of January 1, 2013, added ACO participants for its second performance year (2014), then the adjustments made to the historical benchmark to reflect the ACO's certified ACO Participant List for performance year two would have been based on the same 3 benchmark years (2010, 2011, and 2012) originally used to calculate the historical benchmark for the ACO based on the ACO Participant List it certified when it entered the program at the start of its first performance year. As a result of this methodology, if an ACO certifies revisions to its ACO Participant List for its second and third performance years, it is necessary for us to adjust the historical benchmark to reflect the changes made to the ACO Participant List for the second performance year, and to make further adjustments to reflect the changes made for the third performance year.

Changes in the ACO participant TINs that compose ACOs are also relevant to determining beneficiary assignment across all ACOs participating in the program. A beneficiary is assigned to an ACO if the beneficiary received the plurality of his or her primary care services (measured in allowed charges) from ACO professionals billing under the TINs of ACO participants in the ACO rather than outside the ACO (such as from ACO professionals billing under the TINs of ACO participants in other ACOs or from individual providers or provider organizations that are not participating in an ACO). We perform the assignment process for ACOs simultaneously, regardless of whether they have had an ACO Participant List change. To determine where a beneficiary got the plurality of his or her primary care services, we compare the total allowed charges for each beneficiary for primary care services provided by the ACO (in total for all ACO participants) to the allowed charges for primary care services provided by ACO participants in other ACOs and by non-ACO providers and suppliers. See ''Medicare Shared Savings Program: Shared Savings and Losses and Assignment Methodology Specifications'' available online at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Financial-and-Assignment-Specifications.html* (see version 4 dated December 2015 applicable beginning Performance Year 2016, and version 3 dated December 2014 applicable for Performance Years prior to 2016). In the case where a beneficiary is receiving primary care services from ACO participants in multiple ACOs or from both ACO participants and non-ACO providers and suppliers, the composition of each ACO is important in determining whether the beneficiary is assigned to an ACO at all, and in determining to which ACO (among several) the beneficiary may be assigned.

In summary, in making adjustments to the historical benchmarks for ACOs within an agreement period to account for ACO Participant List changes, the historical benchmark period remains constant, but beneficiary assignment reflects the influence of ACO Participant List changes. Under this methodology, the historical benchmarks for ACOs with ACO Participant List changes from one performance year to the next continue to reflect the ACOs' historical costs in relation to the current composition of the ACO. Changes to an ACO's list of ACO participants will result in changes to the ACO's assigned beneficiary population which can affect the proportion of an ACO's assigned population in each Medicare enrollment type (ESRD, disabled, aged/dual

eligible, aged/non-dual eligible), assigned beneficiary expenditures, and risk adjustment. Further, the historical benchmark will be adjusted to remove the historical claims experience of any ACO participant TINs that have been deleted from the ACO Participant List, unless the TIN has merged with or been acquired by another ACO participant TIN as reported to CMS by the ACO.

In accordance with these policies, we adjusted the historical benchmarks for 162 of 220 ACOs (74 percent) with 2012 and 2013 start dates for the 2014 performance year to reflect changes in ACO participants. For the 2015 performance year, we adjusted benchmarks for 245 of 313 ACOs (78 percent) with 2012, 2013 or 2014 start dates to reflect changes in ACO participants. Among the ACOs that made TIN changes effective for performance year 2015, the mean percentage change in historical benchmark value was −0.3 percent and the magnitude of the change for most ACOs was between −2 percent and +2 percent.

While the current methodology ensures that a benchmark that has been adjusted based on changes in the ACO's participant composition accurately reflects benchmark year assignment using the most recent certified ACO Participant List, a primary drawback is that this methodology is operationally burdensome. To adjust benchmarks to account for ACO Participant List changes made by ACOs for each new performance year we must repeat the assignment process for all 3 benchmark years for each starter cohort. For example, in order to adjust benchmarks for 2012, 2013, and 2014 starters making ACO Participant List changes for the 2015 performance year we had to perform the assignment process for 5 different benchmark years: 2009, 2010, 2011, 2012, and 2013. The operational burden associated with the current methodology will increase further as Track 3 ACOs enter the program. Track 3 ACOs have an offset assignment window based on the most recent 12-month period preceding the relevant calendar year for which data are available (for example, the period spanning October–September prior to the start of the benchmark year) whereas the assignment window for Track 1 and 2 ACOs is based on the 12-month calendar year that corresponds to the benchmark year. Therefore, with the first ACOs starting their participation under Track 3 on January 1, 2016, we now have to perform two assignment runs for each benchmark year.

2. Proposed Revisions

In light of the operational burden of adjusting benchmarks to reflect changes in ACO participants under the current policy, and the considerations associated with our proposal to adopt a benchmark rebasing methodology that requires additional calculations, we considered alternative approaches to streamline calculations of adjusted historical benchmarks. Under these alternatives, we would start with the historical benchmark based on the ACO's certified ACO Participant List for the most recent prior performance year and make adjustments to the benchmark using expenditures from a single reference year—for example, the third benchmark year (BY3) of the current agreement period—for which beneficiary assignment has been performed using both the ACO Participant List for the most recent prior performance year and the new ACO Participant List for the current performance year. This approach would allow us to adjust the benchmark to reflect changes in the ACO participants while reducing the number of benchmark years for which assignment would need to be redetermined based on the new ACO Participant List. Under this approach, where we would adjust the benchmark determined based on the ACO's list of ACO participants for the most recent prior performance year, there would be a cumulative effect of the adjustment in the case where an ACO certifies changes to its ACO Participant List effective for the second and third performance years of the agreement period. However, the number of cumulative adjustments would be limited and, further, we believe that applying adjustments to the benchmark determined based on the certified ACO Participant List for the most recent prior performance year in all cases enhances the simplicity of the approach.

Calculations for the adjustment would be made in relation to three populations of beneficiaries assigned to the ACO in the reference year:

- Stayers: Beneficiaries assigned to an ACO using both the ACO Participant List for the most recent prior performance year and the new ACO Participant List.
- Joiners: Beneficiaries who are assigned to the ACO using the new ACO Participant List but not the ACO Participant List for the most recent prior performance year.
- Leavers: Beneficiaries who are assigned to the ACO using the ACO Participant List for the most recent prior performance year but not the new ACO Participant List.

Calculation of the adjusted historical benchmark would include the following steps for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible):

- Calculate a stayer component: Multiply an ACO's historical benchmark by a ratio of average per capita reference year expenditures for stayers to average per capita reference year expenditures for stayers and leavers combined. This ratio may adjust the benchmark upward or downward depending on the relative expenditures and person years of the stayers and leavers.
- Calculate a joiner component: Determine average per capita reference year expenditures for joiners.
- Combine the stayer and joiner components: Obtain the overall adjusted benchmark for each enrollment type by taking a weighted average of the stayer and joiner components where each component's weight is its relative share of the total number of assigned beneficiaries, identified as stayers or joiners (respectively), based on the new Participant List.
- Once the preceding three steps have been completed for each Medicare enrollment type: Calculate a single weighted average per capita adjusted historical benchmark. We will sum the product of the benchmark expenditures for each Medicare enrollment type and the ACO's proportion of assigned beneficiaries for the corresponding Medicare enrollment type. We will determine the proportion of assigned beneficiaries by Medicare enrollment type during the reference year based on the assigned beneficiary population determined using the new ACO Participant List.
- In conjunction with the proposals to adjust an ACO's rebased historical benchmark to account for regional expenditures, we would also redetermine the regional adjustment to account for changes to the ACO's certified ACO Participant List. In addition to the steps described previously, we would redetermine the ACO's regional service area during the reference year based on the residence of the ACO's assigned beneficiaries for the reference year determined using the new ACO Participant List. We would also use this assigned population to determine the ACO's proportion of beneficiaries by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) to be used in calculating the regional adjustment. We would redetermine the regional adjustment, using the approach described previously under section II.A.2.c. of this proposed rule. In calculating the regional adjustment, we

would adjust for differences between the health status during the reference year of the ACO's assigned beneficiaries determined using the new ACO Participant List and the population of assignable beneficiaries in the ACO's regional service area.

We believe that this approach offers the right balance between approximating the accuracy of the current methodology for adjusting historical benchmarks (which requires performing beneficiary assignment for all 3 of an ACO's historical benchmark years with the new ACO Participant List) and operational ease. Initial modeling suggests that benchmarks calculated using this alternative methodology are highly correlated with those calculated using the current methodology.

We also examined a second alternative under which we would calculate the average per capita expenditures for leavers in the reference year and use this value, along with the relative person years for leavers and stayers, to impute average per capita reference year expenditures for stayers from the historical benchmark. The imputed expenditures for stayers would then be combined with average per capita reference year expenditures for joiners to obtain the overall adjusted benchmark. This second alternative, in addition to being more complex to compute and explain, does not consistently improve the accuracy of the calculations compared to the first alternative. For example, initial modeling indicates this approach can produce a phenomenon whereby ACOs with large numbers of high cost leavers (in relation to their stayer and joiner populations) actually retained relatively high benchmarks under this adjustment, which was an unanticipated result. Further, we have concerns about the reliability and predictability of imputed data, on which this approach depends.

We believe that several clarifications to the application of the preferred first alternative methodology are important. First, in the case where an ACO's new ACO Participant List yields zero assigned beneficiaries who are identified as stayers, we would apply the current methodology for adjusting the historical benchmark for ACO Participant List changes. That is, in such cases, we would calculate the ACO's average per capita historical benchmark based on assignment for each of the 3 benchmark years prior to the start of the ACO's agreement period using the new ACO Participant List. Second, the ACO Participant List for the performance year would be used to identify the counties of residence for the ACO's assigned beneficiaries in order to determine the ACO's regional service area for the purpose of calculating the regional benchmark update, as discussed in section II.A.2.d. of this proposed rule.

We considered whether to apply the preferred alternative methodology for adjusting the historical benchmark for ACO Participant List changes for all ACOs beginning with an ACO's first agreement period, or only for ACOs in a second or subsequent agreement period as part of the revised rebasing methodology. We believe that applying a single policy for adjusting historical benchmarks for changes in ACO participants to all ACOs participating in the program would provide operational consistency and stability to the program and its participants.

Therefore, we propose to replace the current approach for calculating adjusted historical benchmarks for ACOs that make ACO Participant List changes with an approach that adjusts an ACO's historical benchmark using a ratio that is based on expenditures for the ACO's beneficiaries assigned using both the ACO Participant List for the new performance year and the ACO Participant List for the most recent prior performance year (stayers) and expenditures for the ACO's beneficiaries assigned using only the ACO Participant List for the ACO's most recent prior performance year (stayers and leavers) for the same reference year. We propose to define the reference year as benchmark year 3 of the ACO's current agreement period. This figure would then be combined with reference year expenditures for beneficiaries assigned using only the ACO Participant List for the new performance year (joiners) to obtain the overall adjusted benchmark. Calculations of the adjustment would be made, and applied to the historical benchmark, for each of the following populations of beneficiaries, according to Medicare enrollment type: ESRD, disabled, aged/dual eligible, and aged/non-dual eligible. We propose to apply this adjustment to the ACO's historical benchmark determined based the ACO's certified ACO Participant List for the most recent prior performance year. We propose to apply this new approach program wide as we believe it will address operational inefficiencies in the calculation of adjusted historical benchmarks under the current approach while still providing an accurate adjustment to reflect changes in ACO participants. We also propose that in the event an ACO's new ACO Participant List results in zero stayers, we would continue to apply the current methodology for adjusting the ACO's historical benchmark for ACO Participant List changes. We propose to incorporate this adjustment to the historical benchmark for ACOs in their first agreement period and those ACOs that started a second agreement period on January 1, 2016, by adding a paragraph to § 425.602. In addition, we propose to specify that the adjustment would apply to the ACO's rebased historical benchmark in a new provision of the Shared Savings Program regulations at § 425.603. We also propose to add definitions for ''stayers'', ''joiners'' and ''leavers'' to § 425.20.

We seek comment on this proposed approach to adjusting ACO historical benchmarks for changes in ACO participants and any modifications to our proposed approach that may be needed. We welcome comments on alternatives to applying the adjustment to the ACO's historical benchmark determined based on the ACO's certified ACO Participant List for the most recent prior performance year, such as applying the proposed adjustment to the historical benchmark established for the first performance year of the ACO's agreement period. Further, we seek commenters' suggestions on the anticipated interactions between the proposed approach to adjusting ACO historical benchmarks using an expenditure ratio and the rebasing alternatives discussed previously in this proposed rule.

C. Facilitating Transition to Performance-Based Risk

1. Overview

As discussed in the December 2014 proposed rule (79 FR 72815 through 72816), we believe that in order for the Shared Savings Program to be effective and sustainable over the long term, we need to further strengthen our efforts to transition the Shared Savings Program to a two-sided performance-based risk program in which ACOs share in both savings and losses. Although we are encouraged by stakeholder interest in the Shared Savings Program, ACOs have been cautious in choosing to enter performance-based risk arrangements. Only a small number of ACOs have agreed to participate under the program's performance-based risk track (Track 2) established in the November 2011 final rule. Therefore, in the June 2015 final rule, we established a new performance-based risk track at § 425.610, referred to as Track 3, and made other program revisions (see 80 FR 32694 and 32695 for a summary) to encourage ACOs to accept performance-based risk arrangements. We also indicated in the June 2015 final rule (80 FR 32695) that we intended to consider

other modifications to program rules in future rulemaking in the near term to improve ACO willingness to take on performance-based risk. Accordingly, in addition to the proposals to integrate regional factors when resetting ACO benchmarks which are discussed in section II.A. of this proposed rule, we continued to consider whether other revisions might also be appropriate to provide ACOs with additional flexibilities to support them as they transition to performance-based risk.

Currently, for its initial agreement period, an ACO applies to participate in a particular financial model or track of the program as specified under § 425.600(a). If the ACO's application is accepted, the ACO must remain under that financial model for the duration of its 3-year agreement. ACOs entering the program under the one-sided shared savings model (Track 1) that meet eligibility criteria may continue their participation under this model for a second 3-year agreement period as specified under § 425.600(b).

Stakeholders and ACOs have suggested a variety of options to address their concerns about some of the current agreement period related policies. For example, as discussed in the June 2015 final rule (80 FR 32763), some commenters responding to the December 2014 proposed rule supported allowing ACOs initially participating under Track 1 to extend their first agreement period by 1, 2 or 3 years, under certain circumstances, to gain additional experience before starting their second agreement period under a performance-based risk track. Under such an option in which ACOs are allowed to choose voluntarily to have a longer agreement period under Track 1, stakeholders requested that we also maintain an ACO's original historical benchmark as it gains additional experience before moving to performance-based risk. These stakeholders explained that this approach would facilitate ACOs' transition to two-sided performance-based risk arrangements. We did not adopt these suggestions for the reasons discussed in the June 2015 final rule (80 FR 32763). However, based on our experience with the first group of ACOs eligible for renewal for 2016 in which nearly all such ACOs applied to remain in Track 1 for an additional agreement period, we have further considered these issues.

2. Proposed Revisions

We further considered these stakeholder suggestions and whether it would be appropriate to offer an additional option to encourage ACOs to move more quickly from the one-sided shared savings model to a performance-based risk model when renewing their agreements. To respond to stakeholder concerns and to provide additional support for ACOs that are willing to accept performance-based risk arrangements, we are proposing to add a participation option that would allow eligible Track 1 ACOs to defer by 1 year their entrance into a performance-based risk model (Track 2 or 3) by extending their first agreement period under Track 1 for a fourth performance year. ACOs that would be eligible to elect this proposed new participation option would be those ACOs eligible to renew for a second agreement period under Track 1 but instead are willing to move to a performance-based risk track 2 years earlier, after continuing under Track 1 for 1 additional year. This option would assist ACOs in transitioning to a two-sided risk track when they need only one additional year in Track 1 rather than a full 3-year agreement period in order to prepare to accept performance-based risk. The additional year could allow such ACOs to further develop necessary infrastructure to meet the program's goals, such as further developing their care management services, adopting additional mechanisms for measuring and improving quality performance, finalizing implementation and testing of electronic medical records, and performing data analytics. This option would be available to Track 1 ACOs whose first agreement period is scheduled to end on or after December 31, 2016. Under this proposal, ACOs that elect this new participation option would continue under their first agreement period for a fourth year, deferring benchmark rebasing as well as deferring entrance to a two-sided risk track if they are approved for renewal.

More specifically, we are proposing to provide an additional option for ACOs participating under Track 1 to apply to renew for a second agreement period under a two-sided track (Track 2 or Track 3) under the renewal process specified at § 425.224. If the ACO's renewal request is approved, the ACO would be able to defer entering the new agreement period under a performance-based risk track for 1 year. Further, as a result of this deferral, we would also defer rebasing the ACO's benchmark for 1 year. At the end of this fourth performance year under Track 1, the ACO would transition to the selected performance-based risk track for a 3-year agreement period. Accordingly, we are proposing to amend the participation agreement requirements at § 425.200 to provide that an ACO that defers entering its new agreement period will be able to continue participating under its first agreement for an additional year (for an agreement period that would total 4 years).

An ACO electing this option would still be required to undergo the renewal process specified at § 425.224 prior to the end of its initial agreement (PY 3) and meet all other renewal requirements including the requirement that the ACO demonstrate that it is capable of repaying shared losses as required to enter a performance-based risk track. Because the ACO would be committing under the renewal application to transition to a performance-based risk track following completion of PY 4 under Track 1, the ACO would be required to demonstrate as part of its renewal application that it has established an adequate repayment mechanism as specified at § 425.204(f) to assure CMS of its ability to repay losses for which it may be liable during the new agreement period. We propose to make this option available to Track 1 ACOs whose first agreement period is scheduled to end on or after December 31, 2016. Therefore, if finalized, this option would be available to ACOs with 2014 start dates seeking to renew their participation agreement in order to enter their second agreement period beginning in 2017. Under this proposal, we would update the ACO's benchmark as specified at § 425.602(b) for performance year 4 of the initial participation agreement. However, we would defer resetting the benchmark as specified at proposed § 425.603 until the beginning of the ACO's second agreement period (that is, the ACO's first agreement period under the selected performance-based risk track). The benchmark would be reset under the policies in place for that time period including any regional adjustment, as described in this proposed rule, if finalized. Also, we propose that the quality performance standard that would apply for performance year 4 of the initial participation agreement would be the same as for the ACO's performance year 3, consistent with § 425.502(a)(2). Specifically, we propose that during the fourth performance year of the ACO's first agreement period, the ACO must continue to report all measures and the ACO will be assessed on performance based on the quality performance standard in place for the third performance year of the ACO's first agreement period.

In addition, under this proposal, if a Track 1 ACO finishing its initial agreement period chooses to elect this option during the renewal of its

participation in the Shared Savings Program, the ACO would be required to transition to the selected performance-based risk track at the end of the fourth performance year under Track 1. The term of the second agreement period would be 3 performance years.

If such an ACO subsequently decides during the fourth performance year that it no longer wants to transition to the performance-based risk track it selected in its application for a second agreement period, then the currently established close-out procedures and payment consequences of early termination under § 425.221 would apply. For example, if the ACO voluntarily terminates its agreement under § 425.221(a), effective December 31 of its fourth performance year, and completes all required close-out procedures, then as specified by § 425.221(b), the ACO would be eligible to share in any shared savings for its fourth performance year.

However, we believe it would be appropriate under this proposed participation option to provide some incentive for ACOs to honor their commitment to participate early in a performance-based risk track. Therefore, we are proposing that if an ACO that has been approved for an extension of its initial agreement period terminates its participation agreement prior to the start of the first performance year of the second agreement period, then the ACO would be considered to have terminated its participation agreement for the second agreement period under § 425.220. Such an ACO would not be eligible to participate in the Shared Savings Program again until after the date on which the term of that second agreement period would have expired if the ACO had not terminated its participation, consistent with § 425.222.

We would further note that if an ACO that goes on to participate under a two-sided track under this proposed option voluntarily terminates its agreement during its second agreement period, then the currently established close-out procedures and payment consequences of early termination under § 425.221 would apply. If an ACO terminates its agreement under its selected performance-based risk track and subsequently decides to reapply to participate in the Shared Savings Program, then the requirements under § 425.222 for re-application after termination would apply. For example, consistent with our current policy, such an organization would be required to apply to participate under a two-sided model and would have to wait the duration of its remaining agreement period before reapplying.

In developing this proposal to support our policy goal of providing additional flexibility to ACOs that are considering transitioning to two-sided risk, we considered an alternative approach that might achieve the same goal. Specifically, we considered an alternative option that would permit the ACO to transition to a two-sided risk track during a subsequent 3-year agreement period under Track 1, instead of extending the first agreement period for an additional year. Under this alternative approach, we would allow the ACO to remain in Track 1 for the first performance year of the second 3-year agreement period. The ACO would then be required to transition to Track 2 or 3 for the final 2 performance years of the agreement period. An ACO choosing this option would be required to satisfy all the requirements for a performance-based risk track at the time of renewal, including the requirement that the ACO demonstrate that it is capable of repaying shared losses as required to enter a performance-based risk track. Under this approach, we would rebase the ACO's benchmark as provided under proposed § 425.603, effective for the first year of the second 3-year agreement period. Further, we would calculate shared savings for the first year of the second 3-year agreement period under the one-sided model as specified at § 425.604. During the second and third performance years of the second agreement period we would calculate shared savings and shared losses, as applicable, under either Track 2 (as determined at § 425.606) or Track 3 (as determined at § 425.610). We did not elect to propose this alternative option because we believe there could be a stronger incentive for some ACOs to transition to two-sided performance-based risk if we were to defer resetting the ACO's benchmark until the beginning of the ACO's second agreement period. Additionally, the alternative approach could raise concerns about risk selection since an ACO could participate for the first performance year of the second agreement period under this alternative, learn midway through the second performance year that its expenditures for the first performance year were below the negative MSR, and withdraw from the program before being subjected to reconciliation under performance-based risk.

We welcome comments on this proposal and the alternative approach, as well as on other possible alternatives to provide flexibility and encourage ACOs to enter into and honor their participation agreements under performance-based risk tracks, and any related issues.

D. Administrative Finality: Reopening Determinations of ACO Savings or Losses To Correct Financial Reconciliation Calculations, and a Conforming Change

1. Overview

ACOs enter into agreements with CMS to participate in the Shared Savings Program, under which ACOs that meet quality performance requirements and reduce the Medicare Parts A and B expenditures for their assigned beneficiaries below their benchmark by a specified margin are eligible to share a percentage of savings with the Medicare program. Further, ACOs participating under a two-sided track, whose Medicare Parts A and B expenditures for their assigned beneficiaries exceed their benchmarks by a specified margin, are liable for sharing losses with CMS. After each performance year (PY), CMS calculates whether an ACO has generated shared savings by comparing its actual expenditures for its assigned beneficiaries in the PY with its updated benchmark. Savings are generated if actual Medicare Parts A and B expenditures for assigned beneficiaries are less than the updated benchmark expenditures and shared with the ACO if they exceed the ACO's minimum savings rate, and the ACO meets the minimum quality performance standards and otherwise maintains its eligibility to participate in the Shared Savings Program. For an ACO in a two-sided track, losses are generated if actual Medicare Parts A and B expenditures for assigned beneficiaries are greater than the updated benchmark expenditures and the ACO is liable for shared losses if the losses exceed the ACO's minimum loss rate.

To date, we have announced 2 years of financial performance results for ACOs participating in the Shared Savings Program, in Fall 2014 for 220 ACOs with 2012 and 2013 start dates for PY 1 (concluding December 31, 2013), and in August 2015 for 333 ACOs with 2012, 2013 and 2014 start dates for PY 2014. Several months after the release of PY 1 financial reconciliation results and shared savings payments to eligible ACOs, we discovered that there was an issue with one of the source input data fields used in the final financial reconciliation calculations that we ultimately determined resulted in an estimated 5 percent overstatement of PY 1 shared savings payments to ACOs and an understatement of shared losses. The issue did not result in understated PY

1 shared savings payments or overstated PY 1 shared loss recoupments for any ACO.

When we calculate total Medicare Parts A and B FFS expenditures for assigned beneficiaries for purposes of establishing ACO benchmarks and determining performance year results, we make an adjustment to remove IME payments and DSH payments, including uncompensated care payments. We identified an issue in the source data for Quarter 4 of CY 2013 that caused some cancellation claims for uncompensated care to be incorrectly signed (plus sign instead of a minus sign) in the national claim data repository used to calculate ACO benchmarks and performance year results. The outcome of the sign error was that the amounts deducted from total CY 2013 expenditure calculations were doubled for claims that were canceled and resubmitted, which ultimately led to ACO total expenditures for PY 1 being understated in the final reconciliation for PY 1 (that is, for the performance year ending December 31, 2013). As a result, the PY 1 shared savings payments were overstated for some ACOs and shared losses were understated for some other ACOs. The impact on individual ACOs varied depending on the extent to which services provided to the ACO's assigned beneficiaries were furnished by providers that receive DSH payments.

The financial reconciliation calculation/methodology and the amount of shared savings an ACO might earn, including all underlying financial calculations, are not appealable. That is, the determination of whether an ACO is eligible for shared savings under section 1899(d), and the amount of such shared savings, as well as the underlying financial calculations are precluded from administrative and judicial review under section 1899(g)(4) of the Act and § 425.800(a)(4). However, under § 425.314(a)(4), if as a result of any inspection, evaluation, or audit, it is determined that the amount of shared savings due to the ACO or the amount of shared losses owed by the ACO has been calculated in error, CMS reserves the right to reopen the initial determination and issue a revised initial determination. (See also the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/Reconsideration-Review-Process-Guidance.pdf*).

Thus far, we have not further specified, either through regulations or program guidance, the actions that we would take under circumstances when we identify an error in a prior payment determination, such as the error that occurred in the calculation of PY 1 shared savings and shared losses. We have considered what actions we believe would be appropriate for addressing issues with the financial reconciliation calculations underlying the initial determination of ACO shared savings and shared losses in situations such as the data source error that occurred for PY 1, or a final agency determination under § 425.804 or § 425.806, if an error were discovered after a request for reconsideration of the initial determination. In considering this issue, we reviewed existing, analogous provisions within the Medicare program (such as § 405.980 and § 405.986 regarding reopening of initial determinations of claims under the original Medicare program, § 405.1885 regarding reopening of intermediary determinations of program reimbursement under the original Medicare program, and § 423.346 regarding reopening of payment determinations under Medicare Part D).

We are concerned that adopting wholesale one of these existing reopening processes, including all of the associated timeframes, may not be appropriate for the Shared Savings Program. For example, many ACOs have indicated that they intend to quickly reinvest some of any future shared savings they might receive to provide additional staff training, hire additional staff and make other infrastructure improvements to further improve the quality of care for Medicare beneficiaries and reduce unnecessary costs. We believe such investments may be critical so that ACOs can innovate further to achieve even greater cost savings. Shared savings payments also can support an ACO's ongoing operational costs, which we previously estimated to be an average of $0.86 million for an ACO participating in the Shared Savings Program (80 FR 32827). For example, shared savings payments support infrastructure (such as IT solutions) and process development, staffing, population management, care coordination, quality reporting and improvement, and patient education (80 FR 32767). We believe that ACOs may be reluctant to make the necessary investments to enable them to further improve the quality of care for Medicare beneficiaries and achieve greater cost savings if they might be required to unexpectedly pay back some or all of their shared savings payments. Further, ACOs could be reluctant to participate in two-sided performance-based risk tracks, if after receiving a payment determination they might subsequently be required to pay additional amounts for shared losses.

We are concerned that the current uncertainty regarding the timeframes and other circumstances in which we would reopen a payment determination to correct financial calculations under the Shared Savings Program could introduce financial uncertainty which could seriously limit an ACO's ability to invest in additional improvements to increase quality and efficiency of care. This uncertainty could also limit an ACO's ability to get a clean opinion from its financial auditors, which could, for example, harm the ACO's ability to obtain necessary capital for additional program improvements. This could be especially challenging for ACOs seeking to enter or continue under a two-sided performance-based risk track since under the requirements at § 425.204(f)(2), such an ACO must, as part of its application for a two-sided performance-based risk track, demonstrate its ability to repay shared losses to the Medicare program, which it may do by placing funds in escrow, obtaining a surety bond, establishing a line of credit (as evidenced by a letter of credit that the Medicare program can draw upon), or establishing a combination of such repayment mechanisms, that will ensure its ability to repay the Medicare program. These arrangements can often require that an ACO and/or its financial supporters make an assessment of the ACO's level of financial risk for possible repayments. Uncertainty over past financial results could significantly affect an ACO's ability to obtain and maintain these arrangements with financial institutions, and thus discourage ACOs from participating in the Shared Savings Program under two-sided performance-based risk tracks. We are particularly concerned that this could discourage ACOs from moving more quickly from the one-sided shared savings track to a performance-based risk track when renewing their agreements.

We considered an approach under which we would always reopen a determination of ACO shared savings or shared losses to correct any issue that might arise with respect to a financial calculation. Under this approach, we would correct for any and all issues (for example, a source data error or computational error), even for relatively minor errors having little impact on ACO financial results, that are identified within four years after the release of final financial reconciliation results. We are concerned that this approach of correcting even very minor errors might result in significant operational burdens

for ACOs and CMS, including multiple financial reconciliation re-runs and off-cycle payment/recoupment activities that could have the potential for significant and unintended operational consequences, and could jeopardize the certainty of performance results for both ACOs and CMS. As noted earlier in this section, this approach, which includes a relatively broad scope and extended timeframe for reopening, could introduce financial uncertainty that could limit an ACO's ability to invest in additional improvements to increase quality and efficiency of care. This uncertainty could also limit an ACO's ability to get a clean opinion from its financial auditors and/or to obtain funds from lenders or investors.

We also considered whether to adopt a policy under which we would never correct for errors after performing the financial calculations and making initial determinations of ACO shared savings and shared losses. By establishing such definitive administrative finality following notification of any applicable performance-based payments or loss recoupments, both ACOs and CMS would be better able to anticipate that such performance-based payments or loss recoupments would not be subject to subsequent revision. Financial calculations and shared savings payments or shared loss recoupments would not be subject to future reopening, and ACOs would be able to plan future transactions, issue financial reports, and plan for contingencies in reliance on the fact that those payment determinations were closed. However, we believe it would be appropriate to reopen financial calculations in certain circumstances, such as in the case of fraud or similar fault as defined at § 405.902, or for errors with a significant impact on the computation of ACOs' shared savings/shared losses. Therefore, we believe it would be appropriate to allow for corrections, under certain circumstances and within a defined timeframe, after financial calculations have been performed and the determination of ACO shared savings and shared losses has been made. In the following section we further discuss the rationale and the details of our proposed finality policy for financial calculations and shared savings payments or shared loss recoupments.

2. Proposed Revisions

a. Circumstances for Reopening Initial Determinations and Final Agency Determinations of ACO Shared Savings or Shared Losses To Correct Financial Reconciliation Calculations

It is longstanding policy in the Medicare program that a determination may be reopened at any time if it was procured by fraud or ''similar fault,'' (see, for example, § 405.980(b)(3); 74 FR 65296, 65313 (December 9, 2009)). Further, under the Shared Savings Program regulations at § 425.314(a)(4), if as a result of any inspection, evaluation, or audit, it is determined that the amount of shared savings due to the ACO or the amount of shared losses owed by the ACO has been calculated in error, CMS reserves the right to reopen the initial determination and issue a revised initial determination. We believe it would be appropriate to define the circumstances under which we would reopen a payment determination to make corrections after the financial calculations have been performed and ACO shared savings and shared losses determined, absent evidence of fraud or similar fault. In developing the proposals in this section, we considered the following issues: (1) The type of issue/error that we would correct; (2) the timeframes for reopening a payment determination; and (3) whether we should establish a materiality threshold as an indicator of a material effect on shared savings and shared losses that would warrant a correction, and if so, at what level.

First, we are proposing that CMS would have discretion to reopen a payment determination at any time in the case of fraud or ''similar fault,'' as defined in § 405.902. Second, we are proposing that in certain circumstances we would reopen a payment determination for good cause. For consistency and to decrease program complexity, we believe it would be reasonable and appropriate to base the definition of good cause for purposes of the Shared Savings Program on the definition of good cause used elsewhere in the Medicare FFS program. We propose to follow the same approach to reopening for good cause as applies to the reopening of Parts A and B claims determinations under § 405.986. Specifically, we propose that CMS will have the discretion to reopen a payment determination, within 4 years after the date of notification to the ACO of the initial determination of shared savings or shared losses for the relevant performance year, if there is good cause. We propose that good cause may be established if there is new and material evidence that was not available or known at the time of the payment determination, and which may result in a different conclusion, or if the evidence that was considered in making the payment determination clearly shows on its face that an obvious error was made at the time of the payment determination.

New and material evidence or an obvious error could come to CMS' attention through a variety of means, such as identification by CMS through CMS program integrity reviews or audits, identification through audits conducted by independent federal oversight entities such as the Office of the Inspector General (OIG) or the Government Accountability Office (GAO). CMS program integrity reviews and audits would include reviews and audits conducted by CMS' contractors. We believe it would be appropriate to establish a 4-year time period (that is, 4 years from initial notification of the payment determination) for reopenings for good cause to provide sufficient time to initiate, complete, and evaluate errors through CMS program integrity reviews or audits by oversight entities like OIG or GAO. A timeline for reopenings for good cause that is too short could undermine the ability of CMS to address significant issues raised through such program integrity initiatives or audits. Therefore, we believe that it would be appropriate to establish a 4-year timeframe for reopening Shared Savings Program payment determinations for good cause. In developing the proposed time period for reopenings, we considered alternative approaches in which we would provide for either shorter or longer time periods for reopenings for good cause. We chose not to propose these alternative time periods for good cause. A shorter time period might provide more financial certainty for ACOs but could make it difficult for CMS to make corrections based on program integrity reviews or audits by OIG or GAO. Similarly, a longer time period might make it feasible for CMS to make additional corrections based on program integrity reviews or audits by OIG or GAO, but could provide less financial certainty for ACOs.

We propose that good cause would not be established by changes in substantive law or interpretative policy. A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, would not be a basis for reopening a payment determination under this section. Further, we propose CMS has sole

discretion to determine whether good cause exists for reopening a payment determination under this section. Under the proposal, the determination of whether an error was made, whether a correction would be appropriate based on these proposed criteria, and the timing and manner of any correction would be within the sole discretion of CMS. We do not intend to propose an exhaustive list of potential issues that would or would not constitute good cause, but do intend to provide additional subregulatory guidance on this issue if this policy is finalized as proposed. As one example, we do not believe it would be an error constituting good cause for reopening of a payment determination if an ACO identified a claims anomaly such as a participating provider who submitted claims to its Medicare contractor either earlier or later than it had typically submitted claims previously and which therefore might impact the ACO's total expenditures. Likewise, we do not believe that good cause would be established by a request to reopen a claims payment determination based upon a third party payer's error in making a payment determination when Medicare processed the claim in accordance with the information in its system of records or on the claim form. We would also note that good cause would not be established by a reconsideration, appeal, or other administrative or judicial review of any determinations precluded under § 425.800.

When determining whether to reopen for good cause, we would also consider whether the error is material and thus warrants a correction by reviewing the nature and particular circumstances of the error. Under this proposal, we would not reopen a payment determination to consider, or otherwise consider as part of a reopening, additional claims information submitted following the end of the 3-month claims run out and the use of the completion factor. We would continue to use claims submitted prior to the end of the 3-month claims run out with a completion factor to calculate an ACO's per capita expenditures for each performance year, consistent with §§ 425.604(a)(5), 425.606(a)(5) and 425.610(a)(5). Also, consistent with established policy, under this proposed policy, we would not reopen a determination if an ACO's ACO participants submitted additional claims or submitted corrected claims after the 3-month claims run out period following the end of the performance year. As discussed in the November 2011 final rule (76 FR 67837 through 67838), in establishing this policy we focused on balancing the need for timely payment determinations and the benefits of utilizing the most complete data in calculating both the quality metrics and the shared savings reconciliation. We continue to believe that a 3-month run out of claims data aids in ensuring success for ACOs by allowing prompt shared savings payments to eligible ACOs, enabling them to offset the initial startup and/or ongoing operational costs which would in turn allow the ACOs to remain financially viable and enable them to make additional investments to further improve quality of care and decrease costs, while any decrease in the accuracy as a result of the use of a 3-month run out versus a longer time period is mitigated by the application of a completion factor.

Corrections for errors for good cause could in some circumstances introduce additional program complexities with unanticipated consequences. For example, changes to beneficiary assignment could affect the calculation of shared savings and losses for multiple ACOs. Therefore, in order to provide an opportunity for CMS to consider updated information and make other adjustments to payments determinations across all ACOs, and to minimize program disruptions for ACOs resulting from multiple reopenings, we will, to the extent feasible, make corrections in a unified reopening (as opposed to multiple reopenings) to correct errors for a given performance year. In addition, we will consider other ways to reduce operational burdens for both ACOs and CMS that could result from making payment adjustments. For example, during the 4-year time period from notification of the initial payment determination for reopenings due to good cause, if we determine that a correction needs to be made for a performance year's results, we would seek to potentially adjust shared savings payments to the ACO or shared loss recoupments from the ACO for a subsequent performance year. To illustrate, if an ACO that generated shared savings for the second performance year of its agreement period owed CMS money based on a correction made to the payment determination for the prior performance year, we might be able to deduct the amount owed prior to making the current year shared savings payments (subject to the general requirement, discussed elsewhere, for ACOs to repay monies owed to CMS within 90 days of notification of the obligation).

In addition, we have evaluated how we might consider materiality when determining whether to reopen for good cause in the case of CMS technical errors. We do not intend to propose specific criteria for determining materiality but we would provide additional information for ACOs through subregulatory guidance, as appropriate. For example, in the case of technical errors by CMS such as CMS data source file errors and CMS computational errors, we would consider limiting reopenings of payment determinations under the Shared Savings Program to issues/errors that have a material effect on the net amount of ACO shared savings and shared losses computed for the applicable performance year for all ACOs, and thus warrant a correction due to the magnitude of the error. Establishment of such a threshold for making financial corrections to address errors in the determination of shared savings payments or shared loss recoupments could reduce the likelihood of there being multiple financial reconciliation re-runs for errors that do not significantly affect the financial performance calculations. The general requirement under the Shared Savings Program is that ACOs are required to make payment in full to CMS of all amounts owed within 90 days of their receipt of notification. Numerous off cycle adjustments to address technical errors that do not have a material effect on the total amount of ACO shared savings and shared losses computed for the applicable performance year could be disruptive and administratively burdensome for both ACOs and CMS, and could discourage ACOs from participating in the Shared Savings Program.

Accordingly, in considering when to reopen an error for good cause, we intend to strike a careful balance between important Medicare program integrity concerns that payments be made timely and accurately under the Shared Savings Program with our desire to minimize unnecessary operational burdens for ACOs and CMS, and to support the ACOs' ability to invest in additional improvements to increase quality and efficiency of care. To achieve this careful balance in objectives, for reopenings to address CMS technical errors, we may consider whether the error satisfies a materiality threshold, such as 3 percent of the total amount of net shared savings and shared losses for all ACOs for the applicable performance year. We would expect to provide additional information about how we may consider the materiality of an error in subregulatory guidance, if we finalize

this policy as proposed. To illustrate, under such an approach, we could exercise our discretion to reopen the financial reconciliation for a performance year if we determined that a correction to address a CMS technical error would affect total net shared savings and shared losses (that is, the amount of shared savings after the amount of shared losses has been subtracted) for all ACOs for the affected performance year by 3 or more percent. We may consider a higher threshold, such as 5 percent, or a lower threshold, such as 1 or 2 percent. However, based on a review of guidance from the GAO for financial audits of federal entities, we believe that 3 percent could be a reasonable threshold for ''material effect.'' The GAO guidance was developed to assist auditors in assessing material effect for planning the audit scope for federal entities to ensure that financial statement audits achieve their intended outcomes of providing enhanced accountability over taxpayer-provided resources. This guidance has been used for a number of years by GAO financial auditors for performing financial statement audits of federal entities. (See the GAO Web site at *http://www.gao.gov/special.pubs/01765G/vol1__complete.pdf.*) Although ACOs are not federal entities, we believe it would be reasonable to consider the GAO guidance in developing a material effect threshold across all ACOs. The Shared Savings Program is a relatively large federal program administered within HHS, including over 400 ACOs (as of January 1, 2016). Accordingly, we believe that the GAO guidance on federal entity audits, while not directly applicable, provides a relevant and appropriate resource in considering a materiality threshold for reopening certain payment determinations under the Shared Savings Program.

We also initially considered applying a materiality threshold for each ACO rather than applying a materiality threshold to total net shared savings and shared losses for all ACOs. We recognize that in some situations an individual ACO might prefer to have a different materiality threshold, or might prefer that we always correct CMS technical errors that favor the individual ACO. However, we do not believe that applying a materiality threshold, such as 3 percent, to the financial results for each ACO, or applying a lower (or no) materiality threshold for reopenings for CMS technical errors, would achieve the desired level of administrative finality for the Shared Savings Program given that there currently are over 400 ACOs in the program, and correction for CMS technical errors would sometimes favor an individual ACO and sometimes not. We also do not believe it would be appropriate to establish a finality policy to only correct errors that favor the individual ACO. We believe it would be appropriate to limit reopenings to correct CMS technical errors that more widely affect the program rather than reopening determinations for specific issues for each of the hundreds of ACOs participating in the Shared Savings Program absent evidence of fraud or similar fault, or good cause established by evidence of other errors. Otherwise, as noted earlier in this section, a relatively broad scope and extended timeframe for reopening could introduce financial uncertainty that could limit ACOs' ability to invest in additional improvements to increase quality and efficiency of care.

Finally, we note that the current requirements for ACO repayment of shared losses after notification of the initial determination of shared losses would not be affected by any proposals in this section. As described under § 425.606(h)(3) (Track 2) and § 425.610(h)(3) (Track 3), if an ACO has shared losses, the ACO must make payment in full to CMS within 90 days of receipt of notification. These current requirements would continue to apply for repayment by ACOs for shared losses. For example, an ACO would not be able to delay recoupment of any payments required under § 425.606(h)(3) or § 425.610(h)(3) by notifying CMS of a possible error that could merit reopening. Instead, if we determined that a correction should be made, we would subsequently adjust shared savings and shared losses for the applicable performance year based on the correction, and we would add any amount owed to the ACO, as determined through the reopening, prior to making any current year shared savings payments for which the ACO is eligible.

Therefore, after considering these issues, we are proposing to revise § 425.314 to remove (a)(4) and add a new paragraph (e) to specify the circumstances under which we would reopen a payment determination under §§ 425.604(f), 425.606(h), 425.610(h), 425.804, or 425.806. Specifically, we are proposing that, if CMS determines that the amount of shared savings due to the ACO or the amount of shared losses owed by the ACO has been calculated in error, CMS may reopen the earlier payment determination and issue a revised initial determination. We propose that a payment determination may be reopened: (1) At any time in the case of fraud or similar fault, as defined in § 405.902; or (2) not later than 4 years after the date of notification to the ACO of the initial determination of shared savings or shared losses for the relevant performance year, for good cause. We propose that good cause may be established when there is new and material evidence of an error or errors, that was not available or known at the time of the payment determination and may result in a different conclusion, or the evidence that was considered in making the payment determination clearly shows on its face that an obvious error was made at the time of the payment determination. Good cause would not be established by a change of legal interpretation or policy by CMS in a regulation, CMS ruling or CMS general instruction, whether made in response to judicial precedent or otherwise. We have sole discretion to determine whether good cause exists for reopening a payment determination under this section. Also, good cause would not be established by a reconsideration, appeal, or other administrative or judicial review of any determinations precluded under § 425.800.

Under the proposal, the determination of whether an error was made, whether a correction would be appropriate based on these proposed criteria, and the timing and manner of any correction would be made would be within the sole discretion of CMS. If CMS determines that the reopening criteria are met, CMS would recompute the financial results for all ACOs affected by the error or errors. In light of this policy proposal, we would not reopen and revise the PY 1 payment determinations solely affected by the data source error described previously because we so far have not specified, either through regulations or program guidance, the criteria CMS would apply in determining whether to reopen a payment determination. However, we would reopen and revise these PY 1 payment determinations for other errors satisfying the proposed criteria for reopening for good cause or for fraud or similar fault.

We believe this proposal would offer a flexible, balanced approach, providing additional certainty for ACOs as to whether they are eligible for shared savings payments, or required to repay a portion of losses under risk-based tracks, and the amount of any such shared savings or shared losses. ACOs would thus be better able to plan future financial transactions and investments to further improve the quality of beneficiary health care and reduce costs, issue financial reports, and plan for contingencies in reliance on the fact that those payments are closed after the

period for reopening has lapsed, in the absence of fraud or similar fault. We acknowledge that from year to year, corrections could sometimes advantage individual ACOs and sometimes disadvantage individual ACOs. We anticipate that, over time, this approach would not likely have a biased effect on ACOs or Medicare expenditures since the impact of reopenings over time would be equally likely to increase/decrease net shared savings and losses.

In addition, we note that nothing in this proposal would limit the scope of the preclusion of administrative and judicial review under § 425.800. However, we propose to amend § 425.800(a)(4), expressly to include a revised initial determination in the list of determinations that are precluded from administrative and judicial review. We invite comments on this proposal, including the proposed criteria for reopening, on alternative approaches for defining the time period for reopenings of payment determinations, on the criteria for establishing good cause, whether the time period for reopenings for good cause should be longer or shorter than 4 years, and on any other criteria that we should consider for the final rule to address issues related to financial reconciliation calculations and the determination of ACO shared savings and shared losses.

b. Conforming Change

As discussed earlier in the overview for this section, the determination of whether an ACO is eligible for shared savings, and the amount of such shared savings, and the limit on the total amount of shared savings as well as the underlying financial calculations are excluded from administrative and judicial review under section 1899(g) of the Social Security Act. Accordingly, in the November 2011 final rule establishing the Shared Savings Program, we adopted the regulation at § 425.800 to preclude administrative and judicial review of the determination of whether an ACO is eligible for shared savings and the amount of shared savings under Track 1 and Track 2 (§ 425.800(a)(4)), and the limit on total amount of shared savings that may be earned under Track 1 and Track 2 (§ 425.800(a)(5)). In the June 2015 final rule, we amended the Shared Savings Program regulations by adding a new provision at § 425.610 to establish a new performance-based risk option (Track 3) that includes prospective beneficiary assignment and a higher sharing rate. However, in the June 2015 final rule we inadvertently did not also update the regulation at § 425.800 to include references to determinations under § 425.610 (Track 3) in the list of determinations under this part for which there is no reconsideration, appeal, or other administrative or judicial review. Therefore, we are proposing a conforming change to amend § 425.800 to add determinations under § 425.610 (Track 3) to the list of determinations under § 425.800 (a)(4) and (a)(5) for which there is no reconsideration, appeal, or other administrative or judicial review.

III. Collection of Information Requirements

As stated in section 3022 of the Affordable Care Act, Chapter 35 of title 44, United States Code, shall not apply to the Shared Savings Program. Consequently, the information collection requirements contained in this proposed rule need not be reviewed by the Office of Management and Budget.

IV. Regulatory Impact Analysis

A. Statement of Need

This proposed rule is necessary in order to make certain payment and policy changes to the Medicare Shared Savings Program established under section 1899 of the Act. The Shared Savings Program promotes accountability for a patient population, fosters the coordination of items and services under Parts A and B, and encourages investment in infrastructure and redesigned care processes for high quality and efficient service delivery. Proposed changes are focused on calculations for resetting the financial benchmark for an ACO's second or subsequent agreement period, thereby fulfilling a goal communicated in the Shared Savings Program June 2015 final rule (80 FR 32692) to propose a method for taking into account regional expenditures when resetting an ACO's financial benchmark for a second or subsequent agreement period.

B. Overall Impact

We examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

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). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA, which to the best of our ability presents the costs and benefits of the rulemaking.

In keeping with our standard practice, the main analysis presented in this RIA compares the expected outcomes if the full set of proposals in this rule were finalized to the expected outcomes under current regulations. We provide our analysis of the expected costs of the proposed payment model under section 1899(i)(3) of the Act to the costs that would be incurred under the statutory payment model under section 1899(d) of the Act in section IV.E. of this proposed rule.

C. Anticipated Effects

1. Effects on the Medicare Program

The Shared Savings Program is a voluntary program involving an innovative mix of financial incentives for demonstrating quality of care and efficiency gains within FFS Medicare. As a result, the changes to the Shared Savings Program proposed in this rule

could result in a range of possible outcomes. While evaluation of the program's overall impact to date is ongoing, the quality and financial results of the first 2 performance years are within the range originally projected for the program in the November 2011 final rule (see Table 8, 76 FR 67963). Also, at this point, we have seen no evidence of selective ACO participation that would systematically bias overall program performance as measured by ACO benchmarks.

In the June 2015 final rule, we established a policy for rebasing an ACO's financial benchmark for a second or subsequent agreement period by weighting each benchmark year equally and taking into account savings generated by the ACO in the previous agreement period. We also discussed potential future modifications to the rebasing methodology that would account for regional FFS expenditures and remove the policy of adding savings generated by the ACO in the previous agreement period. After further analysis, in this proposed rule, we propose an alternative approach that would adjust the ACO's reset benchmark by a percentage of the difference between the ACO's regional service area average per capita expenditure amount and the ACO's rebased historical benchmark amount (described in section II.A.2.c. of this proposed rule). Under the proposed phased approach to using a higher percentage in calculating the adjustment for regional expenditures (described in section II.A.2.c.3. of this proposed rule): In the ACO's second agreement period the percentage used in calculating the regional adjustment would be set at 35 percent; in the ACO's third agreement period and subsequent agreement periods, the percentage would be set at 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking. This proposed approach would weaken the link between an ACO's performance in prior agreement periods and its benchmark in subsequent agreement periods. These changes are intended to strengthen the incentives for ACOs to invest in infrastructure and care redesign necessary to improve quality and efficiency and meet the goals of the Shared Savings Program.

Further, a key modification to the benchmark rebasing methodology would be to refine certain calculations that currently rely on national FFS expenditures and corresponding trends so that they would instead be determined according to county FFS trends observed in each ACO's unique assignment-weighted regional service area. Annual average per capita costs would be tabulated for assignable FFS beneficiaries in each county. For each ACO a regional weighted average expenditure would be found by applying ACO assigned-beneficiary weights to the average expenditures tabulated for each county. Changes in an ACO's regional service area average per capita expenditures (and relative risk reflected in associated HCC risk scores) would define a regional trend specific to each ACO's region. This regional trend would be utilized in two specific areas of the existing benchmark methodology to replace the: (1) National expenditure trend in calculations establishing the ACO's rebased historical benchmark; and (2) existing national ''flat dollar'' growth amount for updating the rebased historical benchmark for each performance year.

By replacing the national average FFS expenditure trend and ''flat dollar'' update with trends observed for county level FFS assignable beneficiaries in each ACO's unique assignment-weighted regional service area, benchmark calculations would be better structured to account for exogenous trend factors particular to each ACO's region and the pool of potentially-assignable beneficiaries therein (for example, higher trend due to a particularly acute flu season or an unusually large area wage index adjustment or change).

Although the policy would have mixed effects—increasing or decreasing benchmarks for ACOs in various circumstances—an overall increase in program savings would likely result from taking into account service-area trends in benchmark calculations. In some cases lower benchmarks would be produced, preventing shared savings payments to certain ACOs for whom national average trends and updates would have provided higher updated benchmarks. For other ACOs, such a policy would be more sensitive to regional circumstances outside of the ACO's control causing higher trends for the ACO's service area. In such cases, a higher benchmark could improve program cost savings by reducing the likelihood the ACO would choose to drop out of the program because a shared loss would otherwise have been assessed because of exogenous factors unrelated to the ACO's changes in care delivery.

In addition, applying the regional trend as a percentage (rather than ''flat dollar'') when updating the benchmark to a performance year basis is anticipated to further reduce program costs by improving the accuracy of updated benchmarks, particularly for ACOs that have historical benchmarks significantly below or above average. The November 2011 final rule discussed the risk that large nominal ''flat dollar'' growth updates could compound over an agreement period to excessively inflate benchmarks for ACOs with relatively low historical benchmark cost and could lead to predictable bias and resulting cost for selective participation in the program (76 FR 67964). Such risk has not materialized in program experience to date, largely due to the historically low national program trend used to update ACO benchmarks through the first 3 years of the program. However, the per capita trend for the Medicare FFS program is anticipated to be higher in future years associated with the period governed by this proposed rule in contrast to the relatively moderate growth in cost experienced over the first 3 years of the program's implementation.[3] The proposed changes to the methodology for updating the benchmark would apply regional trends to update ACO benchmarks and therefore prevent the increased program cost the current update methodology risks by employing an average ''flat dollar'' update that compounds over the 3 years in an ACO's agreement period.

Program participation and ACO beneficiary assignment are not homogenously distributed geographically. ACOs tend to have service areas overlapping those of other ACOs in the same urban or suburban market(s). Therefore, to the extent that ACOs produce significant reductions in expenditures, a greater proportion of such savings would affect ACO-service-area trends than the average effect felt at the national program level, effectively reducing the average ACO's updated benchmark compared to what the use of a national trend alone would have produced. While such effect has the potential to reduce program costs by reducing net shared savings payments it could be seen as a disadvantage to participating organizations in ''ACO-heavy regions'' that manage to broadly increase efficiency at the overall regional market level.[4] However, on the

[3] Traditional fee-for-service Medicare Part A and B annual per capita cost trend is expected to reach approximately 5 percent in 2019, as detailed in the 2017 Medicare Advantage Early Preview accessible at: *https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/EarlyPreview2017GrowthRates.pdf.*

[4] Similarly, certain regions may be targeted for care delivery reforms, for example certain Center for Medicare and Medicaid Innovation models. A downward bias on an ACO's benchmark could be felt to the extent that such activity reduces expenditures for beneficiaries in the ACO's region but not in a proportional way within the ACO's

Continued

whole, we anticipate this effect to be a reasonable trade-off that would not prevent an overall improvement in the incentive for ACOs to improve efficiency in care delivery in the context of periodic benchmark rebasing as a result of the policies proposed in this proposed rule.

Additionally, we anticipate significant program savings would result from the proposal to remove the current policy in which savings generated in the previous agreement period would be taken into account when resetting the benchmark in an ACO's second or subsequent agreement period. This proposed rule would modify the methodology used to rebase ACO benchmarks for agreement periods beginning in 2017 and subsequent years. In other words, the current rebasing methodology would apply to ACOs that entered a second or subsequent agreement period prior to 2017.

Changes to the existing benchmark calculations described previously would therefore benefit program cost savings by producing rebased benchmarks with improved accuracy (for example, reflecting regional trends rather than national average trends and 'flat dollar' updates) and of somewhat lower per capita cost on average (due to no longer adding a portion of savings to the baseline and because of oversampling ACO populations in regional trend calculations). However, such savings would be partly offset by increasing shared savings payments to ACOs benefiting from our proposal to adjust the rebased historical benchmark with a portion of the difference between the ACO's regional service area average per capita expenditure amount and the ACO's rebased historical benchmark amount. Such trade-off reflects the intention of our proposal to strengthen the reward for attainment of efficiency in an absolute sense, complementing the existing program's focus on rewarding improvement relative to an ACO's recent baseline.

Making a regional adjustment to the ACO's rebased historical benchmark would strengthen an ACO's incentives to generate and maintain efficient care delivery over the long run by weakening the link between an ACO's prior performance and its future benchmark. This adjustment is expected to marginally increase program participation in agreement periods where risk (Track 2 or 3) is mandatory for an ACO since a significant portion of ACOs will have knowledge that a favorable baseline expenditure comparison to their FFS region will mitigate their risk of being assessed a shared loss in a subsequent agreement period. It is also expected to reduce the frequency with which ACOs in Track 2 or 3 drop out of the program during an agreement period because such ACOs will have somewhat greater certainty regarding the extent to which savings achieved in the prior agreement period would continue to be reflected in a rebased benchmark that incorporates a regional adjustment.

However, more predictable relationships, that is, an ACO's knowledge of its costs relative to FFS expenditures in its region, also creates risk of added cost to the Shared Savings Program by way of—(1) increasing shared savings payments to ACOs exhibiting expenditures significantly below their region at baseline especially in cases where such differences are related to factors exogenous to efficiency in the delivery of care (where shared savings payments could be further inflated by increased selection of Track 3 over Track 2); (2) potentially losing participation from ACOs with expenditures high above their region at baseline—reducing the opportunity to impact beneficiary populations with the greatest potential for improvements in the cost and quality of care; [5] and (3) from structural shifts by ACOs in ways that would reduce assignment of relatively high cost beneficiaries and increase assignment of relatively healthy populations or shift the geography of their service area to similarly effect a more favorable benchmark adjustment.

In addition to the uncertainty with respect to the relationship of the potential offsetting effects noted previously, there remains broader uncertainty as to the number of ACOs that will participate in the program (especially under performance-based risk in Track 2 or Track 3), provider and supplier response to financial incentives offered by the program, interactions with other value based models and programs from CMS and other payers, and the ultimate effectiveness of the changes in care delivery that may result as ACOs work to improve the quality and efficiency of patient care. Certain ACOs that have achieved shared savings in their first agreement period may find that they receive significantly lower benchmarks under the proposed revisions (especially in cases where regional expenditures are much lower than expenditures for the ACO's assigned beneficiary population). Other ACOs may seek to maximize sharing in savings by selecting Track 3 if they have assigned beneficiaries with significantly lower expenditures at baseline relative to their region. These uncertainties continue to complicate efforts to assess the financial impacts of the Shared Savings Program and result in a wide range of potential outcomes regarding the net impact of the changes in this proposed rule on Medicare expenditures.

To best reflect these uncertainties, we continue to utilize a stochastic model that incorporates assumed probability distributions for each of the key variables that will affect the overall financial impact of the Shared Savings Program. A summary of assumptions and assumption ranges utilized in the model includes the following:

- Approximately 100, 100, and 200 ACOs will consider renewing in 2017, 2018, and 2019, respectively.
- ACOs will choose not to renew if—

++ Under the current policy: The ACO's gross loss in the prior performance year was 5 percent or greater; or

++ Under the proposed policies: The ACO's gross loss would be 3 percent or greater in the prior performance year after accounting for the expected effect of the revised rebasing methodology (for example, considering differences between the ACO's spending and that of its region) and adjusting for ACO participant changes which result in baseline cost reduction of 2 percent on average (see discussion elsewhere in this proposed rule).

In either scenario, the thresholds are calibrated to approximate the level of baseline loss an ACO would correlate to an expected shared loss from its rebased benchmark. The magnitude of the loss is roughly equal to the revenue ACO participating physicians may have gained from the 5 percent incentive payment available under MACRA[6] that

assigned population. Such scenarios are more likely when competing models are specifically targeted for beneficiaries not assigned to an ACO.

[5] Early program results indicate that ACOs with expenditures significantly above their risk-adjusted FFS regional average have produced greater than average reductions in expenditures than ACOs with low baseline expenditures relative to their region; however it is not yet evident that such early savings achieved for such relatively high cost populations are likely to grow to an extent that their expenditures would reach parity with their region. If the regional adjustment results in unattainable benchmarks for ACOs serving at-risk populations then the program would likely exhibit decreasing participation from providers serving populations where the greatest potential for savings through management would otherwise be present and therefore we would expect significantly lower savings for the program than currently anticipated.

[6] Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) established new incentives to encourage physicians and certain other practitioners to participate in alternative payment models; pending rulemaking, such incentive payments may equate to approximately 5 percent of

is potentially available to physicians and certain other practitioners in certain ACOs for participation in the program; the policies included in this proposed rule are assumed to result in a lower tolerance for renewal after a prior agreement period loss because the proposed regional adjustment to the rebased benchmark is expected to be more consistent from year to year whereas the current rebasing methodology would be expected to generate a higher benchmark reflecting to a greater degree the actual spending from the prior agreement period that led to the prior loss. However, ACOs that do renew under the policies included in this proposed rule would be more likely to remain in the program for the entire agreement period because the benchmark adjustment improves the likelihood that favorable changes to the methodology for rebasing the benchmark that led the ACO to renew its agreement would continue to be evidenced in future performance years.

- Renewing ACO will choose higher risk in Track 3 if—

++ Under the current policies: The ACO's gross savings in prior performance year are 4 percent or greater; or

++ Under the proposed policies: The ACO's prior performance year gross savings adjusted by regional expenditures would be 2 percent or greater.

In either scenario, similar to the renewal assumption, policies included in the proposed rule offer greater certainty that adjusted prior performance will correlate to future performance and therefore the threshold for selecting Track 3 is lower than what is assumed for baseline scenario.

- Marginal gross savings would increase by between 0.0 percent to 1.0 percent for ACOs selecting higher performance-based risk in Track 3 and between 0.0 percent to 0.2 percent for all ACOs due to the adjusted rebasing methodology. These ranges were chosen to encompass a range of relative savings rates observed for performance-based risk accepted by ACOs participating in the Pioneer ACO Model relative to Shared Savings Program ACOs, the vast majority of which have elected to participate under the one-sided shared savings model (Track 1).
- ACOs experiencing a loss during the rebased agreement period are assumed to drop out prior to the second or third performance year if a shared loss from the prior performance year exceeds 2 percent. While Pioneer ACO Model experience would predict a lower tolerance for remaining in the program after a loss, 2 percent was chosen to approximate the incentive payment under MACRA likely to be made available to physicians and certain other practitioners participating in ACOs in Track 2 and Track 3, which was not available to participants in Pioneer ACOs.
- ACOs make adjustments to their ACO Participant Lists that reduce their cost relative to region by approximately 2 percent on average. This assumption is based on empirical analysis of 2015 ACO Participant List change requests and resulting impact on ACO baseline expenditures due to changes in assignment; the magnitude of bias is assumed to be greater for ACOs starting higher than their corresponding regional average expenditures and/or with a relatively small assigned beneficiary population and lower for ACOs starting below regional average expenditures and/or with a relatively large assigned beneficiary population.
- ACOs achieve a mean quality score of 80 percent (based on analysis of Shared Savings Program ACO quality scores in 2013 and 2014).
- ACO savings have a diluted impact on regional expenditures and trends according to ACO assignment saturation of FFS beneficiary population in the market.

Assumptions for ACO baseline costs, including variations in trends for ACOs and their relationship to their respective regions were determined by analyzing existing ACO and corresponding regional expenditures back to 2009, the first benchmark year used for the first wave of ACOs that entered the program in 2012. (Note associated data for the 2012 through 2014 time period is being released in conjunction with this proposed rule to assist commenters in modeling implications of the proposals.) The empirical time series data were randomly extrapolated to form baseline time series data through the end of the rebased agreement period by applying growth rates to ACOs and their regions by randomly sampling empirical growth rates for ACOs (and their respective regions) with similar characteristics in terms of size and relative cost to region.

Using a Monte Carlo simulation approach, the model randomly draws a set of extrapolated ACO baseline trends and specific values for each variable, reflecting the expected covariance among variables, and calculates the program's financial impact based on the specific set of assumptions. We repeated the process for a total of 1,000 random trials, tabulating the resulting individual cost or savings estimates to produce a distribution of potential outcomes that reflects the assumed probability distributions of the incorporated variables.

Table 3 details our estimate of the 3-year net impact of the proposed policy changes on FFS net benefit claims costs, net shared savings payments to ACOs, and the resulting impact on net Federal cost. Projected impacts are detailed for the first 3 cohorts of ACOs that would be renewing agreements under the proposed changes, renewing respectively for agreement periods starting in 2017, 2018, and 2019. During these agreement periods, a 35 percent weight would be placed on the benchmark expenditure adjustment for regional FFS expenditures. In such agreement periods, total savings from the proposed changes to the methodology for calculating and trending expenditures during the benchmark period in order to establish and update the benchmark, as well as anticipated savings from marginally increased program participation and improved incentives for creating efficiency, are expected to be greater than the increase in cost of net shared savings payments due to selective participation in response to adjustments that are predictably significant (either favorable or unfavorable) upon examination of how expenditures for the ACO's historically assigned beneficiary population compare to the ACO's regional service area expenditure level at baseline. For this reason the net Federal impact is projected to be a savings (that is, a negative change in net Federal cost) for the first 3 years for each renewing cohort, and correspondingly a $120 million net Federal savings for the first 3 calendar years of the projection window, 2017 through 2019. Such median impact on net Federal cost results from a projected increase in savings on net benefit claims costs of $370 million partially offset by a $250 million increase in net shared savings payments to ACOs. The last two rows of Table 3 enumerate the range of potential net Federal cost impacts our modeling projected, specifically the 10th percentile of simulation outcomes (a $230 million net Federal increase in cost) and the 90th percentile ($490 million net Federal savings). Overall, approximately two-thirds of trials resulted in combined net Federal savings over 2017 to 2019.

physician fee schedule revenue to eligible professionals participating in certain qualifying ACOs.

TABLE 3—ESTIMATED 3-YEAR IMPACT OF PROPOSED CHANGES (INCLUDING 35 PERCENT WEIGHT USED IN DETERMINING REGIONAL ADJUSTMENT AMOUNT) ON NET BENEFIT COSTS, NET PAYMENTS TO ACOS, AND OVERALL NET FEDERAL COSTS CYS 2017 THROUGH 2019

[Impacts are median results unless otherwise noted]

	Calendar year	2017	2018	2019	3-Year total
Impact on Net Claims Costs ($Million).	ACOs Renew 2017	−60	−60	−70	−190
	ACOs Renew 2018		−60	−60	−120
	ACOs Renew 2019			−60	−60
	All ACO Total	−60	−120	−190	−370
Impact on Net Shared Savings Pay ($Million).	ACOs Renew 2017	40	30	30	100
	ACOs Renew 2018		40	30	70
	ACOs Renew 2019			80	80
	All ACO Total	40	70	140	250
Overall Impact on Net Federal Costs ($Million).	ACOs Renew 2017	−20	−30	−40	−90
	ACOs Renew 2018		−20	−30	−50
	ACOs Renew 2019			20	20
	All ACO Total	−20	−50	−50	−120
	Low (10th %-ile)	20	50	160	230
	High (90th %-ile)	−70	−160	−260	−490

The stochastic model and resulting financial estimates were prepared by the CMS Office of the Actuary (OACT). The median result of $120 million increase in savings in net Federal cost is a reasonable ''point estimate'' of the impact of the proposed changes to the Shared Savings Program during the period between 2017 through 2019. However, we emphasize the possibility of outcomes differing substantially from the median estimate, as illustrated by the estimate distribution. Accordingly, this RIA presents the costs and benefits of this proposed rule to the best of our ability. To help further develop and potentially improve this analysis, we request comment on the aspects of the rule that may incentivize behavior that could affect participation in the program and potential shared savings payments. As further data emerges and is analyzed, we may improve the precision of future financial impact estimates.

To the extent that the Shared Savings Program will result in net savings or costs to Part B of Medicare, revenues from Part B beneficiary premiums would also be correspondingly lower or higher. In addition, because MA payment rates depend on the level of spending within traditional FFS Medicare, savings or costs arising from the Shared Savings Program would result in corresponding adjustments to MA payment rates. Neither of these secondary impacts has been included in the analysis shown.

a. Effects of the Proposed Rule in Subsequent Agreement Periods

For an ACO's third agreement period (that is, second rebased agreement period, for example the 3-year period covering 2020 through 2022 for ACOs renewing for a second agreement period in 2017) we are proposing that the weight on the adjustment to the benchmark for regional FFS expenditures be increased from the 35 percent applicable in the first renewed agreement period to 70 percent. Increasing the weight of the adjustment reduces the strength of the link between an ACO's effect on the cost of care for its assigned beneficiaries and the benchmark calculated for an ensuing agreement period. Weakening this link may increase the incentive for ACOs to make investments in care delivery reforms because resulting potential savings would be more likely to be rewarded over multiple agreement periods rather than being 'baked' back into the benchmark at the next rebasing. On the other hand, efficiency gains would need to be significantly greater than those currently achieved by the ACOs participating in the program to result in budget neutrality by sufficiently offsetting increased shared savings payments to ACOs favored by a regional adjustment with 70 percent weight. As discussed in the preamble, we are proposing to set the weight on the regional adjustment at 70 percent for the third and subsequent agreement periods unless the Secretary determines a lower weight should be applied, as specified through future rulemaking. This determination, which could be made in advance of the agreement period beginning January 1, 2020, may be based on an assessment of the effects of the regional adjustment (and other modifications to the program made under this rule) on the Shared Savings Program such as: The effects on net program costs; the extent of participation in the Shared Savings Program; and the efficiency and quality of care received by beneficiaries.

ACOs demonstrate a wide range of differences in expenditures relative to risk adjusted expenditure levels for their region (for the sample of roughly 200 ACOs that started in the program in 2012 or 2013 the percentage by which ACO per capita expenditures exceed or are exceeded by their respective risk-adjusted regional per capita expenditures varies with a standard deviation of approximately 10 percent). Transitioning to a 70 percent weight to calculate the regional adjustment effectively down-weights the savings generated by the changes we are proposing to make to the existing benchmark calculation, since an ACO's benchmark would have increased dependence on the regional FFS expenditures and correspondingly a decreasing dependence on the historical expenditures for the ACO. At the same time, increasing the weight used to

calculate the regional adjustment could result in selective participation and increases in shared savings payments to ACOs that have low beneficiary expenditures at baseline. If that were to happen, the overall anticipated cost of net shared savings payments would rise and outweigh the anticipated potential gains from additional care management and associated improvements in net benefit costs spurred by the improved incentives for efficiency generated by partially delinking ACO benchmarks from their own historical costs.

An element of the proposed regional adjustment which becomes apparent when reviewing the accompanying data files and the performance of ACOs in 2013 and 2014 (for those roughly 200 ACOs that started in 2012 and 2013) is that ACOs that are above or below the regional service area expenditure amount used to adjust their rebased benchmark in 1 year tend to have a similar bias in the following year. Placing a 100 percent weight on the regional service area expenditure amount illustrates this. Of the 50 ACOs that were the furthest below their estimated regional service area expenditure level in 2013, all were at least 10 percent below and their average expenditures were roughly 15 percent below the expenditures for the region. In the subsequent year, 2014, none of these ACOs exceeded its regional service area expenditure level, and the average expenditure difference only moved by about 2 percentage points. Similar yet less glaring results occur in those ACOs above their regional service area expenditure level, with the 50 ACOs the furthest above their regional service area expenditure level having costs an average of approximately 10 percent above the regional service area expenditure level in 2013—an average difference for the group that only moved by about 2 percentage points the following year.

Of the approximately 150 ACOs that were more than 0.5 percent below their regional service area expenditure level, only about 10 percent were above their regional service area expenditure level in the following year. Again, ACOs above their regional service area expenditure level follow a similar pattern, though less drastic. Of the ACOs above their regional service area expenditure level by more than 0.5 percent, approximately 25 percent performed below their regional service area expenditure level in the following year. Notwithstanding the potential for behavioral changes, this illustrates that for a significant portion of existing ACOs, there is evidence of a bias when compared to their regional service area expenditure level and that bias is likely to be predictable over time. We have accounted for cost associated with program selection for ACOs favored by such bias and considered attrition in participation by ACOs disfavored by such bias. However for some ACOs of the latter condition, it may take multiple years to sufficiently redesign their care delivery processes in order to generate savings substantial enough to offset high expenditures relative to their region at baseline. We note that this analysis is based on data from the first two years of program operations, and longer term effects may emerge to mitigate bias for certain ACOs with high expenditures at baseline.

Additionally, the passage of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) established new incentives to encourage providers to participate in alternative payment models. Paying for value and incentivizing better care coordination and integration is a top priority for us, and we have been implementing policies that encourage a shift towards paying for value instead of volume. MACRA provides additional tools to encourage care integration and value-based payment. Although implementation of MACRA is ongoing and many details are still to be proposed and finalized through rulemaking, the incentives created by MACRA could result in increased market pressure on providers to participate in ACOs. This may lower the risk of selective participation and potentially lead to higher expected net Federal savings.

Emerging data will be monitored in order to provide additional information for updating projections as part of the proposed use of a higher percentage (70 percent) in calculating the regional adjustment amount for ACOs entering a third or subsequent agreement period. For example, if ACOs respond by generating new efficiencies in care beyond those that are anticipated, and/or potential selective participation responses are lower than expected, then a 70 percent weight could potentially be associated with revised expectations regarding net costs or net savings. However, it is also possible that gains in efficiency will fail to materialize and/or selective participation and other behavioral responses will increase cost beyond the level that is currently anticipated, in such scenario we would consider further rulemaking as necessary to protect the Medicare Trust Funds (for example, in order to apply a lower percent weight in calculating the regional adjustment amount). To help further develop and potentially improve this analysis, we request comment on the aspects of the rule that may incentivize behavior that will affect participation in the program and potential shared savings. We specifically request data and methodology suggestions for modeling interactions between ACO payment parameters, anticipated responses to incorporating regional adjustments and trends into the benchmark.

b. Further Considerations

The proposed rule would introduce regional expenditure trends and a regional adjustment to the rebased historical benchmark that would include prospective HCC risk adjustment to ensure trending and the regional adjustment appropriately account for differences in risk between an ACO's assigned beneficiary population and its regional service area assignable beneficiary population. Current program experience supports the hypothesis that the current approach of applying conditional reliance on demographic risk ratios for a continuously-assigned subset of beneficiaries for purposes of adjusting the historical benchmark to a performance year basis provides a reasonable balance between accounting for changes in risk of the population and limiting the risk that coding intensity shifts would artificially inflate ACO benchmarks. The proposal would retain this current policy for adjusting the historical benchmark to a performance year basis.

However, for the proposed changes involving the use of regional expenditure trends (to trend forward the benchmark years and to update the ACO's rebased historical benchmark) and the adjustment to the rebased benchmark for expenditures in the ACO's regional service area, we are not proposing to interject an additional explicit policy for limiting coding intensity sensitivity at this time (beyond what is described in section II.A.3. of this proposed rule), but would rely on the difference between the average prospective HCC scores for the ACO's assigned beneficiary population and its regional service area assignable beneficiary population. Regional trend calculations for the rebased historical base years are expected to mitigate the risk of sensitivity to potential coding intensity efforts by ACO providers/suppliers for several reasons. The benchmark years for the new agreement period correspond to performance years from a prior agreement period where incentives for coding intensity changes were already actively limited by the continuously assigned demographic alternative calculation. In addition,

coding intensity shifts that are uniform over a prior agreement period would not affect the trending of historical expenditures from the first 2 years to the third year of such period because such historical adjustments are only sensitive to risk score changes between the first 2 years and the third year of such baseline period. The CMS prospective HCC model has been updated for 2016 in ways that reduce its sensitivity to subjective coding levels for chronic conditions that are known to have historically accounted for differences in coding levels for MA beneficiaries relative to FFS Medicare. Lastly, ACOs tend to neighbor each other in markets where any ACO coding intensity shifts would then likely drive similar market-wide effects (including effects from market spillover affecting diagnosis codes submitted for patients receiving care from ACO providers/suppliers but who are not ultimately assigned to an ACO) that would tend to net out any coding shifts in the calculation of risk scores relative to the ACO's region. This final consideration also offers a degree of reassurance that the calculation of the adjustment reflecting the difference between an ACO's expenditures relative to its region would be less likely to be materially biased by ACO coding intensity shifts.

If the new benchmark rebasing methodology proposed in this rule is adopted, we intend to carefully monitor emerging program data to assess whether the overall benchmark methodology as revised remains appropriately balanced between sensitivity to real changes in assigned population risk and protection from making shared savings payments due to potential coding intensity shifts. Of particular concern for close monitoring (and potential future rulemaking changes, if necessary) are the unique circumstances related to the use of a prospective beneficiary assignment methodology in Track 3 and the associated benchmark calculations for Track 3 ACOs. Prospective assignment creates an overlap between the claims considered for purposes of determining beneficiary assignment to the ACO and the period in which diagnosis submissions from claims are utilized for calculating a beneficiary's prospective HCC score for the year during which the beneficiary will be assigned to the ACO. A related area for monitoring is whether regional FFS expenditures tabulated at a county level for assignable beneficiaries determined using the assignment methodology used in Track 1 and Track 2 would provide an unbiased comparison to a beneficiary population assigned under the prospective assignment methodology for Track 3. For these reasons, monitoring will consider the potential necessity to undertake rulemaking in order to make adjustments to regional calculations for Track 3 ACOs to avoid biasing the results.

2. Effects on Beneficiaries

As explained in more detail previously, we believe the proposed changes would provide additional incentive for ACOs to improve care management efforts and maintain program participation. In addition, ACOs with low baseline expenditures relative to their region are more likely to transition to and sustain participation in a risk track (Tracks 2 or 3) in future agreement periods. Consequently, the changes in this rule will also benefit beneficiaries through broader improvements in accountability and care coordination (such as through the use of the waiver of the 3-day stay SNF rule by Track 3 ACOs) than would occur under current regulations.

Additionally, we intend to continue to analyze emerging program data to monitor for any potential unintended effect that the introduction of a regional adjustment to the ACO's rebased historical benchmark could potentially have on the incentive for ACOs to serve vulnerable populations (and for ACOs to maintain existing partnerships with providers and suppliers serving such populations). Further refinements that could be addressed in future rulemaking if monitoring ultimately revealed such problems could include reducing the percentage applied to the adjustment to the benchmark for regional expenditures, introducing additional adjustments (for example, enhancements or complements to the prospective HCC risk model) to control for exogenous factors impacting an ACO's costs relative to its region, or otherwise modifying the benchmark calculation to improve the balance between rewarding attainment and improvement in the efficiency and quality of care delivery for the full spectrum of beneficiaries enrolled in FFS Medicare.

3. Effects on Providers and Suppliers

The proposed shift from adding prior agreement period savings to an ACO's rebased baseline (as provided in the June 2015 final rule for ACOs renewing for a second agreement period starting in 2016) to an adjustment reflecting 35 percent of the difference between the ACO's regional service area average per capita expenditure amount and the ACO's rebased historical benchmark amount is anticipated to provide an additional incentive for ACOs to make investments to improve care coordination. At the same time, such change in methodology also shifts the benchmark policy focus from rewarding improvement in trend relative to an ACO's original baseline to an incentive that places more weight on attainment of efficiency—how an ACO compares in absolute expenditures to its region. Certain ACOs that joined the program from a high expenditure baseline relative to their region and that showed savings under the first agreement period benchmark methodology will likely expect lower benchmarks and greater likelihood of shared losses under a methodology that includes a 35 percent weight on the regional expenditure adjustment. Additionally, certain ACOs that joined the program with relatively low expenditures relative to their region may now expect significant shared savings payments even if they failed to generate shared savings in their first agreement period under the existing benchmark methodology.

4. Effect on Small Entities

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most physician practices, hospitals, and other providers are small entities either by virtue of their nonprofit status or by qualifying as a small business under the Small Business Administration's size standards (revenues of less than $7.5 to $38.5 million in any 1 year; NAIC Sector-62 series). States and individuals are not included in the definition of a small entity. For details, see the Small Business Administration's Web site at *http://www.sba.gov/content/small-business-size-standards.* For purposes of the RFA, approximately 95 percent of physicians are considered to be small entities. There are over 1 million physicians, other practitioners, and medical suppliers that receive Medicare payment under the Physician Fee Schedule.

Although the Shared Savings Program is a voluntary program and payments for individual items and services will continue to be made on a FFS basis, we acknowledge that the program can affect many small entities and have developed our rules and regulations accordingly in order to minimize costs and administrative burden on such entities as well as to maximize their opportunity to participate. (For example: Networks

of individual practices of ACO professionals are eligible to form an ACO; the use of an MSR under Track 1, and, if elected by the ACO, under Tracks 2 and 3 that varies by the size of the ACO's population and is calculated based on confidence intervals so that smaller ACOs have relatively lower MSRs; and eligible ACOs may remain under the one-sided model for a second agreement period.)

Small entities are both allowed and encouraged to participate in the Shared Savings Program, provided the ACO has a minimum of 5,000 assigned beneficiaries, thereby potentially realizing the economic benefits of receiving shared savings resulting from the utilization of enhanced and efficient systems of care and care coordination. Therefore, a solo, small physician practice or other small entity may realize economic benefits as a function of participating in this program and the utilization of enhanced clinical systems integration, which otherwise may not have been possible. We believe the policies included in this proposed rule, such as proposals to facilitate the transition to performance-based risk (see section II.C. of this proposed rule) and to streamline the adjustment to the benchmark for changes in the ACO participant composition (see section II.B. of this proposed rule), may further encourage participation by small entities. For example, smaller entities (among others) that are risk averse but ready to transition to a performance-based risk track may elect the option (if finalized) that would defer by one year their entrance into a two-sided model. Once under a two-sided model, ACOs will have the opportunity for greater reward compared to participation under the one-sided model although they will be at risk for shared losses. Additionally, the proposed approach to adjusting for changes in ACO participant composition could provide greater stability to the benchmark calculations over time, particularly for ACOs with relatively smaller numbers of assigned beneficiaries.

As detailed in this RIA, total median shared savings payments net of shared losses are expected to increase by $250 million over the 2017 to 2019 period as a result of changes that will increase benchmarks for certain ACOs participating in the Shared Savings Program and therefore increase the average small entity's shared savings revenue. However, the impact on any single small entity may depend on its relationship to costs calculated for the counties comprising its regional service area. We seek comment from individual providers, including small entities, regarding the changes proposed with special focus on the impact of the adjustment to the benchmark to reflect regional FFS expenditures, again noting for commenters that county level data are being made available in conjunction with this proposed rule to allow them to analyze such differences in cost for individual ACOs and their regions.

5. Effect on Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. Although the Shared Savings Program is a voluntary program, this proposed rule will have a significant impact on the operations of a substantial number of small rural hospitals. We have proposed changes to our regulations such that benchmark trend calculations and adjustments for ACOs that include rural hospitals as ACO participants will be made in order to reflect FFS costs and trends in the ACO's regional service area. Overall, we expect the average ACO to receive greater shared savings revenue under the proposed changes ($250 million greater net sharing anticipated over 2017 through 2019). However, the impact on individual ACOs and their participating small rural hospitals may differ from the program average. We seek comment from small rural hospitals on the proposed changes with special focus on the impact of the adjustment to the benchmark to reflect regional FFS expenditures, again noting for commenters that county level data being made available in conjunction with this proposed rule to allow them to analyze such differences in cost for individual ACOs and their regions.

6. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that is approximately $144 million. This proposed rule does not include any mandate that would result in spending by state, local or tribal governments, in the aggregate, or by the private sector in the amount of $144 million in any 1 year. Further, participation in this program is voluntary and is not mandated.

D. Alternatives Considered

As indicated in the June 2015 final rule (see 80 FR 32795 through 32796), and as discussed previously in section II.A.2.c. of this proposed rule, we also considered an alternative method for establishing benchmarks for subsequent agreement periods that would incorporate regional trends. Under such method we would apply the regional trend to inflate an ACO's historical benchmark from the prior (that is, first) agreement period to represent expenditures expected for the most recent base year preceding the ACO's subsequent agreement period. This approach would therefore be delinked from an ACO's performance over the prior agreement period (except to the extent an ACO's assigned population impacts its wider regional trend)—improving the incentive for ACOs to invest in efforts to improve efficiency. In contrast to the methodology for calculating a regional adjustment proposed in this rule, it would also retain sensitivity to baseline costs demonstrated by beneficiaries assigned to the ACO in the prior agreement period, potentially mitigating concerns regarding certain types of program selection and possibly providing a more incremental transition for ACOs familiar with the existing program benchmark methodology.

Specifically it was estimated that blending an ACO's rebased benchmark with its prior (first) historical benchmark inflated by a regional trend would produce an overall budget neutral change in net program cost for the subsequent agreement period if the blending were accomplished via a 70 percent weight on an ACO's trended prior benchmark and a 30 percent weight on its rebased benchmark. While such blend would reasonably be expected to result in an improvement in program incentives for ACOs to generate new efficiencies in care delivery despite rebasing concerns, other considerations impacted the decision to ultimately propose the different approach detailed in this proposed rule.

Primarily, program experience to date indicates that many ACOs make significant changes to their provider composition over the course of an agreement period. Attempting to lock-in a first historical benchmark that would be trended to form 70 percent of the historical benchmark for future agreement periods would invariably be complicated and in many cases biased by changes in provider composition made years after the ACO's first entry

into the program. Such operational complications and potential biases would invariably grow in magnitude for subsequent agreement periods, necessitating modifications to future rebasing, for example by reducing the weight on the regionally-trended component of the benchmark or requiring the regionally trended component always to be sourced from the rebased benchmark from the prior agreement period—changes that would likely dampen the incentive for ACOs to make significant investments in redesigning care in efficient ways. Furthermore, the rebasing methodology proposed in this proposed rule has the comparative advantage of linking the regional adjustment to an ACO's historical expenditures to its region's contemporary standardized cost as opposed to the level of cost (and associated efficiency) that happened to be exhibited in an ACO's prior historical benchmark period. Therefore, it was determined that the proposed approach generally offers a less complicated and more consistent and equitable mechanism for adjusting ACO rebased benchmarks to reflect regional expenditures over the long term.

E. Compliance With Requirements of Section 1899(i)(3)(B) of the Act

As previously discussed in this proposed rule, certain proposals rely upon the authority granted in section 1899(i)(3) of the Act to use other payment models that the Secretary determines will improve the quality and efficiency of items and services furnished to Medicare FFS beneficiaries. Section 1899(i)(3)(B) requires that such other payment model must not result in additional program expenditures. Collectively, current and proposed policies falling under authority of section 1899(i)(3) of the Act include: performance-based risk, refining the calculation of national expenditures used to update the historical benchmark to use the assignable subpopulation of total FFS enrollment, updating benchmarks with regional trends as opposed to national average absolute growth in per capita spending, and adjusting performance year expenditures to remove IME, DSH, and uncompensated care payments.

A comparison was constructed between the projected impact of the payment methodology that incorporates all proposed changes and a hypothetical baseline payment methodology that excludes the elements described previously that require section 1899(i)(3) of the Act authority—most importantly performance based risk in Tracks 2 and 3 and updating benchmarks using regional trends. The hypothetical baseline was assumed to include adjustments allowable under section 1899(d)(1)(B)(ii) of the Act including the provision from the June 2015 final rule whereby an ACO's rebased benchmark might include an adjustment reflecting a portion of savings measured during the ACO's prior agreement period and the 35 percent weight used in calculating the regional adjustment to the ACO's rebased historical benchmark proposed in this rule. The stochastic model and associated assumptions described previously in this section were adapted to reflect the agreement period spanning 2017 through 2019 for roughly 100 ACOs expected to renew in 2017. Such analysis estimated approximately $130 million greater average net program savings under the alternative payment model that includes all proposed changes than expected under the hypothetical baseline in total over the 2017 to 2019 agreement period cycle. Furthermore, approximately 78 percent of stochastic trials resulted in greater or equal net program savings. The proposals were projected to result in both greater savings on benefit costs and net payments to ACOs. Participation in performance-based risk under Track 2 and Track 3 is assumed to improve the incentive for ACOs to increase the efficiency of care for beneficiaries (similar to as assumed in the modeling of the impacts, described previously). Such added savings are partly offset by lower participation associated with the requirement to transition to performance-based risk. Correspondingly, net shared savings payments are also expected to be greater under the proposed alternative payment model under section 1899(i)(3) of the Act than under the hypothetical baseline, mainly driven by the higher sharing rates and potentially lower minimum savings requirements in Track 2 and Track 3, but partly offset mainly by lower benchmarks resulting from the removal of the policy adopted in the June 2015 final rule of adding a portion of savings to the rebased benchmark, the use of more-accurate regional benchmark updates, and new shared loss revenue.

Additionally, we also projected a lower net federal savings of approximately $15 million would result from using the hypothetical baseline described previously but forgoing the adjustment to account for a portion of savings generated during the ACO's prior agreement period. We believe the proposed removal of this adjustment for savings generated in the ACO's prior agreement period would enable us to place a greater weight on the amount of the regional adjustment in the future, while not over crediting or penalizing an ACO for its prior performance (discussed in section II.A.2.c. of this proposed rule). This alternative hypothetical baseline (that does not account for savings generated in the ACO's prior agreement period) more closely resembles the future hypothetical baseline that would be used in our analysis of the application of a higher weight in calculating the regional adjustment in subsequent agreement periods (if the policies described in this proposed rule are finalized).

Relative savings projected for the ACOs starting a second agreement period in 2017 participation cycle are reasonably assumed to be proportional for ACOs starting a second agreement period in 2018 and 2019 because the assumptions and parameters would be the same or similar. Accordingly, the requirement under section 1899(i)(3)(B) of the Act that an alternative payment model not result in additional program expenditures is therefore satisfied for the period 2017 through 2019. As discussed in sections II.A.2.d.3. and II.A.2.e.3. of this proposed rule, we will reexamine this projection in the future to ensure that the requirement under section 1899(i)(3)(B) of the Act that an alternative payment model not result in additional program expenditures continues to be satisfied, taking into account, for example, increasing the weight placed on the regional adjustment to an ACO's rebased historical benchmark, which is proposed to increase to 70 percent for an ACO's third and subsequent agreement period (unless the Secretary determines a lower weight should be applied, as specified through future rulemaking). In the event that we conclude that the payment model established under section 1899(i)(3) of the Act no longer meets this requirement, we would undertake additional notice and comment rulemaking to make adjustments to the payment model to assure continued compliance with the statutory requirements.

F. Accounting Statement and Table

As required by OMB Circular A–4 under Executive Order 12866, in Table 4, we have prepared an accounting statement showing the change in—(1) net federal monetary transfers; (2) shared savings payments to ACOs net of shared loss payments from ACOs; and (3) the aggregate cost of ACO operations for ACO participants and ACO

providers/suppliers from 2017 to 2019 that are associated with the provisions of this proposed rule as compared to baseline.

TABLE 4—ACCOUNTING STATEMENT ESTIMATE IMPACTS

[CYs 2017–2019]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Transfers From the Federal Government to ACOs				
Annualized monetized: Discount rate: 7%.	− 39.3 million	73.5 million	−159.1 million	Table 3.
Annualized monetized: Discount rate: 3%.	−39.7 million	75.3 million	−161.5 million.	

Notes: Negative values reflect reduction in federal net cost resulting from care management by ACOs. Estimates may be a combination of benefits and transfers. To the extent that the incentives created by Medicare payments change the amount of resources society uses in providing medical care, the more accurate categorization of effects would be as costs (positive values) or benefits/cost savings (negative values), rather than as transfers.

G. Publicly Available Data To Facilitate Modeling of Proposed Changes

We believe several sources of data will facilitate ACOs and other stakeholders in modeling the proposed changes to the benchmark rebasing methodology that include calculations using factors of regional FFS spending. Concurrent with the issuance of this proposed rule, we are making the following new data files available for select calendar years through the Shared Savings Program Web site at *www.cms.gov/sharedsavingsprogram/:*

- Files containing average county FFS expenditures, CMS–HCC prospective risk scores and person-years for assignable beneficiaries by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) for 2012, 2013, and 2014.
- Files containing the total number of assigned beneficiaries for each ACO for each county where at least 1 percent of the ACO's assigned beneficiaries reside for 2012, 2013, and 2014.

These files can be accessed under the Statutes/Regulations/Guidance section of the Shared Savings Program's Web site, see *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Statutes-Regulations-Guidance.html.*

A listing of all publicly available Shared Savings Program ACO data and ACO performance data sources maintained by CMS is available through the Shared Savings Program Web site (see the guide titled ''Medicare Shared Savings Program Publicly available ACO data and ACO performance data sources maintained by CMS'' available online at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/index.html*). The most comprehensive data sets that include specific data used in determining financial reconciliation for performance year 1 (ending December 31, 2013) and performance year 2014 are the Shared Savings Program Accountable Care Organizations Public Use Files (PUFs). For each ACO (identified by ACO name) the PUFs contain: Financial and quality performance data (including quality score, final sharing rate, Minimum Savings Rate/Minimum Loss Rate, benchmark, and the same data provided through the program's Performance Year results dataset available through Data.CMS.gov regarding the calculation of savings/losses); data on demographic characteristics of the ACO's assigned beneficiary population; ACO-level data on expenditure and utilization metrics; and data on the ACO's provider/supplier composition. Additionally, the performance year 2014 PUF includes variables not included in the PUF for the first performance year, including: State(s) where beneficiaries reside; average expenditures for populations of beneficiaries by enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) for benchmark years 1, 2, 3; average HCC risk scores in the performance year and benchmark years 1, 2, 3 for populations of beneficiaries by enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible); average historical expenditure benchmark; and number of assigned beneficiaries by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) in the performance year. (Note the existing 2013 PUF displays aggregate 18 or 21 month data for ACOs with start dates in April 2012 or July 2012 whereas the new data files to support modeling of this proposed rule include data on a calendar year basis, including data for 2013.)

Combining data from existing PUFs and the new data files will allow one or more years of comparison between risk-adjusted per capita expenditures for an ACO's assigned beneficiaries and the corresponding risk-adjusted expenditures for the ACO's regional service area, however the specific year or years of available comparison depend on the ACO's start date. For example, it will be possible to use the new data files to estimate the BY2, BY3 and PY1 (respectively CYs 2012, 2013, and 2014) risk standardized regional FFS costs by Medicare enrollment type for ACOs that started January 1, 2014 and then make a piecewise comparison to corresponding ACO assigned population standardized per capita costs by Medicare enrollment type for such years using the existing 2014 PUF data.

While we believe the release of the new data files in conjunction with existing 2014 PUF data will provide a reasonable overall dataset for illustrating relationships that exist between a representative sample of ACOs in terms of their expenditures and trends relative to their risk-adjusted county-weighted FFS regional service area expenditures and trends, we note that precision in such comparison for any single ACO may be limited because the datasets are not exhaustive. For example, as noted previously, assignment data for an ACO are not shown for counties with less than 1 percent of the ACO's overall assigned beneficiary population in the given year, and ACO assignment is not broken out by Medicare enrollment type at the county level.

We note that aside from these data files published and maintained by CMS, there are possibly other sources of data that would inform analyses of the proposed changes to the benchmarking methodology described in this proposed rule. For example, individual ACOs may have access to additional data, specific

to their organization and experience in the communities in which they operate, that may further enable them to model the potential impacts of the proposed changes on their organization.

H. Conclusion

The analysis in this section, together with the remainder of this preamble, provides a regulatory impact analysis. As a result of this proposed rule, the median estimate of the financial impact of the Shared Savings Program for CYs 2017 through 2019 would be net federal savings of $120 million greater than what would have been saved if no changes were made. Although this is the best estimate of the financial impact of the Shared Savings Program during CYs 2017 through 2019, a relatively wide range of possible outcomes exists. While approximately two-thirds of the stochastic trials resulted in an increase in net program savings, the 10th and 90th percentiles of the estimated distribution show a net increase in costs of $230 million to net savings of $490 million, respectively.

Overall, our analysis projects that improvements in the accuracy of benchmark calculations, including through the introduction of a regional adjustment to the ACO's rebased historical benchmark, are expected to result in increased overall participation in the program. The proposed changes are also expected to improve the incentive for ACOs to invest in effective care management efforts, increase the attractiveness of participation under performance-based risk in Track 2 or 3 for certain ACOs with lower beneficiary expenditures, and result in overall greater gains in savings on FFS benefit claims costs than the associated increase in expected shared savings payments to ACOs. We intend to monitor emerging results for ACO effects on claims costs, changing participation (including risk for cost due to selective changes in participation), and unforeseen biased benchmark adjustments due to diagnosis coding intensity shifts. Such monitoring will inform future rulemaking such as if the Secretary determines that a lower weight should be used in calculating the regional adjustment amount for ACOs' third and subsequent agreement periods.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

V. 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 we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 425

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 425 as set forth below:

PART 425—MEDICARE SHARED SAVINGS PROGRAM

■ 1. The authority citation, for part 425 is revised to read as follows:

Authority: Secs. 1102, 1106, 1871, and 1899 of the Social Security Act (42 U.S.C. 1302, 1306, 1395hh, and 1395jjj).

■ 2. Amend § 425.20 by adding in alphabetical order definitions for ''ACO's regional service area'', ''Assignable beneficiary'', ''BY'', ''Joiners'', ''Leavers'', and ''Stayers'' to read as follows:

§ 425.20 Definitions.

* * * * *

ACO's regional service area means all counties where one or more beneficiaries assigned to the ACO reside.

* * * * *

Assignable beneficiary means a Medicare fee-for-service beneficiary who receives at least one primary care service with a date of service during a specified 12-month assignment window from a Medicare-enrolled physician who is a primary care physician or who has one of the specialty designations included in § 425.402(c).

* * * * *

BY stands for benchmark year.

* * * * *

Joiners means beneficiaries who were not assigned to the ACO for the preceding performance year but become assigned to the ACO for the current performance year when the certified ACO participant list for the current performance year, as required under § 425.118, is taken into account.

Leavers means beneficiaries who were assigned to the ACO for the preceding performance year, but are no longer assigned to the ACO for the current performance year when the certified ACO participant list for the current performance year, as required under § 425.118, is taken into account.

* * * * *

Stayers means beneficiaries who were assigned to the ACO for the preceding performance year and remain assigned to the ACO for the current performance year when the certified ACO participant list for the current performance year, as required under § 425.118 is taken into account.

* * * * *

■ 3. Amend § 425.200 as follows:

■ A. In paragraph (b)(2) by removing the phrase ''all subsequent years'' and adding in its place the phrase ''through 2016''.

■ B. By adding paragraph (b)(3).

■ C. By adding paragraph (e).

The additions read as follows:

§ 425.200 Participation agreement with CMS.

* * * * *

(b) * * *

(3) For 2017 and all subsequent years—

(i) The start date is January 1 of that year; and

(ii) The term of the participation agreement is 3 years, except the term of an ACO's initial agreement period under Track 1 (as described under § 425.604) may be extended, at the ACO's option, for an additional year for a total of 4 performance years if the conditions specified in paragraph (e) of this section are met.

* * * * *

(e) *Optional fourth year.* (1) To qualify for a fourth performance year as described in paragraph (b)(3)(ii) of this section, the ACO must meet all of the following conditions:

(i) Is currently participating in its first agreement period under Track 1.

(ii) Has requested renewal of its participation agreement in accordance with § 425.224.

(iii) Has selected a two-sided model (as described under § 425.606 or § 425.610 of this part) in its renewal request.

(iv) Has requested an extension of its current agreement period and a 1-year deferral of the start of its second agreement period in a form and manner specified by CMS.

(v) CMS approves the ACO's renewal, extension, and deferral requests.

(2) An ACO that is approved for renewal, extension, and deferral that terminates its participation agreement before the start of the first performance year of the second agreement period is—

(i) Considered to have terminated its participation agreement for the second agreement period under § 425.220; and

(ii) Not eligible to participate in the Shared Savings Program again until after the date on which the term of that second agreement period would have expired if the ACO had not terminated its participation, consistent with § 425.222.

■ 4. Amend § 425.314 as follows:

■ A. By removing paragraph (a)(4).

■ B. By adding paragraph (e).

The additions reads as follows:

§ 425.314 Audits and record retention.

* * * * *

(e) *Reopenings.* (1) If CMS determines that the amount of shared savings due to the ACO or the amount of shared losses owed by the ACO has been calculated in error, CMS may reopen the initial determination or a final agency determination under subpart I of this part and issue a revised initial determination:

(i) At any time in the case of fraud or similar fault as defined in § 405.902; or

(ii) Not later than 4 years after the date of the notification to the ACO of the initial determination of savings or losses for the relevant performance year under § 425.604(f), § 425.606(h), or § 425.610(h), for good cause.

(2) Good cause may be established when—

(i) There is new and material evidence that was not available or known at the time of the payment determination and may result in a different conclusion; or

(ii) The evidence that was considered in making the payment determination clearly shows on its face that an obvious error was made at the time of the payment determination.

(3) A change of legal interpretation or policy by CMS in a regulation, CMS ruling or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening a payment determination under this section.

(4) CMS has sole discretion to determine whether good cause exists for reopening a payment determination under this section.

■ 5. Amend § 425.602 as follows:

■ A. Revise the section heading.

■ B. Redesignate paragraph (a)(4) as paragraph (a)(4)(i).

■ C. In newly redesignated paragraph (a)(4)(i) by removing the phrase ''Truncates an assigned'' and adding in its place the phrase ''For performance years before 2017, truncates an assigned''.

■ D. Add paragraph (a)(4)(ii).

■ E. Revise paragraph (a)(5)

■ F. Add paragraphs (a)(8)(i) and (ii).

■ G. Add paragraph (a)(9).

■ H. Revise paragraphs (b)(1) and (2).

■ I. Remove paragraph (c).

The revisions and additions read as follows:

§ 425.602 Establishing, adjusting, and updating the benchmark for an ACO's first agreement period.

(a) * * *

(4) * * *

(ii) For the 2017 performance year and all subsequent performance years, truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year corresponding to each benchmark year in order to minimize variation from catastrophically large claims.

(5)(i) For performance years before 2017—

(A) Using CMS Office of the Actuary national Medicare expenditure data for each of the years making up the historical benchmark, determines national growth rates and trends expenditures for each benchmark year (BY1 and BY2) to the third benchmark year (BY3) dollars.

(B) To trend forward the benchmark, CMS makes separate calculations for expenditure categories for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(ii) For the 2017 and all subsequent performance years—

(A) Using CMS Office of the Actuary national Medicare expenditure data for each of the years making up the historical benchmark, determines national growth rates for assignable beneficiaries identified for the 12-month calendar year corresponding to each benchmark year, and trends expenditures for each benchmark year (BY1 and BY2) to the third benchmark year (BY3) dollars.

(B) To trend forward the benchmark, CMS makes separate calculations for expenditure categories for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

* * * * *

(8) * * *

(i) For performance years before 2017, the benchmark is adjusted to take into account the expenditures for beneficiaries who would have been assigned to the ACO in any of the 3 most recent years prior to the agreement period using the most recent certified ACO participant list for the relevant performance year.

(ii) For the 2017 performance year and all subsequent performance years, the benchmark is adjusted to account for changes in the certified ACO participant list during the term of the agreement period.

(A) To adjust the benchmark, CMS does the following:

(*1*) Calculates a stayer component using an expenditure ratio of average per capita expenditures for stayers to stayers and leavers combined, using BY3 as a reference year. CMS makes separate expenditure calculations for each of the following populations of beneficiaries:

(*i*) ESRD.

(*ii*) Disabled.

(*iii*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*iv*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(*2*) Calculates a joiner component using average per capita expenditures for joiners, using BY3 as a reference year. CMS makes separate expenditure calculations for each of the following populations of beneficiaries:

(*i*) ESRD.

(*ii*) Disabled.

(*iii*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*iv*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(*3*) Combines the stayer component described in paragraph (a)(8)(ii)(A)(*1*) of this section and the joiner component described in paragraph (a)(8)(ii)(A)(*2*) of this section.

(*4*) Calculates a single weighted average per capita adjusted historical benchmark from separate expenditure calculations for each of the following populations of beneficiaries:

(*i*) ESRD.

(*ii*) Disabled.

(*iii*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*iv*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(B) In the event no stayers are identified to complete the calculation as described in paragraph (a)(8)(ii)(A) of this section, CMS calculates an adjusted historical benchmark for the ACO as described in paragraph (a)(8)(i) of this section.

(9) The historical benchmark is further adjusted at the time of reconciliation for a performance year to account for changes in severity and case mix for newly and continuously assigned beneficiaries using prospective HCC risk scores and demographic

factors as described under §§ 425.604(a)(1) through (3), 425.606(a)(1) through (3), and 425.610(a)(1) through (3).

(b) * * *

(1) For performance years before 2017, CMS updates the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program.

(i) CMS updates the fixed benchmark by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program using data from CMS' Office of the Actuary.

(ii) To update the benchmark, CMS makes expenditure calculations for separate categories for each of the following populations of beneficiaries:

(A) ESRD.

(B) Disabled.

(C) Aged/dual eligible Medicare and Medicaid beneficiaries.

(D) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(2) For the 2017 performance year and all subsequent performance years, CMS updates the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program for assignable beneficiaries identified for the 12-month calendar year corresponding to the year for which the update is calculated.

(i) CMS updates the fixed benchmark by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program for assignable beneficiaries identified for the 12-month calendar year corresponding to the year for which the update is being calculated using data from CMS' Office of the Actuary.

(ii) To update the benchmark, CMS makes expenditure calculations for separate categories for each of the following populations of beneficiaries:

(A) ESRD.

(B) Disabled.

(C) Aged/dual eligible Medicare and Medicaid beneficiaries.

(D) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

■ 6. Add § 425.603 to read as follows:

§ 425.603 Resetting, adjusting, and updating the benchmark for a subsequent agreement period.

(a) An ACO's benchmark is reset at the start of each subsequent agreement period.

(b) For ACOs entering into a second agreement period in 2016, CMS establishes, adjusts, and updates the rebased historical benchmark in accordance with § 425.602(a) and (b) with the following modifications:

(1) Rather than weighting each year of the benchmark using the percentages provided at § 425.602(a)(7), each benchmark year is weighted equally.

(2) An additional adjustment is made to account for the average per capita amount of savings generated during the ACO's previous agreement period. The adjustment is limited to the average number of assigned beneficiaries (expressed as person years) under the ACO's first agreement period.

(c) For ACOs entering into a second or subsequent agreement period in 2017 and subsequent years, CMS establishes the rebased historical benchmark by determining the per capita Parts A and B fee-for-service expenditures for beneficiaries who would have been assigned to the ACO in any of the 3 most recent years before the agreement period using the certified ACO participant list submitted before the start of the agreement period as required under § 425.118. CMS does all of the following:

(1) Calculates the payment amounts included in Parts A and B fee-for-service claims using a 3-month claims run out with a completion factor. The calculation—

(i) Excludes IME and DSH payments; and

(ii) Considers individually beneficiary identifiable payments made under a demonstration, pilot or time limited program.

(2) Makes separate expenditure calculations for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(3) Adjusts expenditures for changes in severity and case mix using prospective HCC risk scores.

(4) Truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year corresponding to each benchmark year in order to minimize variation from catastrophically large claims.

(5) Trends forward expenditures for each benchmark year (BY1 and BY2) to the third benchmark year (BY3) dollars using regional growth rates based on expenditures for the ACO's regional service area as determined under paragraphs (e) and (f) of this section, making separate expenditure calculations for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(6) Restates BY1 and BY2 trended and risk-adjusted expenditures in BY3 proportions of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(7) Weights each benchmark year equally.

(8) The benchmark is adjusted to account for changes in the certified ACO participant list during the term of the agreement period.

(i) To adjust the benchmark, CMS does the following:

(A) Calculates a stayer component using an expenditure ratio of average per capita expenditures for stayers to stayers and leavers combined, using BY3 as a reference year. CMS makes separate expenditure calculations for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(B) Calculates a joiner component using average per capita expenditures for joiners, using BY3 as a reference year. CMS makes separate expenditure calculations for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(*C*) Combines the stayer component described in paragraph (c)(8)(i)(A) of this section and the joiner component described in paragraph (c)(8)(i)(B) of this section.

(*D*) Calculates a single weighted average per capita adjusted historical

benchmark from separate expenditure calculations for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(ii) In the event no stayers are identified to complete the calculation as described in paragraph (c)(8)(i) of this section, CMS calculates an adjusted historical benchmark for the ACO as described in § 425.602(a)(8)(i).

(iii) CMS redetermines the regional adjustment amount under paragraph (c)(9) of this section, according to the ACO's assigned beneficiaries for BY3 resulting from the most recent certified ACO participant list for the relevant performance year.

(9) Adjusts the historical benchmark based on the ACO's regional service area expenditures, making separate calculations for the following populations of beneficiaries: ESRD, disabled, aged/dual eligible Medicare and Medicaid beneficiaries, and aged/non-dual eligible Medicare and Medicaid beneficiaries. CMS does all of the following:

(i) Calculates an average per capita amount of expenditures for the ACO's regional service area as follows:

(A) Determines the counties included in the ACO's regional service area based on the ACO's BY3 assigned beneficiary population.

(B) Determines the ACO's regional expenditures as specified under paragraphs (e) and (f) of this section for BY3.

(C) Adjusts for differences in severity and case mix between the ACO's assigned beneficiary population and the ACO's regional service area that includes assignable beneficiaries identified for the 12-month calendar year that corresponds to the relevant benchmark year.

(ii) Calculates the adjustment as follows:

(A) Determines the difference between the ACO's regional service area average per capita expenditure amount as specified under paragraph (c)(9)(i) of this section and the average per capita amount of the ACO's rebased historical benchmark determined under paragraphs (c)(1) through (8) of this section, for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(B) Applies a percentage, determined as follows:

(*1*) The first time an ACO's benchmark is rebased using the methodology described under paragraph (c) of this section, CMS calculates the regional adjustment using 35 percent of the difference between the ACO's regional service area average per capita expenditure amount and the ACO's rebased historical benchmark amount.

(*2*) The second or subsequent time that an ACO's benchmark is rebased using the methodology described under this paragraph (c), CMS calculates the regional adjustment to the historical benchmark using 70 percent of the difference between the ACO's regional service area average per capita regional expenditure amount and the ACO's rebased historical benchmark amount, unless the Secretary determines a lower weight should be applied.

(10) The historical benchmark is further adjusted at the time of reconciliation for a performance year to account for changes in severity and case mix for newly and continuously assigned beneficiaries using prospective HCC risk scores and demographic factors as described under §§ 425.604(a)(1) through (3), 425.606(a)(1) through (3), and 425.610(a)(1) through (3).

(d) CMS updates the rebased historical benchmark under paragraph (c) of this section, annually for each year of the agreement period by the growth in the ACO's regional service area expenditures by doing all of the following:

(1) Determining the counties included in the ACO's regional service area based on the ACO's assigned beneficiary population used to determine financial reconciliation for the relevant performance year.

(2) Determining growth rates based on expenditures for counties in the ACO's regional service area calculated under paragraphs (e) and (f) of this section, for each performance year.

(3) Updating the benchmark by making separate calculations for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(e) For ACOs entering into a second or subsequent agreement period in 2017 and subsequent years, CMS does all of the following to determine risk adjusted county fee-for-service expenditures for use in calculating the ACO's regional fee-for-service expenditures:

(1)(i) Determines average county fee-for-service expenditures based on expenditures for the assignable population of beneficiaries in each county, where assignable beneficiaries are identified for the 12-month calendar year corresponding to the relevant benchmark or performance year.

(ii) Makes separate expenditure calculations for each of the following populations of beneficiaries:

(A) ESRD.

(B) Disabled.

(C) Aged/dual eligible Medicare and Medicaid beneficiaries.

(D) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(iii) The calculation for ESRD beneficiaries is based on the aggregation of expenditures statewide, and applied consistently to each county within a State.

(2) Calculates assignable beneficiary expenditures using the payment amounts included in Part A and B fee-for-service claims with dates of service in the 12-month calendar year for the relevant benchmark or performance year, using a 3-month claims run out with a completion factor. The calculation—

(i) Excludes IME and DSH payments; and

(ii) Considers individually beneficiary identifiable payments made under a demonstration, pilot or time limited program.

(3) Truncates a beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year that corresponds to the relevant benchmark or performance year, in order to minimize variation from catastrophically large claims.

(4) Adjusts fee-for-service expenditures for severity and case mix of assignable beneficiaries in the county using prospective CMS–HCC risk scores.

(i) The calculation is made according to the following populations of beneficiaries:

(A) ESRD.

(B) Disabled.

(C) Aged/dual-eligible Medicare and Medicaid beneficiaries.

(D) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(ii) The calculation for ESRD beneficiaries is based on the aggregation of expenditures and prospective CMS–HCC risk scores statewide, and applied consistently to each county within a State.

(f) For ACOs entering into a second or subsequent agreement period in 2017 and subsequent years, CMS does all of

the following to calculate an ACO's regional expenditures using risk-adjusted county fee-for-service expenditures determined according to paragraph (e) of this section:

(1) Weights resulting county expenditures by the ACO's proportion of assigned beneficiaries for the relevant benchmark or performance year for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iii) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(2) Weights county-level fee-for-service expenditures by the ACO's proportion of assigned beneficiaries in the county, determined by the number of the ACO's assigned beneficiaries residing in the county in relation to the ACO's total number of assigned beneficiaries, to determine regional fee-for-service expenditures for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

■ 7. Amend § 425.604 as follows:

■ A. In paragraphs (a)(1) and (2), remove each time it appears the phrase ''adjust for changes'' and add in its place the phrase ''adjust the benchmark for changes.''

■ B. In paragraph (a)(3) introductory text, remove the phrase ''In adjusting for health status'' and add in its place the phrase ''In adjusting the benchmark for health status''.

■ C. Redesignate paragraph (a)(4) as paragraph (a)(4)(i).

■ D. In newly redesignated paragraph (a)(4)(i) by remove the phrase ''To minimize variation'' and add in its place the phrase ''For performance years before 2017 to minimize variation''.

■ E. Add paragraph (a)(4)(ii).

The addition reads as follows:

§ 425.604 Calculation of savings under the one-sided model.

(a) * * *

(4) * * *

(ii) For the 2017 and all subsequent performance years to minimize variation from catastrophically large claims, CMS truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year corresponding to the performance year.

* * * * *

■ 8. Amend § 425.606 as follows:

■ A. In paragraphs (a)(1) and (2), remove each time it appears the phrase ''adjust for changes'' and add in its place the phrase ''adjust the benchmark for changes. ''

■ B. In paragraph (a)(3) introductory text, remove the phrase ''In adjusting for health status'' and add in its place the phrase ''In adjusting the benchmark for health status. ''

■ C. Redesignate paragraph (a)(4) as paragraph (a)(4)(i).

■ D. In newly redesignated paragraph (a)(4)(i), remove the phrase ''To minimize variation'' and add in its place the phrase ''For performance years before 2017 to minimize variation''.

■ E. Add paragraph (a)(4)(ii).

The addition reads as follows:

§ 425.606 Calculation of shared savings and losses under Track 2.

(a) * * *

(4) * * *

(ii) For the 2017 performance years and all subsequent performance years to minimize variation from catastrophically large claims, CMS truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year corresponding to the performance year.

* * * * *

■ 9. Amend § 425.610 as follows:

■ A. In paragraphs (a)(1) and (2), remove each time it appears the phrase ''adjust for changes'' and add in its place the phrase ''adjust the benchmark for changes.''

■ B. In paragraph (a)(3) introductory text, remove the phrase ''In adjusting for health status'' and add in its place the phrase ''In adjusting the benchmark for health status.''

■ C. Redesignating paragraph (a)(4) as paragraph (a)(4)(i).

■ D. In newly redesignated paragraph (a)(4)(i), remove the phrase ''To minimize variation'' and add in its place the phrase ''For performance years before 2017 to minimize variation''.

■ E. Add paragraph (a)(4)(ii).

The addition reads as follows:

§ 425.610 Calculation of shared savings and losses under Track 3.

(a) * * *

(4) * * *

(ii) For the 2017 and all subsequent performance years to minimize variation from catastrophically large claims, CMS truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year corresponding to the performance year.

* * * * *

§ 425.800 [Amended]

■ 10. Amend § 425.800 as follows:

■ A. In paragraph (a)(4) by—

■ i. Removing the phrase ''The determination of whether'' and adding in its place the phrase ''The initial determination or revised initial determination of whether''.

■ ii. Removing the phrase ''including the determination'' and adding in its place the phrase ''including the initial determination or revised initial determination''.

■ iii. Removing the cross-reference ''§ 425.602, § 425.604, and § 425.606'' and adding in its place the cross-reference ''§§ 425.602, 425.604, 425.606, and 425.610''.

■ B. In paragraph (a)(5) by removing the cross-reference ''§ 425.604 and 425.606'' and adding in its place ''§§ 425.604, 425.606, and 425.610''.

Dated: December 16, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: December 21, 2015.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–01748 Filed 1–28–16; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 81 Wednesday,
No. 22 February 3, 2016

Part III

The President

Proclamation 9391—American Heart Month, 2016
Proclamation 9392—National African American History Month, 2016
Proclamation 9393—National Teen Dating Violence Awareness and Prevention Month, 2016

Federal Register
Vol. 81, No. 22
Wednesday, February 3, 2016

Presidential Documents

Title 3—

The President

Proclamation 9391 of January 29, 2016

American Heart Month, 2016

By the President of the United States of America

A Proclamation

Affecting people of all races and ethnicities, cardiovascular disease is the single leading cause of death for both men and women in the United States, responsible for one in three deaths in the United States each year. Though usually preventable, heart disease can manifest itself in sudden and unforeseen ways, and it costs our Nation hundreds of billions of dollars annually. During American Heart Month, we remember those we have lost to this devastating disease, promote healthy lifestyles that mitigate its impacts, and pledge to continue our fight against it.

Heart disease must be addressed with urgency. Every person can take steps to reduce the risk factors associated with heart disease in themselves and in those they care about—whether as parents, caretakers, or friends—by encouraging healthy eating, physical activity, and by discouraging the use of tobacco. Almost half of all Americans face increased risk of heart disease for reasons that include being a smoker, having high blood pressure, or having high cholesterol. You can reduce your chances of developing heart disease by reducing alcohol intake, exercising regularly, maintaining a nutritious diet, living tobacco-free, and staying aware of early warning signs. For more resources and information, visit www.CDC.gov/HeartDisease.

Testing cholesterol levels for individuals particularly vulnerable to heart disease and checking blood pressure regularly are both critical preventive measures for detecting heart disease early on, and thanks to the Affordable Care Act, tens of millions of Americans now have access to recommended preventive services for free. First Lady Michelle Obama's *Let's Move!* initiative is working to reduce obesity—another primary contributing factor to cardiovascular issues—among children to offset their susceptibility to heart disease and other obesity-related health problems. Additionally, my Administration launched Million Hearts 5 years ago, a national initiative aimed at preventing 1 million heart attacks and strokes by 2017. Moving forward, we will continue to invest in research that helps target medical treatments and gives all of us access to the personalized information we need to keep ourselves and our families healthy.

Michelle and I encourage everyone to participate in National Wear Red Day on Friday, February 5, by wearing red in honor of those we have lost to heart disease and to raise awareness of this devastating disease and the steps we can all take to prevent it. Every 43 seconds, someone in the United States suffers a heart attack, and many of them are fatal. Combating heart disease is imperative for improving public health in America, and together, we can work to ensure everybody knows its signs and symptoms and can access needed care. This month, let us renew our efforts to raise awareness of this disease and its consequences, and let us recommit to building a healthier, heartier future for all.

In acknowledgment of the importance of the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as ''American Heart Month.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim February 2016 as American Heart Month, and I invite all Americans to participate in National Wear Red Day on February 5, 2016. I also invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in recognizing and reaffirming our commitment to fighting cardiovascular disease.

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

[FR Doc. 2016–02218
Filed 2–2–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9392 of January 29, 2016

National African American History Month, 2016

By the President of the United States of America

A Proclamation

America's greatness is a testament to generations of courageous individuals who, in the face of uncomfortable truths, accepted that the work of perfecting our Nation is unending and strived to expand the reach of freedom to all. For too long, our most basic liberties had been denied to African Americans, and today, we pay tribute to countless good-hearted citizens—along the Underground Railroad, aboard a bus in Alabama, and all across our country—who stood up and sat in to help right the wrongs of our past and extend the promise of America to all our people. During National African American History Month, we recognize these champions of justice and the sacrifices they made to bring us to this point, we honor the contributions of African Americans since our country's beginning, and we recommit to reaching for a day when no person is judged by anything but the content of their character.

From the Revolutionary War through the abolitionist movement, to marches from Selma to Montgomery and across America today, African Americans have remained devoted to the proposition that all of us are created equal, even when their own rights were denied. As we rejoice in the victories won by men and women who believed in the idea of a just and fair America, we remember that, throughout history, our success has been driven by bold individuals who were willing to speak out and change the status quo.

Refusing to accept our Nation's original sin, African Americans bound by the chains of slavery broke free and headed North, and many others who knew slavery was antithetical to our country's conception of human rights and dignity fought to bring their moral imagination to life. When Jim Crow mocked the advances made by the 13th Amendment, a new generation of men and women galvanized and organized with the same force of faith as their enslaved ancestors. Our Nation's young people still echo the call for equality, bringing attention to disparities that continue to plague our society in ways that mirror the non-violent tactics of the civil rights movement while adapting to modern times. Let us also not forget those who made the ultimate sacrifice so that we could make our voices heard by exercising our right to vote. Even in the face of legal challenges, every eligible voter should not take for granted what is our right to shape our democracy.

We have made great progress on the journey toward ensuring our ideals ring true for all people. Today, African American high school graduation and college enrollment rates are at an all-time high. The African-American unemployment rate has been halved since its Great Recession peak. More than 2 million African Americans gained health insurance thanks to the Affordable Care Act. The incarceration rates for African-American men and women fell during each year of this Administration and are at their lowest points in over two decades. Yet challenges persist and obstacles still stand in the way of becoming the country envisioned at our founding, and we would do a disservice to all who came before us if we remained blind to the way past injustices shape the present. The United States is home

to 5 percent of the world's population, but 25 percent of the world's prisoners—a disproportionate number of whom are African American—so we must find ways to reform our criminal justice system and ensure that it is fairer and more effective. While we've seen unemployment rates decrease, many communities, particularly those of color, continue to experience significant gaps in educational and employment opportunities, causing too many young men and women to feel like no matter how hard they try, they may never achieve their dreams.

Our responsibility as citizens is to address the inequalities and injustices that linger, and we must secure our birthright freedoms for all people. As we mark the 40th year of National African American History Month, let us reflect on the sacrifices and contributions made by generations of African Americans, and let us resolve to continue our march toward a day when every person knows the unalienable rights to life, liberty, and the pursuit of happiness.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 2016 as National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

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

[FR Doc. 2016–02219
Filed 2–2–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9393 of January 29, 2016

National Teen Dating Violence Awareness and Prevention Month, 2016

By the President of the United States of America

A Proclamation

Teen dating violence is a serious violation that can affect a young person's safety, development, and sense of comfort. Perpetrated by a current or past intimate partner, dating violence takes many forms, including physical, sexual, or emotional abuse, and can occur in person or through electronic communication and social media. Violent dating relationships can lead to depression, anxiety, drug and alcohol use, and thoughts of suicide, and victims may continue to experience detrimental effects throughout their lives. During National Teen Dating Violence Awareness and Prevention Month, we recognize the urgency needed in addressing this problem and recommit to preventing it by educating our youth about its dangers and consequences, and reaffirm the basic human right to be free from violence and abuse.

Dating violence may include physical force, such as kicking, hitting, and shoving; emotional abuse, consistent monitoring, and isolation; or sexual assault. Dating violence can occur in any relationship, whether it is casual and short-term or long-term and monogamous, and any young person can experience dating violence or other unhealthy relationship behaviors—regardless of gender, race, religion, ethnicity, sexual orientation, or socioeconomic status. Approximately 1 in 10 teenagers reports being physically or sexually victimized by a dating partner, and too many other victims do not report it. The cycle of violence can begin with anyone at any time, and as a society, we must acknowledge that we each have a role to play in teaching children about healthy relationships. In their formative years, teens are influenced by their early relationships, and the example set by those around them can have lasting consequences.

My Administration is working diligently to address teen dating violence in a number of ways. Vice President Joe Biden's *1is2many* initiative is strengthening efforts to reduce dating violence among those most vulnerable, particularly young women between the ages of 16 and 24, and is utilizing technology to engage students, teens, and young adults in this cause. To build on our efforts, I established the White House Task Force to Protect Students from Sexual Assault. The Task Force will, in addition to working to combat sexual violence on college campuses, explore ways its recommendations may apply to elementary and secondary schools across our country. My Administration will keep forging a future in which no teenager must suffer due to having an abusive partner.

All Americans have a role to play in ending dating violence and fostering safe, healthy environments for our young people. This month, let us seize our responsibility to set positive examples for our Nation's teenagers by celebrating and demonstrating healthy relationships, and let us recommit to ensuring all people who may be in an abusive relationship have access to help and support. Together, we can reach a day when no young person knows the pain caused by dating violence.

If you or someone you know is involved in an abusive relationship of any kind, you can get immediate and confidential support by calling

1–866–331–9474, texting ''LoveIs'' to 22522, or visiting LoveIsRespect.org. For additional information and resources on dating violence, please visit VetoViolence.CDC.gov.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 2016 as National Teen Dating Violence Awareness and Prevention Month. I call upon all Americans to support efforts in their communities and schools, and in their own families, to empower young people to develop healthy relationships throughout their lives and to engage in activities that prevent and respond to teen dating violence.

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

[FR Doc. 2016–02220
Filed 2–2–16; 11:15 am]
Billing code 3295–F6–P

Reader Aids

Federal Register

Vol. 81, No. 22

Wednesday, February 3, 2016

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5037–5364 1
5365–5572 2
5573–5880 3

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations;
9391 5875
9392 5877
9293 5879
Administrative Orders:
Memorandums:
Memorandum of January 28, 2016 5361
Memorandum of January 29, 2016 5571

7 CFR

920 5573
3434 5575

9 CFR

Proposed Rules:
1 5629
3 5629

10 CFR

Proposed Rules:
430 5658
900 5383

12 CFR

Proposed Rules:
217 5661

13 CFR

Proposed Rules:
107 5666

14 CFR

39 ..... 5037, 5365, 5367
97 ..... 5577, 5579, 5581, 5584
Proposed Rules:
39 ..... 5056, 5395
71 5676

16 CFR

1031 5369

18 CFR

1b 5378
2 5378
157 5378
380 5378
401 5585

21 CFR

73 5589
101 5589
118 5589
165 5589
172 5589
173 5589
177 5589
178 5589
184 5589
189 5589
589 5589
700 5589

24 CFR

Proposed Rules:
960 5677

26 CFR

Proposed Rules:
1 5060

32 CFR

Proposed Rules:
199 5061

33 CFR

117 ..... 5039, 5040, 5041
Proposed Rules:
117 5679

39 CFR

3020 5596
Proposed Rules:
3001 5085

40 CFR

180 5600

42 CFR

440 5530
447 5170
Proposed Rules:
401 5397
425 5824

47 CFR

1 5605
15 5041
73 5380
74 5041
Proposed Rules:
73 5086

50 CFR

665 5619
679 ..... 5054, 5381, 5627, 5628
Proposed Rules:
679 5681

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List February 2, 2016

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.